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Civil Action# 18-cv-01448

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**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Fourteenth Congress

July 5, 2016

Honorable James B. Comey  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, D.C. 20535

Dear Director Comey:

I am concerned that despite finding former Secretary of State Hillary Clinton acted with extreme carelessness and that evidence exists of potential violations of the statutes regarding the handling of classified information, the FBI is not recommending criminal charges against Secretary Clinton. Little solace is found in your detailed breakdown of the FBI's findings that Secretary Clinton acted "extremely careless" in mishandling classified information. This raises many questions.

According to your statement made earlier today, out of the 30,000 e-mails returned to the State Department by Secretary Clinton, 110 e-mails in 52 e-mail chains contained classified information at the time they were sent or received. Eight of those chains contained information that was Top Secret at the time they were sent. Thirty-six chains contained Secret information at the time and eight contained Confidential information. You also noted that separate from those, about 2,000 additional e-mails were "up-classified" to make them Confidential in that the information in those had not been classified at the time the e-mails were sent.

During your remarks, you stated that "[a]lthough there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case." But since President Obama took office in 2009, the Department of Justice has prosecuted at least seven people under the Espionage Act. Five of these individuals -- John Kiriakou, Shamai Leibowitz, Chelsea Manning, Jeffrey Sterling, and former State Department official Stephen Kim -- were sentenced to terms of incarceration.

In 2014, Bronze Star recipient and combat veteran Chief Petty Officer Lyle White pleaded guilty to violating three military regulations for removing classified documents from his Naval office in Virginia and taking them home. He received a suspended 60-day sentence and a suspended \$10,000 fine in return for his plea.

Bryan Nishimura, a Naval reservist deployed in Afghanistan in 2007 and 2008, in his role as a Regional Engineer for the U.S. military in Afghanistan, had access to classified briefings

and digital records that could only be retained and viewed on authorized government computers. Nishimura, however, caused the materials to be downloaded and stored on his personal, unclassified electronic devices and storage media. He carried the classified materials on his unauthorized media when he traveled off-base in Afghanistan and, ultimately, carried those materials back to the United States at the end of his deployment. In the United States, Nishimura continued to maintain the information on unclassified systems in unauthorized locations, and copied the materials onto at least one additional unauthorized and unclassified system. Nishimura pleaded guilty in July of 2015 to unauthorized removal and retention of classified materials. He was fined \$7,500 and ordered to surrender his security clearance.

Your public pronouncement today of the FBI's decision to not recommend charges against Secretary Clinton raises a number of questions. I find the timing and manner of your announcement uniquely troubling in light of last week's secret meeting between Attorney General Loretta Lynch and former President Bill Clinton. I respectfully request that you respond to these questions in writing on or before close of business Monday, July 11, 2016.

1. What sets Secretary Clinton apart from the persons prosecuted for mishandling classified information described above? How does Secretary Clinton's conduct differ from that of former General David Petraeus or former National Security Advisor Sandy Berger?
2. If the FBI found evidence of potential crimes related to mishandling of classified information by Secretary Clinton and her staff, why would the FBI pre-judge that "no reasonable prosecutor" would ever bring such a case for negligent mishandling of classified information? Is that not a decision that should be made by Department of Justice? It strikes me as incredibly unorthodox for you to publicly announce that you are recommending that Secretary Clinton not be charged rather than refer the matter privately to the Department.
3. The espionage chapter, specifically, 18 U.S.C. 793(f), doesn't require that a subject act "intentionally" or "knowingly," but with "gross negligence."

Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer. . . . Shall be fined under this title or imprisoned not more than ten years, or both.

Black's Law defines gross negligence as "a lack of slight diligence or care" or as "a conscious, voluntary, act or omission in reckless disregard of a legal duty and of the consequences to another party..." In your statement you said that Secretary Clinton handled

classified email with "extreme carelessness." How does that not constitute "gross negligence"?

4. Why was Secretary Clinton interviewed only once and only at the end of your investigation? Interviews with her at the early stages and throughout your investigation would have shed light on her conduct in this matter. Certainly, Mrs. Clinton's position as Secretary of State, the non-disclosure agreement she signed as Secretary (and which all federal employees who have access to classified information sign), the painstaking steps she took to circumvent the use of the .gov email system, and her attempts to seek classified devices for use when working inside her State Department office – all clearly point to her knowledge that she handled classified information as Secretary, that she had a duty to do so according to the law, and that she went out of her way to not do so. She was not a rank and file employee with a security clearance. Did this inform your decision?
5. Section 1924 of title 18, United States Code, prohibits the unlawful removal of classified information and is the statute to which General Petraeus pleaded guilty in 2015.

Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year, or both.

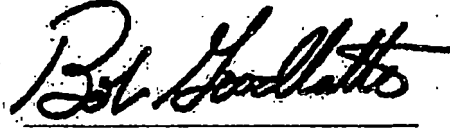
Why does the setup of a private server – through which she received Confidential, Secret, and Top Secret classified information – and retention of such information on the private server – not constitute a violation of Section 1924?

6. Are you concerned that your recommendation that Secretary Clinton not be charged sends a message to the thousands – or millions – of government employees and contractors who possess security clearances (not to mention 535 Members of Congress and Senators) that they don't need to follow the rules?
7. I am concerned that classified information on our military's Special Access Programs and other Top Secret material that Secretary Clinton sent and received over her private server is now in the hands of adversaries who wish to do us harm. If any other American with a security clearance had placed such sensitive information at risk, is there nothing the FBI would have done to recommend sanctions against such person's extreme carelessness?
8. What does your recommendation to DOJ that Secretary Clinton not be charged, despite extreme carelessness in the handling of classified information, mean for the FBI's investigation into the Clinton Foundation?



I look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Goodlatte", written in a cursive style. The signature is positioned above a horizontal line.

**BOB GOODLATTE**  
Chairman

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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KELAN L. DAVIS, *Chief Counsel and Staff Director*  
KATHINE J. LUCAS, *Democratic Chief Counsel and Staff Director*

July 6, 2016

### VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, DC 20535

Dear Director Comey:

On May 17, 2016, I wrote you a letter asking if you believed a special counsel was warranted in the Clinton investigation in light of the conflicts of interest that exist between Department of Justice officials, such as the Attorney General, and Secretary Clinton. I also asked, if you did not believe one was warranted, that you explain why your opinion in this case is different from your decision to appoint a special counsel in the Valerie Plame investigation after Attorney General Ashcroft recused himself. You failed to provide any response at all to that letter. Even before Attorney General Lynch's private meeting with former President Clinton, there were several apparent conflicts of interest, some of which I described in that letter. Prosecutorial decisions made under the shadow of apparent conflicts of interest are understandably suspect. The skepticism from much of the public over your announcement yesterday that the FBI is not recommending any prosecutions stemming from your investigation of Secretary Clinton's use of a non-government email account and server to conduct her official State Department business is reasonable. Your announcement itself contained a number of inconsistencies that also raise serious questions as to how the FBI reached its conclusions. All of these questions can only be answered with greater transparency.

First, Secretary Clinton has long claimed that none of the emails she sent or received on her non-government system were marked as classified. In your statement, you revealed that some "of the e-mails containing classified information **bore markings indicating the presence of classified information.**" However, you also claimed there was no intent to mishandle classified information. Yet you entirely failed to explain how information that was marked as classified—rather than so-called "derivatively classified" information contained in email conversations—could end up on an unclassified system without the intent of the person who transferred them. As you know, classified systems are kept separate from unclassified systems within the government; a user cannot plausibly unintentionally transfer documents marked as classified from the classified systems onto any

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unclassified system and then email them. It takes affirmative, intentional action to do so, such as saving the classified document to a disk from the classified system and moving the disk to an unclassified system, printing the classified document from the classified system and scanning it into an unclassified system, or retyping a classified document into an unclassified system. And government personnel have been prosecuted and convicted for doing exactly this: Navy Reservist Bryan Nishimura was convicted in 2015 for transferring classified information from classified government systems to his unclassified personal electronic equipment, even though he had no intent of further distribution.<sup>1</sup> Despite this, you asserted that you did not see any intentional mishandling of classified information in the Clinton investigation and based your recommendation against prosecution on that assertion. Given the intent required to transfer documents *marked* as classified onto an unclassified system, there is no publicly-available explanation for the basis of your conclusion.

Second, you stated: "The FBI also discovered *several thousand* work-related e-mails that were not in the group of 30,000 that were returned by Secretary Clinton to State in 2014." Secretary Clinton has claimed, including in a sworn declaration in a Freedom of Information Act case, that she had ensured that *all* of her work emails were turned over to the State Department after it noticed she had not, as required by law, turned them over when she left. Yet your statement included no analysis of the applicability of federal records laws, such as alienation of federal records under 18 U.S.C. § 2071, or perjury, and there was no indication that the FBI investigators even pursued this area of potential illegal activity. Similarly, although several of the emails from Secretary Clinton and her associates contained information that raised public corruption issues relating to the Clinton Foundation and paid speeches given by former President Clinton, your statement gave no indications that the FBI ever investigated these issues.

Third, you said "there is evidence of potential violations of the statutes regarding the handling of classified information" and that Secretary Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information." Under the law, 18 U.S.C. § 793(f), gross negligence is enough for a violation, but you stated that because you were unaware of prior prosecutions absent evidence of intent, the FBI's view is that no charges are appropriate in this case. This ignores the requirements of the law itself, the evidence of intent regarding the marked classified information, and the evidence of intent in establishing the private server in the first place. Moreover, novel situations should not be immune from applicable law simply because they are novel.

And finally, in your statement you claimed that "vast quantities of materials exposed in such a way as to support an inference of intentional misconduct" are needed to prosecute. However, you described no analysis of the laws against alienation of federal records and whether the "thousands" of work related emails deleted and withheld from the State Department constituted an inference of intentional misconduct under that statute.

In light of all these inconsistencies, it is even more troubling that the FBI tried to gag its agents with a non-disclosure agreement on this matter, in violation of whistleblower protection statutes. In your July 1st reply to my February 4th letter, you indicated that agents working on this case were required to sign a non-disclosure agreement that failed to exempt protected whistleblowing. Only after

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<sup>1</sup> *Folsom Naval Reservist is Sentenced After Pleading Guilty to Unauthorized Removal and Retention of Classified Materials*, FBI, July 29, 2015. Available at: <https://www.fbi.gov/sacramento/press-releases/2015/folsom-naval-reservist-is-sentenced-after-pleading-guilty-to-unauthorized-removal-and-retention-of-classified-materials>.

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I wrote to you did you advise your FBI agents that they are still free to speak with Congress regarding waste, fraud, and abuse. Interestingly, I wrote to you on February 4, 2016, and finally received a partial response on July 1, 2016, and a full response on July 5, 2016 – five months after my original transmittal.

While your statement contained a summary of the purported facts with several definitive assertions about what they mean, it failed to provide enough details for the public to independently assess your conclusions. Given the inconsistencies in your statement, Congress and the people have a right to know the full set of evidence on which you based your decision.

As such, the FBI should release in detail the actual evidence it gathered in the course of the investigation, including the recovered emails. A final report to the American public would not be without precedent. For example, in light of the intense public interest and the resources devoted to the inquiry, the FBI released a final report at the end of the Anthrax investigation, even though there was no prosecution in that case. Similarly, the FBI should provide a detailed written accounting of the scope of its investigation, the investigative steps it took, and the evidence it gathered in the course of its investigation. Until the FBI does so, much of the public will rightly be skeptical of the integrity of this investigation.

Accordingly, please address the following questions:

1. When will you reply to my letter asking about the apparent conflicts in this case? Since I sent my letter, Former President Clinton had a private meeting with Attorney General Lynch and the New York Times reported that Former Secretary Clinton was considering retaining her as Attorney General if she is elected President. In light of the other apparent conflicts outlined in my letter and this new information, do you believe there is no appearance of a conflict warranting the appointment of a special counsel, and if not, why not?
2. How many emails contained classification markings, what were those markings, and why is that not considered evidence of intentional mishandling of classified information? Did the FBI investigation determine how each of those documents marked as classified was transferred from classified systems onto an unclassified system and then emailed?
3. Publicly-released email indicates Secretary Clinton instructed a subordinate to “remove headers” from a classified document and “send nonsecure.” The document was a set of talking points related to a principals meeting of the National Security Council. Please explain how that is not evidence of intent to mishandle classified information. Was Secretary Clinton asked about that email in her interview with the FBI? Was her subordinate asked about it? What were their responses?
4. Given your statement that Secretary Clinton and her aides were “extremely careless” in handling classified information, why do you believe it would be unreasonable for any prosecutor to bring a charge based on “grossly negligent” handling of classified information? Is there a distinction between those two standards? Or do you believe that there should be an Executive Branch policy of refusing to prosecute anyone for

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- gross negligence without evidence of intentional conduct, even though the statute does not require it? If so, would you recommend repealing the statute criminalizing gross negligence? If not, why not?
5. As part of the investigation, did the FBI review the classified cybersecurity briefing Diplomatic Security arranged for Secretary Clinton and her staff in 2011, the Boswell Memorandum regarding cybersecurity threats relating to the use of Blackberries, and the other relevant security warnings given to Secretary Clinton and her staff on these issues? If not, why not? Did you evaluate whether such repeated warnings to Secretary Clinton about specific cyber threats and the use of non-government email, along with her subsequent and continuing refusal to comply with those multiple warnings and instructions, constituted gross negligence? If not, why not?
  6. Were any of Secretary Clinton's non-government servers, or their backups, located outside of the United States? Did the FBI recover all of the servers involved?
  7. In your statement you said: "To be clear, this is not to suggest that in similar circumstances, a person who engaged in this activity would face no consequences. To the contrary, those individuals are often subject to security or administrative sanctions. But that is not what we are deciding now." Has the FBI recommended that Secretary Clinton or any of her senior aides have their security clearances suspended or revoked as a result of its findings? If not, why not?
  8. One of the people who ran Secretary Clinton's private server, Bryan Pagliano, invoked the Fifth Amendment when called to testify before the Benghazi Committee, when approached by my Committee, and in related Freedom of Information Act litigation. He reportedly received a limited immunity agreement from the Department of Justice. Did any other people the FBI contacted as part of the investigation invoke the Fifth Amendment? Did Secretary Clinton invoke the Fifth Amendment when interviewed by the FBI?
  9. The head of SES/IRM during Secretary Clinton's tenure, John Bentel, testified under oath to the Benghazi Committee that he only learned of Secretary Clinton non-government email and server when the story broke in the press in 2015. He made the same assertion to my Committee through his lawyer. Yet, as part of the State OIG's investigation, two of his subordinates independently told State OIG that they had raised concerns to Mr. Bentel in 2010 about Secretary Clinton's non-government email and server not complying with federal records requirements, that he falsely told them the State Department's legal team had approved her email system, and then told them "not to discuss the matter any further" and "never to speak of the Secretary's personal email system again." Did the FBI interview Mr. Bentel as part of the investigation? If not, why not? Did Mr. Bentel repeat his claim that he only learned of the non-government email and server from the media in 2015? Did the FBI attempt to resolve the conflict between Mr. Bentel's claims and the claims of his two subordinates? If not, why not?



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10. Did the FBI or Department of Justice raise any concerns about several of Secretary Clinton's associates using the same attorneys to represent them in the investigation? Did the FBI determine whether Secretary Clinton paid for the attorneys for her associates, especially Mr. Pagliano and Mr. Bentel, and whether such third-party fee arrangements raised conflicts of interest given that those associates were being asked questions whose answers could incriminate Secretary Clinton? In the FBI's view, would a third-party fee arrangement in which Secretary Clinton paid for Mr. Pagliano's attorney constitute a conflict of interest when he was given immunity to speak about his involvement in her server? If not, why not?
11. According to press reports, the Department of Justice made an agreement with Cheryl Mills that certain topics would be off-limits during her interview with the FBI, including questions about her role in sorting and deleting Secretary Clinton's email. This was purportedly because Ms. Mills claimed to be acting as Secretary Clinton's private attorney in doing so, and thus sought to shield those actions behind attorney-client privilege. Did the FBI and/or Department of Justice make any agreements, formally or informally, with Secretary Clinton, her associates, or their attorneys, to preclude the FBI or Department of Justice from certain areas of inquiry? If so, please describe these arrangements and provide copies of all relevant records of them.
12. Did Secretary Clinton invoke attorney-client privilege, or any other privilege, to refuse to answer any questions posed by the FBI or the Department of Justice during her interview?
13. Rule 1.11 of the ABA Model Rules of Professional Conduct, which covers "Special Conflicts of Interest for Former and Current Government Officers and Employees," specifically states that "a lawyer who has formerly served as a public officer or employee of the government . . . shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation." While working for Secretary Clinton at the State Department, Ms. Mills was personally and substantially involved in Secretary Clinton's use of a personal email and server for official business. Under the rule, it appears that she should have been precluded from serving as Secretary Clinton's private attorney in the same matter after leaving the State Department. Did the FBI determine whether the State Department had given written consent for Ms. Mills' private representation of Secretary Clinton in this matter? Did the FBI otherwise raise concerns about the conflicts the representation posed?
14. When did the FBI first contact Secretary Clinton as part of the investigation? When did it request an interview? When was the date of the interview determined?
15. Did the FBI investigate Secretary Clinton's and her associates possible violations of laws concerning the treatment of federal records, such as 18 U.S.C. § 2071, which prohibits concealing or destroying such federal records? Did the FBI investigate whether any of the thousands of federal records Secretary Clinton and her attorneys deleted were responsive to Congressional inquiries or agency inquiries, such as ones

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from the State Department OIG, which would have violated 18 U.S.C. §§ 1505 and 1519, respectively? Did the FBI evaluate the numerous emails released suggesting that Secretary Clinton and her associates may have attempted to evade the Freedom of Information Act?

16. Did the FBI investigate, or is the FBI currently investigating, allegations of public corruption relating to the Clinton Foundation and former President Clinton's speaking fees from foreign governments? If not, why not?
17. Under the law, it is a "well-settled principle that false exculpatory statements are evidence – often strong evidence – of guilt." *See, e.g., Al-Adahi v. Obama*, 613 F.3d 1102, 1107 (D.C. Cir. 2010); *United States v. Penn*, 974 F.2d 1026, 1029 (8th Cir. 1992); *United States v. Meyer*, 733 F.2d 362, 363 (5th Cir. 1984). As your statement and the State OIG report both demonstrated, Secretary Clinton and her representatives made numerous exculpatory statements later shown to be false: that she never sent or received any classified information; that she never sent or received any information that was classified at the time; that she never sent or received any information marked as classified; that she established the server setup in order to only have to use one device; that the State Department approved her server arrangement; that her attorneys reviewed each of her emails in sorting them for deletion or production; that she turned over all her federal records; that she would cooperate with any inquiries into the issue; that she would encourage her associates to cooperate as well. Did the FBI weigh the probative value of this cavalcade of false statements in determining her guilt and intent, as it should have under the law?

Please provide your response by July 20, 2016. Thank you for your attention to this important matter. If you have any questions, please contact Patrick Davis of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

cc: The Honorable Patrick J. Leahy  
Ranking Member  
Senate Committee on the Judiciary

[redacted] DO) (FBI)

**From:** [redacted] (DO) (FBI)  
**Sent:** Wednesday, July 06, 2016 12:46 PM  
**To:** [redacted] (Judiciary-Dem)  
**Subject:** RE: 2016-07-06 CEG to FBI (Clinton Investigation Transparency)  
**Attachments:** 2016-07-01 FBI to CEG re Clinton server case and NDA.pdf

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b7C -1,2

Copy was delivered, but also attaching here an electronic copy for you. (The July 1 and July 5 they refer to are one and the same.)

[redacted]

b6 -1  
b7C -1

**From:** [redacted] (Judiciary-Dem) [mailto:[redacted]]  
**Sent:** Wednesday, July 06, 2016 12:06 PM  
**To:** [redacted] (DO) (FBI)  
**Subject:** FW: 2016-07-06 CEG to FBI (Clinton Investigation Transparency)

b6 -1,2  
b7C -1,2

[redacted] Chairman Grassley's letter refers to a response the FBI sent to him on July 1 and July 5 re: whistleblowers. Did you provide a copy of that communication to the Ranking Member, and if so who did you send it to? I have not seen it, and would like to get copies ASAP. Thanks,

[redacted]

[redacted]

Chief Counsel, Civil Law and Oversight  
Ranking Member  
Senator Patrick Leahy  
U.S. Senate Judiciary Committee

b6 -2  
b7C -2

[redacted]

**From:** [redacted] (Judiciary-Rep)  
**Sent:** Wednesday, July 06, 2016 11:51 AM  
**To:** [redacted] (DO) (FBI)  
**Cc:** CEG (Judiciary-Rep); [redacted] (Judiciary-Rep); [redacted] (Judiciary-Rep); [redacted] (Judiciary-Dem)  
**Subject:** 2016-07-06 CEG to FBI (Clinton Investigation Transparency)

b6 -1,2  
b7C -1,2

[redacted]

Attached is a letter to Director Comey from Chairman Grassley. Please confirm receipt, and please send all formal follow-up correspondence electronically in PDF format to [CEG@judiciary-rep.senate.gov](mailto:CEG@judiciary-rep.senate.gov) [redacted] and me.

Thanks,  
[redacted]

b6 -2  
b7C -2

[redacted]

Investigative Counsel

Chairman Charles E. Grassley  
U.S. Senate Committee on the Judiciary



b6 -2  
b7C -2



**U.S. Department of Justice**

**Federal Bureau of Investigation**

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*Washington, D.C. 20535-0001*

**AUG 16 2016**

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I am writing in response to your letters to Director Comey dated May 17, 2016 and July 6, 2016 regarding the FBI's investigation of former Secretary of State Hillary Clinton's use of a private email server. As Director Comey said in his statement on July 5, 2016, due to intense public interest in the FBI's investigation into this matter, we believe it is important to address your questions and explain our recommendation as to the appropriate resolution of this investigation. For the same reasons, the FBI will be making a document production responding to your interest in this matter.

The FBI conducted this investigation, as it does all investigations, in a competent, honest, and independent way. We had an investigative team of agents and analysts supported by technical experts, lawyers, and others from several divisions in the FBI. The investigative team worked for close to a year conducting interviews, reviewing emails, and completing technical examinations of recovered equipment. In addition, the FBI's technical team conducted extensive analysis to understand what, if any, indications there might be of a compromise of Secretary Clinton's electronic devices by hostile actors.

After nearly a year of gathering and analyzing evidence from numerous sources, the FBI made a recommendation to the Department of Justice. Although the prosecutors make the ultimate decision about whether or not charges are appropriate based on the evidence, the FBI frequently makes recommendations and engages in conversations with the prosecutors regarding the appropriate resolution of an investigation, given the evidence. The fact that the FBI made a recommendation was not unusual; the fact that it was shared publicly was.

Our investigation looked at whether there was evidence that classified information was improperly stored or transmitted on Secretary Clinton's private email system, in violation of a federal statute (18 U.S.C. § 793) that makes it a felony to mishandle classified information either intentionally or in a grossly negligent way, or another statute (18 U.S.C. § 1924) that makes it a misdemeanor to knowingly remove classified information from appropriate systems or storage facilities. We also considered a statute (18 U.S.C. § 2071) making it illegal to willfully and unlawfully conceal, remove, or destroy a federal record. Ultimately, the FBI did not recommend



The Honorable Charles E. Grassley

prosecution based on an assessment of the facts and a review of how these statutes have been charged in the past.

As the Director testified, cases prosecuted by the Department of Justice under the relevant statutes involved some combination of: (1) clearly intentional and willful mishandling of classified information; (2) significant quantities of material exposed in such a way as to support an inference of intentional misconduct; (3) indications of disloyalty to the United States; or (4) efforts to obstruct justice. One or more of these factors was present in the cases against David Petraeus, Sandy Berger, and Bryan Nishimura. For instance, Petraeus provided vast quantities of highly sensitive, compartmented information that he knew to be classified to a person without an appropriate clearance or a need to know the information and, when confronted, he lied to the FBI. Berger removed clearly marked, highly classified information from the National Archives by secreting the documents in his clothing. These cases included clear evidence of knowledge and intent which illustrates an important distinction from what the FBI found in this investigation. Nishimura, a Naval Reservist stationed in Afghanistan, removed hundreds of marked classified documents, without authorization, from classified U.S. military information systems, which he then placed onto several personally-owned, unauthorized devices. Nishimura later lied to investigators about onto which devices he had placed classified information, and destroyed a large quantity of classified material he had maintained in his home. Despite this destruction, a subsequent search of his house recovered 256 marked classified documents which he was not authorized to store.

The fact that Secretary Clinton received emails containing "(C)" portion markings is not clear evidence of knowledge or intent. As the Director has testified, the FBI's investigation uncovered three instances of emails portioned marked with "(C)," a marking ostensibly indicating the presence of information classified at the Confidential level. In each of these instances, the Secretary did not originate the information; instead, the emails were forwarded to her by staff members, with the portion-marked information located within the email chains and without header and footer markings indicating the presence of classified information. Moreover, only one of those emails was determined by the State Department to contain classified information. There has been no determination by the State Department as to whether these three emails were classified at the time they were sent.

Nor is the fact that Secretary Clinton emailed former Deputy Chief of Staff Jacob Sullivan asking him to remove "identifying heading[s]" from a document and "send nonsecure" as a "nonpaper" sufficient evidence to show that she knowingly or willfully mishandled classified information. As we understand the common State Department use of the term, "non-paper" refers to a document authorized for distribution to a foreign government that is without explicit attribution to the U.S. Government and would not contain classified information. In their interviews with the FBI, both Secretary Clinton and Sullivan indicated their understanding that this was an instruction to remove classified information from the talking points, in order to send the resulting unclassified document through non-secure means. Moreover, the FBI investigation determined that a secure fax was successfully sent subsequent to this message, and no evidence was recovered indicating that the unclassified "non-paper" was ever created or sent over the unclassified email system.

The Honorable Charles E. Grassley

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Title 18, United States Code, Section 793 on its face makes it a felony to cause national defense information to be removed, lost, stolen, or destroyed through gross negligence. Even at the time the statute was passed, there were concerns in Congress about the inclusion of this provision. Additionally, with respect to this statute, there are concerns about the constitutional implications of criminalizing such conduct without requiring the government to prove that the person knew he or she was doing something wrong, which is reflected in the Justice Department's history in charging this specific subsection of the statute (18 U.S.C. § 793(f)). Our understanding is the Department has only charged one person with mishandling national defense information through gross negligence in the 99-year history of the statute, and in that case, the charge was dismissed when the defendant pled guilty to making false statements in violation of 18 U.S.C. § 1001. Moreover, in that case, there were indications of espionage and disloyalty to the United States. As the Director testified, he believed that to prosecute Secretary Clinton or others within the scope of the investigation for gross negligence would be inconsistent with how the Department has interpreted and applied the statute since Congress enacted it.

As the Director stated, the FBI did find evidence that Secretary Clinton and her colleagues were extremely careless in their handling of certain, very sensitive, highly classified information. The term "extremely careless" was intended to be a common sense way of describing the actions of Secretary Clinton and her colleagues. The Director did not equate "extreme carelessness" with the legal standard of "gross negligence" that is required by the statute. In this case, the FBI assessed that the facts did not support a recommendation to prosecute her or others within the scope of the investigation for gross negligence.

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The Honorable Charles E. Grassley

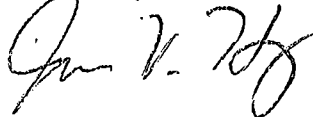
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As the Director noted in his statement, the FBI made its recommendation concerning this matter to the Justice Department independent of any consultation with the Attorney General or any White House officials, and the investigation was conducted without any improper political influence of any kind. For this reason, the FBI does not believe the appointment of a Special Counsel is warranted. In addition, the FBI would refer you to the Department of Justice for any explanation of legal agreements that may or may not have been made with potential witnesses, as well as other judgments or decisions made by Department of Justice officials.

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Thank you for your continued interest in this important matter, and, as always, we appreciate your continued support for the men and women of the FBI. The production of documents related to this matter will be provided under separate cover letter consistent with required protocols for the transmission of classified documents.

Sincerely,



Jason V. Herring  
Acting Assistant Director  
Office of Congressional Affairs

1 - The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

AUG 16 2016

Dear Mr. Chairman:

I am writing in response to your letters to Director Comey dated May 17, 2016 and July 6, 2016 regarding the FBI's investigation of former Secretary of State Hillary Clinton's use of a private email server. As Director Comey said in his statement on July 5, 2016, due to intense public interest in the FBI's investigation into this matter, we believe it is important to address your questions and explain our recommendation as to the appropriate resolution of this investigation. For the same reasons, the FBI will be making a document production responding to your interest in this matter.

The FBI conducted this investigation, as it does all investigations, in a competent, honest, and independent way. We had an investigative team of agents and analysts supported by technical experts, lawyers, and others from several divisions in the FBI. The investigative team worked for close to a year conducting interviews, reviewing emails, and completing technical examinations of recovered equipment. In addition, the FBI's technical team conducted extensive analysis to understand what, if any, indications there might be of a compromise of Secretary Clinton's electronic devices by hostile actors.

After nearly a year of gathering and analyzing evidence from numerous sources, the FBI made a recommendation to the Department of Justice. Although the prosecutors make the ultimate decision about whether or not charges are appropriate based on the evidence, the FBI frequently makes recommendations and engages in conversations with the prosecutors regarding the appropriate resolution of an investigation, given the evidence. The fact that the FBI made a recommendation was not unusual; the fact that it was shared publicly was.

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- 1 - FBI ExecSec, Room 6147 TRIM #s 16/DO/1759, 16/DO/2349
- 1 - A/AD Herring *JVH*
- 1 - Ms. Beers
- MAIL ROOM

The Honorable Charles E. Grassley

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As the Director testified, cases prosecuted by the Department of Justice under the relevant statutes involved some combination of: (1) clearly intentional and willful mishandling of classified information; (2) significant quantities of material exposed in such a way as to support an inference of intentional misconduct; (3) indications of disloyalty to the United States; or (4) efforts to obstruct justice. One or more of these factors was present in the cases against David Petraeus, Sandy Berger, and Bryan Nishimura. For instance, Petraeus provided vast quantities of highly sensitive, compartmented information that he knew to be classified to a person without an appropriate clearance or a need to know the information and, when confronted, he lied to the FBI. Berger removed clearly marked, highly classified information from the National Archives by secreting the documents in his clothing. These cases included clear evidence of knowledge and intent which illustrates an important distinction from what the FBI found in this investigation. Nishimura, a Naval Reservist stationed in Afghanistan, removed hundreds of marked classified documents, without authorization, from classified U.S. military information systems, which he then placed onto several personally-owned, unauthorized devices. Nishimura later lied to investigators about onto which devices he had placed classified information, and destroyed a large quantity of classified material he had maintained in his home. Despite this destruction, a subsequent search of his house recovered 256 marked classified documents which he was not authorized to store.

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Jason V. Herring  
Acting Assistant Director  
Office of Congressional Affairs



**U.S. Department of Justice**

**Federal Bureau of Investigation**

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*Washington, D.C. 20535-0001*

AUG 16 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and  
Government Reform  
United States House of Representatives  
Washington, DC 20515

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman and Mr. Ranking Member:

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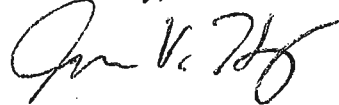
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Office of Congressional Affairs



AUG 16 2016

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1 - FBI ExecSec, Room 6147 TRIM #s 16/DO/2656, 16/DO/2437  
1 - A/AD Herring  
1 - Ms. Beers

*JW4*

MAIL ROOM

The Honorable Jason Chaffetz and The Honorable Elijah E. Cummings

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**U.S. Department of Justice**

**Federal Bureau of Investigation**

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*Washington, D.C. 20535*

The Honorable Paul D. Ryan  
Speaker  
United States House of Representatives  
Washington, DC 20515

**AUG 16 2016**

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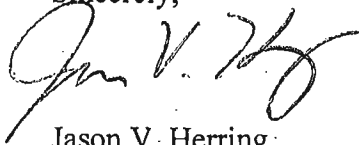
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Jason V. Herring  
Acting Assistant Director  
Office of Congressional Affairs

The Honorable Paul D. Ryan  
Speaker  
United States House of Representatives  
Washington, DC 20515

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1 - FBI ExecSec, Room 6147 TRIM # 16/DO/2377  
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*JWH*

MAIL ROOM

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**U.S. Department of Justice**

Federal Bureau of Investigation

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*Washington, D.C. 20535-0001*

The Honorable Robert Goodlatte  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

**AUG 16 2016**

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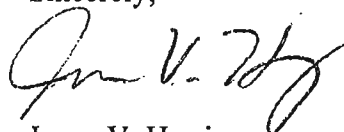
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**U.S. Department of Justice**

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Permanent Select Committee on Intelligence  
United States House of Representatives  
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Title 18, United States Code, Section 793 on its face makes it a felony to cause national defense information to be removed, lost, stolen, or destroyed through gross negligence. Even at the time the statute was passed, there were concerns in Congress about the inclusion of this provision. Additionally, with respect to this statute, there are concerns about the constitutional implications of criminalizing such conduct without requiring the government to prove that the person knew he or she was doing something wrong, which is reflected in the Justice Department's history in charging this specific subsection of the statute (18 U.S.C. § 793(f)). Our understanding is the Department has only charged one person with mishandling national defense information through gross negligence in the 99-year history of the statute, and in that case, the charge was dismissed when the defendant pled guilty to making false statements in violation of 18 U.S.C. § 1001. Moreover, in that case, there were indications of espionage and disloyalty to the United States. As the Director testified, he believed that to prosecute Secretary



The Honorable Devin Nunes

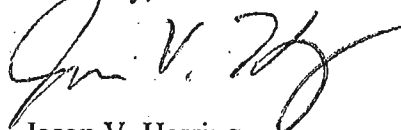
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Sincerely,



Jason V. Herring  
Acting Assistant Director  
Office of Congressional Affairs

1 - The Honorable Adam B. Schiff  
Ranking Member  
Permanent Select Committee on Intelligence  
United States House of Representatives  
Washington, DC 20515

The Honorable Devin Nunes  
Chairman  
Permanent Select Committee on Intelligence  
United States House of Representatives  
Washington, DC 20515

AUG 16 2016

Dear Mr. Chairman:

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After nearly a year of gathering and analyzing evidence from numerous sources, the FBI made a recommendation to the Department of Justice. Although the prosecutors make the ultimate decision about whether or not charges are appropriate based on the evidence, the FBI frequently makes recommendations and engages in conversations with the prosecutors regarding the appropriate resolution of an investigation, given the evidence. The fact that the FBI made a recommendation was not unusual; the fact that it was shared publicly was.

Dep. Director _____	
EAD-Adm. _____	1 - The Honorable Adam B. Schiff
EAD-CT/CI _____	Ranking Member
EAD-Crim. _____	Permanent Select Committee on Intelligence
EAD-Intell. _____	United States House of Representatives
EAD-LES _____	Washington, DC 20515
Asst. Dir.: _____	
Adm. Serv. _____	
CJIS _____	
Ctrintell. _____	1 - FBI ExecSec, Room 6147 TRIM #s TRIM # 16/DO/2374
Ctterrorism _____	
Crim. Inv. _____	1 - A/AD Herring
Cyber _____	1 - Ms. Beers
Finance _____	
Info. Res. _____	
Inspection _____	
Inv. Tech. _____	
Laboratory _____	
Off. of Cong. Affs. _____	
Off. of the Gen. Coun. _____	
Off of Intell. _____	
Off. Pub. Affs. _____	
Off. of Prof. Resp. _____	
Rec. Mgmt. _____	
Security _____	
Training _____	
Off. of EEOA _____	

MAIL ROOM

The Honorable Devin Nunes

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Washington, DC 20515



**U.S. Department of Justice**

Federal Bureau of Investigation

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*Washington, D.C. 20535*

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

AUG 16 2016

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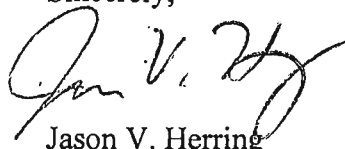
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Acting Assistant Director  
Office of Congressional Affairs

1 - The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

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AUG 16 2016

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- EAD-LES \_\_\_\_\_
- Asst. Dir.: \_\_\_\_\_
- Adm. Serv. \_\_\_\_\_
- CJIS \_\_\_\_\_
- Ctrintell. \_\_\_\_\_
- Ctterrorism \_\_\_\_\_
- Crim. Inv. \_\_\_\_\_
- Cyber \_\_\_\_\_
- Finance \_\_\_\_\_
- Info. Res. \_\_\_\_\_
- Inspection \_\_\_\_\_
- Inv. Tech. \_\_\_\_\_
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- Off. of Cong. Affs. \_\_\_\_\_
- Off. of the Gen. \_\_\_\_\_
- Coun. \_\_\_\_\_
- Off of Intell. \_\_\_\_\_
- Off. Pub. Affs. \_\_\_\_\_
- Off. of Prof. Resp. \_\_\_\_\_
- Rec. Mgnt. \_\_\_\_\_
- Security \_\_\_\_\_
- Training \_\_\_\_\_
- Off. of EEOA \_\_\_\_\_

1 - The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

1 - FBI ExecSec, Room 6147 TRIM #s 16/DO/2350, 16/DO/2525, 16/DO/2600

1 - A/AD Herring  
1 - Ms. Beers

*JWH*

MAIL ROOM

The Honorable Ron Johnson

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Acting Assistant Director  
Office of Congressional Affairs



Federal Bureau of Investigation

Washington, D.C. 20535

October 28, 2016

Honorable Richard M. Burr  
Chairman  
Select Committee on Intelligence

Honorable Devin Nunes  
Chairman  
Permanent Select Committee on Intelligence

Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary

Honorable Robert Goodlatte  
Chairman  
Committee on the Judiciary

Honorable Richard Shelby  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice, Science  
and Related Agencies

Honorable John Culberson  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs

Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and  
Government Reform

Dear Messrs Chairmen:

In previous congressional testimony, I referred to the fact that the Federal Bureau of Investigation (FBI) had completed its investigation of former Secretary Clinton's personal email server. Due to recent developments, I am writing to supplement my previous testimony.

In connection with an unrelated case, the FBI has learned of the existence of emails that appear to be pertinent to the investigation. I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation.

Although the FBI cannot yet assess whether or not this material may be significant, and I cannot predict how long it will take us to complete this additional work, I believe it is important to update your Committees about our efforts in light of my previous testimony.

Sincerely yours,

  
James B. Comey  
Director



- 1 -- Honorable Dianne Feinstein  
Vice Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, DC 20510
  
- 1 -- Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510
  
- 1 -- Honorable Barbara Mikulski  
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- 1 -- Honorable John Conyers, Jr.  
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The Director's  
Chief of Staff,  
Jim Rybicki, has  
approved this  
document for  
signature.

[Redacted]

(OGC)

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October 28, 2016

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Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs

Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and  
Government Reform

Dear Messrs Chairmen:

In previous congressional testimony, I referred to the fact that the Federal Bureau of Investigation (FBI) had completed its investigation of former Secretary Clinton's personal email server. Due to recent developments, I am writing to supplement my previous testimony.

In connection with an unrelated case, the FBI has learned of the existence of emails that appear to be pertinent to the investigation. I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation.

Although the FBI cannot yet assess whether or not this material may be significant, and I cannot predict how long it will take us to complete this additional work, I believe it is important to update your Committees about our efforts in light of my previous testimony.

Sincerely yours,

James B. Comey  
Director

- Dep. Director \_\_\_\_\_
- EAD-Adm. \_\_\_\_\_
- EAD-CT/CI \_\_\_\_\_
- EAD-Crim. \_\_\_\_\_
- EAD-Intell. \_\_\_\_\_
- EAD-LES \_\_\_\_\_
- Asst. Dir.: \_\_\_\_\_
- Adm. Serv. \_\_\_\_\_
- CJIS \_\_\_\_\_
- Ctrintell. \_\_\_\_\_
- Ctterrorism \_\_\_\_\_
- Crim. Inv. \_\_\_\_\_
- Cyber \_\_\_\_\_
- Finance \_\_\_\_\_
- Info. Res. \_\_\_\_\_
- Inspection \_\_\_\_\_
- Inv. Tech. \_\_\_\_\_
- Laboratory \_\_\_\_\_
- Off. of Cong. Affs. \_\_\_\_\_
- Off. of the Gen. Coun. \_\_\_\_\_
- Off. of Intell. \_\_\_\_\_
- Off. Pub. Affs. \_\_\_\_\_
- Off. of Prof. Resp. \_\_\_\_\_
- Rec. Mgmt. \_\_\_\_\_
- Security \_\_\_\_\_
- Training \_\_\_\_\_
- Off. of EEOA \_\_\_\_\_

- 1 -  Room 7176
- 1 - FBI ExecSec, Room 6147
- 1 - A/AD Herring *JBT*

1 - Ms. Beers

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b7C -1

MAIL ROOM

- 1 – Honorable Dianne Feinstein  
Vice Chairman  
Senate Select Committee on Intelligence  
United States Senate  
Washington, DC 20510
- 1 – Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510
- 1 – Honorable Barbara Mikulski  
Ranking Member  
Committee on Appropriations  
Subcommittee on Commerce, Justice, Science  
and Related Agencies  
United States Senate  
Washington, DC 20510
- 1 – Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510
- 1 – Honorable Adam B. Schiff  
Ranking Member  
Permanent Select Committee on Intelligence  
U.S. House of Representatives  
Washington, DC 20515
- 1 – Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515
- 1 – Honorable Michael Honda  
Ranking Member  
Subcommittee on Commerce, Justice, Science  
and Related Agencies  
U.S. House of Representatives  
Washington, DC 20515



1 – Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Congress of the United States  
Washington, DC 20515

October 28, 2016

The Honorable Loretta E. Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

The Honorable James Comey  
Director, Federal Bureau of Investigation  
U.S. Department of Justice  
935 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Lynch and Director Comey:

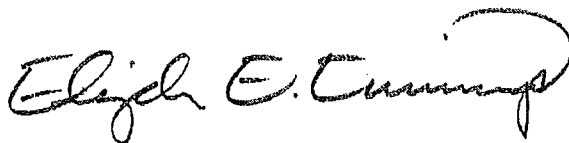
Today, Director Comey sent a letter to eight Congressional Committees after the FBI learned of the existence of emails that may be pertinent to its investigation of former Secretary Hillary Clinton's personal email server.

Although Director Comey's letter was clear that none of the new material identified by the FBI may be "significant," the letter provided such limited and vague information that it allowed rampant speculation, numerous leaks, and wild accusations just 11 days before the presidential election.

During Director Comey's testimony before Congress on July 7, he made clear that the FBI was not treating Secretary Clinton differently from anyone else investigated by the FBI. He explained that it would have been a double-standard to recommend prosecution based on the evidence the FBI had obtained.

In fairness to everyone involved, we are writing to request that the FBI and Department of Justice issue a more complete accounting of the details behind this letter, based on information from your career investigators and prosecutors, in order to debunk these conspiracy theories and correct the public record.

Sincerely,



Rep. Elijah E. Cummings  
Ranking Member  
House Committee on Oversight and  
Government Reform



Rep. John Conyers, Jr.  
Ranking Member  
House Committee on the Judiciary

The Honorable Loretta E. Lynch  
The Honorable James Comey  
Page 2

cc: The Honorable Sally Yates, Deputy Attorney General

The Honorable Mary McCord, Principal Deputy Assistant Attorney General for National Security

The Honorable Jason Chaffetz, Chairman, House Committee on Oversight and Government Reform

The Honorable Bob Goodlatte, Chairman, House Committee on the Judiciary

## United States Senate

WASHINGTON, DC 20510-7012

October 30, 2016

The Honorable James Comey  
Director of the Federal Bureau of Investigation  
Federal Bureau of Investigation Headquarters  
935 Pennsylvania Avenue, NW  
Washington, D.C. 20535-0001

Dear Director Comey:

Your actions in recent months have demonstrated a disturbing double standard for the treatment of sensitive information, with what appears to be a clear intent to aid one political party over another. I am writing to inform you that my office has determined that these actions may violate the Hatch Act, which bars FBI officials from using their official authority to influence an election. Through your partisan actions, you may have broken the law.

The double standard established by your actions is clear.

In my communications with you and other top officials in the national security community, it has become clear that you possess explosive information about close ties and coordination between Donald Trump, his top advisors, and the Russian government - a foreign interest openly hostile to the United States, which Trump praises at every opportunity. The public has a right to know this information. I wrote to you months ago calling for this information to be released to the public. There is no danger to American interests from releasing it. And yet, you continue to resist calls to inform the public of this critical information.

By contrast, as soon as you came into possession of the slightest innuendo related to Secretary Clinton, you rushed to publicize it in the most negative light possible.

Moreover, in tarring Secretary Clinton with thin innuendo, you overruled longstanding tradition and the explicit guidance of your own Department. You rushed to take this step eleven days before a presidential election, despite the fact that for all you know, the information you possess could be entirely duplicative of the information you already examined which exonerated Secretary Clinton.

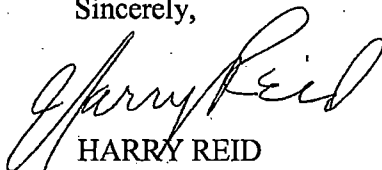
As you know, a memo authored by Deputy Attorney General Sally Yates on March 10, 2016, makes clear that all Justice Department employees, including you, are subject to the Hatch Act. The memo defines the political activity prohibited under the Hatch Act as "activity directed towards the success or failure of a political party, candidate for partisan political office, or partisan political group."

The clear double-standard established by your actions strongly suggests that your highly selective approach to publicizing information, along with your timing, was intended for the success or failure of a partisan candidate or political group.

Please keep in mind that I have been a supporter of yours in the past. When Republicans filibustered your nomination and delayed your confirmation longer than any previous nominee to your position, I led the fight to get you confirmed because I believed you to be a principled public servant.

With the deepest regret, I now see that I was wrong.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry Reid".

HARRY REID  
United States Senator



THAO COCHIAN, MISSISSIPPI, CHAIRMAN

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TAMMY BALDWIN, WISCONSIN  
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## United States Senate

COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-6025  
<http://appropriations.senate.gov>

BRUCE EVANS, STAFF DIRECTOR  
CHARLES E. KIEFFER, MINORITY STAFF DIRECTOR

October 28, 2016

The Honorable James B. Comey  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Ave., N.W.  
Washington, D.C. 20535-0001

Dear Director Comey:

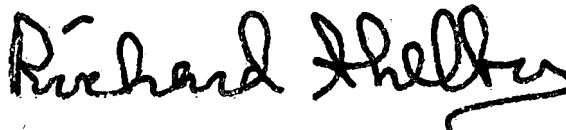
I am writing in response to the letter you sent me regarding the Federal Bureau of Investigation's (FBI) intention to re-open the investigation of former Secretary of State Hillary Clinton. Due to the serious nature of this matter, I request that the FBI expeditiously and thoroughly conduct its review.

In July, you held a press conference where you explained to the American people that Secretary Clinton was "extremely careless" with classified information while using a private e-mail server. Unfortunately, it has now become apparent that the FBI, with all its extensive resources and highly-trained personnel, closed an incomplete investigation that resulted in only partial findings. I firmly believe that the American people deserve to know the facts – *all of them*.

There is much at stake in how this investigation is conducted. Not only is the Bureau's examination a reflection on the current Administration and Secretary Clinton, but it is also critical to the integrity of the FBI and the American people's ability to place their trust in government. I believe that your recommendation and the Department of Justice's decision not to prosecute Secretary Clinton set a dangerous precedent for the way we hold our public officials accountable.

While I am pleased that the FBI is re-opening this case in light of new information, it is imperative that the Bureau immediately evaluate the material to complete this investigation. The American people are electing their next Commander-in-Chief only days from now, and they deserve to know the conclusion of your review prior to Election Day. Let me be clear: This should be your utmost priority.

Sincerely,



Richard C. Shelby  
Chairman  
Senate Subcommittee on Commerce,  
Justice, Science and Related Agencies

United States Senate  
WASHINGTON, DC 20510

October 29, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta E. Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

The Honorable James Comey  
Director, Federal Bureau of Investigation  
U.S. Department of Justice  
935 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Lynch and Director Comey:

Nearly four months ago, Director Comey announced that the Federal Bureau of Investigation (FBI) would not recommend criminal charges related to Secretary Hillary Clinton's use of a private email server, stating that no reasonable prosecutor would move forward with a criminal case, and that his decision "was not a close call." Yet on Friday, Director Comey sent a letter to Congress in which he indicated that the FBI learned of the existence of emails in an unrelated case that appear to be pertinent to its investigation of former Secretary Hillary Clinton's personal email server. Director Comey also indicated that he had authorized agents to "take appropriate investigative steps" to determine *whether* they contain classified information, and *whether* they are important to the investigation.

This letter is troubling because it is vaguely worded and leaves so many questions unanswered. It is not clear whether the emails identified by the FBI are even in the custody of the FBI, whether any of the emails have already been reviewed, whether Secretary Clinton sent or received them, or whether they even have any significance to the FBI's previous investigation. The letter is also troubling because it breaks with the longstanding tradition of Department of Justice and the FBI of exercising extreme caution in the days leading up to an election, so as not to unfairly influence the results.

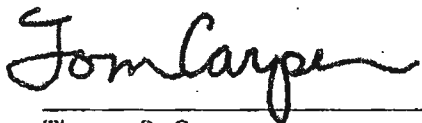
Subsequent to the release of Director Comey's letter yesterday, the media reported that officials at the FBI provided conflicting information to a number of media organizations regarding the purpose of Director Comey's letter and the facts related to these emails. In addition, we are aware of an internal memo reportedly sent yesterday by Director Comey to FBI staff in which he explained his decision to "take appropriate steps to obtain and review" the emails. In that memo, Director Comey stated: "given that we don't know the significance of this newly discovered collection of emails, I don't want to create a misleading impression. In trying to strike that balance, in a brief letter and in the middle of an election season, there is significant risk of being misunderstood." We are also aware that the Department of Justice reportedly warned the FBI that its action were not consistent with long-standing practices of the Department.

Unfortunately, Director Comey's letter *has* been misunderstood. It is already being used for political purposes, creating a misleading impression regarding the FBI's intent and actions. We strongly believe that it is incumbent on the FBI and Department of Justice to act without delay to dispel any misleading impressions about the emails that have been newly identified, as well as their importance – or lack thereof – to the previous investigation involving Secretary Clinton.

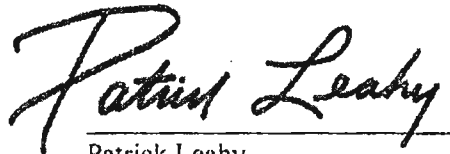
In light of the timing of Director Comey's letter and the confusion and speculation that has resulted, the American people deserve to know that the FBI and Department of Justice are working around the clock to determine the basic facts about the emails in question. Indeed, based on Director Comey's internal memo to FBI staff, it is not clear whether FBI agents have even obtained or reviewed the emails in question. And based on press reports, it appears possible that a significant number – if not all – of the emails could be duplicates of emails already reviewed by the FBI. Accordingly, no later than Monday, October 31, 2016, we request that you provide us with more detailed information about the investigative steps that are being taken, the number of emails involved, and what is being done to determine how many of the emails are duplicative of those already reviewed by the FBI.

Just ten days before a presidential election, the American people deserve more disclosure without delay regarding the FBI's most recent announcement. Anything less would be irresponsible and a disservice to the American people.

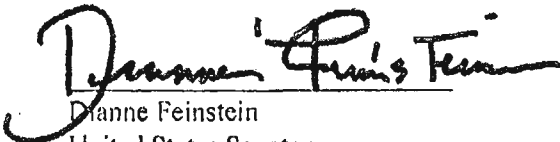
Sincerely,



Thomas R. Carper  
United States Senator



Patrick Leahy  
United States Senator



Dianne Feinstein  
United States Senator



Benjamin L. Cardin  
United States Senator

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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AMY KLOBUCHAR, MINNESOTA  
AL FRANKEN, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT

# United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

KOLYN L. DAVIS, *Chief Counsel and Staff Director*  
KATHLEEN J. LIWICKI, *Democratic Chief Counsel and Staff Director*

October 31, 2016

## VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

Dear Director Comey,

Thank you for your letter on Friday informing the Committee of the new information in the Clinton email investigation. Your letter indicated that the FBI learned in an "unrelated case" of the existence of new emails pertinent to the Clinton inquiry and that you believed the FBI should take additional investigative steps to enable the new evidence to be reviewed.

It is unclear from your letter what those additional investigative steps are, why they are necessary in order to review the emails, and whether they might include compulsory legal process dependent on the approval of prosecutors at the Department of Justice, such as seeking a search warrant. On May 17, 2016, I wrote to you expressing concerns about the appearance that political appointees at the Justice Department might be withholding approval for the FBI to seek search warrants and grand jury subpoenas. These standard investigative tools are usually approved in criminal investigations of this scope and importance. However, it remains unclear to this day whether the FBI requested the use of a grand jury in the Clinton email investigation to compel documents and testimony, and if so whether the Department of Justice denied that request. These concerns are only magnified by these latest developments.

If the FBI is denied the ability to gather evidence through compulsory means, Secretary Clinton and her aides have enormous leverage to negotiate extraordinary concessions in exchange for voluntary cooperation. This has already happened in the course of this investigation. For example, my staff has reviewed the agreements whereby the Justice Department agreed to limit its search of laptops from two of her senior aides to an extremely narrow scope and then destroy the laptops when the search was complete. The scope of the agreed-upon search was so narrow that it prevented review of emails during a time period in which the aides may have engaged in deleting emails relevant to investigations being conducted

by both the FBI and Congress. In addition, it was recently reported that agents investigating potential corruption at the Clinton Foundation were denied access to emails obtained by the FBI in this investigation because of the limited-use agreement through which they were obtained. Needless to say, it is disturbing if political appointees at the Department of Justice are inappropriately withholding compulsory tools from the FBI, forcing agents to depend on a subject or target's consent to gather evidence, which undercuts the FBI's ability to do its job and ultimately obtain justice.

According to news reports following your letter, the "unrelated case" that you referenced is an investigation of senior Clinton aide Huma Abedin's husband, Anthony Weiner and his communications with a minor. What remains unclear is how the FBI obtained the device that led to the discovery of the new emails and what the FBI knows about the content of the new emails.

You clearly faced a difficult decision about whether, what, and how much to disclose about this new information. Any choice could be seen as affecting the election. Some critics of your decision to update your testimony to Congress are inexplicably calling on you with their next breath to release even more information. While I disagree with those who suggest you should have kept the FBI's discovery secret until after the election, I agree that your disclosure did not go far enough. Unfortunately, your letter failed to give Congress and the American people enough context to evaluate the significance or full meaning of this development.

Without additional context, your disclosure is not fair to Congress, the American people, or Secretary Clinton. The factual context is important. In addition, it is critical for the public to know whether the FBI has requested from the Justice Department vital investigative tools such as grand jury subpoenas and search warrants and whether it has been denied access to them. In the absence of additional, authoritative information from the FBI in the wake of your vague disclosure, Congress and the American people are left to sift through anonymous leaks from Justice Department officials to the press of varying levels of detail, reliability, and consistency. The American people deserve better than that.

Accordingly, please respond to the following questions no later than November 4, 2016:

1. Has anyone at the FBI had the ability to read any of the content of the newly discovered emails? If not, then how do you know that they appear to be pertinent to the FBI's inquiry? If so, does any of the content upon initial review suggest obstruction of or false statements to Congress or the FBI by Secretary Clinton or her senior aides? Please explain.
2. What time frame do the newly discovered emails cover and approximately how many are there?
3. Is there any preliminary information to suggest that a significant number of the newly discovered emails are duplicates of emails already reviewed by the FBI?
4. Did the FBI obtain the device(s) through which it learned of the existence of new emails mentioned in your letter on Friday through compulsory process? If so, please describe



the nature and scope of the process in detail. If not, then how did the FBI learn of the existence of the new emails mentioned in your letter?

5. At any point in the Clinton email investigation, did the FBI request use of a grand jury from the Justice Department? If not, why not? If the Department declined, please describe the circumstances in detail. Who at the Justice Department made that decision and what grounds were given for the denial?
6. At any point in the Clinton investigation, did the FBI request an application for a search warrant from the Justice Department? If not, why not? If so, what was the Department's response? If the Department declined, please describe the circumstances in detail. Who at the Justice Department made that decision and what grounds were given for the denial?
7. According to news reports, the FBI has recently obtained a search warrant for the emails in question. If those reports are accurate, please provide the Committee with copies of the material provided to the court in support of the warrant, including any affidavits executed by FBI personnel.
8. According to news reports, the FBI has also been conducting a criminal inquiry involving the Clinton Foundation. Yet, Justice Department officials reportedly denied the FBI's request for a grand jury in that matter and pressured senior FBI officials not to pursue the matter through other means. Is it true that the Department denied the FBI's request for a grand jury in the Clinton Foundation investigation?
9. Press reports also indicate that the Justice Department denied the FBI the ability to search the laptops of senior Clinton aides Cheryl Mills and Heather Samuelson for information related to the Clinton Foundation inquiry. Is it true that the FBI requested such a search of the Mills and Samuelson laptops, but DOJ denied that request? If the FBI did make such a request, was that request made before or after the Department executed its agreement with Mills and Samuelson for a narrow voluntary search and destruction of the laptops?
10. Please provide the committee with all records related to communications between FBI and DOJ officials regarding: (a) requests for any sort of court-supervised process, such as empaneling a grand jury or applying for a search warrant in connection with the Clinton email or Clinton Foundation investigations, or (b) the Mills and Samuelson laptops that were to subject of limited immunity agreements.

Please answer the questions according to their corresponding numbers. I anticipate that your written reply will be unclassified but some responsive documents may contain classified information. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by

Director Comey  
October 31, 2016  
Page 4 of 4

any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. If you have questions, contact Jason Foster of my Committee staff at (202) 224-5225.

Sincerely,

A handwritten signature in black ink that reads "Chuck Grassley". The signature is written in a cursive, slightly slanted style.

Charles E. Grassley  
Chairman  
Committee on the Judiciary

**Congress of the United States**  
**Washington, DC 20515**

November 3, 2016

The Honorable James Comey  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, D.C. 20535

Dear Director Comey:

I am writing to you about your recent announcement that you are continuing to investigate the issues surrounding Secretary Hillary Clinton's personal email server.

High-tech experts have indicated that records of any email sent to any other device would be on the personal server of Secretary Clinton, records that you already have. If that is the case, any emails retrieved from any other device would be duplicates and of no value to your case.

Please explain why if this is true you have taken the unprecedented action that you have, which has complicated our electoral process.

Sincerely,

  
**MIKE THOMPSON**  
Member of Congress

  
**ANNA ESHOO**  
Member of Congress



Federal Bureau of Investigation

Washington, D.C. 20535

November 6, 2016

Honorable Richard M. Burr  
Chairman  
Select Committee on Intelligence

Honorable Devin Nunes  
Chairman  
Permanent Select Committee on Intelligence

Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary

Honorable Robert Goodlatte  
Chairman  
Committee on the Judiciary

Honorable Richard Shelby  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

Honorable John Culberson  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs

Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and  
Government Reform

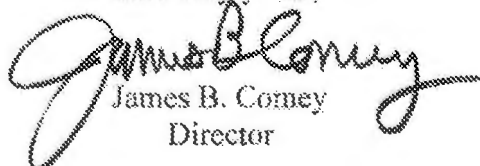
Dear Messrs. Chairmen:

I write to supplement my October 28, 2016 letter that notified you the FBI would be taking additional investigative steps with respect to former Secretary of State Clinton's use of a personal email server. Since my letter, the FBI investigative team has been working around the clock to process and review a large volume of emails from a device obtained in connection with an unrelated criminal investigation. During that process, we reviewed all of the communications that were to or from Hillary Clinton while she was Secretary of State.

Based on our review, we have not changed our conclusions that we expressed in July with respect to Secretary Clinton.

I am very grateful to the professionals at the FBI for doing an extraordinary amount of high-quality work in a short period of time.

Sincerely yours,

  
James B. Comey  
Director

cc: See next page

1 – Honorable Dianne Feinstein  
Vice Chairman  
Select Committee on Intelligence

1 – Honorable Adam B. Schiff  
Ranking Member  
Permanent Select Committee on Intelligence

1 – Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary

1 – Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary

1 – Honorable Barbara Mikulski  
Ranking Member  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

1 – Honorable Michael Honda  
Ranking Member  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science, and Related Agencies

1 – Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs

1 – Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform

November 6, 2016

Honorable Richard M. Burr  
Chairman  
Select Committee on Intelligence

Honorable Devin Nunes  
Chairman  
Permanent Select Committee on Intelligence

Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary

Honorable Robert Goodlatte  
Chairman  
Committee on the Judiciary

Honorable Richard Shelby  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

Honorable John Culberson  
Chairman  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs

Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and  
Government Reform

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Sincerely yours,

James B. Comey  
Director

- Dep. Director .....
- EAD-Adm .....
- EAD-CDCI .....
- EAD-Crim .....
- EAD-Intell .....
- EAD-LES .....
- Asst. Dir.:
- Adm. Serv. ....
- CJIS .....
- CrimIntell .....
- CitizenStat .....
- Crim. Inv. ....
- Cyber .....
- FinStat .....
- Info. Sys. ....
- Inspection .....
- Inv. Tech. ....
- Laboratory .....
- Off. of Cong. Affs. ....
- Off. of the Gen. Coun. ....
- Off. of Intell. ....
- Off. Pub. Affs. ....
- Off. of Prof. Resp. ....
- Rec. Mgnt .....
- Security .....
- Training .....
- Off. of EEOA .....

- 1 - [Redacted] Room 7176
- 1 - FBI ExecSec, Room 6147
- 1 - A/AD Herring

1 - Ms. Beers

b6 -1  
b7C -1

cc: See next page MAIL ROOM



1 -- Honorable Dianne Feinstein  
Vice Chairman  
Select Committee on Intelligence

1 -- Honorable Adam B. Schiff  
Ranking Member  
Permanent Select Committee on Intelligence

1 -- Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary

1 -- Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary

1 -- Honorable Barbara Mikulski  
Ranking Member  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science and Related Agencies

1 -- Honorable Michael Honda  
Ranking Member  
Committee on Appropriations  
Subcommittee on Commerce, Justice,  
Science, and Related Agencies

1 -- Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs

1 -- Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform

FEDERAL BUREAU OF INVESTIGATION  
FOI/PA  
DELETED PAGE INFORMATION SHEET  
Civil Action# 18-cv-01448

Total Deleted Page(s) = 70  
Page 14 ~ b5 - 1; b6 - 1; b7C - 1;  
Page 15 ~ b5 - 1;  
Page 16 ~ b5 - 1;  
Page 17 ~ b5 - 1;  
Page 18 ~ b5 - 1;  
Page 19 ~ b5 - 1;  
Page 22 ~ Referral/Consult;  
Page 23 ~ Referral/Consult;  
Page 24 ~ Referral/Consult;  
Page 25 ~ Referral/Consult;  
Page 26 ~ Referral/Consult;  
Page 27 ~ Referral/Consult;  
Page 31 ~ b5 - 1;  
Page 32 ~ b5 - 1;  
Page 33 ~ b5 - 1;  
Page 35 ~ b5 - 1;  
Page 36 ~ b5 - 1;  
Page 37 ~ b5 - 1;  
Page 39 ~ b5 - 1;  
Page 40 ~ b5 - 1;  
Page 41 ~ b5 - 1;  
Page 43 ~ Duplicate;  
Page 44 ~ Duplicate;  
Page 45 ~ Duplicate;  
Page 48 ~ Duplicate;  
Page 49 ~ Duplicate;  
Page 50 ~ Duplicate;  
Page 52 ~ b5 - 1;  
Page 55 ~ Duplicate;  
Page 301 ~ b5 - 1,2,3;  
Page 340 ~ Referral/Consult;  
Page 341 ~ Referral/Consult;  
Page 342 ~ Duplicate;  
Page 343 ~ Duplicate;  
Page 344 ~ Duplicate;  
Page 345 ~ Duplicate;  
Page 346 ~ Referral/Consult;  
Page 347 ~ Referral/Consult;  
Page 348 ~ Referral/Consult;  
Page 349 ~ Referral/Consult;  
Page 350 ~ Referral/Consult;  
Page 351 ~ Referral/Consult;  
Page 352 ~ Referral/Consult;  
Page 353 ~ Referral/Consult;  
Page 354 ~ Referral/Consult;  
Page 355 ~ Referral/Consult;  
Page 362 ~ b5 - 1;  
Page 366 ~ b5 - 1,2;

Page 376 ~ Duplicate;  
Page 377 ~ Duplicate;  
Page 378 ~ Duplicate;  
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Page 391 ~ Duplicate;  
Page 392 ~ Duplicate;  
Page 394 ~ Duplicate;  
Page 395 ~ Duplicate;  
Page 396 ~ Duplicate;  
Page 405 ~ Referral/Consult;  
Page 406 ~ Referral/Consult;

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**COMEY, JAMES B. (DO) (FBI)**

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**To:** RYBICKI, JAMES E. (DO) (FBI)  
**Subject:** What I will say Tuesday on phone

I wanted to let you know that I am doing a press conference this morning announcing the completion of our Midyear investigation and referral of the matter to DOJ. I'm not going to tell you anything about what I will say, for reasons I hope you understand. I think it is very important that I not have coordinated my statement outside the FBI. I'm not going to take questions at the press conference. When it is over, my staff will be available to work with your team.

Tuesday, July 5, 2016

- 0700-0730:  Pool notified. [AD Kortan]
- 0800:  Media Advisory sent out [AD Kortan]
- 0830:  DAG notified [Director]  
 NSD/DAAG Toscas notified [DD]  
 PADAG Axelrod notified [COS]  
 CES notified [SC Strzok]
- 0835:  AG notified [Director]
- 1000:  House and Senate Judiciary and Intel Chair and RM staff notified that D would like to speak to members after noon [AD Kelly]
- 1050:  E-mail sent out to workforce
- 1100: Press Conference in Webster

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After Press Conference Notifications:

- ICIG [SC Strzok]
- DNI [Director or DD]
- USA/EDVA [DD]
- SJC Chair Grassley [Director]
- SJC RM Leahy [Director]
- SSCI Chair Burr [Director]
- SSCI Vice Chair Feinstein [Director]
- HJC Chair Goodlatte [Director]
- HJC RM Conyers [Director]
- HPSCI Chair Nunes [Director]
- HPSCI RM Schiff [Director]

Good morning. I'm here to give you an update on the FBI's investigation of Secretary Clinton's use of a personal email system during her time as Secretary of State.

After a tremendous amount of work over the last year, the FBI is completing its investigation and referring the case to the Department of Justice for a prosecutive decision. What I would like to do today is tell you three things: what we did; what we found; and what we are recommending to the Department of Justice.

This will be an unusual statement in at least a couple ways. First, I am going to include more detail about our process than I ordinarily would, because I think the American people deserve those details in a case of intense public interest. Second, I have not coordinated or reviewed this statement in any way with the Department of Justice or any other part of the government. They do not know what I am about to say.

I want to start by thanking the FBI employees who did remarkable work in this case. Once you have a better sense of how much we have done, you will understand why I am so grateful and proud of their efforts.



## **So, first, what we have done:**

The investigation began as a referral from the Intelligence Community Inspector General in connection with Secretary Clinton's use of a personal email server during her time as Secretary of State. The referral focused on whether classified information was transmitted on that personal system.

Our investigation looked at whether there is evidence classified information was improperly stored or transmitted on that personal system, in violation of a federal statute making it a felony to mishandle classified information either intentionally or in a grossly negligent way, or a second statute making it a misdemeanor to knowingly remove classified information from appropriate systems or storage facilities.

Consistent with our counter-intelligence responsibilities, we have also investigated to determine whether there is evidence of computer intrusion in connection with the personal email server by any foreign power, or other hostile actors.

I have so far used the singular term, "email server," in describing the referral that began our investigation. It turns out to have been more complicated than that. Secretary Clinton used several different servers and administrators of those servers during her four years at the State Department, and used

numerous mobile devices to view and send email on that personal domain. As new servers and equipment were employed, older servers were taken out of service, stored, and decommissioned in various ways. Piecing all of that back together -- to gain as full an understanding as possible of the ways in which personal email was used for government work -- has been a painstaking undertaking, requiring thousands of hours of effort.

For example, when one of Secretary Clinton's original personal servers was decommissioned in 2013, the email software was removed. Doing that didn't remove the email content, but it was like removing the frame from a huge finished jigsaw puzzle and dumping the pieces on the floor. The effect was that millions of email fragments end up unsorted in the server's un-used -- or "slack" -- space. We searched through all of it to see what was there, and what parts of the puzzle could be put back together.

FBI investigators have also read all of the approximately 30,000 emails provided by Secretary Clinton to the State Department in December 2014. Where an email was assessed as possibly containing classified information, the FBI referred the email to any U.S. government agency that was a likely "owner" of information in the email, so that agency could make a determination as to whether the email contained classified information at the time it was sent or received, or whether there was reason to classify the email now, even if its content was not

classified at the time it was sent (that is the process sometimes referred to as “up-classifying”).

From the group of 30,000 emails returned to the State Department, 110 emails in 52 email chains have been determined by the owning agency to contain classified information at the time they were sent or received. Eight of those chains contained information that was Top Secret at the time they were sent; 36 chains contained Secret information at the time; and 8 contained Confidential information, which is the lowest level of classification. Separate from those, about 2,000 additional emails were “up-classified” to make them Confidential; the information in those had not been classified at the time the emails were sent.

The FBI also discovered several thousand work-related emails that were not in the group of 30,000 that were returned by Secretary Clinton to State in 2014. We found those additional emails in a variety of ways. Some had been deleted over the years and we found traces of them on devices that supported or were connected to the private email domain. Others we found by reviewing the archived government email accounts of people who had been government employees at the same time as Secretary Clinton, including high-ranking officials at other agencies, people with whom a Secretary of State might naturally correspond.

This helped us recover work-related emails that were not among the 30,000 produced to State. Still others we recovered

from the laborious review of the millions of email fragments dumped into the slack space of the server decommissioned in 2013.

With respect to the thousands of emails we found that were not among those produced to State, agencies have concluded that 3 of those were classified at the time they were sent or received, 1 at the Secret level and 2 at the Confidential level. There were no additional Top Secret emails found. Finally, none of those we found have since been “up-classified.”

I should add here that we found no evidence that any of the additional work-related emails were intentionally deleted in an effort to conceal them. Our assessment is that, like many email users, Secretary Clinton periodically deleted emails or emails were purged from the system when devices were changed. Because she was not using a government account – or even a commercial account like Gmail – there was no archiving at all of her emails, so it is not surprising that we discovered emails that were not on Secretary Clinton’s system in 2014, when she produced the 30,000 emails to the State Department.

It could also be that some of the additional work-related emails we recovered were among those deleted as “personal” by Secretary Clinton’s lawyers when they reviewed and sorted her emails for production in 2014.

The lawyers doing the sorting for Secretary Clinton in 2014 did not individually read the content of all of her emails, as we did for those available to us; instead, they relied on header information and used search terms to try to find all work-related emails among the reportedly more than 60,000 total emails remaining on Secretary Clinton's personal system in 2014. It is highly likely their search terms missed some work-related emails, and that we later found them, for example, in the mailboxes of other officials or in the slack space of a server.

→ It is also likely that there are other work-related emails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all emails they did not return to State, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery.

We have conducted interviews and done technical examination to attempt to understand how that sorting was done by her attorneys. Although we do not have complete visibility because we are not able to fully reconstruct the electronic record of that sorting, we believe our investigation has been sufficient to give us reasonable confidence there was no intentional misconduct in connection with that sorting effort.

And, of course, in addition to our technical work, we interviewed many people, from those involved in setting up and maintaining the various iterations of Secretary Clinton's personal server, to staff members with whom she corresponded on email,

to those involved in the email production to State, and finally, Secretary Clinton herself.

Last, we have done extensive work to understand what indications there might be of compromise by hostile actors in connection with the personal email operation.

**That's what we have done. Now let me tell you what we found:**

Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information, there is evidence that they were extremely careless in their handling of very sensitive, highly classified information.

For example, seven email chains concern matters that were classified at the Top Secret/Special Access Program level when they were sent and received. These chains involved Secretary Clinton both sending emails about those matters and receiving emails from others about the same matters. There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for that conversation. In addition to this highly sensitive information, we also found information that was properly classified



as Secret by the U.S. Intelligence Community at the time it was discussed on email (that is, excluding the later “up-classified” emails).

None of these emails should have been on any kind of unclassified system, but their presence is especially concerning because all of these emails were housed on unclassified personal servers not even supported by full-time security staff, like those found at Departments and Agencies of the U.S. Government – or even with a commercial service like Gmail.

Separately, it is important to say something about the marking of classified information. Only a very small number of the emails containing classified information bore markings indicating the presence of classified information. But even if information is not marked “classified” in an email, participants who know or should know that the subject matter is classified are still obligated to protect it. //

While not the focus of our investigation, we also developed evidence that the security culture of the State Department in general, and with respect to use of unclassified email systems in particular, was generally lacking in the kind of care for classified information found elsewhere in the government. //

With respect to potential computer intrusion by hostile actors, we did not find direct evidence that Secretary Clinton’s

personal email domain, in its various configurations since 2009, was successfully hacked. But, given the nature of the system and of the actors potentially involved, we assess that we would be unlikely to see such direct evidence. We do assess that hostile actors gained access to the private commercial email accounts of people with whom Secretary Clinton was in regular contact from her personal account. We also assess that Secretary Clinton's use of a personal email domain was both known by a large number of people and readily apparent. She also used her personal email extensively while outside the United States, including sending and receiving work-related emails in the territory of sophisticated adversaries. Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton's personal email account.

**So that's what we found. Finally, with respect to our recommendation to the Department of Justice:**

In our system, the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect. Although we don't normally make public our recommendations to the prosecutors, we frequently make recommendations and engage in productive conversations with prosecutors about what resolution may be appropriate, given the evidence. In this case, given the importance of the matter, I think unusual transparency is in order.

Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case. Prosecutors necessarily weigh a number of factors before bringing charges. There are obvious considerations, like the strength of the evidence, especially regarding intent. Responsible decisions also consider the context of a person's actions, and how similar situations have been handled in the past.

In looking back at our investigations into mishandling or removal of classified information, we cannot find a case that would support bringing criminal charges on these facts. All the cases prosecuted involved some combination of: clearly intentional and willful mishandling of classified information; or vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; or indications of disloyalty to the United States; or efforts to obstruct justice. We do not see those things here.

To be clear, this is not to suggest that in similar circumstances, a person who engaged in this activity would face no consequences. To the contrary, those individuals are often subject to security or administrative sanctions. But that is not what we are deciding now.

As a result, although the Department of Justice makes final decisions on matters like this, we are expressing to Justice our view that no charges are appropriate in this case. //

I know there will be intense public debate in the wake of this recommendation, as there was throughout this investigation. What I can assure the American people is that this investigation was done competently, honestly, and independently. No outside influence of any kind was brought to bear.

I know there were many opinions expressed by people who were not part of the investigation – including people in government – but none of that mattered to us. Opinions are irrelevant, and they were all uninformed by insight into our investigation, because we did the investigation the right way. Only facts matter, and the FBI found them here in an entirely apolitical and professional way. I couldn't be prouder to be part of this organization.

###

**Rybicki, James E. (DO) (FBI)**

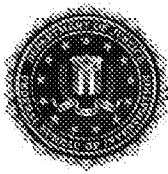
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**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Tuesday, May 10, 2016 3:23 PM  
**To:** James B. Comey  
**Subject:** FW: Brown Bag Issues list for Wed May 11  
**Attachments:** Issues List 05-11-2016.doc

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**From:** Kortan, Michael P. (DO) (FBI)  
**Sent:** Tuesday, May 10, 2016 3:17 PM  
**To:** Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>  
**Subject:** Brown Bag Issues list for Wed May 11

Jim: I'm also querying reporters directly and will combine with our list when we brief the D. tx. M



## Reporter Pen and Pad – Current Issues

May 11, 2016

**Clinton Emails – timing on interview; claims of server hack; disconnect between FBI & DOJ?**

**Encryption/Going Dark - Protect community, protect privacy**

- VEP Process – willful circumvention by only buying solution vs. vulnerability? Scalable?
- San Bernardino phone – cost of the tool; Forensic exam completed?; what did we find?

**Cyber**

- Ransomware - Increasing? The FBI's policy is recommending victim NOT pay ransom
- Critical Infrastructure Vulnerabilities, i.e., Ukraine Cyber Attack
- Syrian Electronic Army Member Extradited to US, Peter Romar

**Race and Law enforcement**

**CJIS**

- NIBRS – Necessity for better crime data
- New NICS – launching this summer
- Next Generation Identification System and federal privacy rules

**Use of Network Investigative Techniques**

- Ruling in Wa. compelling FBI to disclose NIT code used in child pornography invest.

**Rule 41 clarification**

- Clarification sought by FBI/DOJ that would allow a search warrant in one jurisdiction to be applied to a device in another

**Panama Papers – legislation re: Beneficial Sharing; FCPA**

**Domestic threat landscape**

- Current threat environment post Paris, Brussels; Overseas partners; Right kind of intel?
- HVEs, flow of fighters, ISIL targeting military, cyber threats in the name of ISIL
- ISIL "Hit Lists" – Law enforcement's "Duty to Warn"; ISIL Antiquities Trafficking
- Travelers: Any change? How many have travelled overseas and come back?
- Strategy to counter the threat: What is FBI's CVE role within USG?
  - Shared Responsibilities Committees (SRCs) - Target Muslims?; Develop Sources?; Independent of FBI?

**Domestic Terrorism**

- Aftermath of Oregon occupation; lessons learned
- How much did the FBI response cost the taxpayer?
- Status of IG report on HRT

**Twitter Bars Intelligence Agencies From Using Analytics Service**

**9/11 Commission Report - 28 pages requested to be declassified; Does FBI oppose?**

**Undercover Sting Operations – Entrapment?**

**RNC, DNC, Rio Olympic Games - Any viable threats? Potential FBI support**

**Aviation: Surveillance, capabilities, legal authority, budget**

**Micro. Hair - flawed forensic analysis; Expansion to other pattern-based comparative disciplines**

### OTHER ISSUES

**Hiring – Diversity, Cyber Talent**

**Iran nuclear agreement: Impact on CI, CT and CP?; Levinson investigation/Barry Meier book**

**Refugees to US: Impact on FBI? Terrorists among the refugees?**

**FBI HQ Building: Is everything still on track? Potential for building to be named after Hoover?**



[Redacted]

**From:** [Redacted]  
**Sent:** Wednesday, July 06, 2016 2:24 PM  
**To:** Comey, James B. (DO) (FBI)  
**Subject:** Kudos

b6 -4  
b7C -4

Director: I don't know if my opinion means anything to you, but I just want to thank you for the integrity you have shown over the Clinton Email matter.

Your press conference was truthful, transparent, and comprehensible.

The reputation, character and "street creds" of the FBI were all maintained by your actions.

It was a chapter right out of the book, *Profiles in Courage* by JFK.

All the best

[Redacted]

Retired SSA [Redacted]

[Redacted]

b6 -4  
b7C -4

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This message is for information purposes only, it is not a recommendation, advice, offer or solicitation to buy or sell a product or service nor an official confirmation of any transaction. It is directed at persons who are professionals and is not intended for retail customer use. Intended for recipient only. This message is subject to the terms at: [www.\[Redacted\].com/emaildisclaimer](http://www.[Redacted].com/emaildisclaimer).

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b6 -4  
b7C -4

**Rybicki, James E. (DO) (FBI)**

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**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Wednesday, July 06, 2016 7:17 AM  
**To:** James B. Comey  
**Subject:** SAC SVTC Topics

- Midyear Exam (Reflections; possible upcoming congressional testimony) - Upcoming congressional engagements: Congressional Black Caucus Meeting (Next Tuesday); House Homeland Committee Worldwide Threats Hearing (Next Thursday) - Historically Black Colleges and Universities Law Enforcement Association Meeting (Next Wednesday in Daytona, FL) - Lync call with interns (last Friday). Stress importance of utilizing interns throughout the summer; recruitment pipeline.

**Rybicki, James E. (DO) (FBI)**

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**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Tuesday, November 08, 2016 3:01 PM  
**To:** James B. Comey  
**Subject:** Midyear thoughts  
**Attachments:** Midyear thoughts.docx

Let me know when you have a moment to discuss.

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Tuesday, November 08, 2016 3:37 PM  
**To:** [REDACTED]  
**Subject:** Fwd: Midyear thoughts  
**Attachments:** Midyear thoughts.docx

b6 -1  
b7C -1

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 11/8/16 3:00 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** Midyear thoughts

Let me know when you have a moment to discuss.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, November 08, 2016 4:22 PM  
**To:** James B. Comey  
**Subject:** Re: Midyear thoughts  
**Attachments:** Midyear thoughts JBC.docx

Take a look at this version. I think I understood and addressed your good questions. Call when you have reviewed.

On Tue, Nov 8, 2016 at 3:36 PM, James B. Comey <[jcb.dir@ic.fbi.gov](mailto:jcb.dir@ic.fbi.gov)> wrote:

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <[James.Rybicki@ic.fbi.gov](mailto:James.Rybicki@ic.fbi.gov)>  
**Date:** 11/8/16 3:00 PM (GMT-05:00)  
**To:** "James B. Comey" <[jcb.dir@ic.fbi.gov](mailto:jcb.dir@ic.fbi.gov)>  
**Subject:** Midyear thoughts

Let me know when you have a moment to discuss.

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Tuesday, November 08, 2016 4:23 PM  
**To:** Rybicki, James E. (DO) (FBI)  
**Subject:** Fwd: Midyear thoughts  
**Attachments:** Midyear thoughts JBC.docx

Take a look at this version. I think I understood and addressed your good questions. Call when you have reviewed.

On Tue, Nov 8, 2016 at 3:36 PM, James B. Comey <[jcb.dir@ic.fbi.gov](mailto:jcb.dir@ic.fbi.gov)> wrote:

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <[James.Rybicki@ic.fbi.gov](mailto:James.Rybicki@ic.fbi.gov)>  
**Date:** 11/8/16 3:00 PM (GMT-05:00)  
**To:** "James B. Comey" <[jcb.dir@ic.fbi.gov](mailto:jcb.dir@ic.fbi.gov)>  
**Subject:** Midyear thoughts

Let me know when you have a moment to discuss.



**James B. Comey**

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**From:** James B. Comey  
**Sent:** Wednesday, November 09, 2016 10:46 AM  
**To:** Campbell, Joshua S. (DO) (FBI)  
**Subject:** Fwd: Midyear thoughts  
**Attachments:** Midyear thoughts JBC.docx

----- Original message -----

From: "James B. Comey" <jcb.dir@ic.fbi.gov>  
Date: 11/8/16 4:23 PM (GMT-05:00)  
To: "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
Subject: Fwd: Midyear thoughts

Take a look at this version. I think I understood and addressed your good questions. Call when you have reviewed.

On Tue, Nov 8, 2016 at 3:36 PM, James B. Comey <jcb.dir@ic.fbi.gov> wrote:

----- Original message -----

From: "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
Date: 11/8/16 3:00 PM (GMT-05:00)  
To: "James B. Comey" <jcb.dir@ic.fbi.gov>  
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

**James B. Comey**

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**From:** James B. Comey  
**Sent:** Wednesday, November 09, 2016 12:54 PM  
**To:** Rybicki, James E. (DO) (FBI)  
**Attachments:** Midyear thoughts [redacted] edits.docx

b5 -1  
b6 -4  
b7C -4

[redacted]  
[redacted] Her suggestion is attached.

[redacted] (DO) (FBI)

**From:** [redacted] (DO) (FBI)  
**Sent:** Tuesday, July 05, 2016 5:23 PM  
**To:** NPO  
**Subject:** OPA Horizon - 7/5/16

b6 -1  
b7C -1

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

**FBI Office of Public Affairs  
The Horizon  
Tuesday, July 5, 2016**

**National Issues**

- **Clinton Investigation: OPA** – In a televised announcement today Director Comey said the FBI is not recommending criminal charges in the investigation into Hillary Clinton’s use of a private email system. The Director made public some details about what FBI investigators found due to the intense public interest in the case. Following the press conference, media continued to make inquiries, including about the cost of the inquiry and how many agents were involved. There were also multiple requests made for the Director to go on-camera this afternoon. OPA declined to comment further and referred only to the Director’s statement. FBI.gov posted a blog entry and the Director’s full statement: [https://www.fbi.gov/news/news\\_blog/fbi-recommends-no-charges-following-clinton-e-mail-investigation](https://www.fbi.gov/news/news_blog/fbi-recommends-no-charges-following-clinton-e-mail-investigation).
- **Ex-Guantanamo Detainee: OPA** – Fox News asked for any information the FBI might have about former Guantanamo detainee [redacted], who was released to [redacted]. Officials in [redacted] believe he crossed into [redacted]. OPA did not provide any information.
- **FBI.gov Top Story: OPA** – Forensic artists and anthropologists at the FBI Laboratory help put a human face on unidentified remains to support local law enforcement agencies. The story includes a video: <https://www.fbi.gov/news/stories/2016/july/forensic-anthropology-puts-a-human-face-on-unidentified-remains>.

b6 -3  
b7C -3

**Local Stories**

- **Charlotte** – [redacted] were sentenced to federal prison for charges relating to providing material support for terrorism. [redacted] was sentenced to 92 months imprisonment, followed by 5 years of supervised release, and [redacted] was sentenced to 108 months imprisonment, followed by 5 years of supervised release.
- **Detroit** – SAC David Gelios and ASAC Jeffrey Downey accompanied 20+ Detroit Field Office agents and professional staff to volunteer at Comerica Park for the Willie Horton’s “Batting for Kids” event. The iconic annual event teaches Detroit area youth, many of whom are under-privileged, basic baseball skills. SAC Gelios threw out the first pitch at the event. The Detroit Field Office has been affiliated with the “Batting for Kids” event since it began, fifteen years ago.
- **Los Angeles** – [redacted] who resides in [redacted] was charged today with felony computer hacking related to a phishing scheme that gave him illegal access to over 300 Apple iCloud and Gmail accounts, including those belonging to members of the entertainment industry in Los Angeles. [redacted] was named in a criminal information filed last week in the United States District Court in Los Angeles. [redacted] has signed a plea agreement in which he agrees to plead guilty to a felony violation of the Computer Fraud and Abuse Act, specifically, one count of unauthorized access to a protected computer to obtain information. Although [redacted] has been charged in Los Angeles, the parties have agreed to transfer the case to the [redacted] for the entry of his guilty plea and sentencing. Once he enters the guilty plea, [redacted] will face a statutory maximum sentence of five years in federal prison.
- **New York** – Reuters published a story today about FBI NY’s complex financial crimes branch following an interview with ASAC Casale last week. The piece highlighted how the FBI is still pursuing white collar cases following the Newman ruling: <http://mobile.reuters.com/article/idUSL1N19K1MK>.

b6 -3  
b7C -3

b6 -3  
b7C -3

- Newark – Electronics detection canine Iris and her handler, SA [redacted] gave a presentation and demonstration to international thriller writers at 26 Federal Plaza, New York, New York. b6 -1,3  
b7C -1,3
- Washington Field – [redacted] was arrested on July 3 for attempting to provide material support to the ISIL. [redacted] is alleged to have attempted to provide services by assisting in the procurement of weapons to be used in what he believed was going to be an attack on U.S. soil committed in the name of ISIL.

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[redacted]

National Press Office

[redacted]

b6 -1  
b7C -1

[REDACTED] (DO) (FBI)

**From:** [REDACTED] (DO) (FBI)  
**Sent:** Wednesday, July 06, 2016 10:23 AM  
**To:** James B. Comey  
**Subject:** note of thanks

b6 -1  
b7C -1

Sir,  
A note of thanks from retired EAD Glover.

[REDACTED]  
**From:** John Glover [mailto:[REDACTED]]  
**Sent:** Tuesday, July 05, 2016 8:38 PM  
**To:** [REDACTED]  
**Subject:** MY PERSONAL RESPONSE TO DIRECTOR COMEY'S PRESS CONFERENCE RE SECRETARY CLINTON'S USE OF HER PERSONAL EMAIL SERVER

b6 -1,4  
b7C -1,4

[REDACTED]

Please see that these comments reach the director.

"I just finished watching your press conference concerning Secretary Clinton's use of a private server while serving as Secretary of State, and could not be prouder of the FBI as an organization and of you as its director. It is apparent that this very sensitive case was conducted under intense scrutiny and in a highly politicked environment. Yet, it is apparent that the FBI performed its public duty objectively, effectively and professionally, notwithstanding the politically- based criticisms that will , no doubt, be forthcoming.

Thanks to you director Comey, for reminding the public that the FBI will follow the facts, and will do its job thoroughly, and in a way that is required and demanded by the American public.

John Glover, Retired  
Executive Assistant Director, FBI"

**Rybicki, James E. (DO) (FBI)**

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**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Friday, September 02, 2016 5:28 PM  
**To:** James B. Comey  
**Cc:** [REDACTED] (DO) (FBI) b6 -1  
**Subject:** Upcoming Hearings b7C -1  
**Attachments:** HOCR Transcript (07.07).docx; Overlapping Members.docx

Director: In anticipation of your 9/27 and 9/28 hearings, attached is the transcript of your 7/7 testimony before House Government Reform. The 2nd doc (labeled "Overlapping Members") contains the portions of the transcript dealing with members who were present at the 7/7 hearing and are also members of House Judiciary (Chaffetz is a member of HJC but not included in this doc because he speaks throughout).

Your member and issue books for these hearings will be ready the week of 9/12.



House Oversight and Government Reform Committee - Hearing

Subject: FBI Probe of Clinton's Private Email Server

Witnesses: FBI Director James Comey testifies

Location: 2154 Rayburn House Office Building

Time: 10:00 am EDT, Date: Thursday, July 7th, 2016

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CHAFFETZ: The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

I want to thank Director Comey for being here, and doing so on short notice. CHAFFETZ: My -- I have the greatest admiration for the FBI. My grandfather was a career FBI agent.

I'd say I'm here because we're mystified and confused by the fact pattern that you laid out and the conclusions that you reached.

It seems that there are two standards. And there's no consequence for these types of activities and dealing in a careless way with classified information. It seems to a lot of us that the average Joe, the average American, that if they had done what you laid out in your statement, that they'd be in handcuffs and they might be on their way to jail and they probably should.

And I think there is a legitimate concern that there is a double standard. If your name isn't Clinton or you're not part of the powerful elite, that Lady Justice will act differently. It's a concern that Lady Justice will take off that blindfold and come to a different conclusion.

Hillary Clinton created this mess. Wasn't Republicans. It wasn't anybody else. She made a very conscious decision. On the very day that she started her Senate confirmation, she set up and got a domain name. And set up a system to avoid and bypass the safety, security, and the protocol of the State Department.

Classified information is classified for a reason. It's classified because if it were to get out into the public, there are nefarious actors, nation states, others that want to do harm to this country. And there are people who put their lives on the line protecting and serving our country. When those communications are not secure, it puts their lives in jeopardy.

This classified information is entrusted to very few, but there is such a duty and an obligation to protect that, to fall on your sword to protect that. And yet, there's -- there doesn't seem to be any consequence.

I was talking to Trey Gowdy and he made a really good point with us yesterday. Mr. Gowdy said, you know, in your statement, Mr. Director, you mentioned that there was no precedent for this. But we believe that you have set a precedent and it's a dangerous one.

The precedent is if you sloppily deal with classified information, if you're cavalier about it -- and it wasn't just a innocent mistake, this went on for years -- that there's going to be no consequence. We -- we're a different nation in the United States of America. We are self-critical. Most nations would never do this. But we do it in the spirit of making ourselves better. There will be all kinds of accusations about political this and political that.

I -- I have defended your integrity, every step of the way. You are the definitive voice. I stand by that. But I am mystified and I am confused because you listen to your fact pattern and come to the conclusion that there is no consequence, I don't know how to explain that.

We'll have constituents ask us, they'll get mad, they're -- you know, they're frustrated. They've seen this happen time and time again. I don't know how to explain it. And I hope that it -- through this hearing, we can stick to the facts and understand this because there does seem to be two standards, there does seem to be no consequence, and I want to understand that. And I want to be able to explain it to the person that's sitting at home. And that's where we're here.

And so I yield back. I now recognize the ranking member, Mr. Cummings.

CUMMINGS: Director Comey, thank you for being here today.

I want to begin by commending you and the public servants at the FBI for the independent investigation you conducted. You had a thankless task. No matter what recommendation you made, you were sure to be criticized.

There's no question that you were extremely thorough. In fact, some may even say you went too far in your investigation. But of course, that was your job. That is your job.

Secretary Clinton has acknowledged that she made a mistake in using a personal e-mail account. You explained on Tuesday that she and her colleagues at the State Department were extremely careless with their e-mails. But after conducting this exhaustive review, you determined that no reasonable prosecutor would bring a case based on this evidence. And you and the career staff recommended against prosecution.

Based on the previous cases you examined, if prosecutors had gone forward, they would have been holding the secretary to a different standard from everyone else. Amazingly, amazingly, some Republicans who were praising you just days ago for your independence, for your integrity, and your honesty, instantly turned against you because your recommendation conflicted with the predetermined outcome they wanted.

In their eyes, you had one job, and one job only: to prosecute Hillary Clinton. But you refused to do so. So now you are being summoned here to answer for your alleged transgressions. And in a sense, Mr. Director, you're on trial. Contrary to the claims of your critics, there is absolutely no evidence that you made your recommendation for political reasons; no evidence that you were bribed or coerced or influenced; no evidence that you came to your conclusion based upon anything but the facts and the law.

I firmly believe that your decision was not based on convenience, but on conviction. Today, House Republicans are doing what they always do, using taxpayers' money to continue investigating claims that

have already been debunked just to keep them in the headlines one more day. When they hear a political siren, they rush towards it over and over again, even if the evidence is not there.

Exhibit A. Majority Leader Kevin McCarthy, who admitted on national television that Republicans established the Benghazi Select Committee to bring down Secretary Clinton's poll numbers. I didn't say that. McCarthy said it. The fact was confirmed by a Republican staffer on that committee who reported that he was fired in part for not going along with the hyper-focus on Secretary Clinton.

I give House Republicans credit. They certainly are not shy about what they are doing. They've turned political investigations into an art form. If our concerns here today are with the proper treatment of classified information, then we should start with a review of our previous hearing on General David Petraeus, who pled guilty last year to intentionally and knowingly compromising highly classified information.

The problem is, Mr. Director, we never had that hearing. This committee ignored that breach of national security because it did not match the political goals of House Republicans. If our concerns today were with finally addressing a broken classification system in which security levels are arbitrarily changed up and down, that would have been a legitimate goal. That would have been a valuable addition to reforming and improving our government. After all, we are the Government Reform Committee.

We could have held hearings here on Zika -- the Zika virus, preventing gun massacres like the one in Orlando, or a host of other topics that could actually save people's lives. But that's not why we're here. That is not why our chairman called this emergency hearing 48 hours after you made your recommendation.

Everyone knows what this committee is doing. Honestly, I would not be surprised and I say this with all seriousness, I would not be surprised if tomorrow Republicans set up a new committee to spend \$7 million-plus on why the FBI failed to prosecute Hillary Clinton.

Director Comey, let me conclude with this request. Even with all that I have said, I believe that there is a critical role for you today. I've listened carefully to the coverage on this issue. And I've heard people say as recently as this morning, three hours ago, that they were mystified by your decision. As a matter of fact, the chairman repeated it a minute ago.

So there is a perceived gap between the things you said on Tuesday and your recommendation. There's a gap, Mr. Director. So in this moment, and this is a critical moment, I beg you to fill the gap. Because when the gap is not filled by you, it will be filled by others. Share with us, the American people, your process and your thinking. Explain how you examine the evidence, the law, and the precedent. Describe in clear terms how you and your team career professionals arrived at this decision.

If you can do that today, if you can do that, that could go a long way towards people understanding your decision.

Finally, I want to make it clear that I condemn these completely unwarranted political attacks against you. They have attacked you personally. They have attacked your integrity. They have impugned your professionalism. And they have even suggested that you were somehow bought and paid for because you made your recommendation based upon the law and the facts.

I know you're used to working in a world of politics, but these attacks have been beyond the pale.

So, you do not deserve this. Your family does not deserve it. And the highly skilled and dedicated agents of the FBI do not deserve it. I honor your professionalism and your service to our country. And again, even if it takes until hell freezes over, I beg you to close the gap. Tell us what happened between what you found and your decision so that not only the members of this panel and this Congress will understand, but so that Americans will understand.

And if you do that, if you do that, then it will be all worth it today.

With that, I yield back.

CHAFFETZ: I think -- hold on one second. With -- with your indulgence, to the ranking member, for which I have the greatest respect, you asked for a hearing on General Petraeus and how that was dealt with. You got it. We will have one in this oversight committee and the record will reflect that in the Judiciary Committee, I repeatedly questioned Attorney General Holder. I repeatedly questioned the FBI director about the disposition of that case, probably more than any member in the House or Senate. And if you want a hearing, we'll do that.

CUMMINGS: Does the gentleman yield?

CHAFFETZ: Yes.

CUMMINGS: Thank you.

CHAFFETZ: Number two, you complained that we haven't done a hearing on Zika. The Oversight and Government Reform Committee I believe was the very first committee to actually do a hearing on Zika that was chaired by Mr. Mica. And I'm proud of the fact that we did a Zika hearing and we did it first.

CUMMINGS: Does the gentleman yield?

CHAFFETZ: Sure.

CUMMINGS: Can we have another one? Because the problem is still there.

CHAFFETZ: Absolutely.

CUMMINGS: Big time. Thank you.

CHAFFETZ: Absolutely, absolutely.

MICA: Mr. Chairman, I just -- a unanimous consent request that we put the date of the hearing in the record at this time that I chaired, thank you, on Zika.

CHAFFETZ: Absolutely. And the ranking member knows that we have held multiple hearings on the criminal justice -- on criminal justice reform. You asked for it. You're passionate about it. And we did do that as well. So to suggest we haven't addressed some of those issues I think is inaccurate.

CUMMINGS: I don't think I did that, Mr. Chairman. But again, as late as yesterday with the problem in Minnesota, with an African American man being killed, I'd like to have some hearings still on the criminal justice system. Thank you.

CHAFFETZ: I thank the gentleman, without objection.

I'm going to work with you on that, as I have every step of the way.

CUMMINGS: Thank you, Mr. Chairman. CHAFFETZ: Without objection, the chair is authorized to declare a recess at any time.

We'll hold the record open for five legislative days for any members who would like to submit a written statement.

We'll now recognize our distinguished witness for our first panel.

I am pleased to welcome the Honorable James Comey, the director of the Federal Bureau of Investigations. We welcome Director Comey, and thank him for being here.

Pursuant to committee rules, all witnesses are to be sworn before they testify. If you'll please rise and raise your right hand. Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth?

Thank you.

Let the record reflect that the witness answered in the affirmative.

Mr. Comey, the floor is yours. You can take as long or as short as you'd like. If you have a written statement that you would like to submit afterwards, we're happy to do that as well. It will be made part of the record. The time is now yours. Director Comey, you're recognized.

COMEY: Thank you Mr. Chairman, Mr. Cummings, members of the Committee.

I am proud to be here today representing the people of the FBI who did this investigation as they do all their work in a competent, honest, and independent way. I believe this investigation was conducted consistent with the highest traditions of the FBI. Our folks did it in an apolitical and professional way, including our recommendation as to the appropriate resolution of this case.

As I said in my statement on Tuesday, I expected there would be significant public debate about this recommendation. And I'm a big fan of transparency, so I welcome the conversation we're going to have here today. And I do think a whole lot of folks have questions about, "so why did we reach the conclusion we did and what was our thinking?" I hope to get an opportunity to address that and explain it. People can disagree, can agree, but they will at least understand that the decision was made and the recommendation was made the way you would want it to be, by people who didn't give a hoot about politics, who cared about what are the facts, what is the law, and how similar people, all people have been treated in the past.

Maybe I can say a few words at the beginning that would help frame how we think about this. There are two things that matter in a criminal investigation of a subject. What did the person do, and when they did that thing, what were they thinking? When you look at the hundred years plus of the Justice Department's investigation and prosecution of the mishandling of classified information, those two questions are present. What did the person do? Did they mishandle classified information? And when they did it, did they know they were doing something that was unlawful.? That has been the characteristic of every charged criminal case involving the mishandling of classified information.

I'm happy to go through the classifications in particular. In our system of law, there's a thing called mens rea. It's important to know what you did and when you did it. This Latin phrase "mens rea" means, "What were you thinking?"

We don't want to put people in jail unless we prove that they knew they were doing something they shouldn't do. That is the characteristic of all the prosecutions involving mishandling of classified information.

There was a statute passed in 1917 that on its face makes it a crime, a felony for someone to engage in gross negligence. So that would appear to say, well, maybe in that circumstance you don't need to prove they were doing something unlawful, maybe it's enough to prove they were really, really careless beyond a reasonable doubt. At the time Congress passed that statute in 1917, there was a lot of concern in the House and Senate about whether that was going to violate the American tradition of requiring that before you go and lock somebody up, you proved they knew they were doing something wrong. So there was a lot of concern about it.

The statute was passed. As best I can tell, the Department of Justice has used it once in the 99 years since reflecting that same concern. I know from 30 years with the Department of Justice, they have grave concerns about whether it's appropriate to prosecute somebody for gross negligence, which is why they've done it once that I know of in a case involving espionage.

When I look at the facts we gather here, as I said, I see evidence of great carelessness, but I do not see evidence that is sufficient to establish that Secretary Clinton or those with whom she was corresponding, both talked about classified information on e-mail and knew when they did it, they were doing something that was against the law. So given that assessment of the facts, my understanding of the law, my conclusion was and remains, no reasonable prosecutor would bring this case. No reasonable prosecutor would bring the second case in 100 years focused on gross negligence. I know that's been a source of some confusion for folks, that's just the way it is. I know the Department of Justice, I know no reasonable prosecutor would bring in the case. I know a lot of my former friends are out there saying, they would. I wonder where they were in the last 40 years because I'd like to see the cases they brought on gross negligence. Nobody would. Nobody did.

So judgment was, the appropriate resolution of this case was, not with a criminal prosecution. As I said, folks can disagree with that. I hope that they know that, that view, not just my view but of my team, was honestly held, fairly investigated, and communicated with unusual transparency because we know folks care about it.

So I look forward to this conversation. I look forward to answering as many questions as I possibly can. I'll stay as long as you need me to stay because I believe transparency matters tremendously. I thank you for the opportunity.



CHAFFETZ: Thank you, director. I'm going to recognize myself here.

Physically where were Hillary Clinton's servers?

COMEY: The operational server was in the basement of her home in New York. The reason I'm answering it that way, is that sometimes after they were decommissioned they were moved to other facilities -- storage facilities, but the live device was always in the basement.

CHAFFETZ: Was that an authorized or unauthorized location?

COMEY: It was an unauthorized location for the transmitting of classified information.

CHAFFETZ: Is it reasonable or unreasonable to expect Hillary Clinton would receive and send classified information?

COMEY: As Secretary of State, reasonable that the Secretary of State would encounter classified information in the course of the Secretary's work.

CHAFFETZ: Via e-mail?

COMEY: Sure, depending upon the nature of the system. To communicate classified information, it would have to be a classified rated e-mail system.

CHAFFETZ: But you did find more than 100 e-mails that were classified that had gone through that server correct?

COMEY: Through an unclassified server correct.

CHAFFETZ: Yes. So Hillary Clinton did come to possess documents and materials that contained classified information via e-mail on these unsecured servers is that correct?

COMEY: That is correct. CHAFFETZ: Did Hillary Clinton lie?

COMEY: To the FBI? We have no basis to conclude she lied to the FBI.

CHAFFETZ: Did she lie to the public?

COMEY: That's a question I'm not qualified to answer. I can speak about what she said to the FBI.

CHAFFETZ: Did she -- did Hillary Clinton lie under oath?

COMEY: To the -- not to the FBI. Not in a case we're working.

CHAFFETZ: Did you review the documents where Congressman Jim Jordan asked her specifically and she said, quote, "there was nothing marked classified on my e-mails either sent or received," end quote?

COMEY: I don't remember reviewing that particular testimony, I'm aware of that being said, though.

CHAFFETZ: Did the FBI investigate her statements under oath on this topic?

COMEY: Not to my knowledge. I don't think there's been a referral from Congress.

CHAFFETZ: Do you need a referral from Congress to investigate her -- her statements under oath?

COMEY: Sure do.

CHAFFETZ: You'll have one. You'll have one in the next few hours. Did

Hillary Clinton break the law?

COMEY: In connection with her use of the e-mail server, my judgment is that she did not.

CHAFFETZ: Are you just not able to prosecute it or did Hillary Clinton break the law?

COMEY: Both. I don't want to give an overly lawyerly answer. The question I always look at is, is there evidence that would establish beyond a reasonable doubt that somebody engaged in conduct that violated a criminal statute. And my judgment here there is not.

CHAFFETZ: The FBI does background checks. If Hillary Clinton applied for the job at the FBI, would the FBI give Hillary Clinton a security clearance?

COMEY: I don't want to answer a hypothetical.

The FBI has a robust process in which we adjudicate the suitability of people for employment in the bureau. CHAFFETZ: Given the fact pattern you laid out less than 40 hours ago, would that person who had dealt with classified information like that, would that person be granted a security clearance at the FBI?

COMEY: It would be a very important consideration and a suitability determination.

CHAFFETZ: You're kind of making my point, Director. The point being because I injected the word "Hillary Clinton," you gave me a different answer.

If I came up to you and said that this person was extremely careless with classified with classified information, the exposure to hostile actors, had used despite a warning -- created unnecessary burdens and exposure, if they said they had one device and you found out they had multiple devices, if there had been e-mail chains with somebody like Jake Sullivan asking for classification changes; you're telling me that the FBI would grant a security clearance to that person?

COMEY: I hope I'm giving a consistent -- I'm not saying what the answer would be.

I'm saying that would be an important consideration in a suitability determination for anybody. CHAFFETZ: It's -- personally, I think that sounds like a bit of a political answer, because I can't imagine that the FBI would grant a security clearance to somebody with that pattern. Do you agree or disagree with that?

COMEY: I say what I said before, again, it's very hard to answer a hypothetical. I will repeat it: It would be a very important consideration in a suitability determination.

CHAFFETZ: Did Hillary Clinton do anything wrong?

COMEY: What do you mean by wrong?

CHAFFETZ: I think it's self-evident.

COMEY: Well, I'm lawyer, I'm an investigator and I'm -- hope, a normal human being.

CHAFFETZ: Do you really believe there should be no consequence for Hillary Clinton and how she dealt with this?

COMEY: Well I didn't say, I hope folks remember what I said on Tuesday. I didn't say there's no consequence for someone who violates the rules regarding the handling of classified information. There are often very severe consequences in the FBI involving their employment, involving their pay, involving their clearances.

That's what I said on Tuesday. I hope folks walk away understanding that just because someone's not prosecuted for mishandling classified information, that doesn't mean, if you work in the FBI, there aren't consequences for it.

CHAFFETZ: So if Hillary Clinton or if anybody had worked at the FBI under this fact pattern, what would you do to that person?

COMEY: There would be a security review and an adjudication of their suitability and a range of discipline could be imposed from termination to reprimand and in between, suspensions, loss of clearance.

So you could be walked out or you could -- depending upon the nature of the facts -- you could be reprimanded. But there is a robust process to handle that.

CHAFFETZ: I've gone past my time. I yield back. I now recognize the ranking member Mr. Cummings.

CUMMINGS: Thank you very much. Director Comey, and I want to thank you very much for being here today, especially on such short notice. You and your staff should be commended for the thorough and dedicated review you conducted.

Unfortunately, some of my colleagues are now attacking you personally because your final recommendation conflicted with their preconceived political outcome in this case.

Some have tried to argue that this case is far worse than the case of General David Petraeus, who was convicted in 2015 of knowingly and intentionally compromising highly classified information.

In fact, one very vocal politician we all know said this, and I quote, "If she isn't indicted, the only reason is because the Democrats are protecting her. She is being protected 100 percent, because you look at

General Petraeus, you look at all the other people that did a fraction of what she did, but she has much worse judgment than he had and she's getting away with it and it's unfair to him," end of quote.

Director Comey, you were the director of the FBI when General Petraeus pled guilty. Is that right?

COMEY: Yes.

CUMMINGS: If I understand that case correctly, General Petraeus kept highly classified information in eight personal notebooks at his private residence. Is that correct?

COMEY: That is correct.

CUMMINGS: According to the filings on that case, his notebook included the identities of covert officers. He also included war strategy, intelligence capabilities, diplomatic discussions, quotes and (inaudible) discussions from high level national security council meetings and discussions with the president.

General Petraeus shared his information with his lover and then biographer. He was caught on audio tape telling her, and I quote, "I mean, they are highly classified, some of them. They don't have it -- it on -- on it, but I mean, there's code word stuff in there," end of quote.

Director Comey, what did General Petraeus mean when he said he intentionally shared, quote, "code word" information with her? What does that mean?

COMEY: The Petraeus case, to my mind, illustrates perfectly the kind of cases the Department of Justice is willing to prosecute. Even there, they prosecuted him for a misdemeanor.

In that case, you had vast quantities of highly classified information, including special sensitive compartmented information. That's the reference to code words. Vast quantity of it. Not only shared with someone without authority to have it, but we found it in a search warrant hidden under the insulation in his attic and then he lied to us about it during the investigation.

So you have obstruction of justice, you have intentional misconduct and a vast quantity of information. He admitted he knew that was the wrong thing to do. That is a perfect illustration of the kind of cases that get prosecuted. In my mind, it illustrates importantly the distinction to this case.

CUMMINGS: And General Petraeus did not admit to these facts when the FBI investigators first interviewed him, did he?

COMEY: No, he lied about it.

CUMMINGS: But he did admit to these facts in a plea agreement. Is that correct?

COMEY: Yes.

CUMMINGS: Here's what the department filing said about General Petraeus, and I quote. "The acts taken by defendant David Howell Petraeus were in all respects knowing and deliberate and were not committed by mistake, accident or other innocent reason," end of quote.

Is that an accurate summary, in your view, Director Comey?

COMEY: Yes, it actually leaves out an important part of the case, which is the obstruction of justice.

CUMMINGS: Was he -- was he charged with obstruction of justice?

COMEY: No.

CUMMINGS: And why not?

COMEY: A decision made by the leadership of the Department of Justice not to insist upon a plea to that felony.

CUMMINGS: So the question is, do you agree with the claim that General Petraeus, and I quote, "got in trouble for far less," end of quote? Do you agree with that statement?

COMEY: No, it's the reverse.

CUMMINGS: And what do you mean by that?

COMEY: His conduct, to me, illustrates the categories of behavior that mark the prosecutions that are actually brought. Clearly intentional conduct, knew what he was doing was a violation of the law, huge amounts of information that even if you couldn't prove he knew it, it raises the inference that he did it, an effort to obstruct justice. That combination of things makes it worthy of a prosecution. A misdemeanor prosecution, but a prosecution nonetheless.

CUMMINGS: Sitting here today, do you stand by the FBI's recommendation to prosecute General Petraeus? COMEY: Oh, yeah.

CUMMINGS: Do you stand by the FBI's recommendation not to prosecute Hillary Clinton?

COMEY: Oh -- yes.

CUMMINGS: Director Comey, how many times have you testified before Congress about the General Petraeus case? Do you know?

COMEY: I don't think I've ever testified -- I don't think I've testified about it at all. I don't think so.

CUMMINGS: With that, I'll yield back.

CHAFFETZ: I have to check the record, but I believe I asked you a question about it at the time. But maybe not.

COMEY: You could have. That's why I was squinching my face. It could have been a Judiciary Committee hearing I was asked about it.

CHAFFETZ: Yeah. We'll now recognize the gentleman from South Carolina, Mr. Gowdy, for five minutes.

GOWDY: Good morning, Director Comey. Secretary Clinton said she never sent or received any classified information over her private e-mail. Was that true?

COMEY: Our investigation found that there was classified information sent...

GOWDY: So it was not true?

COMEY: That's what I said.

GOWDY: OK. Well, I'm looking for a little shorter answer so you and I are not here quite as long. Secretary Clinton said there was nothing marked classified on her e-mails, either sent or received. Was that true?

COMEY: That's not true. There were a small number of portion markings on, I think, three of the documents.

GOWDY: Secretary Clinton said, I did not e-mail any classified material to anyone on my e-mail, there is no classified material. Was that true?

COMEY: There was classified material e-mailed.

GOWDY: Secretary Clinton said she used just one device. Was that true?

COMEY: She used multiple devices during the four years of her term as secretary of state.

GOWDY: Secretary Clinton said all work-related e-mails were returned to the State Department. Was that true?

COMEY: No. We found work-related e-mails, thousands that were not returned.

GOWDY: Secretary Clinton said neither she nor anyone else deleted work related e-mails from her personal account. Was that true?

COMEY: That's a harder one to answer. We found traces of work-related e-mails in -- on devices or in slack space. Whether they were deleted or whether when the server was changed out something happened to them. There's no doubt that the work-related e-mails that were removed electronically from the e-mail system.

GOWDY: Secretary Clinton said her lawyers read every one of the e-mails and were overly inclusive. Did her lawyers read the e-mail content individually?

COMEY: No.

GOWDY: Well in the interest of time, and because I have a plane to catch tomorrow afternoon, I'm not going to go through anymore of the false statements. But I am going to ask you to put on your old hat. False exculpatory statements, they are used for what?

COMEY: Either for the -- a substantive prosecution or for evidence of intent in a criminal prosecution.

GOWDY: Exactly. Intent and consciousness of guilt, right? Is that right?

COMEY: Right.

GOWDY: Consciousness of guilt and intent. In your old job, you would prove intent, as you just referenced, by showing the jury evidence of a complex scheme that was designed for the very purpose of concealing the public record and you would be arguing in addition to concealment the destruction that you and I just talked about or certainly the failure to preserve.

You would argue all of that under the heading of content (ph) -- intent. You would also be arguing the pervasiveness of the scheme, when it started, when it ended and the number of e-mails, whether they were originally classified or up-classified.

You would argue all of that under the heading of intent. You would also, probably, under common scheme or plan, argue the burn bags of daily calendar entries or the missing daily calendar entries as a common scheme or plan to conceal. GOWDY: Two days ago, Director, you said, "A reasonable person in her position should have known a private e-mail was no place to send and receive classified information." You're right. An average person does know not to do that.

This is no average person. This is a former first lady, a former United States senator, and a former secretary of state that the president now contends is the most competent, qualified person to be president since Jefferson. He didn't say that in '08, but he says is now.

She affirmatively rejected efforts to give her a state.gov account. She kept these private e-mails for almost two years, and only turned them over to Congress because we found out she had a private e-mail account.

So you have a rogue e-mail system set up before she took the oath of office, thousands of what we now know to be classified e-mails, some of which were classified at the time. One of her more frequent e-mail comrades was in fact hacked, and you don't know whether or not she was. And this scheme took place over a long period of time and it resulted in the destruction of public records.

And yet you say there is insufficient evidence of intent. You say she was extremely careless, but not intentionally so. You and I both know intent is really difficult to prove. Very rarely do defendants announced "on this date, I intend to break this criminal code section; just to put everyone on notice, I am going to break the law on this date." It never happens that way.

You have to do it with circumstantial evidence. Or if you're Congress and you realize how difficult it is to prove specific intent, you will formulate a statute that allows for gross negligence.

My time is out, but this is really important. You mentioned there's no precedent for criminal prosecution. My fear is there still isn't. There's nothing to keep a future secretary of state or president from this exact same e-mail scheme, or their staff.

And my real fear is this -- it's what the chairman touched upon, this double-track justice system that is rightly or wrongly perceived in this country, that if you are a private in the Army and you e-mail yourself classified information, you will be kicked out. But if you are Hillary Clinton and you seek a promotion to



commander in chief, you will not be. So what I hope you can do today is help the average -- the reasonable person you made reference to, the reasonable person understand why she appears to be treated differently than the rest of us would be.

With that, I would yield back.

CHAFFETZ: I will now recognize the gentlewoman from New York, Ms. Maloney.

MALONEY: Director, thank you for your years of public service. You have distinguished yourself as the assistant U.S. attorney for both the Southern District of New York and the Eastern District of Virginia. That's why you were appointed by President Bush to be the deputy attorney general at the Department of Justice, and why President Obama appointed you as the director of the FBI in 2013.

Despite your impeccable reputation for independence and integrity, Republicans have turned on you with a vengeance immediately after you announced your recommendation not to pursue criminal charges against Secretary Clinton.

Let me give you some examples. Representative Turner said, and I quote, "The investigation by the FBI is steeped in political bias," end quote. Was your investigation steeped in political bias? Yes or no?

COMEY: No. It was steeped in no kind of bias.

MALONEY: Thank you.

The speaker of the House Paul Ryan was even more critical. He accused you of not applying the law equally. He said your recommendation shows, and I quote, "the Clintons are living above the law; they've being held to a different set of standards; that is clearly what this looks like," end quote.

How do you respond to his accusations that you held the Clintons to a different set of standards than anyone else? Did you hold them to a different standard or the same standard?

COMEY: It's just not -- it's just not accurate. We try very hard to apply the same standard whether you're rich or poor, white or black, old or young, famous or not known at all. I just hope folks will take the time to understand the other cases, because there's a lot of confusion out there about what the facts were of the other cases that I understand good people, reasonable people to have questions.

MALONEY: Senator Cruz also criticized you. He said that there are, and I quote, "serious concerns about the integrity of Director Comey's decision." He stated that you, quote, "you had rewritten a clearly worded federal criminal statute." Did you rewrite the law in any way or rewrite any statute?

COMEY: No. MALONEY: Now, I hesitate -- I truly hesitate to mention the next one. But Donald Trump took these conspiracy theories to a totally new level. He said, and I quote, "It was no accident that charges (inaudible) recommended against Hillary the exact same day as President Obama campaigned with her for the first time." So did you plan the timing of your announcement to help Secretary Clinton's campaign event on Tuesday?

COMEY: No. The timing was entirely my own. Nobody knew I was going to do it, including the press. I'm very proud of the way the FBI, nobody leaked that. We didn't coordinate it. Didn't tell. Just not a consideration.

MALONEY: Mr. Trump also claimed that Secretary Clinton bribed the attorney general with an extension of her job. And I guess this somehow affected your decision. I know it's a ridiculous question, but I have to ask it. Did you make your decision because of some kind of bribe to the attorney general?

COMEY: No.

MALONEY: I -- I tell you, are you surprised as I am by the intensity of the attacks from the GOP on you, after having made a decision, a thoughtful decision, an independent decision with the professional staff of the FBI?

COMEY: I'm not surprised by the intense interest and debate. I predicted it. I think it's important that we talk about these things. They inevitably become focused on individual people. That's OK. We'll just continue to have the conversation.

MALONEY: I believe that what we're seeing today is that if the GOP does not like the results of an investigation or how it turns out, and we saw they originally were lauding you. The minute you made your announcement, they're now attacking you -- the same people.

And now, I predict they'll be calling for more hearings, more investigations, all at the expense of the taxpayer. And they do this instead of working on what the American people really care about. They want Congress to focus on jobs, the environment, homeland security, the security of our nation, affordable childcare, affordable college educations, and an economy that works and helps all people.

I thank you for performing your job with distinction and the long history of your whole profession of integrity and independence. And thank you very much. My time is expired.

CHAFFETZ: I thank the gentlewoman.

We'll now recognize the gentleman from Ohio, Mr. Jordan, for five minutes.

JORDAN: Thank you, Mr. Chairman.

Director, thank you for being with us. On Tuesday, you said, "any reasonable person in Secretary Clinton's position should have known that an unclassified system was no place for these conversations." You said on Tuesday, "some of her e-mails bore classified markings." And you also said on Tuesday there were potential violations of the appropriate statutes.

Now, I know a bunch of prosecutors back home would look at that fact pattern and look at that evidence -- you even referenced it in your opening statement, some of your prosecutor -- friends in the prosecution business have been on TV saying they would have looked at that same evidence and they would have taken it to a grand jury.

But on Tuesday, you said, and today in your opening statement, you said, "no reasonable prosecutor would bring such a case."

And then in your statement Tuesday, you cite factors that helped you make that decision and make that statement. And one of the factors you said was "consider the context of a person's actions." Typically, when I hear "context" in the course of a criminal investigation, it's -- it's from the defense side, not the prosecution side. It's at the end of the case after there's been a trial and a guilty verdict, and it's during the sentencing phase -- mitigating circumstances. That's the context we typically think about.

But you said it on the front end. You said "consider the context of the person's actions." And so I'm curious. What does "consider the context" mean? Because a lot of Americans are thinking just what the chairman talked about in his opening statement, that there are two standards: one for we the people, and one for the politically connected.

A lot of folks I get the privilege of representing back in Ohio think that when you said "consider the context," they think that's what Mr. Gowdy just talked about -- the fact that she is former first lady, former secretary of state, former senator, major party's nominee for the highest office in the land. And, oh by the way, her husband just met with the individual you work with at an airport in Arizona five days ago.

So, you said none of that influenced your decision. But tell us what "consider the context" means. COMEY: Thank you, Mr. Jordan.

What I was trying to capture is the fact that the exercise for prosecutorial discretion is always a judgment case. It is in every single case. Among the things you consider are, what was this person's background? What was the circumstances of the offense? Were they drunk? Were they inflamed by passion? Was it somebody who had a sufficient level of education, and training, and experience that we can infer certain things from that to consider the entire circumstances of the conduct and background? I did not mean to consider political context.

JORDAN: The entire circumstances, and Mr. Gowdy just talked about this scheme -- remember what she did, right? She sets up this unique server arrange. She alone controlled it.

On the server, on that system are her personal e-mails, her work related e-mails, Clinton Foundation information, and now we know, classified information. This gets discovered. We find out this arrangement exists. Then what happens? Her lawyers, her legal team decides which ones we get and which ones they get to keep.

They made the sort on the front end. And then we find out the ones that they kept and didn't give to us, didn't give to the American people, didn't give to Congress, the ones they kept, they destroyed them. And you don't have to take my word. I'll take what you said on Tuesday, "they deleted all e-mails they did not return to the State Department, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery." Now, that sounds like a fancy way of saying they hid the evidence, right? And you just told Mr. Gowdy thousands of e-mails fell into those categories.

Now, that seems to me to provide some context to what took place here. Did Secretary Clinton's legal team -- excuse me, let me ask it this way. Did Secretary Clinton know her legal team deleted those e-mails that they kept from us?

COMEY: I don't believe so.

JORDAN: Did Secretary Clinton approve those e-mails being deleted?

COMEY: I don't think there was any specific instruction or conversation between the Secretary and her lawyers about that.

JORDAN: Did you ask that question? COMEY: Yes.

JORDAN: Did Secretary Clinton know that her lawyers cleaned devices in such a way to preclude forensic recovery?

COMEY: I don't believe she did.

JORDAN: Did you ask that question?

COMEY: Yes.

JORDAN: Do you see how someone could view the context of what she did, set up a private system, she alone controlled it, she kept everything on it? We now know from Ms. Abedin's deposition they did it for that reason, so no one could see what was there based on the depositions Ms. Abedin gave. And then when they got caught, they deleted what they had and they scrubbed their devices. Is that part of the context in evaluating this decision?

COMEY: Sure, sure. And I understand what inferences can be drawn from that set of facts, of course.

JORDAN: Mr. Chairman, I yield back.

CHAFFETZ: I thank the gentleman. We will now recognize the gentle woman from the District of Columbia, Mrs. Norton for five minutes.

NORTON: Thank you, Mr. Chairman. Director Comey, I appreciate your conduct of this investigation in a nonpartisan way in keeping with the sterling reputation, which has led presidents of both parties to appoint you to highly placed law enforcement positions in our federal government.

I want to say for the record that this hearing where you call the prosecutor, Mr. Comey, stands in the place of the prosecutor, because the Attorney General has accepted entirely the FBI's recommendations. When you call the prosecutor to give account for the decision to prosecute or not a particular individual raises serious questions of separation of powers, and particularly when you're questioning the prosecutor's decision with respect to the decision, to prosecute or not a particular individual, it raises serious bill of attainder Constitutional questions.

These hearings are so often accusatory that they yield no guidance as to how to conduct business in the future. And that's the way it looks -- it looks as though that is how this hearing is going. Of course, now, everyone understands in the abstract, why it is important for security reasons to use official government mail or e-mail rather than private e-mail if security matters are involved. It's a very broad, wide proposition.

Now, there are no rules so far as I know, requiring members of Congress to use their -- as to how they use their official e-mail accounts, whether involving security or not. The Chairman of this Committee lists his personal account, for example, on his business card. No one says that's wrong. I don't know if it's wrong or right, because there's no guidance.

Federal agency employees, members of Congress, often have secure information or at least sensitive information that shouldn't be made public. Some of our members on the Intelligence Committee, or the Defense Committee or even this committee, and they have such matters -- some of these matters may concern national security issues. And I don't know if something is sensitive, as the itinerary -- if you're going to a hotel as to the route you're taking, and where you will be, all that could be on people's personal e-mails.

Of course, there's a legislative branch, and I spoke of separation of powers. I'm not indicating that there should be a government-wide sense that it is ordained from or hide (ph) -- but there ought to be rules that everybody understands about especially after the Clinton episode, about the use of personal e-mail. So I would like your insight for guidance as far as other federal employees are concerned or other members of Congress and their staff because I think we could learn from this episode.

So strictly from a security standpoint, do you believe that federal employees, staff, even members of Congress, should attempt guidance on the issue of the use of personal e-mails versus some official form of communication? What should we learn from the process the Secretary has gone through? I'm sure there will be questions about how there was even confusion, for example, in the State Department. But what should we learn when it comes to our own -- our own use of e-mail and the use of federal employees on this question?

COMEY: May I answer, Mr. Chairman?

The most important thing to learn is an unclassified e-mail system is no case for an e-mail conversation about classified matters. By that, I mean either sending a document as an attachment over unclassified e-mail that is classified, or having a conversation about something that is a classified subject on an unclassified e-mail system. That's the focus of the concern.

That's the focus of this investigation, that it was also a personal e-mail adds to the concern about the case because of the security vulnerabilities associated with a personal system. But the brute of the problem is people using unclassified systems to conduct business that is classified. So all of us should have access to, when we have access to classified information, classified communication systems.

The FBI has three levels an unclassified system, a secret system, and a top secret system. You can e-mail on all three, but you need to make sure you don't e-mail on the unclassified system, even if that's a government classified system about matters that are classified. That's the important lesson learned.

Everybody ought to be aware of it. Everybody ought to be trained on it. We spend a lot of time training on it in the fib to make sure folks are sensitive to the need of moving a classified discussion, even if it doesn't involve sending a document to the appropriate forum.

NORTON: Members of Congress included?

COMEY: Of course.

NORTON: Thank you, Mr. Chairman.

CHAFFETZ: We'll now recognize the gentleman from Florida, Mr. DeSantis for five minutes.

DESANTIS: Director, the reason why that's so important is because of if top secret information is compromised, that could damage our national security, correct?

COMEY: Yes, by definition...DESANTIS: And American lives are at stake in some instances, correct?

COMEY: Yes.

DESANTIS: You mentioned, a lot of people are upset that there are no consequences for Secretary Clinton, but in your statement you pointed out that administrative and security consequences would be appropriate if someone demonstrated extreme carelessness for classified information. So for those consequences, that would include potentially termination of federal employment?

COMEY: Correct.

DESANTIS: It could include revocation of security clearance?

COMEY: Yes.

DESANTIS: It could include and ineligibility for future employment in national security positions?

COMEY: It could.

DESANTIS: Would you as the FBI Director allow someone, and employee of your agency to work in a national security capacity, if that person had demonstrated extreme carelessness in handling top- secret info?

COMEY: The answer to that is we would look very closely at that in a suitability determination. It's hard to answer in the abstract, "yes in all cases and no in all cases," but it would be a very important suitability scrub.

DESANTIS: So there would be instances where someone could be extremely careless and maintain competence? We have a lot of people who are competent in this country who would love to work for your agency, but yet, it would be potentially -- you would allow someone to be potentially careless and carry on?

COMEY: In the hypothetical, I can imagine if it was a long time ago, and it was a small amount of conduct or something -- that's why it's hard to say other than it would be a very important part...

DESANTIS: Let's put it this way. Would being extremely careless in handling top secret information expose an employee of the FBI to potential termination? COMEY: Yes.

DESANTIS: Why shouldn't U.S. officials use mobile devices when traveling to foreign countries, especially if they're discussing classifying or sensitive information?

COMEY: Because the mobile device will transmit its signal across networks that are likely controlled or at least accessed by that hostile power.

DESANTIS: That's the guidance that the FBI gives all officials when they're traveling overseas? That's still good guidance, correct?

COMEY: That's good guidance.

DESANTIS: How did top secret information end up on the private server, because your statement addressed Secretary Clinton. You did not address any of her aides in your statement. Attorney general Lynch exonerated everybody. That information just didn't get there on its own, so how did it get there? Were you able to determine that?

COMEY: Yes, by people talking about a top secret subject in an e-mail communication.

DESANTIS: So...

COMEY: Not about forwarding a top secret document, it's about having a conversation about a matter that is top secret.

DESANTIS: And those were things that were originated by Secretary Clinton's aides and sent to her, which would obviously be in her server, but it was also included Secretary Clinton originating those e-mails, correct?

COMEY: That's correct.

In most circumstances, it initiated with aides starting the conversation. In the one involving top secret information, Secretary Clinton not only received but sent e-mails talking about the same subject.

DESANTIS: And of that top secret information you found, would somebody who is sophisticated in those matters, should it have been obvious to them that was sensitive information?

COMEY: Yes.

DESANTIS: So I guess my issue about knowledge of what you're doing is, in order for Secretary Clinton to have access to top secret, SCI FBI information, didn't she have to sign a form with the State Department acknowledging her duties and responsibilities under the law to safeguard this information?

COMEY: Yes. Anybody who gets access to SCI, Sensitive Compartmented Information would sign a read-in form that lays that out. I'm sure members of Congress have seen the same thing. DESANTIS: And it stresses in that document and other training people would get, that there are certain requirements to handling certain levels of information. For example, a top secret document, that can't even be on your secret system at the FBI, correct?

COMEY: Correct.



DESANTIS: So you have to follow certain guidelines. And I guess my question is, is she's very sophisticated person, she did execute that document, correct?

COMEY: Yes.

DESANTIS: And her aides who were getting the classified information, they executed similar documents to get a security clearance, correct?

COMEY: I believe so.

DESANTIS: And she knowingly clearly set up her own private server in order to -- let me ask you that, was the reason she set up her own private server in your judgment was because she wanted to shield communications from Congress and the public?

COMEY: I can't say that.

Our best information is that she set it up as a matter of convenience. It was an existing system her husband had and she decided to have a domain on that system.

DESANTIS: So the question is, is very sophisticated, this is information that clearly anybody who had knowledge of security information would know that it would be classified? But I'm having a little bit of trouble to see, how would you not then know that that was something that was inappropriate to do?

COMEY: Well, I just want to take one of your assumptions about sophistication. I don't think that our investigation established she was actually particularly sophisticated with respect to classified information and the levels and treatment, and so far as we can tell...

DESANTIS: Isn't she in an original classification of authority?

COMEY: Yes, sir.

DESANTIS: Good grief.

Well, I appreciate you coming. I yield back the balance of my time.

CHAFFETZ: I thank the gentleman. I ask unanimous consent to enter into the record two documents that Mr. DeSantis referred to. One is the Sensitive Compartmented Information Nondisclosure agreement, the other one is the Classified Information Nondisclosure Agreement, both signed by Hillary Rodham Clinton. Without objection, so ordered. I now recognize the gentleman from Missouri, Mr. Clay, for five minutes.

CLAY: Thank you, Mr. Chairman. Thank you, Director Comey, for being here today and for the professionals whom you lead at the FBI.

Two years ago, after my urgent request to then Former Attorney General Eric Holder for an expedited Justice Department investigation into the tragic death of Michael Brown in Ferguson, Missouri, I witnessed first hand the diligence, professionalism, and absolute integrity of your investigators. And I have no doubt that was the case in this matter as well.

I did not think it was possible for the majority to exceed their unprecedented arrogant abuse of official channels and federal funds that we have witnessed over the past two years. As they have engaged in a partisan political witch hunt at taxpayer expense against Secretary Clinton. But I was wrong, this proceeding is just a sequel to that very bad act and the taxpayers will get the bill.

It's a new low, and it violates both house rules and the rules of this Committee. So with apologies to you and the FBI for this blatantly partisan proceeding, let me return to the facts of this case as you have clearly outlined them.

First question. Did Secretary Clinton or any member of her staff intentionally violate federal law?

COMEY: We did not develop clear evidence of that.

CLAY: Did Secretary Clinton or any member of her staff attempt to obstruct your investigation?

COMEY: We did not develop evidence of that.

CLAY: In your opinion, do the mistakes Secretary Clinton has already apologized for and expressed regret for, rise to a level that would be worthy of federal prosecution?

COMEY: As I said Tuesday, our judgment, not just mine, but the team's judgment at the FBI is that the Justice Department would not bring such a case. No Justice Department would under any --whether Republican or Democrat administration.

CLAY: Thank you for that response.

I know the FBI pays particular attention to groups by training agents and local law enforcement officers and participating in local hate crime working groups. Is that right?

COMEY: Yes, sir.

CLAY: Some of these organizations seem relatively harmless, but others appear to be very dangerous and growing. Some even promote genocide in their postings and rhetoric online. In your experience, how dangerous are these groups and have they incited violence in the past?

COMEY: I think too hard to answer, Congressman in the abstract, there are some groups that are dangerous, there are some groups that are exercising important protected speech under the First Amendment.

CLAY: Let me ask about it in a more direct question. A gentleman named Andrew England is the editor of a website called the Daily Stormer that is dedicated to the supremacy of the white race, as well as attacking Jews, Muslims, and others. The website features numerous posts with the hash #whitegenocide, to protest what they contend is an effort to eliminate the white race. Are you familiar with this movement?

COMEY: I'm not.

CLAY: Okay. Well, this hash tag has been promoted all over social media by a growing number of white supremacists. For example, one Nazi sympathizer tweeted repeatedly using the handle, @whitegenocidetm. Are you concerned that some groups are increasing their followers in this way, particularly if some of those followers could become violent?

COMNEY: I don't know the particular enough to comment, Congressman.

We are always concerned when people go beyond protected speech, which we do not investigate, moving towards acts of violence. And so, our duty is to figure out when have people walked outside the First Amendment protection and are looking to kill folks or hurt folks.

I don't know enough to comment on the particular. CLAY: I see.

Well, one of my biggest concerns is that certain public figures are actually promoting these groups even further, and as you may know, one of our most vocal candidates for president retweeted @whitegenocidetm. Three weeks later, he did it again. Two days after that, he retweeted a different user whose image also included the term white genocide, and that's not even all of them.

Director Comey, don't these actions make it easier for these racist groups to recruit even more supporters?

COMNEY: I don't think I'm in a position to answer that in an intelligent way sitting here.

CLAY: I appreciate you trying, and thank you, Mr. Director, for your exceptional principled service to our country.

I yield back.

CHAFFETZ: Thank you. We'll now recognize the gentlewoman from Wyoming, Ms. Lummis for five minutes.

LUMMIS: Welcome, Director. Thank you so much for being here.

My phone has been ringing off the hook in my Washington office, in my Wyoming office -- from constituents who don't understand how this conclusion was reached. So I appreciate you being here to help walk us through it.

And here's the issue that the people that are calling me from Wyoming are having, they have access to this statute, it's Title XVIII U.S. Code 1924. I'm going to read you the statute, it says, "whoever being an officer employee, contractor, or consultant to the United States and by virtue of his office, employment, position, or contract becomes possessed of documents or materials containing classified information of the United States knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year or both." Armed with that information, they're wondering how Hillary Clinton, who is also an attorney, and attorneys are frequently held to a higher standard of knowledge of the law, how this could not have come to her attention.

She was the Secretary of State. Of course, the Secretary of State is going to become possessed of classified materials. Of course, she was an attorney, she practiced with a prominent Arkansas law firm, the Rose Law Firm. She knew from her White House days with her husband, the President, that classified materials can be very dangerous if they get into the wrong hands.

She had to have known about this statute because she had to have been briefed when she took over the job as the Secretary of State. So how, given that body of knowledge and experience, could this have happened in a way that could have potentially provided access by hackers to confidential information?

COMNEY: You know, it's a good question. A reasonable question.

The protection we have as Americans is that the government in general and in that statute in particular, has to prove before they can prosecute any of us, that we did this thing that's forbidden by the law. And when we did it, we knew we were doing something that was unlawful. We don't have to know the code number, but that we knew we were doing something that was unlawful. That's the protection we have, one I have worked for very hard.

When I was in the private sector, I did a lot of work with the Chamber of Commerce to stop the criminalization of negligence in the United States...

LUMMIS: Your know thought Mr. -- may I interrupt and suggest that, this statute says, "knowingly removes such documents or materials without authority and with the attempt to retain such documents or materials at an unauthorized location." The intent here in the statute is to retain the documents at an unauthorized location. It's not intent to pass them on to a terrorist or to someone out in Internet land, it's just the intent to retain the documents or materials at an unauthorized location.

COMNEY: It's more than that, though.

You would have to show that and prove criminal intent both by law, that's the way the judgment would instruct the jury, and practice by the Department of Justice. They have reserved that statute, even though it's just a misdemeanor, for people who clearly knew they were breaking the law, and that's the challenge.

So should have known, must have know, had to know -- does not get you there. You have to prove beyond a reasonable doubt that they knew they were engaged in something that was unlawful. That's the challenge.

LUMMIS: Then may I turn to her attorneys? Did all of Secretary Clinton's attorneys have the requisite clearances at the times they received all of her e-mails, especially those that were classified at the time they were sent?

COMNEY: No.

LUMMIS: They destroyed, as has been noted, 30,000 e-mails of Secretary Clinton's. Do you have 100 percent confidence that none of the 30,000 e-mails destroyed by Secretary Clinton's attorneys was marked as classified?

COMNEY: I don't have 100 percent confidence.

I'm reasonably confident some of them were classified. There were only three in the entire batch we found that bore any markings to indicate they were classified. So that's less likely, but surely, it's a reasonable assumption some of the ones they deleted contained classified information.

LUMMIS: Thank you, Director. Thank you, I yield back.

CHAFFETZ: I now recognize the gentleman from Massachusetts, Mr. Lynch, for five minutes.

LYNCH: Thank you, Mr. Chairman. Thank you, Director Comey, for appearing here to help the Committee with this work.

Director Comey, Secretary Clinton is certainly not the only Secretary of State to use a personal e-mail account with information later identified as being classified. I want to show you, this is a book that was written by Former Secretary of State Colin Powell. And in his book, he says, "to complement the official state department computer in my office, I installed a laptop computer on a private line. My personal e-mail account on a laptop allowed me to direct access to anyone online. So I started shooting e-mails to my principle assistants, to individual ambassadors, and increasingly, to my foreign minister colleagues who like me were trying to bring their ministries into the 186,000 miles per second world." Were you aware of this, that Secretary Colin Powell actually had a private server as well?

COMEY: Not a private server. I think he used a commercial e-mail account for state department business.

LYNCH: Private line? Unprotected?

COMEY: Correct. Not a State Department e-mail system.

LYNCH: Right.

COMEY: Right.

LYNCH: He went rogue, so to speak. Right?

COMEY: I don't know whether I would say that.

LYNCH: All right. I'm not going to put words in your mouth.

Do you think this was careless for him to do that, to start -- get his own system.? He installed a laptop computer on a private line. " My personal e-mail account was on a laptop and allowed me direct access to anyone. Anyone online." That's his own statement.

I'm just trying to compare Secretaries of State because Secretary Powell has never been here. As a matter of fact, when we asked him for his e-mails, unlike the 55,000 that we received from Secretary Clinton, he said, "I don't have any to turn over." This is a quote. This was on ABC this week. He explained, "I don't have any to turn over. I didn't keep a cache of them. I did not print them off. I do not have thousands of pages somewhere in my personal files." But he was Secretary of State and he operated, you know, on a private system. Were you aware of that?

COMEY: Not at the time 15 years ago, but I am now.

LYNCH: Yes, okay.

So recently, well, back in October 2015, the State Department sent Secretary Powell a letter requesting that he contact his e-mail provider, AOL, to determine whether any of his e-mails are still on the unclassified systems. Are you aware of that ongoing investigation?

COMEY: I don't know of an investigation...

LYNCH: Well, that request for information from Secretary Powell, the former Secretary?

COMEY: Yes. Yes, I am.

LYNCH: You're aware of that. Are you surprised that he has never responded?

COMEY: I don't know enough to comment. I don't know exactly what conversation he had with the State Department. LYNCH: I try to look at the -- where we have a lot of comparisons of other cases. And it seems like all the cases where prosecutions have gone forward, the subject of the investigation has demonstrated a clear intent to deliver classified information to a person or persons who were unauthorized to receive that.

So if you look at the, you know, PFC Bradley Manning, now Chelsea Manning, that was a court-martial, but he demonstrated a clear intent to publish that information, which was classified. Julian Assange, the WikiLeaks editor I guess and publisher, again a wide and deliberate attempt to publish classified information. General Petraeus, which we talked about earlier today, shared information with his biographer. Jeffrey Sterling, of the New York Times and Former CIA Officer Kiriakou who was interested in writing a book, so he hung on to his information. And even Former Director of the CIA, John Deutsche, who retains classified information on a couple of servers, one in Belmont, Massachusetts, and one in Bethesda, Maryland, now that is after he became a private citizen.

So in all those cases, there's a clear intent. As you said before, you look at what people did and what they were thinking when they did that. And I would just ask you, is there a clear distinction between what those people did and what Secretary Clinton did in her case?

COMEY: In my view, yes. The Deutsche case illustrates it perfectly. He took huge amount of documents, almost all of the TS-CIA level, had them in hard copy at his house, had them on an unclassified system attached to the Internet, attempted to destroy some when he got caught. Admitted, "I knew I wasn't supposed to be doing this," -- clear intent, obstruction of justice. Those are the kind of cases that get prosecuted.

That's what I said and I meant it when I said it. In my experience, which is three decades, no reasonable prosecutor would bring this case. I know that frustrates people, but that's the way the law is, and that's the way the practice is in the Department of Justice.

LYNCH: Thank you for your testimony and for your service. I yield back.

CHAFFETZ: I thank the gentleman. We'll go to the gentleman from North Carolina, Mr. Meadows, for five minutes.

MEADOWS: Thank you, Mr. Chairman. Director Comey, thank you. There has been much said today about criticizing you and your service. And I want to go on record that even though many of my constituents would love for me to criticize your service because of the conclusion you reached, never have I, nor will I criticize your service. And we appreciate your service to this country and the integrity.

So I'm going to focus on the things that you said, not the conclusion that you drew. And Congressman Trey Gowdy and I talked a little bit about this. On February 4th, 2016, Secretary Clinton during a presidential debate said, "I never sent or received any classified material. They are retroactively classifying it." Close quote.

And so in your statement on July 5th, you said that, "there were indeed 110 e-mails, 52 e-mail chains which there was classified information on it at the time it was sent or received." So those two statements, both of them cannot be true. Is that correct, your statement and her statement.?

COMEY: It's not accurate to say that she did not send or receive classified...

MEADOWS: So she did not tell the truth during that presidential debate that she never sent or received classified information, and it was retroactively classified?

COMEY: I don't think that's a question I should be answering of what was her in head.

MEADOWS: Well, either your statement is not true or hers is not true. Both cannot be true. Is your statement true?

COMEY: That I can speak to.

MEADOWS: OK, so your statement is true, so the American people will have to judge with her statement not being true.

So let me go on to another one. On October 22nd, she said, "there was nothing marked classified on e-mails either sent or received," and in your statement, you said, "a" very small number of e-mails contained classified information, bore markings indicating the presence of classified information at the time." So she makes a statement that says there was no markings. You make a statement that there was. So her statement was not true?

COMEY: That one I actually have a little insight into her statement because we asked her about that. There were three documents that bore portion markings where you're obligated when something is classified to put a marking on that paragraph.

MEADOWS: Right.

COMEY: There were three that bore "c" which means that's confidential classified information.

MEADOWS: So a reasonable person who has been a Senator, a Secretary of State, a First Lady, wouldn't a reasonable person know that that was a classified marking? As a secretary of state, a reasonable person? That's all I'm asking.



COMEY: Before this investigation, I probably would have said, yes. I'm not so sure. I don't find it incredibly...

MEADOWS: Director Comey, come on.

I mean, I have only been here a few years and I understand the importance of those markings. So you're suggesting that a long length of time that she had no idea what a classified marking would be? That's your sworn testimony today?

COMEY: No, no, not that she would have no idea what a classified marking would be, but it's an interesting question as to -- the question about sophistication came up earlier -- whether she was sophisticated enough to understand what a "c" means.

MEADOWS: So you're saying the former Secretary of State is not sophisticated enough to understand a classified marking?

COMEY: That's not what I said.

MEADOWS: That's a huge statement.

COMEY: That's not what I said. You asked me did I assume someone would know. Probably before the investigation, I would have, I'm not so sure of that answer any longer. I think it's possible -- possible that she didn't understand what a "c" meant when she saw it in the body of the e-mail like that.

MEADOWS: After years in the Senate and Secretary of State, I mean, that's hard for me and the American people to believe, Director Comey. And I'm not questioning your analysis of it, but wouldn't a reasonable person think that someone who has the highest job of handling classified information would understand that?

COMEY: I think that's the conclusion a reasonable person would draw. It may not be accurate...

MEADOWS: Let me go a little bit further, because that last quote actually came on October 22nd, 2015, under sworn testimony before the Benghazi Committee. So if she gave a sworn testimony, that a reasonable person would suggest is not truthful, isn't it a logical assumption she may have misled Congress, and we need to look at that further?

COMEY: Well, the reasonable person test is not what you look at for perjury or false statements. But like I said, I can understand why people would ask that question.

MEADOWS: All right.

So let me in the last little portion of this, in your three and a half-hour interview on Saturday, did she contradict some of these public statements in private? Because you said she didn't lie to the FBI, but it's apparent that she lied to the American people. So did she change her statements in that sworn testimony with you last Saturday?

COMEY: I haven't gone through that to parse that...

MEADOWS: Can you do that and get back to this Committee? It's important, I think to the American people and to transparency.

COMEY: I'm sure. And as the Chairman and I have talked about, I'm sure the Committee is going to want to see documents of our investigation and whatnot. And we'll work to give you whatever we can possibly give you under our law, but I haven't done that analysis at this point.

MEADOWS: Will you do that and get back to us?

CHAFFETZ: The gentleman's time has expired. We'll now recognize the gentleman from Tennessee, Mr. Cooper, for five minutes.

COOPER: Thank you, Mr. Chairman. Thank you, Director Comey.

I hate to see one of America's most distinguished public servants pilloried before this Committee. We're all highly partisan here. We're a good back seat drivers. We're all today, apparently, armed chair prosecutors.

And you stated the truth when you said, "you didn't know of anyone who would bring a case like this". Some of the prosecutors have had the case to do that. I hope that this Committee's effort is not intended to intimidate you, or the FBI, or law enforcement in general, or government employees. And I'm thankful at this moment that you have such a lifetime record of speaking truth to power because that's very important.

It's also very important that apparently you're a life-long Republican. You're just here to do your job, state the facts.

I think the key issue here is whether in fact there is a double standard, whether some Americans are being treated differently than others? I think I can rely on my Republican colleagues to make sure that Hillary Clinton is treated no better than anybody else. There should be some attention given to make sure she's not treated any worse than anybody else.

I think we all know that we wouldn't be having this hearing, especially on an emergency basis, unless she were running for President. My colleague from Massachusetts has just pointed out the previous Secretaries of State are not being called on the carpet, whether that be Condoleezza Rice, or Colin Powell, or others. But I think the grossest double standard here today is the fact that all of the members of this Committee, every member of Congress, is not subject to the same law that Secretary Clinton was subject to.

And as lawmakers, that means that we have exempted ourselves from the standard of other federal employees. My colleague from D.C., Ms. Norton, referred to this. Why did we exempt ourselves from the same rules? Apparently, our Chairman lists his private e-mail account on his business card. We all have access to classified information. COOPER: I would like to challenge my Republican colleagues here today. Let's work together and introduce legislation to make the same laws apply to us as applied to the executive branch and to Secretary Clinton.

I would be happy to join in such legislation to make sure that we're not being hypocritical on this panel, that we're holding ourselves to the same standards as Secretary Clinton and not trying to accuse her of things that we may be guilty of ourselves. I bet my colleagues would be the first to complain if, for example, e-mails were retroactively classified.

That's a situation most people in public service would object to pretty strongly. How did you know at the time if you had no idea? So I think it's very important, if we want as Congress to have the trust of the American people, to not be hypocritical. To uphold the same standards that we want to see upheld by others.

And I'm just thankful at this moment in our history that we have someone like you who's in charge of the FBI. Because too many things are highly politicized. The last thing we should do is criminalize our political system.

I didn't see any of my Republican colleagues complain when former Governor Bob McDonnell was exonerated by an eight to zero vote at the Supreme Court for having done certain things that I think most Americans would find object able.

But our court on a bipartisan, unanimous basis exonerated him just a week or two ago. So I think this is a moment for committee members reflect, to take a deep breath, to calm down and realize exactly what you said, that no reasonable prosecutor would have brought this case. And thank you for stating that so clearly and publicly.

I yield back the balance. I yield to the Ranking Member.

CUMMINGS: Mr. Director, lemme ask you this. First of all, I associate myself with everything the gentleman just said. You were talking about some markings a little bit earlier, is that right?

Can you describe what those markings are like -- markings on the documents? You said there were three documents with certain markings on them.

COMEY: Yeah. CUMMINGS: That indicated classified, go ahead.

COMEY: There were three e-mails that down in the body of the e-mail, in the three different e-mails, there were paragraphs and the beginning of the paragraph had a parenthesis, a capital "c" and then a parenthesis.

And that is a portion marking to indicate that.

CUMMINGS: That paragraph.

COMEY: That paragraph is classified at the confidential level, which is the lowest level of classification.

CUMMINGS: And so out of 30,000 documents, this is -- you found these three markings. Is that what you're saying?

COMEY: Three e-mails bore "c" markings down in the body. None of the e-mails had headers, which is at the top of a document that says it's classified. Three had -- within the body -- the portion marking for "c."

CUMMINGS: Thank you.

CHAFFETZ: I thank the gentleman.

I now recognize the gentleman from Tennessee, Mr. Duncan, for five minutes.

DUNCAN: Thank you, Mr. Chairman.

Mr. Meadows mentioned one instance in which Secretary Clinton said that she had -- that she did not mail any classified material to anyone. Actually, she said that several other times.

But it is accurate, Director Comey, that you found at least 110 instances of when she had mailed, e-mailed classified material?

COMEY: One hundred and ten that she either received or sent.

DUNCAN: Right. And it also is accurate that, quote, "Clinton's lawyers cleaned their devices in such a way as to preclude complete forensic recovery."

COMEY: Correct.

DUNCAN: And also, when she said -- when Secretary Clinton said that nothing she sent was marked classified and you said in your press conference, but even if information is not marked classified in an e-mail particularly, our participants who know or should know that the subject matter is classified are still obligated to protect it.

Do you -- do you feel that Secretary Clinton knew or should have known that she was obligated to protect classified information?

COMEY: Yes. DUNCAN: With her legal background and her long experience in government. Also, she said at one point that she has directed all e-mails, work-related e-mails, to be forwarded to the State Department.

Is it also accurate that you discovered thousands of other e-mails that were work-related other than the 30,000 she submitted?

COMEY: Correct.

DUNCAN: Before I came to Congress, I spent several years as a criminal court judge. I tried several -- presided (ph) over several hundred felony criminal cases. And I can assure you that I saw many cases where the evidence of criminal intent was flimsier than the evidence in this case.

But do you -- do you realize or do you realize that great numbers of people across this country felt that you presented such a strong -- such an incriminating case against Secretary Clinton in your press

conference that they were very surprised or even shocked when you reached the conclusion to let her off?

Do you doubt that great numbers feel that way?

COMEY: No, I think so. And I understand the questions. And I wanted to be as transparent as possible. We went at this very hard to see if we could make a case. And I wanted the American people to see what I honestly believed about the whole thing.

DUNCAN: Well, do you understand as the chairman said earlier, that great numbers of people feel now that there's one standard of justice for the Clintons and another for regular people?

COMEY: Yeah, I've heard that a lot. It's not true, but I've heard it a lot.

DUNCAN: Well, even the Ranking Member who is here, who of course, as we understand had to defend Secretary Clinton as strongly as possible, he almost begged you to explain the gap between the incriminating case you presented and the conclusion that was reached.

Did -- did that surprise you, that he felt so strongly that there was this big gap?

COMEY: No, not at all. It's a complicated matter. It involves understanding how the Department Of Justice works across decades, how prosecutorial discretion is exercised. I get that folks see disconnections, especially when they see a statute that says gross negligence.

Well, the director just said she was extremely careless. So how is that not prosecutable? So it takes an understanding of what's going on over the last 99 years.

What's the precedent, how do we treat these cases -- I totally I get people's questions and I think they're in good faith. DUNCAN: Do you -- we talk about gross negligence here and you said that Secretary Clinton was extremely careless with this classified material and how dangerous it could be, how threatening to -- even to people's lives that it could be to disclose classified material.

Do you agree that there is a very thin line between gross negligence and extreme carelessness? And would you explain to me what you consider to be that difference?

COMEY: Sure, judge -- Congressman. As a former judge, you know there isn't actually a great definition in the law of gross negligence. Some courts interpret it as close to willful, which means you know you're doing something wrong.

Others drop it lower. My term (ph) extremely careless is trying to be kind of an ordinary person. That's a common-sense way of describing it; it sure looks real careless to me.

The question of whether that amounts to gross negligence frankly is really not at the center of this because when I look at the history of the prosecutions and see, it's been one case brought on a gross negligence theory.

I know from 30 years there's no way anybody from the Department Of Justice is bringing a case against John Doe or Hillary Clinton for the second time in 100 years based on those facts.

DUNCAN: You ended your statement to Congressman Cooper a while ago saying no -- saying once again that no reasonable prosecutor could have brought this case, yet you also mentioned earlier today that you had seen several of your friends and other prosecutors who have said publicly, many across this country, they would have been glad to prosecute this case.

COMEY: I smile because they're friends and I haven't talked to them I want to say, guys, so where were ya over the last 40 years?

Where were these cases? They just have not been brought for reasons that I said earlier. It's a good thing the Department Of Justice worries about prosecuting people for being careless. I don't like it.

As a citizen, I want people to show they knew they were breaking the law and then we'll put you in jail.

DUNCAN: Of course, you know many people have been prosecuted for gross negligence by the Federal Government, by the FBI.

CHAFFETZ: The gentleman's time has expired.

We'll now recognize the gentleman from Virginia, Mr. Connolly, for five minutes.

CONNOLLY: Thank you.

And welcome, Director Comey and although our politics are different, I gather you're a Republican. Is that correct?

COMEY: I have been registered Republican for most of my adult life. Not registered any longer.

CONNOLLY: We don't register by party in Virginia but many have suspected my politics as being Democratic. And I thank you for your integrity. As my colleague said and I said in my opening statement, your career has been characterized as speaking truth to power.

And you're doing it again today.

Just to set the context, Director Comey, not that you're unaware of this, today's hearing is political theater. It's not even the pretense of trying to get at the truth. This is the desperate attempt under a -- an extraordinary set of circumstances, an emergency hearing. CONNOLLY: I don't know what the emergency is other than one side is about to nominate somebody who is a pathological narcissist who, you know, was talking about banning Muslims and Mexicans crossing who are all rapists and women who are pigs and terrified at the prospect of the consequences of that in the election, so let's grab onto whatever we can to discredit or try to discredit the other nominee. Putative nominee. And you took away their only hope.

And so the theater today is actually trying to discredit you. Subtly (ph), in some cases. My friend from South Carolina uses big words like "exculpatory" and kind of goes through what a prosecutor would do. The insinuation being you didn't do your job.

My friend from Wyoming is apparently flattered (ph) with citizens in her home state who are reading the statute that governs classification. A lot of time on the hands back there, I guess, but yeah, this is all designed to discredit your finding.

Now, the FBI interviewed Secretary Clinton, is that correct?

COMEY: Yes.

CONNOLLY: Did she lie to the FBI in that interview?

COMEY: I have no basis for concluding that she was untruthful with us.

CONNOLLY: Is it a crime to lie to the FBI?

COMEY: Yes, it is.

CONNOLLY: David Petraeus did lie to the FBI?

COMEY: Yes.

CONNOLLY: And he was prosecuted for that -- well, could have been.

COMEY: Could have been. Was not for that.

CONNOLLY: Right. That's always a judgment call.

COMEY: Correct.

CONNOLLY: Was she evasive?

COMEY: I don't think the agents assessed she was evasive.

CONNOLLY: Hmm. How many e-mails are we talking about, total, universe, that were examined by your team?

COMEY: Tens of thousands.

CONNOLLY: Tens of thousands. And how many are in a questionable category that maybe could have, should have been looked at more carefully because there could be some element of classification, apparently my friend from North Carolina assumes we're all intimately familiar with a fact if a "c" appears, it means a classification, though there seems to be some dispute about that because the State Department, as I understand it, has actually said some of those were improperly marked and shouldn't have had the "c."

Are you aware of that?

COMEY: Yes.



CONNOLLY: Yes. So could it be that in her hundred trip, four years, 100 overseas trips to 100 countries, as secretary of state trying to restore U.S. credibility that had been destroyed in the previous eight years overseas, and tens of thousands of e-mail communications, not including phone calls and classified conversation and skips and the like, that maybe the small percentage of e-mails she didn't pay as much attention to them as maybe in retrospect one would hope she would have.

Is that a fair conclusion? Could that be a fair conclusion?

COMEY: I don't usually deal in maybes. It's possible.

CONNOLLY: Well, you do deal in distinguishing between willful and inadvertent.

COMEY: Sure.

CONNOLLY: And in this case, you concluded it has to be in the latter category. It wasn't willful.

COMEY: We concluded there was not adequate evidence of willful conduct.

CONNOLLY: Right. So there's no obfuscation, here, unlike in the Petraeus case, and there's no evasion, there's no lying. There's no willful attempt to compromise classified material, despite the insinuations of my friends on the other side of the aisle.

And the only hope left in this political theater is to discredit you and your team in the hopes that therefore you won't have credibility and we can revisit this monstrous crime of using a private server, that server being the server of the former president of the United States, that maybe Mrs. Clinton thought would be more secure than the leaky system at the State Department.

I yield back. CHAFFETZ: I now recognize the gentleman from Texas, Mr. Hurd, for five minutes.

HURD: Thank you, Mr. Chairman. Mr. Chairman, I'm offended. I'm offended by my friends on the other side of the political aisle saying this is political theater. This is not political theater. For me, this is serious.

I spent nine and a half years as an undercover officer in the CIA. I was the guy in the back allies collecting intelligence, passing it to lawmakers. I have seen my friends killed, I have seen assets put themselves in harm's way. And this is about protecting information, the most sensitive information the American government has, and I wish my colleagues would take this a little bit more seriously.

Mr. Comey -- Director Comey, excuse me. SAP. Special Access Program. You alluded to earlier that includes SCI information. Does SCI information include HUMINT and SIGINT?

COMEY: Yes.

HURD: HUMINT and SIGINT, Human intelligence information collected from people that are putting themselves in harm's way to give us information to drive foreign policy. Signals intelligence, some of the most sensitive things to understand what al Qaeda is doing, what ISIS is doing.

So, the former secretary of state had an unauthorized server. Those are your words. In her basement, correct?

COMEY: Correct.

HURD: Who was protecting that information? Who was protecting that server?

COMEY: Well, not much. There was a number of different people who were assigned as administrators of the server.

HURD: And at least seven e-mail chains or eight that -- was classified as TS/SCI?

COMEY: Correct.

HURD: So the former secretary of state, one of the president's most important advisers on foreign policy and national security, had a server in her basement that had information that was collected from our most sensitive assets, and it was not protected by anyone. And that's not a crime?

That's outrageous. People are concerned. What does it take for someone to misuse classified information and get in trouble for it?

COMEY: It takes mishandling it and criminal intent.

HURD: And so an unauthorized server in the basement is not mishandling?

COMEY: Well, no, there is evidence of mishandling here. This whole investigation at the end focused on is there sufficient evidence of intent.

HURD: Were -- was this unanimous opinion within the FBI on your decision?

COMEY: The whole FBI wasn't involved, but the team of agents, investigators, analysts, technologists, yes.

HURD: Did you take into any consideration the impact that this precedence can set on our ability to collect intelligence overseas?

COMEY: Yes. My primary concern is the impact on what other employees might think in the federal government.

HURD: And you don't think this sends a message to other employees that if a former secretary of state can have an unauthorized server in their basement that transmits top-secret information, that that's not a problem?

COMEY: Oh, I worry very much about that. That's why I talked about that in my statement, because an FBI employee might face severe discipline, and I want them to understand that those consequences are still going to be there.

HURD: Director Comey, do you have a server in your basement?

COMEY: I do not.

HURD: Does anybody in the FBI have a server in their basement? Or in their house?

COMEY: I don't know. Not to my knowledge.

HURD: Do you think it's likely?

COMEY: I think it's unlikely.

HURD: I would think so, too. I would think so, too. Because I'm proud -- always been proud to serve alongside the men and women that you represent.

So there was no dissenting opinion when you make this decision. It's your job to be involved in counterintelligence as well. Right?

COMEY: Yes.

HURD: So that means protecting our secrets from foreign adversaries collecting them. Is that correct?

COMEY: Correct.

HURD: Did this activity you investigated make America's secrets vulnerable to hostile elements? COMEY: Yes.

HURD: Do you think that pattern of behavior would continue?

COMEY: I'm sorry? I missed the...

HURD: Do you think that pattern of behavior would continue?

COMEY: Would continue...

HURD: By -- by our former secretary of state?

COMEY: I'm not following you. You mean if we hadn't -- if this had not come to light, you mean?

HURD: Right now. Based on what we see, do you think there's going to be other elements within the federal government that think it's OK to have an unauthorized server in their basement?

COMEY: They better not. That's one of the reasons I'm talking about it.

HURD: So but -- what is the ramifications of them doing that? What is the -- what is -- you know how is there going to be any consequences levered if it's not being levered here? Because indeed, this is -- you're setting a precedent.

COMEY: The precedent -- I want people to understand, again, I only am responsible for the FBI, that there will be discipline from termination to reprimand and everything in between for people who mishandle classified information.

HURD: Director Comey, I'm not a lawyer, and so I may misstate this. Is there such a thing as the case of first impression, and why was this not possibly one of those?

COMEY: There is such a thing, which just means the first time you do something. The reason this isn't one of those is that's just not fair. That would be treating somebody differently because of their celebrity status or because of some other factor that doesn't matter. We have to treat people -- the bedrock of our system of justice, we treat people fairly, we treat them the same based on their...HURD: And that person mishandling the most sensitive information that this government can collect is -- is not fair? It's not fair to punish someone who did that?

COMEY: Not on these facts. It would be fair -- if that person worked for me, it would be fair to have a robust disciplinary proceeding. It's not fair to prosecute that person on these facts.

CHAFFETZ: I thank -- thank...

HURD: Mr. Chairman, I yield back the time I do not have.

CHAFFETZ: Thank the gentleman. I will now recognize the gentleman from Pennsylvania, Mr. Cartwright, for five minutes.

CARTWRIGHT: Thank you, Mr. Chairman. I'd like to open by acknowledging my colleague from North Carolina, Mr. Meadows -- here he comes back in the room -- for -- for acknowledging your integrity, Director Comey.

I think bipartisan sentiments like that are few and far between around here and I appreciate Congressman Meadows' remark. You are a man of integrity, Director Comey. It is troubling to me that that remark from Congressman Meadows is not unanimous at this point. It used to be.

Just weeks ago our chairman, Representative Chaffetz, stated on national TV that Republicans, quote, "believe in James Comey," unquote. He said this, and I quote, "I do think that in all of the government, he is a man of integrity and honesty. His finger's on the pulse of this. Nothing happens without him. And I think he is going to be the definitive person to make a determination or a recommendation." But just hours after your actual recommendation came out, Chairman Chaffetz went on TV and accused you of making a, quote, "political calculation."

And then our speaker of the House weeks ago referring to you, Director Comey, said, "I do believe that his integrity is unequalled." So your integrity was -- it was unanimous about your integrity before you came to your conclusion, but after, not so much. That's troubling.

And I want to give you a chance, Director Comey, how do you respond to that? How important to you is maintaining your integrity before the nation? COMEY: I think the only two things I have in life that matter are the love of my family and friends and my integrity. So I care deeply about both.

CARTWRIGHT: All right. Now Director Comey, you discussed your team a little bit and they deserve a lot of credit for all of the hard work and effort that went into this investigation. And I think you just said that they were unanimous that everyone who looked at this agreed that no reasonable prosecutor would bring a case. Am I correct in that?

COMEY: Yes.

CARTWRIGHT: How many people were on this team?

COMEY: It changed at various times, but somewhere between 15 and 20. Then we used a lot of other FBI folks to help from time to time.

CARTWRIGHT: How many hours were spent on this investigation?

COMEY: We haven't counted yet. They -- they -- I said to them, they moved -- they put three years of work into 12 calendar months.

CARTWRIGHT: And how many pages of documents did the FBI review in this investigation?

COMEY: Thousands and thousands and thousands.

CARTWRIGHT: And the agents do the document review, were they qualified or were they unqualified?

COMEY: They were an all-star team. They are a great group of folks.

CARTWRIGHT: How about Secretary Clinton? Did she agreed to be interviewed?

COMEY: Yes.

CARTWRIGHT: Come in voluntarily without the need of a subpoena?

COMEY: Yes.

CARTWRIGHT: Was she interviewed?

COMEY: Yes.

CARTWRIGHT: Was she interviewed by experienced, critical, veteran agents and law enforcement officers or by some kind of credulous, gullible, newbies doing their on-the-job training, Director?

COMEY: She was interviewed by the kind of folks the American people would want doing the interview. Real pros.

CARTWRIGHT: All right. You were asked about markings on a few documents. I have the manual here. Marking classified national security information. And I don't think you were given a full chance to talk about those three documents with the little "c"s on them.

Were they properly documented? Were they properly marked according to the manual?

COMEY: No.

CARTWRIGHT: According to the manual, and I ask unanimous consent to enter this into the record, Mr. Chairman.

CHAFFETZ: Without objection...

CARTWRIGHT: According to the manual, if you're going to classify something, there has to be a header on the document. Right?

COMEY: Correct.

CARTWRIGHT: Was there a header on the three documents that we've discussed today that had the little "c" in the text someplace?

COMEY: No. They were three e-mails. The "c" was in the body, in the text, but there was no header on the e-mail or in the text.

CARTWRIGHT: So if Secretary Clinton really were an expert at what's classified and what's not classified and were following the manual, the absence of a header would tell her immediately that those three documents were not classified. Am I correct in that?

COMEY: That would be a reasonable inference.

CARTWRIGHT: All right. I thank you for your testimony, Director. I yield back.

CHAFFETZ: I thank the gentleman. Will now recognize the gentleman from Colorado, Mr. Buck, for five minutes.

BUCK: Good morning, Director Comey.

COMEY: Morning, sir.

BUCK: Thank you for being here. I also respect your commitment to law and justice and your career. And I -- first question I want to ask you, is this hearing unfair? Has it been unfair to you?

COMEY: No.

BUCK: Thank you. One purpose of security procedures for classified information is to prevent hostile information -- hostile nations from obtaining classified information. Is that fair?

COMEY: Yes.

BUCK: And do -- did hostile nations obtain classified information from Secretary Clinton's servers?

COMEY: I don't know. It's possible, but we don't have direct evidence of that. We couldn't find direct evidence.

BUCK: I want to -- without making this a law school class, I want to try to get into intent. There are various levels of intent in the criminal law, everything from knowingly and willfully doing something all the way down, to strict liability. Would you agree with me on that?

COMEY: Yes.

BUCK: And in Title 18, most of the -- criminal laws in Title 18 have the words "knowingly" and "willfully" in them and that is the standard typically that United States attorneys prosecute under.

COMEY: Most do. Unlawfully, knowingly, willfully is our standard formulation for charging a case.

BUCK: And there are also a variety of others between the knowingly and willfully standard and the strict liability standard. And in many, like environmental crimes, have a much lower standard because of the toxic materials that are at risk of harming individuals. Is that fair?

COMEY: That's correct.

BUCK: Okay. Let's talk about this particular statute, 18 U.S.C. 1924. I take it we could all agree -- you and I can agree on a couple of the elements. She, Secretary Clinton was an employee of the United States.

COMEY: Correct.

BUCK: And as a result of that employment, she received classified information.

COMEY: Correct.

BUCK: And there is no doubt about those two elements. Now I don't know whether the next element is one element or two, but it talks about knowingly removed such materials without authority and with the intent to retain such material at an unauthorized location.

So I'm going to treat those as two separate parts of the intent element. First of all, do you see the word "willfully" anywhere in this statute?

COMEY: I don't.

BUCK: And that would indicate to you that there is a lower threshold for intent?

COMEY: No, it wouldn't.

BUCK: Why?

COMEY: Because we often -- as I understand, the Justice Department's practice and judicial practice will impute to any criminal statute at that level with a knowingly also requirement that you know that you're involved in criminal activity of some sort. A general mens rea requirement.

BUCK: So -- and you would apply that same standard to environmental (inaudible)?



COMEY: No, if it specifically says it is a negligence-based crime, I don't think a judge would impute that.

BUCK: But -- but Congress specifically omitted the word "willfully" from this statute, and yet you are implying the word willfully in the statute. Is that fair?

COMEY: That's fair.

BUCK: Okay. So what this statute does say is "knowingly removed such materials without authority." Is it fair that she knew that she didn't have authority to have this server in her basement?

COMEY: Yes, that's true.

BUCK: And she knew that she was receiving materials, classified information, in -- in the e-mails that she received on -- on her BlackBerry and other devices.

COMEY: I can't answer -- I'm hesitating as a prosecutor because it's always -- to what level of proof. I do not believe there's evidence beyond a reasonable doubt that she knew she was receiving classified information in violation of the requirements.

BUCK: But that's not my question.

COMEY: (Inaudible) evidence of that.

BUCK: That's not my question. My question, in fairness, is did she know that she was receiving information on the servers at her location?

COMEY: Oh, I'm sorry. Of course, yes. She knew she was using her e-mail system.

BUCK: And as secretary of state, she also knew that she would be receiving classified information.

COMEY: Yes, in general.

BUCK: OK. And did she then have the intent to retain such material at an unauthorized location? She retained the material that she received as secretary of state at her server in her basement and that was unauthorized.

COMEY: You're asking me did she have the -- I'm going to ask you the burden of proof question in a second. But did she have the intent to retain classified information on the server or just to retain any information on the server?BUCK: Well, we've already established that she knew, as secretary of state, that she was going to receive classified information in her e-mails. And so did she retain such information that she received as secretary of state on her servers in her basement?

COMEY: She did in fact -- there is, in my view, not evidence beyond certainly probable cause. There's not evidence beyond a reasonable doubt that she knew she was receiving classified information or that she intended to retain it on her server.

There's evidence of that but when I said there's not clear evidence of intent, that's what I meant. I could not, even if the Department Of Justice would bring that case, I could not prove beyond a reasonable doubt those two elements.

BUCK: Thank you very much.

CHAFFETZ: Thank the gentleman.

Now, we'll go to the gentlewoman from Illinois, Ms. Duckworth for five minutes.

DUCKWORTH: Thank you, Mr. Chairman. When I first entered Congress three years ago, like many freshmen members, I -- I'm like many freshmen members. I actually sought out this committee.

I wanted to be on this committee because I wanted to tackle the challenges of good government, like working to eliminate proper payments or prevent wasteful programs duplication. Before I joined Congress, I had the privilege of serving in the army for 23 years and I -- you know, and as I tackled those challenges and in the challenges of helping reduce veteran's homelessness, I witnessed firsthand the real world importance of improving and streamlining government operations.

How even the best policies in the world will not work without proper implementation. And so when it comes to implementing true and lasting reforms that will make sure that electronics records and other records and the history of our great nation are preserved for future generations, I've done my best to approach this goal seriously.

I'm focused on making sure that our nation sustains a long-term commitment to modernizing our federal records keeping (ph) system from improving the laws governing what needs to be collected to ensuring our civil servants across government have the necessary tools to achieve what should be nonpartisan and a shared goal.

With respect to examining the tough lessons learned from numerous record keeping incidents that our committee has dealt with which transcend any one agency or any single administration, my mission is clear. Make sure we here in Congress move beyond partisan politics and engage in the serious hard work of ensuring that the laws written in an era of pen and paper are overhauled to meet the digital challenges of the 21st century.

Dr. Comey, the Office of Management and Budget and the national archives and records administration released a memorandum known as "the managing government records directive" in 2012.

And this directive states, and I quote, "by December 31st, 2016, federal agencies will manage both permanent and temporary e-mail records in an accessible electronic format. Federal agencies must manage all e-mail records in an electronic format. E-mail records must be retained in an appropriate electronic system that supports records management and litigation requirements which may include preservation in place models, improving the capability to identify, retrieve and retain the records as long as they are need."

As a director of a bureau who deals with sensitive information on a daily basis, do you believe that this directive is necessary and attainable for agencies across the board within that four-year time frame from August 2012 to December 2016?

COMEY: I don't know enough to say both. I can say it's certainly necessary. I don't know whether it's achievable.

DUCKWORTH: OK are you familiar with the capstone approach? That's the federal -- it's approach it says that federal agencies should save all e-mails for select senior-level employees and that the e-mails of other employees will be archived for a temporary period set by the agency so that senior employees' e-mails are kept forever and those by other lower-level employees are actually archived for short period -- a shorter period.

COMEY: I'm aware generally. I know what applies to me and when I was Deputy Attorney General of the Bush Administration.

DUCKWORTH: Yes in fact, I understand that FBI is currently actively using this approach according to the agencies -- senior agency official for records for records management F.Y. '15 annual report.

My understanding that capstone approach is aimed at streamlining the record-keeping process for e-mails and reducing the volume of records that an agency has to maintain. Nearly all agencies will be required to comprehensively modernize their approach to managing federal records in the near future.

As the head of a component agency, Director Comey, within the Department of Justice which appears to be a leader in adopting the innovative capstone approach across the agency, would you agree with respect to instituting foundational reforms that will strengthen records preservation, the capstone approach used by DOJ should be accelerated and rode out across the Federal Government?

COMEY: I think we're doing it in a pretty good way. I don't know -- I'm not an expert enough to say whether anybody should do it the way we do it, honestly.

DUCKWORTH: Are you satisfied with the way that you're doing it?

COMEY: I am but I don't want to sound overconfident because I'm sure there's a why we can do it better but I think we're doing it in a pretty good way.

DUCKWORTH: Do you have any one person within the FBI that continually reviews the -- your record-keeping and also -- or do they report directly to you, as well as -- is there a periodic review of -- of how you're implementing this process?

COMEY: Yes. We have an entire division devoted to records management that assistant director reports up to the deputy director who reports to me. We have -- it's an enormous operation as you might imagine, requiring constant training.

And so I -- that's what I mean when I say I think we're doing it in a pretty good way. And we have record marking tools. We prompt with dialogue boxes requiring employees to make a decision, what's the nature of this record you're creating now and where should it be stored?

So I think we're doing it in a pretty good way. That's why I say that.

DUCKWORTH: Have you seen that in any of the other agencies that you have interacted with or have you had a chance -- an occasion to look at what some of the other agencies are doing with their sensitive and classified information?

Are they following the same technique as you are doing in the FBI?

COMEY: I don't know enough to say. I personally.

DUCKWORTH: OK. I am out of time but thank you.

CHAFFETZ: Thank the gentlewoman.

We'll now recognize the gentleman from Michigan, Mr. Walberg, for five minutes.

WALBERG: I thank the chairman.

And thank you, Director Comey, for being here.

Mr. Chairman, thank you for holding this hearing.

And Director Comey for making it very clear that you believe we've done this respectfully with good intention. And I wish some of my colleagues that had instructed us on our intent were here. They have a great ability to understand intent better than I guess the director of the FBI.

But it is an intent that's important here, that we understand we are oversight and government reform committee. And if indeed, the tools aren't there to make sure that our country is secure and that officials at the highest levels in our land don't have the understanding on what it takes to keep our country secure, that we do the necessary government reform to put laws in place that will be effective and will meet the needs of distinguished agencies and important agencies like the FBI.

So thank you, Mr. Chairman, for doing this hearing. It's our responsibility to do oversight and reform as necessary.

Going back, Director Comey, to paraphrase the Espionage Act, people in the 7th district of Michigan understand it from this perspective and common sense. What it says, that whoever being entrusted with information related to national defense through gross negligence permits the information to be removed from its proper place in violation of their trust shall be fined or imprisoned under the statute.

There doesn't seem to be a double standard there. It doesn't express intent. You've explained your understanding of why intent is needed and we may agree or disagree on that.

But the general public looking at that statute says it's pretty clear. Question I would ask, Director Comey, what's your definition of extremely careless, if you could go through that?

COMEY: I intended it as a common-sense term. It's one of those kind of you know it when you see it sort of things. Somebody who is -- should know better, someone who is demonstrating a lack of care that strikes me as there's ordinary accidents and then there is just real sloppiness.

So I think of that as kind of real sloppiness.

WALBERG: So you stated you had found 110 e-mails on Secretary Clinton's server that were classified at the time they were sent or received. Yet Secretary Clinton has insisted for over a year, publicly, that she never sent or received any classified e-mails.

The question I have from that, would it be difficult for any Cabinet-level official -- specifically, any Cabinet official, let alone one who is a former White House resident or U.S. Senator, to determine if information is classified?

COMEY: Would it be difficult?

WALBERG: Would it be difficult?

COMEY: That's hard to answer in the abstract. It would depend upon the context in which they are hearing it or seeing it. Obviously, if it's marked, which is why we require markings, it's easy.

It's too hard to answer because there are so many situations you might encounter it.

WALBERG: But with the -- the training that we receive and certainly a secretary Of state would receive or someone who lives in the White House, that goes a little above and beyond just the common sense individual out there trying to determine.

Knowing that classified information will be brought and to remove to an unauthorized site ought to cause a bit of pause applause there, shouldn't it?

COMEY: Yeah and if you're a government official, you should be attentive to it because you know that the matters you deal with could involve sensitive information. So sure.

WALBERG: So Secretary Clinton's revised statement she never knowingly sent or received any classified information is probably also untrue.

COMEY: Yeah, I don't want to comment on people's public statements.

We did not find evidence sufficient to establish that she knew she was sending classified information beyond a reasonable doubt to meet the intent standard.

Like I said, I understand why people are confused by the whole discussion. I get that. But you know what would be a double standard? If she were prosecuted for gross negligence. WALBERG: But your statement on Tuesday said there is evidence to support a conclusion that any reasonable person in secretary Clinton's position should have known that an unclassified system was no place for the conversation.

COMEY: I stand by that.

WALBERG: Now that's very clear.

COMEY: That's the definition of carelessness, of negligence.

WALBERG: Which happened.

COMEY: Oh, yeah.

WALBERG: As a result of our secretary of state's -- former secretary of state's decisions.

COMEY: Yes.

WALBERG: Is it your statement then before this committee that Secretary Clinton should have known not to send classified material, and yet she did?

COMEY: Certainly, she should have known not to send classified information. As I said, that's the definition negligent. I think she was extremely careless. I think she was negligent. That, I could establish. What we can't establish is that she acted with the necessary criminal intent.

WALBERG: Do you believe that the -- that since the Department of Justice hasn't used the statute Congress passed, it's invalid?

COMEY: No. I think they are worried that it is invalid, that it will be challenged on Constitutional grounds, which is why they've used it extraordinarily sparingly in the decades.

WALBERG: Thank you. I yield back.

CHAFFETZ: I thank the gentleman. We'll now go to -- I'll recognize Mr. Lieu of California for five minutes.

LIEU: Thank you, Mr. Chair. As I read some of my Republican colleagues' press statements and as I sit here today, I am reminded of that quote from Macbeth, "full of sound and fury, signifying nothing." I've heard some sound and fury today from members of the committee. And the reason they largely significant nothing is because of two fundamental truths that are self-evident. The first of which, none of the members of this committee can be objective on this issue. I can't be objective. I've endorsed Hillary Clinton for president. As have the Democratic members of this committee.

My Republican colleagues can't be objective. They oppose Hillary Clinton for president. Which is why we have you. You are a non-partisan career public servant that's served our nation with distinction and honor. And not only can you be objective, it is your job to be objective to apply the law fairly and equally regardless much politics.

I think it would be important for the American people to get a fuller appreciation of your public service, so let me ask you, before your FBI director, how many years did you serve as a federal prosecutor?

COMEY: I think 15.

LIEU: For a period of time, you were at Columbia Law School as a scholar and you specialized in national security law. Is that correct?

COMEY: Sometimes I fantasize I still am.

LIEU: All right. Thank you. When you served in the Republican administration of President George W. Bush, you were then the second- highest ranking member of the Department of Justice. Is that right?

COMEY: Yes. President Bush appointed me to be U.S. Attorney in Manhattan and then the No. 2 in the Department of Justice.

LIEU: When you were confirmed for the FBI director position, the vote was 93-1. Is that correct?

COMEY: That's correct.

LIEU: With that strong bipartisan support, it is not surprising that Senator Grassley, a Republican, said during your confirmation, and I quote, "Director Comey has a reputation for applying the law fairly and equally regardless of politics."

In this case, did you apply the law fairly, equally regardless of politics?

COMEY: Yes.

LIEU: Did you get any political interference from the White House?

COMEY: None.

LIEU: Did you get any political interference from the Hillary Clinton campaign? COMEY: None.

LIEU: One of the reasons you are appointed to a fixed term of ten years, a very long term, is to help insulate you from politics. Isn't that right?

COMEY: That's correct.

LIEU: The second fundamental truth today about this hearing is that none of the members of this committee have any idea what we're talking about because we have not reviewed the evidence personally in this case.

When I served on active duty in the U.S. Air Force in the 1990s, one of my duties was a prosecutor. One of the first things I learned as a prosecutor is it is unprofessional and wrong to make allegations based on evidence that one has not reviewed.

So let me ask you, has any member of this committee, to the best of your knowledge, reviewed the 30,000 e-mails at issue in this case?

COMEY: I don't know. Not to my knowledge.

LIEU: Has any member of this committee sat through the multiple witness interviews that the FBI conducted in this case?

COMEY: No. That I know. No.



LIEU: Has any member of this committee received any special information about the files that you kept or other FBI agents kept on this case?

COMEY: Not to my knowledge.

LIEU: Now let's do a little bit of math here. 1 percent of 30,000 e-mails would be 300 e-mails. Is that right?

COMEY: I think that's right.

LIEU: 30 e-mails would be one-tenth of 1 percent. And three e-mails would be one one-hundredth of 1 percent of 30,000. Right?

COMEY: I think that's right.

LIEU: So of those three e-mails, one one-hundredth of 1 percent of 30,000, they bore these tiny little classified markings which is, as you describe, a "c" with parentheses. Correct?

COMEY: Correct.

LIEU: It's certainly (ph) possible that a busy person who has sent and received over 30,000 e-mails just might miss this marking of a "c" with parentheses. It is possible, correct?

COMEY: Correct. LIEU: So let me now just conclude by stating what some of my colleagues have, which is, there is just the strongest whiff of hypocrisy going on here. The American public might be interested in knowing that all members of Congress receive security clearances just for being a member of Congress.

We get to have private e-mail servers. We get to have private e-mail accounts. We can use multiple devices. We can take devices overseas.

And really, at the end of the day when the American people look at this hearing, they need to ask themselves (ph) this question -- do they trust the bias partisan politicians on this committee who are making statements based on evidence we have not reviewed, or do they trust the distinguished FBI director? I would trust the FBI Director.

I yield back.

CHAFFETZ: Thank you. I will now recognize the gentleman from Florida, Mr. Mica, for five minutes.

MICA: Thank you, Mr. Chairman. Director, how long did you investigate this matter?

COMEY: Just about a year.

MICA: A year. And do you believe you conducted a legitimate investigation?

COMEY: Yes, sir.

MICA: And -- it was a legitimate subject that was something that you should look into? You had that responsibility, is that correct?

COMEY: Yes.

MICA: We have a responsibility to hear from you on the action that you took. This weekend -- well, tomorrow, we'll go back to our districts and we have to explain to people, I'll be at (ph) a couple of cafes where I see folks and meetings and they're going to ask a lot of questions about what took place.

Have you seen the Broadway production Hamilton?

COMEY: Not yet. I'm hoping to.

MICA: I haven't either. But I understand it won the choreography Tony Award. I think you and others know that. The problem I have in explaining to my constituents in what's come down, it almost looks like a choreography.

Let me just go over it real quickly with you. Last Tuesday -- not this week -- one week ago, former President Clinton meets with the attorney general in Phoenix.

The next Friday, last Friday, Mrs. Lynch, the AG, says she's going to defer to the FBI on whatever you came up with.

On Saturday morning I saw the vans pull up. This is this past Saturday. And you questioned Secretary Clinton for three hours? Is that -- I guess that's correct?

COMEY: Three and a half.

MICA: OK. And then on Tuesday morning, the morning after July 4th, we watched in our office -- I had my interns, I said come in, we've got the FBI director, let's hear what he has to say. We're all kind of startled. You basically said you were going to recommend not to prosecute. Correct?

COMEY: Yes, sir.

MICA: And then Tuesday -- well, we had President Obama and Secretary Clinton arrive in Charlotte at 2:00 and shortly thereafter we had the attorney general as closing the case.

This is rapid fire. I mean, now, my folks think that there is something fishy about this. I'm not a conspiracy theorist, but there are a lot of questions on how this came down.

I have questions about how this came down. Did you personally interview the secretary on Saturday morning?

COMEY: I didn't personally, no.

MICA: How many agents did?

COMEY: I think we had five or six.

MICA: Did you talk to all of those agents after the interview?

COMEY: I did not speak to all of them, no.

MICA: Did she testify or talk to them under oath?

COMEY: No.

MICA: She did not. Well, that's a problem. But...

COMEY: No -- it's still a crime to lie to us.

MICA: I know it is. Do you have a transcript of that -- that..

COMEY: No, we don't record our...

MICA: Do you have a 302 -- I guess it's called...

COMEY: I do. I don't have it with me, but I do.

MICA: Did you read it?

COMEY: Yes.

MICA: You did? Can we get a copy of it since the case is closed? COMEY: I don't know the answer.

MICA: I would like a copy of that provided to the committee. I would like also for the last 30 days any communications between you or any agent or any person in the FBI with the attorney general or those in authority in the Department of Justice on this matter. Could you provide us with that?

COMEY: We'll provide you with whether we can under the law and under our policy. It would actually be easy in my case.

MICA: You see the problem that I have though, is I have to go back and report to people what took place.

COMEY: Sure.

MICA: Now, did you write the statement that you gave on Tuesday?

COMEY: Yes.

MICA: You did. And did you -- you said you didn't talk to all of the agents. But all of the agents, did they meet with you and then is that the group that said that we all vote to not recommend prosecution?

COMEY: I did not meet with all of the agents. I've met with -- I guess I've -- I've met with all of them...

(CROSSTALK)

MICA: But we're getting the word that it was like unanimous out of FBI that we don't prosecute.

COMEY: What's your question, Congressman?

MICA: Well, again, I want to know who counseled you. You read their summary. OK, you -- she was not under oath. And it appears -- members have cited here where she lied or misled to Congress which will lead now to the next step of our possibly giving you a referral on this matter. You're aware of that?

COMEY: Yes, we -- someone mentioned that earlier.

MICA: And that probably will happen. Thank you for shedding some light on what took place.

COMEY: Can I -- Mr. Chairman, can I respond just very briefly?

CHAFFETZ: Go ahead.

COMEY: I hope what you'll tell the folks in the cafe is, is look me in the eye and listen to what I'm about to say. I did not coordinate that with anyone. The White House, the Department of Justice, nobody outside the FBI family had any idea what I was about to say.

I say that under oath, I stand by that. There was no coordination, no --there was an insinuation what you were saying that I don't mean to get strong in responding but I want to make sure I was definitive about that.

MICA: Thank you, sir.

CHAFFETZ: Thank you.

We'll now recognize the gentlewoman from the Virgin Islands. Ms. Plaskett, for five minutes.

PLASKETT: Thank you, Mr. Chairman.

And thank you all for being here.

Director Comey, I would rather be here talking with you about the FBI's investigation and their resources to those individuals who are acting under color of law who've apparently committed egregious violations in the killings that we've seen in the recent days.

But instead, Mr. Chairman, I'm sitting here and I've listened patiently as a number of individuals have gone on national TV and made accusations against Director Comey, both directly and indirectly, because he recommended against prosecution based upon facts.

I've listened just very recently here in this hearing, as my esteemed colleague from Florida tries to insinuate the condensation of an investigation into a week that actually occurred over a much, much longer period of time.

And using that condensation and conspiracy theory to say that there's some orchestration. And that they have accused Mr. Director Comey of basing his decision on political considerations rather than the facts.

I've heard chuckles and laughter here in this hearing and I don't think there's anything to be smiling or laughing about. Because I want to say something to those individuals who are chuckling and laughing and making attacks on Director Comey for doing his job.

You have no idea who you're talking about. Your accusations are completely off base, utterly offensive to us as American people. I know this because I've had the honor of working for Director Comey during my own service at the Department Of Justice.

From 2002 to 2004, I served as Senior Counsel to the Deputy Attorney General. I worked with both director attorney -- the Deputy Attorney General, Larry Thompson, and Deputy Attorney General Jim Comey when he became deputy as a staff attorney.

And I know from my own experiences that Director Comey is a man of impeccable integrity. There are very few times when you as an attorney or as an individual can work with individuals or a gentleman who is completely that.

Someone who is above the fray. Anyone who suggests or implies that he made his recommendations on anything but the facts simply does not know James Comey. We've used the term no reasonable prosecutor. Well, I know that James Comey doesn't act as what a reasonable prosecutor would do because he is the unyielding prosecutor.

He is the prosecutor who does what is politically not expedient for himself, his staff, but for the law. And I'm not the only person in this hearing, in this committee, who's worked with Director Comey or for him.

Representative Gowdy himself also commended Director Comey and he said this, and I quote, "I used to work with him. I think Comey is doing exactly what you want. He's doing a serious investigation behind closed doors away from the media's attention and I'm going to trust him until I see a reason not to."

Representative Gowdy referred to Director Comey as honorable and apolitical. He said this is exactly what you want in law enforcement. Well, that's exactly what you want in law enforcement until the decision is not the decision that you want.

Director Comey, Chairman Chaffetz, as it was said by one of my colleagues, went on television and accused you of making quote a "political calculation." He said your recommendation was nothing more than quote, "a political determination in the end."

I'm gonna ask you, how do you respond to that? Were your actions in any way, shape or form governed by political consideration?

COMEY: No, not in any way.

PLASKETT: And did anyone with Secretary Clinton's campaign or the administration influence your recommendation for political reasons?

COMEY: No, they didn't influence it in any way.

PLASKETT: I'm going to take you at your word because I know and those who will go through the record of your long tenure as a career prosecutor and they look at examples, we'll see that you have taken decisions that have not been that.

Which your supervisors, which the president, which others have wanted you to take. As a fellow prosecutor who believed that the facts must come above politics, I'm thankful that we have you.

And Director Comey, I want to thank you for your service to our country. And you have our support. We would like to see as much documents and I'm grateful that you want to keep the transparency so that the American public can understand the difference between what they hear in the media and the elements of a crime necessary for criminal prosecution.

Thank you.

CHAFFETZ: Thank the gentlewoman.

We'll now recognize the gentleman from Texas, Mr. Farenthold, for five minutes.

FARENTHOLD: Thank you very much.

Director Comey, I want to talk a little bit about cyber security. State Department's Inspector General reported (ph) detailed instances of multiple attacks on Secretary Clinton's computer, as well as her replying to suspicious e-mail from the personal account of Under Secretary Of State.

Director, you said that hostile actors (ph) successful gained access to the commercial e-mail accounts of people Secretary Clinton regularly communicated with. In the case of the Romanian hacker Guccifer, according to accessing Sidney Blumenthal's account -- and you know that's been public, for some time.

During your investigation, were there other people in the State Department or that regularly communicated with Secretary Clinton that you can confirm were successfully hacked?

COMEY: Yes.

FARENTHOLD: And were these folks that regularly communicated with the secretary?

COMEY: Yes.

FARENTHOLD: And were you able to conclude definitively that the attempted hacks referenced in the I.G. report were not successful?

COMEY: We were not able to conclude that they were successful. I think that's the best way to say it.

FARENTHOLD: All right, well while you said that given the nature of Clinton's server, it would be unlikely to see evidence one way or the other whether or not it had been successful hacked.

How many unsuccessful attempts did you uncover, did you find any there?

COMEY: There were unsuccessful attempts. I don't know the number off top of my head.

FARENTHOLD: Do you have an idea -- were they from foreign governments? Where'd they come from?

COMEY: I want to be careful what I say in an open setting and so I -- we can give you that information but I don't want to give the -- any foreign governments knowledge of what I know, so there...

FARENTHOLD: But you -- would you be so far as to say if they probably weren't American high school students fooling around?

COMEY: Correct, it was not limited to criminal activity.

FARENTHOLD: During your investigation, did you or anyone in the FBI interview the hacker Guccifer?

COMEY: Yes.

FARENTHOLD: And he claimed he gained access to Sid Blumenthal's e-mail account and traced them back to Clinton's private server. Can you confirm that Guccifer never gained access to her server?

COMEY: Yeah he did not. He admitted that was a lie. FARENTHOLD: All right, well, at least that's good to hear.

All right, Section 793 of Title 18 in the United States Code makes it a crime to allow classified information to be stolen through gross negligence. Were you to discover that hostile actors had actually gotten into Secretary Clinton's e-mail, would that have changed your recommendation with respect to prosecuting her?

COMEY: Unlikely, although we didn't consider that question because we didn't have those facts.

FARENTHOLD: All right. I want to go back to the question of intent real quick, for just a second.

I'm a recovering attorney. It's been decades since I actually practiced law. But you kept referring to she had to know it was illegal to have the requisite criminal intent. I was always taught in law school, and I don't know where this changed, that ignorance of the law was no excuse. If I'm driving a long at 45 miles and hour and didn't see the 35 mile and hour speed limit, I was still intentionally speeding, even though I didn't know it.

Now, I might not have had the requisite criminal intent if maybe my accelerator were jammed or something like that, but even though I didn't know the law was 35, I was driving 45, I'm going to get a ticket. And I'm probably going to be prosecuted for that.

So, how can you say ignorance of the law is an excuse in Ms. Clinton's case?

COMEY: Well, the comparison to petty offenses, I don't think is -- you spoke about the question of -- ignorance of the law is no excuse, but here's the distinction. You have to have general criminal intent. You don't need to know what particular statute you're violating, but you must be aware of the generally wrongful nature of your conduct...



(CROSSTALK)

FARENTHOLD: We -- now, so Congress when they enacted that statute said "gross negligence." That -- that doesn't say intent. So what are we going to have to enact to get you guys to prosecute something based on negligence or gross negligence? Are we going to have to add, "and oh by the way, we don't mean -- we really do mean you don't have to have intent there"? COMEY: That's a conversation for you all to have with the Department of Justice. But it would have to be something more than the statute enacted in 1917. Because for 99 years, they've been very worried about its constitutionality.

FARENTHOLD: All right. Well, I think that's something this committee and Congress as a whole, the Judiciary Committee, that Mr. Chaffetz and I also sit on, will be looking at it.

And I was on television this morning. And I just want to relay a question that I received from a caller into that television commercial (sic). It's just real simple: Why should any person follow the law if our leaders don't? And we can argue about intent or not, but you laid out the fact that she basically broke the law, but you couldn't prove intent.

Maybe I'm putting words in your mouth, but I do want to know why -- why any person should follow the law if our leaders don't have to. Maybe that's rhetorical, but I'll give you an opportunity to comment on that.

COMEY: That's a question I'm no more qualified to answer than any American citizen. It's an important question. In terms of my work and my world, my folks would not be -- one of my employees would not be prosecuted for this. They would face consequences for this. So the notion that it's either prosecute or you walk around, you know, smiling all day long is just not true for those people who work for the government.

The broader question is one for a democracy to answer. It's not for me.

FARENTHOLD: And I guess the ultimate decision as to whether or not Mrs. Clinton works in government or not is not in -- is in everybody's hands.

CHAFFETZ: I thank the gentleman.

FARENTHOLD: I yield back.

CHAFFETZ: We'll now recognize the gentleman from Pennsylvania, Mr. Boyle, for five minutes.

BOYLE: Thank you, Mr. Chairman.

And thank you, Director Comey, for appearing especially on such short notice.

I want to share with you actually something a friend of mine was expressing when watching your press conference 48 hours ago. And this is someone who's not in any way political. In fact, probably typical of most American citizens today in being depressed about the remarkable level of cynicism we have in our government, that specifically those of us who are in government make decisions first and foremost because of the party hat we wear and not necessarily based on the facts and the evidence. And he

texted me after watching your 15-minute presentation, "Oh, it's nice to see a real pro; you can tell that he would make the decision based on the facts and the evidence and not what party he wears."

I think that's so important if we're ever going to get to a place in this country where we restore some of the faith that we had in government. If you look at the poll numbers from the 1940s and 1950s, and you look at faith in government among the American public, and you look at those numbers today, the numbers today are anemic. They're nowhere near the levels that they were decades ago.

So for that, I want to say thank you, and I think that many citizens have the same -- the same impression.

When I first met you a couple of years ago at a weekend session in Colonial Williamsburg, you might remember that we had a discussion about my biggest concern, frankly, facing the security of the American people. And that is the possibility of a lone-wolf terrorist, someone becoming self-radicalized and acting based on that. We had an exchange that I'll keep private, but I think I can characterize that you share my concern.

I'm just thinking for the last two-and-a-half hours that we've been here, we've had the FBI director asking questions on this matter, when frankly I would have much rather your time spent dealing with the potential lone-wolf terrorists and other coordinated facts that we face.

But since this is the Oversight and Government Reform Committee, trying to find something that we can now take and possibly use in a systemic way, not just the celebrity of Secretary Clinton and the fact because it involves her, let's face it, that's the reason why we're here.

But I want to try to take something out of this very expensive and long investigation and try to use it in a productive way toward reforming government that possibly we can get something good out of it. So toward that end, I'm really concerned about this issue of up-classification because it seems as if, and I was not aware of this until the investigation, there is quite a strong discrepancy between not just former Secretary Clinton, but even former Secretary Powell, what he thinks should be classified and then what is classified after the fact.

And I think you'd, if I'm right, there were some 2,000 e-mails that were up-classified. I was wondering if you could -- you could speak to that.

COMEY: It actually was not a concept I was real familiar with before this. It's the notion that something might not have been classified at the time, but that in hindsight, as a government agency considers releasing it, they raise the classification level to protect it, because it would -- it's a candid assessment of a foreign leader or something like that. I think it is largely a State Department thing because their diplomats will often be conversing in an unclassified way, that when they look at releasing it in response to a FOIA request, they think it ought to be protected in some fashion.

But honestly, those -- I kind of pushed those to the side. The important thing here was what was classified at the time. That's what matters.

BOYLE: Right. And that for a law enforcement official matters. But I'm just wondering if you could share with us any of your impressions about a system that exists where there is such gray area and discrepancy in what is classified and what's not. And if you or your agents had any suggestions for us either in Government Reform or I happen to be on the Foreign Affairs Committee that has oversight of

State Department. Do you believe that this is a matter that we should take up where there is such discrepancy on what's classified and what's not classified?

I even -- I think of one example. Ambassador Ross put something in a book that wasn't classified, and then was up-classified after the book came out. What -- what good does that do us as a country in terms of trying to protect the intelligence of the United States?

COMEY: I'm not an expert in this up-classification business, but I do suspect it will be a fertile ground for trying to figure out whether there are ways to do it in a more predictable, reliable way.

BOYLE: Yeah. Well, thank you again for your service, and I yield back my time.

CHAFFETZ: I thank the gentleman.

I will now recognize the gentleman from Georgia, Mr. Hice, for five minutes.

HICE: Director Comey, your statement on Tuesday clearly showed that Secretary Clinton not only was extremely careless in handling classified information, but that also any reasonable person should have known better, and that also in doing so, she put our national security at risk with her reckless behavior.

So it seems to me that the American people are only left, based on your assessment, with just a few options. Either Secretary Clinton herself is not a reasonable person, or she is someone who purposefully, willfully exhibited disregard for the law, or she is someone who sees herself as above the law.

And to muddy the water even further after listening to you lay out the facts of the investigation, much of what you said directly contradicted her in previous statements that she had made.

I think that all this compiled, putting the -- connecting the dots -- that so many American people are irate that after all of this, there was not a recommendation for Secretary Clinton to be prosecuted. HICE: Now, I do greatly appreciate the fact that you came out with much more information on this than you would have in other cases. And I think that was the right thing to do. Undeniably, this is not a typical case. This is something of great public interest. Obviously, the subject of the investigation, a former secretary of state, former senator, and all those things that we have talked about, former first lady and so forth. And in addition to this, her husband who happens to be a former president of the United States is meeting privately with the attorney general right before all of this interview takes place.

Obviously, this is very suspicious. Just the optics of it all. And at the same time, that you're coming out or more or less the same time that you are announcing the decision, Secretary Clinton is flying around in Air Force One with the president doing a campaign event.

I mean there's nothing about this case that's ordinary. There's nothing about the subject that's ordinary. So let me ask you this. Director, did Secretary Clinton in fact comply with the department's policies or the Federal Records Act?

COMEY: I don't think so. I know you have the State Inspector General here, who's more of expert on all the department's policies but at least in some respects, no.

MICA: So keeping the servers at home and all these types of things obviously is not in compliance with the department's policies.

COMEY: Yes and I've read the Inspector General's report on that. So that's part of the reason I can answer that part with some confidence.

MICA: OK and yet she said publicly that she fully complied. So there again, is another issue. If you had the same set of facts but a different subject, a different individual involved say just an average, ordinary State Department employee or an anonymous contractor, what would have been the outcome?

COMEY: I'm highly confident there would be no criminal prosecution no matter who it was. There would be some range of discipline, they might get fired, they might lose their clearance, they might be suspended for 30 days, could be some discipline.

Maybe just a reprimand, I doubt it, I think it'd be higher on the discipline spectrum but some sort of discipline.

MICA: So is it your opinion there should likewise be some discipline in this case?

COMEY: That's not for me to say. I can talk about what would happen if it was a government employee under my responsibility.

MICA: Well, then what you're laying out is that there is a double standard for someone else, a different subject, an anonymous contractor or someone at the State Department.

There would absolutely be discipline but because of who the subject is, you're not willing to say there should be discipline. So there's again -- this whole issue -- this is what the American people are so upset about. Let me say that -- when you -- when you stated that no reasonable prosecutor would pursue this case, is that because the subject of this investigation was unique?

COMEY: No. There's no double standard there. And there's no double standard either in the sense that if it was John Doe, former government employee, you'd be in the same boat.

We wouldn't have any reach on the guy. He wouldn't be prosecuted.

MICA: But he would have some discipline.

COMEY: Well, not if he had -- not if he had left government service.

MICA: Had they lied about having servers, had they lied about sending and receiving classified e-mails, had they lied about not deleting those e-mails to the public, had they lied about not having any marked classified -- the statements are clearly documented.

And you're saying that this -- an average person would experience discipline by your own words, but Secretary Clinton does not deserve to be disciplined.

CHAFFETZ: The gentleman's time has expired but the director may answer if he wants to.

COMEY: An average employee still in government service would be subject to a disciplinary process. Now, if they'd left, you'd be in the same boat.

CHAFFETZ: Gentleman from Georgia yields back.

The chair now recognizes the gentleman from Vermont, Mr. Welch.

WELCH: Thank you very much, Mr. Chairman.

Thank you, Director Comey. The prosecutor has really awesome power. The power to prosecute is the power to destroy. And it has to be used with restraint. You obviously know that.

You're being asked to -- you had to exercise that responsibility in the context of a very contested presidential campaign, enormous political pressure. You had to do it once before. And I go back to that evening of March 10, 2004, when the question was whether a surveillance program authorized after 9/11 by President Bush was going to continue despite the fact that the Justice Department had come to an independent legal conclusion that it actually violated our constitutional rights.

That's a tough call because America was insecure. The president was asserting his authority as Commander In Chief to take an action that was intended to protect the American people but you and others in the Justice Department felt that whatever that justification was, the Constitution came first and you were going to defend it.

As I understand it, you were on your way home and had to divert your drivers to go back to the hospital to be at the bedside of a very sick, at that time Attorney General. And you had to stand in the way of the White House Chief of Staff and the White House Council.

I'm not sure that was a popular decision or one that you could have confidently thought would be a career booster. But I want to thank you for that. Fast forward, we've got this situation of a highly contested political campaign. And there is substantive concern that's legitimate by Democrats and Republicans for independent political reasons.

But you had to make a call that was based upon your view of the law, not your view of how it would affect the outcome of who would be the next Commander in Chief. Others have asked this for you, but I think I'm close to the -- close to the end.

I want to give you a chance to just answer I think the bottom line questions, here.

Had you, after your thorough investigation, found evidence that suggested that criminal conduct occurred, is there anything, anything or anyone that could have held you back from deciding to prosecute?

COMEY: No. I mean I -- I don't have the power to decide prosecution but I worked very hard to make sure that a righteous case was prosecuted.

WELCH: And you would have made that recommendation to the Attorney General?

COMEY: Yes.

WELCH: Was there any interference, implicit or explicit, from the President of the United States or anyone acting on his behalf to influence the outcome of your investigation and the recommendation that you made?

COMEY: No.

WELCH: Was there anyone in the Hillary Clinton campaign, or Hillary Clinton herself, who did anything directly or indirectly to attempt to influence the conclusion that you made to recommend no prosecution?

COMEY: No.

WELCH: At this moment, after having been through several hours of questioning, is there anything in the questions you've heard that would cause you to change the decision that you made?

COMEY: No, I don't -- I don't love this, but it's really important to do. And I understand the questions and concerns. I just want the American people to know we really did this the right way.

You can disagree with us but you cannot fairly say we did it in any kind of political way. We don't carry water for anybody. We're trying to do what the right thing is.

WELCH: I -- I very much appreciate that and I very much appreciate that it takes strong people of independent judgment to make certain that we continue to be a nation of laws.

Mr. Chairman, just one final thing and I'll yield to Mr. Cummings.

We've got a political debate where a lot of these issues that are going to be -- that have been raised are going to be fought on the campaign. And we've got Secretary Clinton who's going to have to defend what she did.

She's acknowledged it's a mistake; we've got that great constitutional scholar, Mr. Trump, who's going to be making his case about why this was wrong, but that's politics. That's not really having anything to do with the independence of prosecutorial discretion.

Thank you, Director Comey.

And I yield whatever additional time I have to Mr. Cummings.

CHAFFETZ: I think the gentleman's gonna yield back, I have spoken with Mr. Cummings, so.

We'll now recognize the gentleman from Kentucky, Mr. Massie, for five minutes.

MASSIE: Thank you, Mr. Chairman.

And thank you, Director Comey, for showing up and your willingness to be transparency and answer a lot of unanswered questions. A few hours before this hearing started I went on to social media and asked people to submit questions.

And I've got over 500 questions and I don't think I'll get to ask them all in these five minutes. But I'm sure you'll be willing to answer them. One of the common things that I came in here to ask but I realize it's not the right question now, is what's the difference between extremely careless and gross negligence?

But in the process of this hearing, what I'm hearing you say is, that's not what we -- that's not what your reluctance is based on. It's not based on the reluctance to prosecute.

Your reluctance to recommend a prosecution -- or an indictment is not based on parsing those words.

It's based on your concern for this statute with this -- this statute. Is that correct? From your opening statement?

COMEY: It's broader than that, actually. The statute -- and it fits within a framework of fairness and also my understanding of what the Department of Justice has prosecuted over the last 50 years. MASSIE: So when you say a reasonable prosecutor wouldn't take this case, it's not because you don't think she made -- that she lied in public or that maybe she was negligent, it's because you have concern with the prosecutorial history of this statute?

COMEY: Not just that statute, but also 1924, which is the misdemeanor. I also don't see cases that were prosecuted on facts like these. 793 (ph) and 1924...

MASSIE: ... But you did find one prosecution in -- has it been overturned by the Supreme Court?

COMEY: No, there was one time it was charged in an espionage case, and the guy ended up pleading guilty to a different offense so it was never adjudicated.

MASSIE: So, your concern is with the negligence threshold. You think it requires mens rea, or knowing the crime. But in all 50 states, isn't there negligent homicide statute, and aren't people prosecuted for that all the time? Doesn't the Supreme Court, and all the courts below that, uphold those prosecutions just on the basis of negligence?

COMEY: I don't know about all 50 states. I think negligent homicide and manslaughter statutes are relatively common.

MASSIE: OK, don't all 50 states have something like that, and aren't those sustained in the upper courts, those convictions?

COMEY: I don't know whether all 50 states have something like that, but again, I think it's very common and I think those are sustained.

MASSIE: Don't we have a history of -- you implied the American judicial system doesn't have a history of convicting somebody for negligence, but don't we in other domains of justice?

COMEY: We do. I know the federal system best. There are very few in the federal system. They're mostly, as you (ph) talked about earlier, in the environmental and Food and Drug Administration area.

MASSIE: Thank you. Now, I want to ask another question that's come up here. You've basically related to us that this information, this top secret or classified information got into these e-mail chains because of conversations people were having. They were relating what they heard before in other settings. Is that correct? COMEY: No. Maybe in some cases, but it was people having an e-mail conversation about a classified subject.

MASSIE: OK, so they were having an e-mail conversation, but how in this e-mail conversation did this bore (ph) marking show up? Like, if they're not sophisticated enough, as you said before, even Hillary Clinton wasn't sophisticated enough to recognize a bore (ph) marking to, the "C" with the parenthesis for confidential or classified. If they weren't that sophisticated, how did they recreate that bore marking in their e-mails when they're having these discussions?

COMEY: A lot of what ended up on Secretary Clinton's server were stuff that had been forwarded up the chain. It gets to her from her stack, a lot of that, forwarding. And, then she comments sometimes on it. Someone down in the chain, in typing a paragraph that summarized something put a portion marking "C", "paren", "C", "paren", on that paragraph.

MASSIE: Doesn't it take a lot of intent to take a classified document from a setting that's, you know, authorized and secure, to one that's not? Wouldn't it require intent for somebody to recreate that classification marking in an unsecure setting?

COMEY: I don't know. It's possible, but also, I could...

MASSIE: ... Could you accidentally type, "Open parenthesis", "C", "closed parenthesis", and indent the paragraph?

COMEY: Oh no, you wouldn't accidentally type...

MASSIE: ... Right...

COMEY: ... Someone actually down the chain...

MASSIE: ... OK, so this is my question is someone down the chain being investigated? Because they had the intent clearly if they had the sophistication -- which Hillary Clinton, you insinuate, may have lacked. If they had the sophistication to know what this bore marking was, they had to have the intent to recreate it, or the intent to cut, copy, paste from a secure system to an unsecure system. Wouldn't that be correct?

COMEY: Potentially, but we're not -- there's not an open criminal investigation of that person way down the chain...

MASSIE: ... Shouldn't there be?

COMEY: A criminal investigation?

MASSIE: An investigation if there's intent, which is what you -- I mean, and I think you may be reasonable in requiring that threshold. Don't we treat everybody the same whether they're the top of the chain or the bottom of the chain?



COMEY: Sure, you want to if the conduct is the same. We did not criminally investigate whoever started that chain and put the "C" on that -- those paragraphs. We didn't.

MASSIE: OK, I would suggest maybe you might want to do that, and I will yield back to the Chairman.

CHAFFETZ: OK, I thank the gentleman. I now recognize the gentlewoman from Michigan, Mrs. Lawrence for five minutes.

LAWRENCE: Director Comey, how many years have you been the director?

COMEY: Two -- three years. I don't know the exact day count at this point.

LAWRENCE: How many cases have you investigated, approximately, that you had to render a decision?

COMEY: The Bureau investigates tens of thousands of cases. The Director only gets involved in a very small number of them.

LAWRENCE: About how many?

COMEY: I think I've been deeply involved in probably 10 to 20.

LAWRENCE: Have you even been called before Congress on any of those other decisions?

COMEY: No, this is the first time.

LAWRENCE: Thank you. There are some Republicans who support you. Not surprisingly, they're the ones who actually know you. I have a letter here, and I would like to enter it into the record, from Richard Painter, he was President Bush's Chief Ethics lawyer. May it be entered into the record?

CHAFFETZ: She's asking unanimous consent, without objection, so ordered.

LAWRENCE: Mr. Painter refers to Mr. Comey as a man of, and I quote, "the man of the utmost integrity who calls the shots as he saw them, without regard to political affiliation or friendship." He states, and I quote, "throughout the FBI investigation of Secretary Clinton's e-mail server, I have been convinced that the Director would supervise the investigation with being impartial, and strict adherence to the law, as well as procedural."

He also adds, although I'm aware of very few prosecutions for carelessness in handling classified information as opposed to intentional disclosure, I knew that the Director would recommend prosecution in any and all circumstances where it was warranted. I can not think of someone better suited to handle such a politically sensitive investigation."

Finally, and I quote, "I urge all members of the United States Congress to stop from inferring in specific decisions, particularly those involving political allies, or opponents. During my tenure in the White House there were very unfortunate allegation that power Senators sought politically motivating firing of United States attorney. Whether or not such allegations were true, it is imperative," and I'm still

quoting, "that members of the Senate or the House never again conduct themselves in a manner where such interference could be suspected."

And, I want to be on the record, I wholeheartedly agree with Mr. Painter.

Director, you have demonstrated yourself, you sat here and asked (ph) the questions, and I would never oppose to finding the answers to any situation that is directly related to federal agencies which we, on this committee, are responsible for. But, I want to be clear that Congress has no business, no business interfering with these types of decisions that are coming in this -- in your responsibility.

These type of attacks are not only inappropriate, but they're dangerous. They're dangerous because they could have a chilling effect on the future investigations. And, I ask that question, how long have you been this position? How many times have you made decisions, and it were knocked, pulled in 24 before this committee? How many times? And, then we say it's not political.

And, you have said repeatedly, regardless of who it was you would have conducted the investigation as required under your responsibility. And, here you have Republicans who are saying you are an honorable man. Until this day, I have not heard any complaints of your judgment. So, I sit here today as a member of Congress on the record that the slippery slope that we're seeing today in this hearing, I want every member to be cautious of what we're saying. That in America when we have investigation that we will allow our own elected Congress and Senate to make this a political agenda to attack, but only if it's in their agenda. This goes for Democrats and Republicans, we are not here to do that.

Thank you, and I yield back my time.

CHAFFETZ: I thank the gentlewoman.

Will now recognize the gentleman, Mr. Blum. BLUM: Thank you, Mr. Chairman.

Thank you, Director Comey for being here today, and thanks for hanging in there until every last question is answered.

I'm not a lawyer, that's the good news. I'm a career businessman. I spent most of my career operating in the high high- tech industry.

Today, I heard words such as common sense, reasonable person, carelessness, judgment, or lack thereof. I like these words. I understand these words. I think the average American does as well. I'd like to focus on that.

Last Tuesday, Director, you said, and I quote, "none of these e- mails should have been on any kind of unclassified system, but their presence is especially concerning because all these e-mails were housed on unclassified personal servers not even supported by full- time security staff like those found at agencies of the United States government or even with a commercial e-mail service such as Gmail." Director Comey, my small Iowa business doesn't even use Gmail for our e-mail because it's not secure enough.

I know some security experts in the industry. I check with them. The going rate to hack into somebody's Gmail account, \$129. For corporate e-mails, they can be hacked for \$500 or less. If you want to hack into an IP address, it's around \$100. I'm sure the FBI can probably do it cheaper. This is the going rate.

Director Comey, are you implying in that statement that the private e-mail servers of Secretary Clinton's were perhaps less secure than a Gmail account that is used for free by a billion people around this planet?

COMEY: Yes. And I'm not looking to pick on Gmail. Their security is actually pretty good, the weakness is individual users. But, yes, Gmail has full-time security staff and thinks about patching, and logging, and protecting their systems in a way that was not the case here.

BLUM: I would like to ask you, what kind of judgment -- we talked a lot about judgment today -- does this decision to potentially expose to hackers classified information on e-mail service that's less secure than Gmail, your words -- what does that suggest to you?

COMEY: It suggests the kind of carelessness I talked about. BLUM: In August of last year, Secretary Clinton was asked by Ed Henry of Fox News whether she had wiped her entire server, meaning that, did she delete all the e-mails on her server? Her response, "you mean with a cloth?" March of 2015, during a press conference, Secretary Clinton assured us that her private e-mail server was secure saying, "the server was on private property guarded by the Secret Service."

Now, this would have been laughable if it wasn't so serious. I know, you know, my constituents in eastern Iowa know, you don't need to be a cat burglar to hack into an e-mail server and you don't need a cloth to wipe a server clean. One would think that a former United States Senator, one would think that a former Secretary of State would know this as well. Would you agree with that statement?

COMEY: You would think, although as I said before, one of the things I learned in this case is that the Secretary may not have been as sophisticated as people assumed.

She didn't have a computer in her office at the State Department for example. I don't think -- so I would assume the same thing about someone who had been a Senator and a high-ranking official. I'm not sure it's a fair assumption in this case.

BLUM: In your opinion, did Secretary Clinton know that a server could in fact be wiped clean electronically and not with a cloth?

COMEY: Well, I assume -- I don't know...

BLUM: Would you assume she knows that?

COMEY: I would assume it was a facetious comment about a cloth. I don't know a particular on that one.

BLUM: Would you also assume Director, that Secretary Clinton knew that a server could be wiped clean electronically, that it could be hacked electronically, not physically? You don't need a cat burglar to hack a server. Would you assume -- is reasonable to assume she knows that?

COMEY: To some level she would know that. To some level of understanding.

BLUM: Then once again, for someone who knew these things or we assume to some level she knew these things, what kind of judgment does a decision to expose classified material on personal servers suggest to you? What type of judgment?

COMEY: It's not my place to assess judgment. I talk in terms of state of mind, negligence in particular. I think there was carelessness here. In some circumstances, extreme carelessness.

BLUM: Was her server hacked?

COMEY: I don't know. I can't -- can't prove that it was hacked.

BLUM: That answer says to me it could have been hacked.

COMEY: Sure.

BLUM: And if it was hacked, potentially damaging material, damaging to American secrets, damaging to American lives, could have been hacked, could have been exposed, correct? Lives could have been put at risk if that server was indeed hacked?

COMEY: I'm not prepared to say yes as to that last piece. That would require me going into a way -- I can't here due to the nature of the classified information. But there is no doubt that it potentially would have exposed information that's classified -- information that was classified because it could damage the United States of America.

BLUM: So it could I have happened, the FBI just isn't aware?

COMEY: Correct.

BLUM: Thank you very much.

I yield back the time I do not have.

CHAFFETZ: I thank the gentleman.

I now recognize the gentlelady from New Jersey, Ms. Watson Coleman, for five minutes.

WATSON COLEMAN: Thank you.

And thank you, Director. I've got a number of questions so I'm going to zip through these. This is a question I'm going to ask you and you may not even have the answer to it because you may not have known this. This is about the classification marking issue that you've been asked about earlier. According to the State Department which addressed the issue yesterday, a spokesman said that, "the call sheets appear to bear classified markings -- but this was actually a mistake." To quote, "generally speaking, there's a standard process for developing call sheets for the Secretary of State. Call sheets are often marked, but it's not untypical at all for them to be marked at the confidential level prior to the decision of the Secretary that he or she will make that call. Often times, once it is cleared, the Secretary

intends to make a call, the department will then consider the call sheet SBU, Sensitive But Unclassified or unclassified altogether, and then marked appropriately."

The classifications of a call sheet therefore is not necessarily fixed in time and staffers in the Secretary's office who are involved in preparing and finalizing these call sheets, they understand that. Given this context, it appears that markings in the documents raised in the media reports were no longer necessary or appropriate at the time they were sent as an actual e-mail. Those markings were human error. They didn't need to be there. Did you know this?

COMEY: No. WATSON COLEMAN: Thank you, Mr. Director.

Can you tell me based upon your information has there been and is there any evidence that our national security has been breached or at risk as a result of these e-mails and their being on this server? Is there any evidence?

COMEY: There's no direct evidence of an intrusion.

WATSON COLEMAN: Thank you very much.

I have to tell you that while I think that this should conclude this discussion, I know we're going to hear this issue ad nauseam. But I am concerned about another issue that I think really is resonating with the people in this country. That issue has to do with experiences that we had just the last two days.

Mr. Director, I want to bring this up for your consideration because I want to ask you, what can the FBI do in this issue? This morning, we woke up to another graphic and deeply disturbing video that actually brought me to tears when my staff played it for me, where a Minnesota woman's boyfriend has been shot as her young child sat in the back-seat after apparently telling the officer he was licensed to carry a weapon. He had it on him, and was going to reach for his identification.

Just the other day, there was a -- an incident in Baton Rouge involving a Mr. Alton Sterling, an African-American man who was shot while pinned to the ground by police officers in Baton Rouge. An interaction taped by two bystanders with cell phones captured this. So I think that we've got an issue here, an issue of real national security.

And I want to ask you, Mr. Director, do we have an opportunity to direct our time and resources in your department to those issues? Is it -- is it not important that we save their names to remind people of the loss of a Tamir Rice, to an Eric Garland, to an Alton Sterling, to a John Crawford III, to a Michael Brown, to a Walter Scott, and even a Sandra Bland? Deaths in the hands of police custody or by police happening -- are these not happening at an alarming rate and is this not a legitimate space for the FBI to be working in?

COMEY: Yes, is the emphatic answer. Those are incredibly important matters.

As you know, the FBI spends a lot of time on them because they're very, very important. We have an investigation open on the Baton Rouge case. I was briefed this morning on the Minnesota case and I would expect we'll be involved in that as well. It's an important part of our work. WATSON COLEMAN: Do you feel that you have the resources from the legal imperative to the funding to address these cases and what seems to be a disturbing pattern in our country today?

COMEY: I'm a bad bureaucrat, but I have -- I believe I have sufficient resources and we are applying them against those situations. because I believe the individual cases matter enormously, but also the people's confidence in law enforcement is one of the bedrocks of this great country of ours. I have the resources and we're applying them too.

WATSON COLEMAN: And in addition, we believe that our law enforcement is by in large of high integrity and have the desire to keep us protected and safe. But when we find out that there are these occasions, and when there's an indication that there's a pattern that is taking place in this country, we have a responsibility to ensure that everyone in this country is safe. And simply because you're a black man or a black woman does not make you a target.

Thank you. I yield back my time.

CHAFFETZ: I thank the gentlewoman. We'll now recognize the gentleman from North Carolina, Mr. Walker.

WALKER: Thank you Mr. Chairman. Thank you Director Comey for being here.

There are a few things in this town that people agree on both sides of the aisle, one is your reputation. I'm reminded of the passage in James: Swift to hear, slow to speak, slow to wrath.

I am a little disappointed in some of the things I've heard from my colleagues about some of the attacks on your character and integrity. I haven't heard those. And I hope that we have not -- you've not experienced that.

I also struggle with a change of heart that we're hearing today. I have a list of elected officials who have questioned your investigation, even attacked it. In fact, former President Clinton said, "This is a game." In fact, last Friday, Congresswoman Wasserman Schultz said, "Secretary Clinton is not the target of this investigation, or whatever you want to call it."

My question to you today: Do you feel like this has been a Republican witch hunt, this hearing? COMEY: No. I said from the beginning, I understand people's questions and interest. I'm a huge fan of transparency. I think that's what makes our democracy great.

WALKER: I think that is one of the reasons as to why you are so respected.

To me, this hearing is about understanding and disseminating the facts, and how you saw them, and how the American public sees them. And specifically in the areas of where there was wrongdoing admitted under your investigation, where there was obviously breaking the law, but also some cover-ups. Did Congress ask you to pursue this investigation?

COMEY: No. It was a referral from the Inspector General of the intelligence community.

WALKER: So it wasn't Republicans either was it?

COMEY: No.

WALKER: How did you go about collecting the evidence?

COMEY: We used the tools we normally use in a criminal investigation.

WALKER: Did or do you receive a congressional referral for all the information you collected?

COMEY: Not to my knowledge.

WALKER: One of the things I'm struggling with or what I would like to know specifically is, under oath Ms. Clinton made these three comments that we now know are untrue in the Benghazi hearing.

Number one, she's turned over all her work related e-mails. Number two, telling the committee that her attorneys went through every single e-mail. And finally, and probably the one that continues to stick the most, there was, and I quote, "nothing marked classified on my e-mails," end quote.

Now, earlier when the chairman questioned you about this, you said something about needing a congressional referral, recommendation. My question is something of this magnitude, why -- can you help me understand why didn't it rise to your investigation or someone bringing that to your knowledge as far as saying this is a problem, here she is, again, Secretary Clinton lying under oath specifically about our investigation?

COMEY: We out of respect for the legislative branch being a separate branch, we do not commence investigations that focus on activities before Congress without Congress asking us to get involved. That's a long-standing practice of the Department of Justice and the FBI. So we don't watch on TV and say we ought to investigate that, Joe Smith said this -- in front of the committee. It requires the committee to say, "We think we have an issue here; would you all take a look at it?"

WALKER: With all due respect, if you have the Secretary Clinton under oath speaking about your very investigation, and you've talked about your wonderful staff, and certainly have no reason to deny it; why wouldn't that rise to the level of suspicion that -- here she is saying this under oath. Lying under oath is a crime is it not?

COMEY: Yes.

WALKER: What's the penalty on that? That's considered perjury right?

COMEY: Perjury, it's a felony, I forget the exact -- it's potentially years in prison.

WALKER: I don't understand -- would you help me understand why somebody wouldn't have tipped you off that she's talking about the specific case under oath that you're investigating?

COMEY: There's a difference between us being aware of testimony and us opening a criminal investigation for potential perjury.

Again, it's not this case in particular, but all cases. We don't do that without the committee saying, "We think there was an issue in testimony given in this separate branch of the government."

WALKER: You also mentioned earlier, and it's been quoted several times, that no reasonable prosecutor would move forward with some of the facts. Is there any room at all that somebody would differ on the opinion? I know that former United States Attorney General Michael Mukasey said that an illegal server disqualifies her from holding any federal office. So there are people of highest esteem that may differ obviously not privy to the exact facts.

Can you make any room? You said no reasonable person. Do you understand why American people or would understand why other people may say that she has stepped across a line or broke enough laws here that you would come to a different conclusion?

COMEY: Sure, I respect different opinions.

My only point -- as I said earlier, I smile because those folks are my friends, I've worked with them for a long time. None of those guys in my position I believe knowing what I know, would think about it differently. But I also respect that they have a different view from the outside.

WALKER: Thank you, Mr. Chairman. I yield back.

CHAFFETZ: I thank the gentleman. I now recognize the gentleman from California, Mr. DeSaulnier.

DESAULNIER: Thank you, Mr. Chairman. Director, I just want to thank you as others have, and I know you don't need this but I think the American people clearly need to hear it, you've done a wonderful job today. There are moments in my political life and as an American I despair for the future of this country, not often but -- in those moments comes an individual like yourself, be it by providence or good fortune or framework of the U.S. constitution, I really believe you served this country and all Americans well irrespective of their party affiliation.

So really two questions. Two lines of questions, I should say. One is I -- another colleague brought this up, but you mentioned in just previous testimony about the bedrock and the importance of public confidence and public safety institutions, yours and all. So I just want to give you an opportunity, I think you have responded to this multiple times -- but given you had little opportunity tonight -- because I think it's important for the American public to know that the system isn't rigged, that there are people such as yourself and the 15 individuals who worked on this case and others that do their job and believe in the Constitution of the United States. And if you have any further comments about -- comments that would say that the system's rigged and Americans should give up on the system.

COMEY: One of the reason I welcome this opportunity to have this conversation, is I was raised by great parents who taught me, you can't care what other people think about you. In my business, I have to and deeply do, that people have confidence that the system's not fixed, against black people, for rich people, for powerful people.

It's very, very important that the American people understand that there really are people that you pay for with your tax dollars who don't give a rip about Democrats or Republicans, or this or that, who care about finding out what is true. And I am lucky to lead an organization that is that way to its core.

I get a ten-year term to ensure that I stay outside of politics, but in a way that it's easy. I lead an organization that is resolutely apolitical. We are tough aggressive people. If we can make a case, we'll



make a case. We do not care what the person's stripes are or what their bank account looks like. I worry very much when people doubt that.

It's the reason I did the press conference two days ago. I care about the FBI's reputation, I care about the Justice Department, I care about the whole system deeply. And so I decided I'm going to do something no Director's ever done before. I'm not going to tell the Attorney General or anybody else what I'm going to say or even I'm going to say it. They didn't know nor did the media know until I walked out what I was going to talk about and then I offered extraordinary transparency, which I'm sure confused and bugged a lot of people.

It's essential that people see as much as they can so they can make their judgment. Again, they may conclude I'm an idiot and that I should reason different, but what I hope they will not conclude is that I'm a dishonest person. I'm here trying to do the right thing in the right way.

I lead 36,000 people who have that as their spine. That's what I want them to know. I don't care that people agree or disagree about our democracy, but at its core, you need to know there are good people trying to do the right thing all day long. You pay for them and we'll never forget that. DESAULNIER: I appreciate that.

Within context of these are human institutions -- pretty clear to me as non-lawyer that you had a bright line in terms of your decision about pursuing prosecution. But you did spend an extended period of time talking about, what I think I take from you as being a fairly objective analysis of what was careless in terms of handling of it, either ascribed to the former secretary of state or to the department.

You said, and I quote, during your comments, "while not the focus of our investigation, we also developed evidence that a security culture of the State Department in general with respect to the use of unclassified e-mail systems in particular was generally lacking in the kind of care classified information found elsewhere in the government."

That's accurate, isn't it?

COMNEY: Yes, sir.

DESAULNIER: So struggling with this, and this is in the context of this hearing, oversight in State Department in this committee, as to how do we go from here, and be clearer about how the State Department -- we'll talk about this with the I.G., and some of the comments former Secretary Powell has made including that the absurdity of the retroactive classification.

And now we have 1,000 of these e-mails from Secretary Clinton that's out in the public and are being spread even further. So there are other people involved.

Sitting there, how does this committee go forward to make sure the State Department can still function in the way it does with human beings and have conversations that are both transparent, but also national security?

What are the things we need to do to make sure that this doesn't happen again?

COMEY: Well, I think a good start -- I think the reason the chairman has the I.G. from the State Department here is to start that conversation. The I.G. knows deeply the culture of a department and is far better equipped than I to say, you ought to focus here, you ought to focus there to make it better.

So I think that's the place to start. DESAULNIER: Thank you, Mr. Director. I yield back.

CHAFFETZ: Thank you. We'll now recognize the gentleman from Tennessee, Mr. DesJarlais, for five minutes.

DESJARLAIS: Director Comey, thank you for appearing so quickly on short notice. I think it's really important that you're here because of the way you laid out the case on Tuesday, there is a perception that you felt one way and then came to another conclusion.

I, like many of my colleagues, put a post up back in my district and let them know you were coming. And in less than 24 hours, I had 750 questions sent to ask you. So again, thank you for being here.

But a common theme, just to summarize a lot of those concerns, were that in this case Clinton was above the law, that there was a double standard and a lot of that was based on the way you presented your findings.

Now, your team, you said you did not personally interview her on Saturday, but your team did for about three-and-a-half hours, correct?

COMEY: Yes.

DESJARLAIS: OK. Do you know, in reading the review or the summary, did they ask Hillary Clinton about her comment that she had never sent or received classified information over private e-mail?

COMEY: I think so, but I can't -- I can't remember specifically.

DESJARLAIS: OK.

COMEY: It's a very long, 302. I'd have to check and then get back to you.

DESJARLAIS: OK. And we'll get access to that.

Do you know if they asked her when she said that there was nothing marked classified on my e-mails sent or received?

COMEY: Same answer. I'm not sure.

DESJARLAIS: OK. And so the same answer then when she said, I did not e-mail any classified material to anyone on my e-mail, there was no classified material, you don't know whether they asked her that?

COMEY: I don't know whether they asked her that question. The entire interview was going to be -- was focused on, so what did you know, what did you see, what is this document, that kind of thing.

DESJARLAIS: OK. Do you know if she asked her whether she stands by the fact she that said she just used one device and that was for her convenience?

COMEY: I don't know. I know they established, in talking to her, she used many devices during her four years. So I don't know whether they asked her specifically about that statement. That's easy to check, though.

DESJARLAIS: OK. I guess my point is, you're trying to get inside the head of Hillary Clinton in this investigation and know whether there was intent. And so we all know what she told the people. That has been well-documented.

She said that she did not do those things, that she did not send or receive classified e-mails, that she used one server and one device for her convenience.

And since then, I think even in your statement, you recognize that those were not correct. Is that fair?

COMEY: I really don't want to get in the business of trying to parse and judge her public statements. And so I think I've tried to avoid doing that sitting here.

DESJARLAIS: Why do you feel that's important?

COMEY: Because what matters to me is what did she say to the FBI. That's obviously first and foremost for us.

DESJARLAIS: Right.

(CROSSTALK)

DESJARLAIS: Honest people don't need to lie, is that right?

COMEY: Honest people don't need to lie? I hope not.

DESJARLAIS: OK. Well, in this case, for some reason, she felt the need to misrepresent what she had done with this server all throughout the investigation. You guys after a year, brought her in on Saturday and in three-and-a-half hours came out with a conclusion that she shouldn't be prosecuted because there was no intent, is that right?

COMEY: No.

DESJARLAIS: OK. So I don't want to put words in your mouth. But is it fair to say that your interpretation of Hillary Clinton's handling of top secret information, classified documents was extremely careless?

COMEY: Yes.

DESJARLAIS: And is it fair to say that you said that -- you went on to define "extremely careless," that Hillary Clinton's handling of top secret information was sloppy or represents sloppiness?

COMEY: Yes. That's another way of trying to express the same concept.

DESJARLAIS: OK. And then just a few minutes ago, you also stated that you now believe that Hillary Clinton is not nearly as sophisticated as people thought, is that correct?

COMEY: Yes, I think that's fair, actually -- no, not as people thought, but as people would assume about somebody with that background.

DESJARLAIS: OK. So...

COMEY: I'm sorry. I should be clear about this. Technically sophisticated. I'm not opining on other kinds of sophistication.

DESJARLAIS: All right. In the last minute, Director, I want to talk a little bit about precedent, because I think my colleague Trey Gowdy made a great point that there still is really no precedents in terms of punishment for this type of behavior.

Are you particular with Bryan Nishimura's case.

COMEY: Yes.

DESJARLAIS: OK. He's a naval reservist, for those who don't know, and he was prosecuted. What is the difference between his case and Hillary Clinton's case in terms of extremely carelessness and gross negligence, because we're dealing with Statute 793 Section F where it does not require intent, is that correct?

COMEY: I'm sorry, 793-F is the gross negligence standard.

DESJARLAIS: Right.

(CROSSTALK)

DESJARLAIS: Right, and is that why Bryan Nishimura was punished?

COMEY: No. Nishimura was prosecuted under the misdemeanor Statute 1924 on facts that are very different -- if you want me to go through them, I'll go through them, but very different than...

(CROSSTALK)

DESJARLAIS: Well, OK, I think that there has been a review of this case, and they're very similar. And that's why people feel that there's a double standard...

(CROSSTALK)

COMEY: What they're reading in the media is not a complete accounting of the facts in that case.

DESJARLAIS: Well, would you agree then with Representative Gowdy that there still is really no precedents for punishing someone like Hillary Clinton, and she could really go in -- potentially be elected president and do this again without fear of being punished?

COMNEY: I don't think I'm qualified to answer that question.

DESJARLAIS: All right. My time has expired. Thank you for your time.

CHAFFETZ: Thank the gentleman.

Now recognize the gentlewoman from New Mexico, Ms. Lujan Grisham.

LUJAN GRISHAM: Thank you, Mr. Chairman.

I've had the benefit of -- when you're last to -- or nearly last, to really have both the benefit and then to question the kinds of statements and the dialogue back and forth.

And where I'm settled at this point in time is in a couple of places, but particularly, I don't think there's any member in this committee, or quite frankly any member in Congress who doesn't both want and expect that the FBI and the Department of Justice to be -- to operate in a fair, unbiased, and highly independent manner.

Otherwise, you can't appropriately uphold or enforce federal law. And while we've all -- this has been stated in a couple of different ways, I'm going to see if we can't -- I want to get direct answers.

So, Mr. Comey, is there any evidence, given that that's the standard that we all want, desire, and expect, to suggest that Hillary Clinton was not charged by the Department of Justice due to inappropriate political influence or due to her current or previous public positions?

COMNEY: Zero. And if there is such evidence, I'd love folks to show it to me.

LUJAN GRISHAM: And in that regard, was there a double standard?

COMNEY: No. In fact, I think my entire goal was to avoid a double standard, to avoid what sometimes prosecutors call "celebrity hunting," and doing something for a famous person that you would never do for an ordinary Joe or Jane.

LUJAN GRISHAM: Thank you. And I really appreciate that you're here today and explaining the process in great detail, frankly. And I've -- this committee works at getting specific detail about a variety of reviews, investigations, policies, concepts throughout federal government.

And I think I can say that this committee often finds that we don't get very much clarity or specific responses to the majority of questions that we ask. So I really appreciate that, and that in explaining that what led the FBI to conclude that Hillary Clinton should not be charged.

Saying that, however, I'm still concerned, frankly, that the use of this hearing and some of the public statements made by the elected officials accusing the Department of Justice of using a double standard, without any evidence at all to support that statement, leaning on accusations of such, in fact jeopardizes the very thing we want the most, which is an apolitical and independent Department of Justice. And we have every right to ask these tough questions and to be clear that the process that you use for everyone, including elected officials, works, and that there's a responsibility not to substitute your own political

preferences for the outcome of an independent and apolitical Department of Justice investigations on any level, whether it involves Hillary Clinton or anybody else.

Do you agree with that general statement? COMEY: Yes.

LUJAN GRISHAM: For me, that's a really important ethical line that I believe should never be crossed. I worry that some of what we did today, could be frankly interpreted as violating that very standard.

And for that I certainly want the American people and my constituents who are watching to understand that very important line and to be sure that our responsibility is better served making sure that we do have, in fact, an independent body, whose aim it is to bring about truth and justice and uphold the federal law.

And, sir, based on everything that you said today, I don't see any reason to disagree with your statements, your assessments or the explanation of that process. With the little time I do have left, I do want to say that given that some of the classified material that we've both debated and talked about today can be classified later or up classified.

Or that other agencies have different determinations of what constitutes classified and not. I do think that's a process that warrants refining. And if something can come out of this hearing about making sure that we do something better in the future, for everyone, not just appointed or elected officials that, that ought to be something that we do.

I'm often confused by some of the things that are clearly told to us in a classified briefing that appear to be different or -- or already out in the public in some way, and I'm not sure who's making those decisions. I honor my responsibility to the highest degree, but I think that's a process that could use some significant refining, and that's my only suggestion, sir.

Thank you for being here today.

COMEY: Thank you.

CHAFFETZ: I thank the -- I thank the gentlewoman. We'll now recognize the gentleman from Georgia, Mr. Carter for five minutes.

CARTER: Thank you Mr. Chairman. And Director Comey, thank you for being here today. I appreciate it. I'm over here.

COMEY: Oh, sorry.

CARTER: I'm over here. And I'm gonna -- I'm gonna be real quick and -- and try to be succinct. I -- I want to clarify some things that you said, and -- and look, I -- I don't want to go over everything that everybody's been through today. I mean, we've had some great questions that have -- have asked you about, you said this, she said that.

Representative Gowdy made a great case of, you know, this is what she said under oath, and -- and publicly, and yet, you dispute that and say, no, this is the case. But, look I'm just -- just got a couple of questions. OK?

First of all, did I understand you correctly that your decision, that this decision was made within 3 and 1/2 hours of -- of an interview, and that was all?

COMEY: No, we investigated it for a year.

CARTER: You investigate, but you interviewed her for 3 and 1/2 hours last week and then came to the conclusion?

COMEY: Correct. We interviewed her on Saturday for 3 and 1/2 hours, the last step in a year-long investigation.

CARTER: OK. Now, as I understand that Hillary Clinton has testified that -- that the servers that she used were always safe and secure. Yet, you refute that and say, no, that is not the case at all. Were they ever secure? Were the servers that she would use, were they ever secure?

COMEY: The challenge of security is not binary, it's just degrees of security. It was less secure than one at the State Department, or as I said, even one at a private commercial provider like a Gmail.

CARTER: Well, let me ask you this, she's got staff, and she's got people around her. Did they know she was doing this? Did they know that she was using these other devices? Did anybody ever bring it to her attention and say, hey, you don't suppose to be doing that?

COMEY: I think a lot of people around the secretary understood she was using a private personal email set...

CARTER: Than why didn't they say something? Don't they have a responsibility as well?

COMEY: That's an important question that goes to the culture of the State Department that's worth asking.

CARTER: I -- you -- I mean, look we all surround ourselves, we get people and we depend on to help us. I don't -- should they be held responsible for that? For not bringing that to someone's attention? If I see someone who's breaking -- who's not following protocol, is it my responsibility to report them?

COMEY: Yes. Yeah.

CARTER: Well, I certainly...

COMEY: Especially when it comes to security matters. Obligation to report a security violation that you may witness, whether it's involving you or one of your co-workers. But this is about -- so if someone...

CARTER: What about Bryan Pagliano? Did -- did he ever know? Do you know if he knew that she was -- she was not following proper protocol here?

COMEY: He helped set it up.

CARTER: He helped set it up? So obviously he knew.

COMEY: Yeah. Obviously he knew that...

CARTER: OK, is anything going to be done to him? Any -- any prosecution, or any discipline, any...

COMEY: I don't know about discipline, but there's not going to be any prosecution of him.

CHAFFETZ: Will the -- will the gentleman yield?

CARTER: I yield.

CHAFFETZ: My understanding, Director, is that you offered him immunity. Why did you offer him immunity and what did you get for it?

COMEY: You know, that I have to -- I'm not sure what I can talk about in open setting about that.

CHAFFETZ: Well, he's not going to be prosecuted, so...

COMEY: Right, but I -- I want to be careful. I'm doing this 24 hours after the investigation closed. I want to be thoughtful, because we're -- we're as you know, big about the law, that I'm following the law about what I disclose about that. So I'll have to get back to you on that one. I don't want to answer that off the cuff.

CARTER: Director Comey, I -- I am not a lawyer. I'm not an investigator. I'm a pharmacist, but I'm a citizen. And citizens are upset. I watched with great interest last -- earlier this week when you laid out your case. And -- and I'm telling you, you laid it out, bam, bam, bam, here's what she did wrong, wrong, wrong, wrong.

And then all of a sudden you used the word, however. And -- and it was like you could hear a gasp throughout the country of people saying, ah, here we go again. Do you regret presenting it in a way like that?

COMEY: No, I -- I'm highly -- I think I didn't use the word "however." I try never to use that in speaking, but I did lay it out, I thought in the way that made sense and that I hoped was maximum transparency for people. And I know...

CARTER: But that's the point -- I'm sorry, but that's the point it didn't make sense. The way you were laying it out, it would have made sense in the way that the questions have been asked here and -- and we've made all these points of where -- where she was obviously told lies underneath -- under oath that it would have been OK, we -- we finally got one here.

COMEY: Yeah, I think it made sense. I just hope folks go back, maybe with a cup of tea and open their minds and read my statement again, carefully. But again, if you disagree, that's OK.

CARTER: But it -- but it -- but when we -- look, I've only been here 18 months. And I'm gonna tell ya, it -- this "inside the beltway" mentality, no wonder people don't trust us.



COMEY: Well, I -- I have no -- I don't know who you're talking about. I have no kind of "inside the beltway" mentality.

CARTER: But this is an example of what I'm talking about here. It -- it -- it -- just was as a non-lawyer, as a non-investigator, it would appear to me, you have got a hell of a case.

COMEY: And I'm telling you do, and I hope people take the time to understand why.

CARTER: Mr. Chairman, I yield back.

CHAFFETZ: Thank the gentleman. I will now recognize the gentleman from Arizona, Mr. -- Mr. Goshar. Oh, let's go ahead and go to the gentleman from South Carolina, Mr. Mulvaney first.

MULVANEY: Thank you gentleman. Director Comey, earlier today you heard a long list of statements that Ms. Clinton has made previously, both to the public and to Congress that were not factually accurate.

I think you went down the whole long list. When she met with you folks on Saturday last week, I take it she didn't say the same things at that interview?

COMEY: I'm not equipped sitting here without the 302 in front of me to answer in that broad...

MULVANEY: But it's your -- it's your testimony...

COMEY: But I have no basis -- we do not have a basis for concluding she lied to the FBI.

MULVANEY: Gotcha. Did anybody ask her on Saturday, why she told y'all one thing and told us another?

COMEY: I don't know as I sit here. I mean, I can -- I'll figure that out.

MULVANEY: Would that have been of interest to you in helping to establish intent?

COMEY: It could have been, sure.

MULVANEY: More importantly I think, did anybody ask her why she set up the email system as she did in the first place?

COMEY: Yes.

MULVANEY: And the answer was convenience?

COMEY: Yeah, it was already there. It was a system her husband had and so she just jumped on to it.

MULVANEY: Were you aware that just earlier this week, her -- her assistant actually said it was for an entirely different reason? It was to -- it was to keep emails from being accessible, and that it was for concealment purpose. So she was -- Huma Abedin was asked in her deposition why it was set up.

And it was said, to keep her personal emails from being accessible. To the question, to whom? To anybody. Where you aware of that testimony?

COMEY: Generally, yes.

MULVANEY: OK. So here's -- here's sort of the summary I take from what we've done today, which is that over the course of the entire system, what she did, she intentionally set up a system. According to your -- to your testimony, your findings, she was careless regarding its technical security.

I think you said, that even a basic free account, a Gmail account had better security than she had. And she did that according to her own staffer's sworn deposition, "For the purpose of preventing access to those emails." As a result of this, she exposed top secret information to potential hack by foreign actors. You've seen the emails. We have not.

I think you said earlier that the emails could be of the sort that would put national security at risk. And I think we had testimony earlier that -- and got you to -- to acknowledge that it might even put our agents overseas at risk. COMEY: Yeah, I don't think I agree with that. But, it's still important.

MULVANEY: Okay, all right. She kept all of that secret until after she left the State Department. She lied about it, or at least made untrue statements about it, after it finally came to light. She thereafter ordered the destruction of evidence, evidence that was destroyed so thoroughly, that you folks could not do an adequate recovery.

Yet she receives no criminal penalty. So I guess this is my question to you, are we assume, as we sit here today, that if the next President of the United States does the exact same thing on the day he or she is sworn into office, sets up a private email service for the purpose of concealing information from the public or from anybody, that as a result of that, potentially exposes national security level information to our enemies, lies about it and then destroys the evidence during an investigation, that there be no criminal charges, if you're the FBI Director, against that person?

COMEY: Yeah, that's not a question the FBI Director should answer. I mean, I ...

MULVANEY: No, I'm asking you, I'm asking you if, if she does the exact same thing as President as she's done today, your result would be the exact same as it was 40 hours ago. There would be no criminal findings, right?

COMEY: If the facts were exactly the same?

MULVANEY: Right.

COMEY: And the law was exactly the same?

MULVANEY: Right.

COMEY: Yeah, the result would be the same.

MULVANEY: And I guess under the theory that if there's, the law is to be equally applied to everybody. That if a White House staffer does the exact same thing, for the exact same purpose and exposes the exact same risks, that there'll be no criminal action against that person.

It could be, as you've mentioned administrative penalties, there are no administrative penalties as I understand it, by the way, against the President, correct?

COMEY: I don't think so, but I'm not at ...

(CROSSTALK)

MULVANEY: I don't think there are either. I don't think, I don't think you can take away the President's top security clearance and I'm pretty sure you can't fire the President, because we've tried.

Not only would a staffer not have any criminal charges brought against them, but it, I suppose a summer intern could do the exact same thing under the theory that, we're going to apply the law equally regardless of who the people are.

My question to you is this, and it's not a legal question, it's, I guess it's a common-sense ordinary question that folks are asking me, from a national security standpoint, somebody who used to lecture on that, does that bother you?

COMEY: The mishandling of classified information bothers me no matter what circumstance it occurs in, because it has national security implications.

MULVANEY: Does it bother you that the precedent that you are setting today, may well lead to a circumstance where our top secret information continues to be exposed to our potential enemies?

COMEY: No, in this sense, the precedent that I'm setting today is my absolute best effort to treat people fairly without regard to who they are. If that continues to be the record of the FBI and Justice Department, that's what it should be.

The rest of the implications in your question, are beyond that.

They're important, but they're not, they're not for the FBI to answer. We should, we should aspire to be apolitical, facts in the law, treat Joe the same as Sally as Secretary so-and-so. That's my goal.

MULVANEY: If you would come to a different decision, I, by the way, I, I tend to (inaudible) agree everything you just said, if you'd come to a different decision, do you think it would have a different precedential value, that would keep our information more safe?

COMEY: If we decided to recommend criminal ...

MULVANEY: Yes Sir.

COMEY: Charges here? I don't know, that's a good question. I don't know. I could, I could argue it both way, I guess I'm a lawyer, I can argue everything both ways, but I could argue that both ways.

MULVANEY: All right, thank you Director Comey. Thank you Mr. Chairman.

COMEY: Yeah.

CHAFFETZ: Thank you Gentlemen. Now recognize the gentlemen from Arizona, Mr. Gosar, for five minutes.

GOSAR: Thanks Mr. Chairman. Thank you Mr. Comey for being here. My, my colleague alluded to Brian Pagliano, the IT advisor and were you made aware of the deal of immunity with him?

COMEY: I am aware.

GOSAR: Now that Attorney General Lynch has stated there'll be no charges, there's many that suspect that in his (inaudible) that he failed to answer questions in his congressional deposition, that he had something to hide. Why did your investigators at the DOJ decide it was necessary to offer Mr. Pagliano immunity?

COMEY: As I said in response to your earlier question, I need to be more thoughtful about what I say about an immunity deal in public. May be totally fine, just don't want to screw up because we're doing this quickly.

GOSAR: Okay.

COMEY: In general I can answer, because I've done it many times as a Prosecutor. You make a grant of immunity in order to get information that you don't think you could get otherwise.

GOSAR: But you know that there maybe something there in hindsight, right? You're looking, you're looking ahead because of the pertinent information this person possesses?

COMEY: Right, they may have, they, you believe they have relevant information to the investigation.

GOSAR: So, did the investigators draft an interview report known as a 302 with Mr. Pagliano?

COMEY: Yes.

GOSAR: Do you have any importance of this case where you commit to voluntarily disclosing the 302's for review of Brian Pagliano and other witnesses interviewed on, as part of your investigation?

COMEY: I'll commit to giving you everything I can possibly give you under the law, and to doing it as quickly as possible. That's said then, that means I got to go back and sort it out. For example, the 302 of Secretary Clinton, it's classified at the TSSCI level, so we got to sort through all that, but we'll do it, we'll do it quickly.

GOSAR: Yeah, I know you've done this, because you've done this for Lois Learner and other cases, so we would expect that. Now, Director Comey, Hillary Clinton testified before Congress and told the American people multiple times that she never emailed any classified information to anyone on her private email servers. Your investigation revealed a 110 of Clinton's emails, 52 email chains contained classified information. Clinton told the American people, and I quote, "The laws and regulations in effect when I

was Secretary State, allowed me to use my email for work. This is undisputed." Your investigation revealed that that also wasn't true. Clinton claimed she turned over all her work related emails.

Your investigator, investigation revealed that this wasn't also true. Clinton claimed that there was no security breaches and her private servers had numerous safeguards. Your investigation revealed eight email chains on Clinton's private servers containing top secret information. And that it was possible, hostile, "Hostile actors gained access to sensitive information."

Further, multiple people she emailed with regularity were hacked by hostile actors and her private servers are less secure than a Gmail account, making a security breach all the more likely. Director Comey, it's a federal crime, as you know, to mishandle classified information in a grossly negligent way, and you stated Clinton and her colleagues were extremely careless.

Clinton was publicly, has publicly stated she was well aware of the classification requirements. Then she broke the law anyway. Multiple people have been prosecuted for less and there's a growing trend of abuses in senior level employees.

The only difference between her and others, is her total resistance to acknowledge, to acknowledge her irresponsible behavior, that jeopardized our national security and the American people. I think you should have recommended Clinton be prosecuted under Section 793, or Section 1024 or Title 18.

If not who, if not now, when? Your recommendation deprived the American people of their opportunity for justice in this matter.

There shouldn't be a double standards for the Clintons and they shouldn't be above the law. With that, I'm going to yield the rest of my time, gentlemen from South Carolina, Mr. Gowdy.

GOWDY: Thank you Doctor Gosar. Director Comey, I want to go back to the issue of intent for just a second. We could disagree on whether or not it's an element of the offense, let's assume for the sake of argument, that you're right and I'm wrong and that it is an element of the offense.

Secretary Clinton said that she was, "Well aware of classification requirements". Those are her words, not mine and not yours. So if she were, "Well aware of classification requirements", how did that impact your analysis of her intent? Because I've heard you this morning, describe her as being less than sophisticated. She disagrees with that.

COMEY: Well, I was talking about technical sophistication. The question is, I would hope everybody who works in the Government is aware of classification requirements. The question then is, if you mishandle classified information, when you did that thing, did you know you were doing something that was unlawful? That's the intent question.

GOWDY: All right, well you and I are going to have to get together some other time and discuss all the people we prosecuted who were unaware that they were breaking the law. That, there are lots of really dumb defendants out there, who don't know that what they're doing is against the law. But let's go with what you say ...

COMEY: I disagree. I, you may have prosecuted a lot of those folks. I did not prosecute all those folks.

GOWDY: I was a gunner prosecutor and you were a white collar prosecutor. Trust me, there, there are lots of people who don't know you can't kill other people. Let me ask you this, on the issue of intent, you say it was convenience, okay? You're a really smart lawyer, if it were convenience Director, she wouldn't have waited two years to return the documents and she wouldn't have deleted them four years after they were created.

So you can't really believe that her intent was convenience when she never turned them over until Congress started asking for them, could you?

COMEY: Yeah my focus, and I hope I made this clear, my focus is on, what was the thinking around the classified information. I mean it's relevant why the system was set up and the thinking there. But she didn't, I don't understand her to be saying, we'll I think I've said it already, that, that's my focus.

GOWDY: So, I know I'm out of time, but, but it just strikes me, you are reading a specific intent element into a gross negligence statute, not even general intent?

CHAFFETZ: Gentlemen's time.

GOWDY: A specific intent ...

CHAFFETZ: Gentleman's time has expired.

GOWDY: Element.

COMEY: Yeah. Is that? Oh, sorry.

CHAFFETZ: Go, the Director can answer. COMEY: I enjoyed, I enjoyed talking with him. The, the question you've got to ask is, why is it that the Department of Justice, since 1917, has not used that gross negligence statute for charging at once in an espionage case. And whether their decision was smart or not, that is the record of fairness.

And so you have to decide, do I treat this person against that record? And if I do, is that a fair thing to do? Even if you're not worried about the constitutionality of it, and my judgment is, no reasonable prosecutor would do that. That would be celebrity hunting. That will be treating this person differently than John Doe.

MULVANEY: Director, I want to follow up on that.

Why did you do what you did? My interpretation of what the FBI is supposed to be doing, is to come to a determination of the facts and then turn it over to a prosecutor. You were a prosecutor but you are not a prosecutor now.

COMEY: Right.

MULVANEY: It is unprecedented that an FBI Director gave the type of press conference that he did and took a position that an unreasonable prosecutor would only take this case forward. Why would do you that?

COMEY: Yes, it's a great question.

Everything I did would have been done privately in the normal course. We have great conversation in the FBI, as prosecutors we make recommendations, we argue back and forth. What I decided to do was offer transparency to the American people about the "whys" of that, what I was going to do because I thought it was very, very important for their confidence in the system of justice. And within that their confidence in the FBI.

I was very concerned that if I didn't show that transparency, that in that lack of transparency people would say, "what is going on here -- something seems squirrely here? So I said I would do something unprecedented because I think it is unprecedented situation.

Now, the next Director who is criminally investigating one of the two candidates for president may find him or herself bound by my precedent. OK, if that happens in the next 100 years, they will have to deal with what I did. I decided it was worth doing.

CHAFFETZ: Mr. Cummings.

CUMMINGS: Director, I have just one question.

I'm sitting here listening to this and I really -- this is something that bothered me in the Lois Lerner case and in this case. I'm wondering of what your opinion -- Ms. Lawrence talked about this -- the chilling effect of your having to come here and justify your decisions.

I know that you have been really nice and you explained why you did what you did and I'm glad you are doing it, but -- you know, do you at all -- taking off -- I'm talking about -- here you have people making decisions and then being pulled here in the Congress to then say - OK, to be questioned about the decisions. At what point, or do you even think about it becoming a chilling effect? Because most people when their decision is made, they don't get this kind of opportunity.

As you well know, there are no statements. They either get indicted or they are not. I know you see this as a special case. I'm wondering whether you agree with Ms. Lawrence that we may be just going down a slippery slope? That's all I want to know.

COMEY: My honest answer is I don't think so.

When I talked to the Chairman, I agreed to come because I think the American people care deeply about this. There's all kinds of folks watching this at home or being told, "well, lots of other cases are being prosecuted and she wasn't." I want them to know that's not true.

I want to have this conversation. I welcome the opportunity. Look, it's a pain. I have had to go to the bathroom for about an hour but is...

CHAFFETZ: Don't worry, we're half way done.

COMEY: It is really important to do because this is an unprecedented situation.

Transparency is the absolute best thing for me and for democracy. And I realize Mr. Chairman, my folks told me I screwed up one fact that I should fix. I was mis-remembering, in the Petraeus case, we didn't find the note books in the attic, we found it in his desk. So I wanted to make sure I was fair to him about that.

I really don't think it has a chilling effect. Again, if there is another presidential candidate being investigated by the FBI, maybe they will be bound by this. Lord willing it will not happen again, certainly, my 2,619 days left on this job. It won't happen on my term but if it does, I won't be chilled.

CHAFFETZ: If we need a humanitarian break just give me a cue.

COMEY: I feel like we are almost done.

CHAFFETZ: We're on the right trajectory, yes.

We would like to recognize the gentleman from Alabama, Mr. Palmer for five minutes.

PALMER: Thank you Mr. Chairman.

Director Comey, your statement on Tuesday indicated that Secretary Clinton and her colleagues sent or received e-mails marked classified on an unsecured private e-mail server that may or may not have been hacked by foreign power. Are you aware that teenage hackers hack personal accounts of CIA Director John Brennan, the Director of U.S. National Intelligence, James Clapper and FBI deputy director Mark F. Giuliano?

COMEY: I am intensely aware. They didn't hack in the way we normally think of it, but they got there by treachery, got access to their accounts.

PALMER: The point I want to make that is that these were personal - commercial protected personal e-mail accounts that contained no classified information. Yet, Ms. Clinton used her personal e-mail, not a commercial account, on a server in her basement without even this basic protection, and transmitted classified information through that account.

If teenagers in England were able to hack personal e-mail accounts of the Director of the CIA, the Director of the U.S. National Intelligence, and the Deputy Director of the FBI, does it concern you that sophisticated hackers or hackers working for foreign interest never attempted? I mean, does it seem reasonable that they never attempted or were never successful in hacking Mrs. Clinton's personal e-mail accounts or one of her devices?

COMEY: It concerns me a great deal. That is why we spent so much time trying to see if we could figure out -- see finger prints of that.

PALMER: You said in your statement regarding your recommendation not to prosecute - to be clear, this is not to suggest that in similar circumstances a person who engaged in this activity would face no consequences. To the contrary, these individuals are often subject to security or administrative sanctions, that is not what we are deciding here. Do you stand by that?

COMEY: Yes.



PALMER: I thought you would.

You also said, "you could not prove intent." I want to touch on a couple things here. One, a reasonable person would not have compromised classified information by keeping that information on inadequately secured private devices. In other words, such a person would be viewed as unreasonable and unsuitable for any position in our government that included any responsibility for handling and protecting classified information. Would you agree? COMEY: I would agree it would be negligent. I can't prejudge a suitability determination but it would be definitely be stared at very hard.

PALMER: Let me tell you why I bring this up.

I sat up here next to Mr. Hurd who served our country valiantly, put his life on the line. I don't know if you can sense the passion and intensity of his questions, because he knows people whose lives are on the line right now. In regard to his questions, if someone -- a U.S. intelligence agent had mission compromised or worse, had been killed, or injured, or captured because of carelessness of someone responsible for protecting classified information, would intent matter at that point?

COMEY: In deciding whether to prosecute the person, of course. Yes, that's the answer. Of course, it would - the matter would be deadly serious, but the legal standards would be the same.

PALMER: What we are dealing with in this hearing is not the lack of due diligence in handling routine government data or information, but the lack of due diligence by Secretary Clinton and her carelessness in handling classified information that could have compromised American national security - as Mr. Hurd pointed out, the missions and personal safety of our intelligence agents. That troubles me greatly.

And I think the issue here -- I do respect you. I have spoken in your defense many times, at this point to my detriment. I do believe that your answers are honest and factual.

Based on your answers regarding plus Mrs. Clinton's use of e-mail and based on what we know, it seems to me that she is stunningly incompetent in understanding of basic technology of e-mail and stunningly incompetent in handling classified information. I mean, you should never associate the Secretary of State and classified information with the word careless. It doesn't matter.

I mean, we have to exercise the utmost due diligence. All of us in this Committee do in handling this. You do in prosecuting cases and I see that in what you are trying to do. I just think we need to leave here with this understanding that there is more to this story than we know.

If a foreign hacker got into this I can assure you that they know what was in those e-mails that were deleted. They read them all. They know what is in the e-mails that we never received.

Mr. Chairman, I yield back.

CHAFFETZ: I thank the gentleman. We will now go to the gentleman from Wisconsin, Mr. Grothman for five minutes. GROTHMAN: Thank you. Thanks for coming on over to the Rayburn building.

As I understand it your testimony today, is that you have not brought criminal charges against Hillary Clinton in part because you feel you can't prove guilt beyond a reasonable doubt, and in part because

she didn't understand the laws with regard to e-mails, and servers, and that sort of thing. Question for you. When she erased these e-mails -- you, however, did say that if somebody did this under you there would be consequences.

If somebody did exactly what Mrs. Clinton did or was one of your lieutenants or you think (ph) one of the lieutenants under the CIA or some other agency that deals with top secret documents, what would you do to those underlings (ph)?

COMEY: I would make sure that they were adjudicated through a security disciplinary proceeding to figure out what are all circumstances and what punishment discipline is appropriate that could range from being terminated to being reprimanded and a whole spectrum between suspensions, loss of clearance, it's a bunch of different options.

GROTHMAN: OK but somehow let's say one of your top two or three lieutenants you find out that they've had this separate server out there and they're keeping secret documents, flipping them around, do you think they should be fired? Not criminally charged but fired?

COMEY: Yeah, I don't think it's appropriate to say. I think it should go through -- we have a very robust process. There ought to be a very intense suitability review of that person.

Maybe there's something we're missing that would mitigate the punishment we would impose but it would have to go through our system.

GROTHMAN: OK next question. Just for the listening audience, here. At first when I hear about erasing e-mails I think it's like you know, like on my phone where I might erase an auto insurance solicitation.

The erasers here, however, were not just Mrs. Clinton pressing delete. Or they -- there was a much greater effort made to make sure that these e-mails would never be recovered. Do you want to comment on what was done to erase the e-mails?

COMEY: I think what you're referring to is after her lawyers -- her lawyers say -- although I don't -- I'm not able to verify this. There were 60,000 or so left at the end of 2014.

They went through them in a way I described in my statement two days ago and then they produced the ones that were work related and then they erased from their system the ones that were not work related. That was done using technical tools basically to remove them from lawyers -- from the servers to wipe them away.

GROTHMAN: OK so in other words, the effort was not just Mrs. Clinton, where somebody went delete, delete, delete. They went above and beyond that so that your top technical experts could not get back at these e-mails, correct?

COMEY: Right, not fully. We were able to...

GROTHMAN: You recovered a few.

COMEY: Yeah, we can go up through the lawyer's laptops and see some traces but not fully -- not fully recover them.

GROTHMAN: OK now, the information that I have and you can correct me if I'm wrong implies that these erasers were done in December of 2014 after the Benghazi scandal broke, after there were questions about the Clinton Foundation.

Did you ever come across why she allowed these e-mails to sit out there even for years after she stopped being Secretary of State but all of a sudden as these other scandals began to bubble up she felt -- or her lawyers felt -- that she had to erase them?

COMEY: Yeah I think the way the process worked is she had e-mails that were just on her system. She actually had deleted some I think over time as an ordinary user would. And then the State Department contacted her and other former secretaries and said we have a gap in our records, we need you to look and see if you have e-mails and give them back.

She then tasked her lawyers to engage in this review process of that 60 some thousand and make that cut and then was asked by her lawyers at the end, do you want us to keep the personal e-mails. And she said I have no use for them anymore.

It's then that they issued the direction that the technical people delete them.

GROTHMAN: Do you think Mrs. Clinton knew that the technical people were erasing these e-mails so that even your top technical experts could recover them?

COMEY: Based on my sense now for technical sophistication, I -- I -- I don't think so.

GROTHMAN: You don't think the lawyers told her that that's what they were doing? Erasing all these e-mails that everybody on this committee wanted to look at?

COMEY: Yeah -- and I'm sure we've asked this...

GROTHMAN: What type of lawyer wouldn't tell their client they were doing that? But...

COMEY: I don't think -- I think -- I think our evidence -- our investigation is they did not. That they asked her, do you want to keep them and they said no and they said wipe them away.

GROTHMAN: OK. Now, as I understand it, the goal was just to erase personal e-mails but you have recovered e-mails that wouldn't be considered personal e-mails at all.

COMEY: Correct.

GROTHMAN: OK I don't know that you didn't recover them (ph) but based upon the e-mails that you recovered presumably, her lawyers or somebody was going well beyond personal e-mails. Is it possible we'll never be able to recover e-mails that dealt with the Clinton Foundation or dealt with the Benghazi scandal?

Is it possible because of what her lawyers did that they were erasing things that were incriminating, maybe involving items that you were not particularly investigating but these have now been destroyed forever?

COMEY: If it's possible -- as I said in my statement on Tuesday, we did not find evidence to indicate that they did the eraser to conceal things of any sort. But it's possible, as I said on Tuesday, that there are work related e-mails that were in the batch that were deleted.

GROTHMAN: I'm sorry, when you go to this length to make sure you can never recover the e-mails who are erased, wouldn't you think the intent is to make sure nobody looks at them again?

Why -- why -- otherwise, couldn't you just (inaudible).

CHAFFETZ: I thank the gentleman. We'll give the director time to -- if he wants to respond.

COMEY: I guess it's a bit circular. You delete because you want to delete. But that -- that -- what I mean is we didn't find any evidence of evil intent and intent to obstruct justice.

GROTHMAN: You wouldn't have been able to because you don't know what was deleted.

CHAFFETZ: I thank the -- we'll now recognize Mr. Russell of Oklahoma, for five minutes.

RUSSELL: Thank you, Mr. Chairman.

Director Comey, thank you for your long service and your long suffering. I think we're toward the end of the line, here. I want to say for the record with regard to national security, I sleep a little easier at night knowing that you're at the helm of the FBI. And thank you for your dedicated service and your integrity. You have stated in your statement and also multiple times here, that there should be consequences for the mishandling of state secrets. If I hold a top secret SCI in the bureau and I did hold one when I was in the United States Army in a career of service.

I handle classified information here, if I -- if I held that in the FBI and you discover that I mishandled state secrets on a private server in my basement, would I be trusted by the bureau to further handle top secret information?

COMEY: Maybe not. You would go immediately through a security process to review whether you should continue working for us and if you do what clearances you should retain.

RUSSELL: If I violated the handling of state secrets in the FBI, would you consider me the best suitable candidate for promotion and higher responsibility?

COMEY: It would be a serious concern and we would stare at it very hard in a suitability review.

RUSSELL: Although you have recommended to the Department of Justice that no criminal charges be brought to bear (ph), are you recommending to the Department of Justice that there be no consequences for mishandling of state secrets?

COMEY: No, my recommendation was solely with respect to criminal charges.

RUSSELL: What would you recommend?

COMEY: I don't think it's for me to recommend.

RUSSELL: But you do -- you've been very open and even stated why you felt that these were unique sets of circumstances that called for greater transparency. You do make recommendations routinely, as you've stated here today.

We're talking top secret SCI information that's been mishandled. You would take a dim view to that if I were an agent. What consequence -- this is what the American people feel exasperated about. There seems to be no consequence.

So in a case like this, if it's not going to be criminal charges recommended, what are the American people to do to hold their officials accountable if maybe they shouldn't be trusted for further promotion and higher responsibility?

COMEY: And what I -- and what I meant earlier is that's not a question that the American people should put to FBI director. I can answer about things within my remit but that -- I understand the question but it's not one for me to answer in my role.

RUSSELL: Well, I hope it's one that the American people answer in the future because we do have a choice about those that would mishandle information. And while we're all fallible human beings and we all make mistakes, in a case like this, for decades of my service in the army infantry and handling top secret SCI information and then as a member of Congress, we know those responsibilities.

Is it your view and others that have interviewed Mrs. Clinton that she would not have known what those responsibilities were?

COMEY: No, I think in a -- in a way, you would expect she understood the importance of protecting classified information. RUSSELL: Well, I would agree with that and there's been a breach. I think that the American people demand a consequence, that they demand an accountability. And I think it's important to uphold the form of our Republican government that we have a consequence. And with that, thank you for your appearance here today.

And I would like to yield the remainder of my time to Chairman Chaffetz.

CHAFFETZ: Thank you, I think if you yield back, through mutual agreement Mr. Cummings and I have agreed that I do have about a dozen or so quick follow up questions.

You have been most generous with your time but I would like to get through this last bit and again, we'll do so with equal time. How did the Department of Justice, or how did the FBI view the incident in which Hillary Clinton instructed Jake Sullivan to take the markings off of a document that was to be sent to her?

COMEY: Yes, we looked at that pretty closely. There was some problem with their secure fax machine and there was an e-mail in which she says in substance, take the headers off of it and send it as a non-paper and as we've dug into that more deeply, we've come to learn that at least this one view of it that is reasonable, that a non-paper in State Department parlance (ph) means a document that contains things we could pass to another government.

So essentially take out anything that's classified and send it to me. Now it turned out that didn't happen, we actually found that the classified fax was then sent, but that's our best understanding of what that was about.

CHAFFETZ: So this was a classified fax?

COMEY: Correct.

CHAFFETZ: So Hillary Clinton sends to Jake Sullivan, Jake -- well let me go back, Jake Sullivan says they say they had issues sending secure fax, they're working on it. Hillary Clinton sends to Jake Sullivan, if they can't, turn into non-paper with no identifying heading and send non-secure. So you're telling me it's a classified piece of information, she's taking off the header and she's instructing them to send it in a non-secure format. Is that not intent?

COMEY: Well that actually caught my attention when I first saw it and what she explained to us in her interview was, and other witnesses too as well, is what she meant by that is make it into a non-classified document, that's what a non-paper is in their world, and send it to us because I don't need the classified stuff I just need the...

CHAFFETZ: Then why take off the heading if it's going to be turned into a non-classified document, why take off the heading?

COMEY: I assume because it would be non-classified anymore so you wouldn't have a classified header on it. Because what she said during her interview...

CHAFFETZ: Because she wanted to be technically correct, is that what you're saying, that you're...

COMEY: No, I think what she said during the interview is I was telling him in essence, send the unclassified document, take the header off, turn it into a non-paper, which is a term I had never heard before but I'm told by people I credit that in diplomatic circles something we can pass to another government...

CHAFFETZ: You are very generous in your accepting of that. Did any unclear individuals receive any classified information over Hillary Clinton's server?

COMEY: Did any unclassified (ph) people receive classified information? I don't think any of the correspondents on the classified e-mails were unclassified people. These were all people with clearances working, doing State Department business, on the unclassified (ph) system.

CHAFFETZ: Did Mr. Pagliano have the requisite security clearance?

COMEY: As I sit here, I can't remember. He was not a participant on the classified e-mail exchanges though.

CHAFFETZ: But he was running the server, he set it up...

COMEY: That's a different question. That's -- I'm sorry I misunderstood your question then. Yes, there's no doubt that uncleared people had access to the server because even after Pagliano there were others who maintained the server who were private sector folks.

CHAFFETZ: So there are hundreds of classified documents on these servers, how many people, without a security clearance had access to that server?

COMEY: I don't know the exact number as I sit here, it's probably more than two, less than ten.

CHAFFETZ: I appreciate your willingness to follow up with this. Did Secretary Clinton's attorneys have the security clearances needed?

COMEY: They did not.

CHAFFETZ: Does that concern you?

COMEY: Oh yes, sure.

CHAFFETZ: Is there any consequence to an attorney rifling through Secretary Clinton's, Hillary Clinton's e-mails without a security clearance?

COMEY: Well, not necessarily criminal consequences but there's a great deal of concern about an uncleared person not subject to the requirements we talked about in the read (ph) in (ph) documents potentially having access. That's why very, very important for us to recover everything we can back from attorneys.

CHAFFETZ: So what's the consequence? I mean here Hillary Clinton gave direction to her attorneys without a security clearance to go through documents that were classified.

COMEY: I think that's what happened in fact, whether that was the direction is a question I can't answer sitting here.

CHAFFETZ: See -- you're parsing (ph) that one a little bit...

COMEY: No, no you were just asking me -- I don't...

CHAFFETZ: What's the consequence? They don't work for the government, we can't fire them so is there no criminal prosecution of those attorneys, should they lose their bar license, what's the consequence to this?

COMEY: But they acted with criminal intent or active with some mal-intent...

CHAFFETZ: What you're telling us is it doesn't matter if you have a security clearance or not because I may be innocent enough, hello I'm just an attorney, I like the secretary, I'm trying to help Hillary Clinton, I'm not trying to give it to the Chinese or the Russians, I'm just trying to help her. So there's no intent? It doesn't matter if these people have security clearances?

COMEY: Of course it matters, that's why I said...

CHAFFETZ: But there's no consequence, Director, there's no consequence.

COMEY: Well, I don't know what consequence you'd have in mind, very...

CHAFFETZ: Prosecute them.

COMEY: An attorney for receiving from his client information that ends up being classified.

CHAFFETZ: I asked you at the very beginning, does Hillary Clinton, is there a reasonable expectation that Hillary Clinton would send and receive if not day -- hourly if not daily, classified information. That's reasonable to think that the Secretary of State would get classified information every moment. She's not the head of Fish and Wildlife so the idea that she would turn over her e-mails, her system, her server to, what it sounds like, up to ten people without security clearances and there's no consequence. So why not do it again?

COMEY: That's a question I don't think you should put to me, you're asking -- I'm talking about my criminal investigation.

CHAFFETZ: But how can that -- there's no intent there, does she not understand that these people don't have security clearances?

COMEY: Surely she understands at least some of them don't have security clearances.

CHAFFETZ: So she understands they don't have security clearances and it's reasonable to think she's going to be in (ph) classified information. Is that not intent to provide a non-cleared person access to classified information?

COMEY: You're mixing it up though. I don't think it's reasonable to assume -- mixing me up, sorry, not your fault -- that someone who is maintaining your server is reading your e-mails, in fact I don't think that's the case here. There's a separate thing which is when she is engaging counsel (ph) to comply with the State Department's request, are her lawyers then exposed information that may be on there that's classified, so...

CHAFFETZ: And did they see any classified information? Did Hillary Clinton's attorneys, without security clearances, see classified information?

COMEY: As (ph) I sit here, I don't know the answer to that.

CHAFFETZ: It has to be yes Director, you came across 110 and they said they went through all of them.

COMEY: Well, they didn't read them all they just looked at headings (ph)...

CHAFFETZ: So their excuse is we saw the e-mails but we didn't read them?

COMEY: You know I think I said this in my statement on Tuesday, they sorted the e-mails by using headers and search terms to try and find work related e-mails, we read them all.



CHAFFETZ: I know that you read them all. Do you think it's reasonable or unreasonable to think that her attorneys, under her director, did or did not read those e-mails? Because there were -- let me go back to this, yes or no, were there or were there not classified e-mails that her -- that Hillary Clinton's attorneys read?

COMEY: I don't know whether they read them at the time.

CHAFFETZ: They -- did Hillary Clinton give non-cleared people access to classified information?

COMEY: Yes. Yes.

CHAFFETZ: What do you think her intent was?

COMEY: I think then was to get good legal representation and to make the production to the State Department. That can be a very tall order, in that circumstance (ph) I don't see the evidence there to make a case that she was acting with criminal intent in her engagement with her lawyers.

CHAFFETZ: And I'd just -- I guess I read criminal intent as the idea that you allow somebody without a security clearance access to classified information. Everybody knows that Director, everybody knows that. I've gone way past my time, let me recognize Mr. Cummings for an equal amount of time. CUMMINGS: Director thank you for your patience. I wanted to clear up some things. I want to make sure I understand exactly what you testified to on the issue of whether Secretary Clinton sent or received e-mails that were marked as classified.

On Tuesday you stated, and I quote, "only a very small number of the e-mails containing classified information bore markings, and I emphasis bore markings, indicating the presence of classified information."

Republicans have pounced on this statement as evidence that Secretary Clinton lied. But today we learned some significant new facts and I hope the press listens to this. First you clarify that you were talking about only three e-mails out of 30 thousand. Your office is reviewed. Is that right?

COMEY: Three, yes.

CUMMINGS: Three out of 30 thousand, is that right?

COMEY: Yes at least 30 thousand.

CUMMINGS: At least 30 thousand. Second, you confirmed that these three e-mails were not properly marked as classified at the time based on Federal guidelines and manuals.

They did not have a classification header; they did not list the original classifier, the agency, officer of origin, reason for classification, or date for declassification. Instead these e-mails included only a single quote see parenthesis, end parenthesis and then end of quotation mark for confidential on one paragraph lower down in the text, is that right?

COMEY: Correct.

CUMMINGS: Third, you testified that based on these facts it would have been a quote "reasonable inference for Secretary Clinton to" quote "immediately" end of quote conclude that these e-mails were not in fact classified. So that was also critical new information. But there's one more critical fact that these e-mails were not in fact, and that is this Director, and to the press these e-mails were not in fact classified.

The State Department explained to us yesterday -- they reported that these e-mails are not classified and that including the little C on these e-mails was a result of a human error. The bottom line is that those little Cs should not have been on those documents because they were not in fact classified.

When Representative Watson Coleman asked you a few minutes ago about this you testified that you had not been informed. And I understand that, I'm not beating up on you I promise you. But can you tell us why Director Comey -- because I want -- because republicans are pouncing saying the Secretary lied and I want to make sure we're clear on this. Can you tell us why Director Comey did you consult, and we're just curious, did you consult about these three e-mails out of the more than 30 thousand or did this just not come up? What happened there?

COMEY: Yes I'm not remembering for sure while I'm here. I'm highly confident we consulted with them and got their view on it. I don't know about what happened yesterday. Maybe their view has changed or they found things out that we didn't know. But I'm highly confident we consulted with them about it.

CUMMINGS: So this is solely different than what we understood yesterday. Today we learned that these e-mails were not in fact classified, they should not have been included in those -- they should not have included those straight (ph) markings. They were not properly marked as classified and the Director of the FBI believes it was reasonable for Secretary Clinton to assume that these documents were not classified. Chairman, you raised a question about whether Secretary Clinton's attorneys have security clearances.

It is my understanding that they did. We can double check that, but that is my understanding. And we'll double check that. Let me move to the next topic. You explained on Tuesday that you were providing quote an update on the FBI's investigation of Secretary Clinton's use of a personal e-mail system during her time as Secretary of State. You explained that you received a referral on this matter from Inspector General of Intelligence Community on July 6th, 2016. Is that right?

COMEY: Yes.

CUMMINGS: Today 10s of thousands of Secretary Clinton's e-mails are probably available on the State Department's website. And our staff have been reviewing the e-mails that were retroactively determined to include classified information. Based on this review, it appears that these e-mails included more than one thousand individuals who sent or received the information that is not redacted as classified. Let me make that clear. About one thousand people sent or received the same information that was contained in Secretary Clinton's e-mails and retroactively classified. Were you aware of that?

COMEY: No, the number doesn't surprised me though.

CUMMINGS: Why not?

COMEY: Because this was -- they were doing the business of the State Department on this e-mail system, so I don't know how many thousands of people work in the State Department. But it doesn't surprise there'd be lots of people on these chains. CUMMINGS: And would you agree that something needs to be done with regard to this classification stuff because classified things are classified then they're not classified, then they are retroactively classified. I mean does that go into your consideration when looking at a case like this?

COMEY: Yes I don't pay much attention to the up classified stuff because we're focused on intent. So if someone classifies it later, it's impossible that you formed intent around that because it wasn't classified at the time. I know that's a process -- I wasn't familiar with it before this investigation, but I don't spend a lot of time focused on it in the course of a criminal investigation.

CUMMINGS: I understand. We also reviewed who these people are and they include a host of very experienced career diplomats with many years of experience. So let me ask you this. When you received this referral from the Inspector General about Secretary Clinton's e-mails, did you also receive any referrals for any of the other one thousand people who sent and received those e-mails? Did you?

COMEY: No.

CUMMINGS: I understand that...

COMEY: Well I should stop there. Within the scope of our investigation was a group of people closer to the Secretary. We looked at their conduct. I forget what the number is -- four or five of them, but then the hundreds of others that may have been on the chain were not the subjects of the investigation.

CUMMINGS: OK, I have 30 more seconds. I understand that Secretary Clinton is the only one running for President, but it does not make sense that she was singled out for a referral to the FBI. Do you agree with that?

COMEY: I don't think I agree with that.

CUMMINGS: So let's go back to Colin Powell; do you think you ought to look at his situation or Condoleezza Rice?

COMEY: Well there's been no referral on them. I know only brief (ph) of service (ph) superficial (ph) level of their circumstances this case strikes me as very different from those and not an inappropriate referral from the Inspector General.

CHAFFETZ: Thank you gentlemen. Who was Hillary Clinton e-mailing that was hacked?

COMEY: Yes I don't want to say in open forum. We can get you that information, but again, I don't want to give any hostile adversaries insight into who -- what we figured out.

CHAFFETZ: Fair enough.

COMEY: So I know the names, but...

CHAFFETZ: Understood, understood. Was there any evidence of Hillary Clinton attempting to avoid compliance with the Freedom of Information Act?

COMEY: That was not the subject of our criminal investigation, so I can't answer that sitting here.

CHAFFETZ: It's a violation of law, is it not?

COMEY: Yes, my understanding is there are civil statutes that apply to that. I don't know...

CHAFFETZ: So let's put the boundaries on this a little bit. What you didn't look at. You didn't look at whether or not there was an intention or the reality of non-compliance with the Freedom of Information Act?

COMEY: Correct.

CHAFFETZ: You did not look at testimony that Hillary Clinton gave in the United State Congress, both the House and the Senate.

COMEY: To see whether it was precarious in some respect?

CHAFFETZ: Yes.

COMEY: No we did not.

CHAFFETZ: Did you review and look at those transcripts as to the intent of your recommendation.

COMEY: I'm sure my folks did. I did not.

CHAFFETZ: So OK, and this is an important point because I think those of us in Congress, knowing that you got a criminal referral from an Inspector General, thought that you were also looking at whether or not Hillary Clinton had provided false testimony, which is a crime, to the Congress, but you didn't look at that.

COMEY: Correct. As I said, I'm confident my folks looked at the substance of the statements, try to understand the circumstances around the entire situation...

CHAFFETZ: Can you confirm that? I just want to make sure.

COMEY: Yes we'll confirm that. Also, again, maybe I'm missing this, but I don't think we got a referral from Congressional Committees -- a perjury referral.

CHAFFETZ: No it was the Inspector General that initiated this. Did the fact that Hillary Clinton refused to be interviewed by the Inspector General, what did that say to you about intent?

COMEY: At least for our criminal investigation, not particularly germane. CHAFFETZ: Are you familiar -- you're familiar there's a website, I mean lots of government agencies have a website. The State Department has a website; [state.gov](http://state.gov/). And they have a YouTube site. Videos that are uploaded to a YouTube site, would those be considered Federal Records?

COMEY: I don't know.

CHAFFETZ: So they're paid for by federal dollars. They're maintained by federal employees. Would that not be a federal record?

CHAFFETZ: Yeah I just don't know. I'm sure there's an expert who can answer that in two seconds but I'm not that expert.

CHAFFETZ: OK we've kept you here a long time. I want to follow up on that. Is the FBI still investigating Hillary Clinton's aides?

COMEY: No is the answer. The Department of Justice declined on all of those who were subjects communicating her through that e-mail system.

CHAFFETZ: What recommendations did you make about her aides?

COMEY: Same, same. We didn't recommend that anybody be prosecuted on those facts.

CHAFFETZ: And if you can help us understand who precisely had been ruled out for prosecution that would be.

COMEY: Sure.

CHAFFETZ: Did you look at the Clinton Foundation?

COMEY: I'm not going to comment on the existence or nonexistence of any other investigations.

CHAFFETZ: Was the Clinton Foundation tied into this investigation?

COMEY: Yeah I'm not going to answer that.

CHAFFETZ: The server that was set up in her home was originally set up by, you said, former President Bill Clinton.

COMEY: Correct.

CHAFFETZ: Do you know who paid for that?

COMEY: I don't sitting here.

CHAFFETZ: OK. I'll have equal time for my colleague and friend, Mr. Cummings.

CUMMINGS: I'm going to yield two minutes of my 3.43 to Mr. Lynch.

LYNCH: Thank you, Mr. Director. We're talking about hacking. And so on this committee, we -- we -- we're very much interested in cyber security. And we review a lot of the major hacks that are going on.

So just recently, I would say in the last 18 months, we've had a major hack February of 2016 at the Department Of Homeland Security and the FBI. We had a hacking group; the Site Intelligence Group reported that a group called crackers with attitude had hacked 9,000 employees' data from Department Of Homeland Security including names, e-mail addresses, locations, and telephone numbers.

Also, 20,000 FBI workers. We had another hack direct evidence obviously of those, another hack at OPM of 4.2 million current and former federal government employees. Their information had been stolen including social security numbers which are not redacted.

We had IRS in May 2015, millions -- no, I'm sorry 200,000 attempted and 100,000 were successful. We had State Department announced a breach of its computer systems after an infiltration forced the agency to temporarily shut down its classification system.

We had the United States Postal Service, 800,000 postal employees, 2.9 million customers. The White House, Washington Post reported back in -- this is back in 2014, that the White House computer was hacked.

National Oceanic Atmospheric Administration; we had -- I'm on another committee for financial services we had Verizon, USCLA health systems, thousands and thousands and thousands of employees, Anthem Health Care, Sony Pictures, Staples, Home Depot, JP Morgan -- it gets into the millions.

Community health systems, Target, TJX, all of these we have direct evidence, millions and millions and million of people their accounts being hacked. Any direct evidence that Hillary Clinton's e-mails were hacked?

COMEY: No.

LYNCH: OK.

I have no further questions. I yield back.

CUMMINGS: Mr. Director, we are about at the end. I'm gonna do a concluding statement and then I think the chairman will. I wanna -- first of all, I want to go back to something that Ms. Watson Coleman said a little earlier. As an African-American man in this country, 66 years old, moving towards the twilight of my life, we cannot allow black men to begin -- to continue to be slaughtered.

This morning I woke up to my wife literally crying, watching the tape of this guy Anton Sterling in Baton Rouge and then she looked at the one the Philandro Castle near Minneapolis.

And I hope you watch them. There's something wrong with this picture. And don't get me wrong, I am all for -- I supported police, I am a lawyer. And I know how important police are and I know there are so many great folks.

But Mr. Director, if you do nothing else in your 2,000 plus days left, you have got to help us get a hold of this issue. It is so painful. I can't even begin to tell you. And so I don't want -- I've been fortunate in my life.

I've been very fortunate that I have not been harmed by the police, but I've been stopped 50 million times. Now, with regard to this hearing I want to thank you again. You know, as I listen to you, you said something that I will never forget. And for some reason it gave me a chill.

You said there are two things that are most important to me, two things. You said my family and my reputation. My family and my reputation. And I -- I don't know whether your family is watching this but I hope that they are as proud of you as I am.

Because you are the epitome of what a public servant is all about. Sacrificing over and over and over again, trying to do the right thing, sometimes coming under ridicule, but yet still doing the right thing. And so I hope that they are proud of you.

The second thing I hope is that no matter what has happened in this hearing, I hope that you know that your reputation is still in tact. And so I conclude by summarizing that I think some of our key findings today, first the director testified that his entire team of 15 to 20 FBI investigators and analysts unanimously agree on the recommendation not to prosecute Secretary Clinton.

Second, Director Comey made crystal clear that Republican claims, some of the talking heads claims of bias are completely false. Testified that he would treat John Doe the same way he would treat Hillary Clinton, that he was forceful on that point.

Third, on the claim that Secretary Clinton sent or received e-mails that were marked as classified, that claim has now been significantly under cut. Those documents were not classified and those markings were not proper.

Finally, Republicans have repeatedly cried foul about a double standard when it comes to Secretary Clinton's e-mails. But Director Comey testified the real double standard would have been to prosecute her with this completely -- with this completely inadequate evidence. Again, director, I thank you. But I thank somebody else. I thank and having practiced law for many years and having dealt with the FBI on many cases, I want to thank the people who work with you because it's not just -- this is not just about you.

This is not just about Secretary Clinton. When we are addressing you the whole cad ray of people who give their blood, their sweat and their tears to protect us as Americans. And I just want to thank them because sometimes I think they are forgotten, unseen, unnoticed, unappreciated and unapplauded.

But today I applaud them and I thank you.

Thank you very much and I yield back. CHAFFETZ: And I thank the gentleman. And I concur with the idea that every FBI agent I have ever met has just been above reproach and they make us proud and they work hard, they put their lives on the line.

They serve overseas, they serve domestically. Can't thank them enough for what they do. And I hope that is part of the message that we carry back.

I cannot thank you personally enough, you, on a personal level, for your accessibility, your ability to get on the phone with me the same day that you make your announcement, and then in rapid fire when I

said to you, what day is best -- we're going to have to do this so which day is best for you. And you said Thursday, and here we are and doing it.

I can't thank you enough. I wish all of the government employees would have that attitude and approach. And I really do. And I can't thank you enough. I look forward to working with you and your staff as we move forward in getting this documentation, things that you can't share publicly and others.

It is the intention of the committee to -- I told Mr. Cummings here that we would come back after votes. Votes have been pushed back now a bit. So what I would like to do is to go into recess for five minutes and then we will start with our second panel.

Committee stands in recess until five minutes from now.

Thank you, again, Director Comey.



**REP. JORDAN**

CHAFFETZ: Did you review the documents where **Congressman Jim Jordan** asked her specifically and she said, quote, "there was nothing marked classified on my e-mails either sent or received," end quote?

COMEY: I don't remember reviewing that particular testimony, I'm aware of that being said, though.

CHAFFETZ: Did the FBI investigate her statements under oath on this topic?

COMEY: Not to my knowledge. I don't think there's been a referral from Congress.

CHAFFETZ: Do you need a referral from Congress to investigate her -- her statements under oath?

COMEY: Sure do.

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JORDAN: Thank you, Mr. Chairman.

Director, thank you for being with us. On Tuesday, you said, "any reasonable person in Secretary Clinton's position should have known that an unclassified system was no place for these conversations." You said on Tuesday, "some of her e-mails bore classified markings." And you also said on Tuesday there were potential violations of the appropriate statutes.

Now, I know a bunch of prosecutors back home would look at that fact pattern and look at that evidence -- you even referenced it in your opening statement, some of your prosecutor -- friends in the prosecution business have been on TV saying they would have looked at that same evidence and they would have taken it to a grand jury.

But on Tuesday, you said, and today in your opening statement, you said, "no reasonable prosecutor would bring such a case."

And then in your statement Tuesday, you cite factors that helped you make that decision and make that statement. And one of the factors you said was "consider the context of a person's actions." Typically, when I hear "context" in the course of a criminal investigation, it's -- it's from the defense side, not the prosecution side. It's at the end of the case after there's been a trial and a guilty verdict, and it's during the sentencing phase -- mitigating circumstances. That's the context we typically think about.

But you said it on the front end. You said "consider the context of the person's actions." And so I'm curious. What does "consider the context" mean? Because a lot of Americans are thinking just what the chairman talked about in his opening statement, that there are two standards: one for we the people, and one for the politically connected.

A lot of folks I get the privilege of representing back in Ohio think that when you said "consider the context," they think that's what Mr. Gowdy just talked about -- the fact that she is former first lady, former secretary of state, former senator, major party's nominee for the highest office in the land. And,

oh by the way, her husband just met with the individual you work with at an airport in Arizona five days ago.

So, you said none of that influenced your decision. But tell us what "consider the context" means. COMEY: Thank you, Mr. Jordan.

What I was trying to capture is the fact that the exercise for prosecutorial discretion is always a judgment case. It is in every single case. Among the things you consider are, what was this person's background? What was the circumstances of the offense? Were they drunk? Were they inflamed by passion? Was it somebody who had a sufficient level of education, and training, and experience that we can infer certain things from that to consider the entire circumstances of the conduct and background? I did not mean to consider political context.

JORDAN: The entire circumstances, and Mr. Gowdy just talked about this scheme -- remember what she did, right? She sets up this unique server arrange. She alone controlled it.

On the server, on that system are her personal e-mails, her work related e-mails, Clinton Foundation information, and now we know, classified information. This gets discovered. We find out this arrangement exists. Then what happens? Her lawyers, her legal team decides which ones we get and which ones they get to keep.

They made the sort on the front end. And then we find out the ones that they kept and didn't give to us, didn't give to the American people, didn't give to Congress, the ones they kept, they destroyed them. And you don't have to take my word. I'll take what you said on Tuesday, "they deleted all e-mails they did not return to the State Department, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery." Now, that sounds like a fancy way of saying they hid the evidence, right? And you just told Mr. Gowdy thousands of e-mails fell into those categories.

Now, that seems to me to provide some context to what took place here. Did Secretary Clinton's legal team -- excuse me, let me ask it this way. Did Secretary Clinton know her legal team deleted those e-mails that they kept from us?

COMEY: I don't believe so.

JORDAN: Did Secretary Clinton approve those e-mails being deleted?

COMEY: I don't think there was any specific instruction or conversation between the Secretary and her lawyers about that.

JORDAN: Did you ask that question? COMEY: Yes.

JORDAN: Did Secretary Clinton know that her lawyers cleaned devices in such a way to preclude forensic recovery?

COMEY: I don't believe she did.

JORDAN: Did you ask that question?

COMEY: Yes.

JORDAN: Do you see how someone could view the context of what she did, set up a private system, she alone controlled it, she kept everything on it? We now know from Ms. Abedin's deposition they did it for that reason, so no one could see what was there based on the depositions Ms. Abedin gave. And then when they got caught, they deleted what they had and they scrubbed their devices. Is that part of the context in evaluating this decision?

COMEY: Sure, sure. And I understand what inferences can be drawn from that set of facts, of course.

JORDAN: Mr. Chairman, I yield back.

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**Rep. Gowdy**

CHAFFETZ: Yeah. We'll now recognize the gentleman from South Carolina, Mr. Gowdy, for five minutes.

GOWDY: Good morning, Director Comey. Secretary Clinton said she never sent or received any classified information over her private e-mail. Was that true?

COMEY: Our investigation found that there was classified information sent...

GOWDY: So it was not true?

COMEY: That's what I said.

GOWDY: OK. Well, I'm looking for a little shorter answer so you and I are not here quite as long. Secretary Clinton said there was nothing marked classified on her e-mails, either sent or received. Was that true?

COMEY: That's not true. There were a small number of portion markings on, I think, three of the documents.

GOWDY: Secretary Clinton said, I did not e-mail any classified material to anyone on my e-mail, there is no classified material. Was that true?

COMEY: There was classified material e-mailed.

GOWDY: Secretary Clinton said she used just one device. Was that true?

COMEY: She used multiple devices during the four years of her term as secretary of state.

GOWDY: Secretary Clinton said all work-related e-mails were returned to the State Department. Was that true?

COMEY: No. We found work-related e-mails, thousands that were not returned.

GOWDY: Secretary Clinton said neither she nor anyone else deleted work related e-mails from her personal account. Was that true?

COMEY: That's a harder one to answer. We found traces of work-related e-mails in -- on devices or in slack space. Whether they were deleted or whether when the server was changed out something happened to them. There's no doubt that the work-related e-mails that were removed electronically from the e-mail system.

GOWDY: Secretary Clinton said her lawyers read every one of the e-mails and were overly inclusive. Did her lawyers read the e-mail content individually?

COMEY: No.

GOWDY: Well in the interest of time, and because I have a plane to catch tomorrow afternoon, I'm not going to go through anymore of the false statements. But I am going to ask you to put on your old hat. False exculpatory statements, they are used for what?

COMEY: Either for the -- a substantive prosecution or for evidence of intent in a criminal prosecution.

GOWDY: Exactly. Intent and consciousness of guilt, right? Is that right?

COMEY: Right.

GOWDY: Consciousness of guilt and intent. In your old job, you would prove intent, as you just referenced, by showing the jury evidence of a complex scheme that was designed for the very purpose of concealing the public record and you would be arguing in addition to concealment the destruction that you and I just talked about or certainly the failure to preserve.

You would argue all of that under the heading of content (ph) -- intent. You would also be arguing the pervasiveness of the scheme, when it started, when it ended and the number of e-mails, whether they were originally classified or up-classified.

You would argue all of that under the heading of intent. You would also, probably, under common scheme or plan, argue the burn bags of daily calendar entries or the missing daily calendar entries as a common scheme or plan to conceal. GOWDY: Two days ago, Director, you said, "A reasonable person in her position should have known a private e-mail was no place to send and receive classified information." You're right. An average person does not do that.

This is no average person. This is a former first lady, a former United States senator, and a former secretary of state that the president now contends is the most competent, qualified person to be president since Jefferson. He didn't say that in '08, but he says is now.

She affirmatively rejected efforts to give her a state.gov account. She kept these private e-mails for almost two years, and only turned them over to Congress because we found out she had a private e-mail account.

So you have a rogue e-mail system set up before she took the oath of office, thousands of what we now know to be classified e-mails, some of which were classified at the time. One of her more frequent e-

mail comrades was in fact hacked, and you don't know whether or not she was. And this scheme took place over a long period of time and it resulted in the destruction of public records.

And yet you say there is insufficient evidence of intent. You say she was extremely careless, but not intentionally so. You and I both know intent is really difficult to prove. Very rarely do defendants announced "on this date, I intend to break this criminal code section; just to put everyone on notice, I am going to break the law on this date." It never happens that way.

You have to do it with circumstantial evidence. Or if you're Congress and you realize how difficult it is to prove specific intent, you will formulate a statute that allows for gross negligence.

My time is out, but this is really important. You mentioned there's no precedent for criminal prosecution. My fear is there still isn't. There's nothing to keep a future secretary of state or president from this exact same e-mail scheme, or their staff.

And my real fear is this -- it's what the chairman touched upon, this double-track justice system that is rightly or wrongly perceived in this country, that if you are a private in the Army and you e-mail yourself classified information, you will be kicked out. But if you are Hillary Clinton and you seek a promotion to commander in chief, you will not be. So what I hope you can do today is help the average -- the reasonable person you made reference to, the reasonable person understand why she appears to be treated differently than the rest of us would be.

With that, I would yield back.

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GOWDY: Thank you Doctor Gosar. Director Comey, I want to go back to the issue of intent for just a second. We could disagree on whether or not it's an element of the offense, let's assume for the sake of argument, that you're right and I'm wrong and that it is an element of the offense.

Secretary Clinton said that she was, "Well aware of classification requirements". Those are her words, not mine and not yours. So if she were, "Well aware of classification requirements", how did that impact your analysis of her intent? Because I've heard you this morning, describe her as being less than sophisticated. She disagrees with that.

COMEY: Well, I was talking about technical sophistication. The question is, I would hope everybody who works in the Government is aware of classification requirements. The question then is, if you mishandle classified information, when you did that thing, did you know you were doing something that was unlawful? That's the intent question.

GOWDY: All right, well you and I are going to have to get together some other time and discuss all the people we prosecuted who were unaware that they were breaking the law. That, there are lots of really dumb defendants out there, who don't know that what they're doing is against the law. But let's go with what you say ...

COMEY: I disagree. I, you may have prosecuted a lot of those folks. I did not prosecute all those folks.

GOWDY: I was a gunner prosecutor and you were a white collar prosecutor. Trust me, there, there are lots of people who don't know you can't kill other people. Let me ask you this, on the issue of intent, you

say it was convenience, okay? You're a really smart lawyer, if it were convenience Director, she wouldn't have waited two years to return the documents and she wouldn't have deleted them four years after they were created.

So you can't really believe that her intent was convenience when she never turned them over until Congress started asking for them, could you?

COMEY: Yeah my focus, and I hope I made this clear, my focus is on, what was the thinking around the classified information. I mean it's relevant why the system was set up and the thinking there. But she didn't, I don't understand her to be saying, we'll I think I've said it already, that, that's my focus.

GOWDY: So, I know I'm out of time, but, but it just strikes me, you are reading a specific intent element into a gross negligence statute, not even general intent?

CHAFFETZ: Gentlemen's time.

GOWDY: A specific intent ...

CHAFFETZ: Gentleman's time has expired.

GOWDY: Element.

COMEY: Yeah. Is that? Oh, sorry.

CHAFFETZ: Go, the Director can answer. COMEY: I enjoyed, I enjoyed talking with him. The, the question you've got to ask is, why is it that the Department of Justice, since 1917, has not used that gross negligence statute for charging at once in an espionage case. And whether their decision was smart or not, that is the record of fairness.

And so you have to decide, do I treat this person against that record? And if I do, is that a fair thing to do? Even if you're not worried about the constitutionality of it, and my judgment is, no reasonable prosecutor would do that. That would be celebrity hunting. That will be treating this person differently than John Doe.

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**Rep. Farenthold**

FARENTHOLD: Thank you very much.

Director Comey, I want to talk a little bit about cyber security. State Department's Inspector General reported (ph) detailed instances of multiple attacks on Secretary Clinton's computer, as well as her replying to suspicious e-mail from the personal account of Under Secretary Of State.

Director, you said that hostile actors (ph) successful gained access to the commercial e-mail accounts of people Secretary Clinton regularly communicated with. In the case of the Romanian hacker Guccifer, according to accessing Sidney Blumenthal's account -- and you know that's been public, for some time.

During your investigation, were there other people in the State Department or that regularly communicated with Secretary Clinton that you can confirm were successfully hacked?

COMEY: Yes.

FARENTHOLD: And were these folks that regularly communicated with the secretary?

COMEY: Yes.

FARENTHOLD: And were you able to conclude definitively that the attempted hacks referenced in the I.G. report were not successful?

COMEY: We were not able to conclude that they were successful. I think that's the best way to say it.

FARENTHOLD: All right, well while you said that given the nature of Clinton's server, it would be unlikely to see evidence one way or the other whether or not it had been successful hacked.

How many unsuccessful attempts did you uncover, did you find any there?

COMEY: There were unsuccessful attempts. I don't know the number off top of my head.

FARENTHOLD: Do you have an idea -- were they from foreign governments? Where'd they come from?

COMEY: I want to be careful what I say in an open setting and so I -- we can give you that information but I don't want to give the -- any foreign governments knowledge of what I know, so there...

FARENTHOLD: But you -- would you be so far as to say if they probably weren't American high school students fooling around?

COMEY: Correct, it was not limited to criminal activity.

FARENTHOLD: During your investigation, did you or anyone in the FBI interview the hacker Guccifer?

COMEY: Yes.

FARENTHOLD: And he claimed he gained access to Sid Blumenthal's e-mail account and traced them back to Clinton's private server. Can you confirm that Guccifer never gained access to her server?

COMEY: Yeah he did not. He admitted that was a lie. FARENTHOLD: All right, well, at least that's good to hear.

All right, Section 793 of Title 18 in the United States Code makes it a crime to allow classified information to be stolen through gross negligence. Were you to discover that hostile actors had actually gotten into Secretary Clinton's e-mail, would that have changed your recommendation with respect to prosecuting her?

COMEY: Unlikely, although we didn't consider that question because we didn't have those facts.

FARENTHOLD: All right. I want to go back to the question of intent real quick, for just a second.

I'm a recovering attorney. It's been decades since I actually practiced law. But you kept referring to she had to know it was illegal to have the requisite criminal intent. I was always taught in law school, and I don't know where this changed, that ignorance of the law was no excuse. If I'm driving a long at 45 miles and hour and didn't see the 35 mile and hour speed limit, I was still intentionally speeding, even though I didn't know it.

Now, I might not have had the requisite criminal intent if maybe my accelerator were jammed or something like that, but even though I didn't know the law was 35, I was driving 45, I'm going to get a ticket. And I'm probably going to be prosecuted for that.

So, how can you say ignorance of the law is an excuse in Ms. Clinton's case?

COMEY: Well, the comparison to petty offenses, I don't think is -- you spoke about the question of -- ignorance of the law is no excuse, but here's the distinction. You have to have general criminal intent. You don't need to know what particular statute you're violating, but you must be aware of the generally wrongful nature of your conduct...

(CROSSTALK)

FARENTHOLD: We -- now, so Congress when they enacted that statute said "gross negligence." That -- that doesn't say intent. So what are we going to have to enact to get you guys to prosecute something based on negligence or gross negligence? Are we going to have to add, "and oh by the way, we don't mean -- we really do mean you don't have to have intent there"? COMEY: That's a conversation for you all to have with the Department of Justice. But it would have to be something more than the statute enacted in 1917. Because for 99 years, they've been very worried about its constitutionality.

FARENTHOLD: All right. Well, I think that's something this committee and Congress as a whole, the Judiciary Committee, that Mr. Chaffetz and I also sit on, will be looking at it.

And I was on television this morning. And I just want to relay a question that I received from a caller into that television commercial (sic). It's just real simple: Why should any person follow the law if our leaders don't? And we can argue about intent or not, but you laid out the fact that she basically broke the law, but you couldn't prove intent.

Maybe I'm putting words in your mouth, but I do want to know why -- why any person should follow the law if our leaders don't have to. Maybe that's rhetorical, but I'll give you an opportunity to comment on that.

COMEY: That's a question I'm no more qualified to answer than any American citizen. It's an important question. In terms of my work and my world, my folks would not be -- one of my employees would not be prosecuted for this. They would face consequences for this. So the notion that it's either prosecute or you walk around, you know, smiling all day long is just not true for those people who work for the government.

The broader question is one for a democracy to answer. It's not for me.



FARENTHOLD: And I guess the ultimate decision as to whether or not Mrs. Clinton works in government or not is not in -- is in everybody's hands.

CHAFFETZ: I thank the gentleman.

FARENTHOLD: I yield back.

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**Rep. DeSantis**

CHAFFETZ: We'll now recognize the gentleman from Florida, Mr. DeSantis for five minutes.

DESANTIS: Director, the reason why that's so important is because of if top secret information is compromised, that could damage our national security, correct?

COMEY: Yes, by definition...DESANTIS: And American lives are at stake in some instances, correct?

COMEY: Yes.

DESANTIS: You mentioned, a lot of people are upset that there are no consequences for Secretary Clinton, but in your statement you pointed out that administrative and security consequences would be appropriate if someone demonstrated extreme carelessness for classified information. So for those consequences, that would include potentially termination of federal employment?

COMEY: Correct.

DESANTIS: It could include revocation of security clearance?

COMEY: Yes.

DESANTIS: It could include and ineligibility for future employment in national security positions?

COMEY: It could.

DESANTIS: Would you as the FBI Director allow someone, and employee of your agency to work in a national security capacity, if that person had demonstrated extreme carelessness in handling top- secret info?

COMEY: The answer to that is we would look very closely at that in a suitability determination. It's hard to answer in the abstract, "yes in all cases and no in all cases," but it would be a very important suitability scrub.

DESANTIS: So there would be instances where someone could be extremely careless and maintain competence? We have a lot of people who are competent in this country who would love to work for your agency, but yet, it would be potentially -- you would allow someone to be potentially careless and carry on?

COMNEY: In the hypothetical, I can imagine if it was a long time ago, and it was a small amount of conduct or something -- that's why it's hard to say other than it would be a very important part...

DESANTIS: Let's put it this way. Would being extremely careless in handling top secret information expose an employee of the FBI to potential termination? COMNEY: Yes.

DESANTIS: Why shouldn't U.S. officials use mobile devices when traveling to foreign countries, especially if they're discussing classifying or sensitive information?

COMNEY: Because the mobile device will transmit its signal across networks that are likely controlled or at least accessed by that hostile power.

DESANTIS: That's the guidance that the FBI gives all officials when they're traveling overseas? That's still good guidance, correct?

COMNEY: That's good guidance.

DESANTIS: How did top secret information end up on the private server, because your statement addressed Secretary Clinton. You did not address any of her aides in your statement. Attorney general Lynch exonerated everybody. That information just didn't get there on its own, so how did it get there? Were you able to determine that?

COMNEY: Yes, by people talking about a top secret subject in an e-mail communication.

DESANTIS: So...

COMNEY: Not about forwarding a top secret document, it's about having a conversation about a matter that is top secret.

DESANTIS: And those were things that were originated by Secretary Clinton's aides and sent to her, which would obviously be in her server, but it was also included Secretary Clinton originating those e-mails, correct?

COMNEY: That's correct.

In most circumstances, it initiated with aides starting the conversation. In the one involving top secret information, Secretary Clinton not only received but sent e-mails talking about the same subject.

DESANTIS: And of that top secret information you found, would somebody who is sophisticated in those matters, should it have been obvious to them that was sensitive information?

COMNEY: Yes.

DESANTIS: So I guess my issue about knowledge of what you're doing is, in order for Secretary Clinton to have access to top secret, SCI FBI information, didn't she have to sign a form with the State Department acknowledging her duties and responsibilities under the law to safeguard this information?

COMEY: Yes. Anybody who gets access to SCI, Sensitive Compartmented Information would sign a read-in form that lays that out. I'm sure members of Congress have seen the same thing. DESANTIS: And it stresses in that document and other training people would get, that there are certain requirements to handling certain levels of information. For example, a top secret document, that can't even be on your secret system at the FBI, correct?

COMEY: Correct.

DESANTIS: So you have to follow certain guidelines. And I guess my question is, is she's very sophisticated person, she did execute that document, correct?

COMEY: Yes.

DESANTIS: And her aides who were getting the classified information, they executed similar documents to get a security clearance, correct?

COMEY: I believe so.

DESANTIS: And she knowingly clearly set up her own private server in order to -- let me ask you that, was the reason she set up her own private server in your judgment was because she wanted to shield communications from Congress and the public?

COMEY: I can't say that.

Our best information is that she set it up as a matter of convenience. It was an existing system her husband had and she decided to have a domain on that system.

DESANTIS: So the question is, is very sophisticated, this is information that clearly anybody who had knowledge of security information would know that it would be classified? But I'm having a little bit of trouble to see, how would you not then know that that was something that was inappropriate to do?

COMEY: Well, I just want to take one of your assumptions about sophistication. I don't think that our investigation established she was actually particularly sophisticated with respect to classified information and the levels and treatment, and so far as we can tell...

DESANTIS: Isn't she in an original classification of authority?

COMEY: Yes, sir.

DESANTIS: Good grief.

Well, I appreciate you coming. I yield back the balance of my time.

CHAFFETZ: I thank the gentleman. I ask unanimous consent to enter into the record two documents that Mr. DeSantis referred to. One is the Sensitive Compartmented Information Nondisclosure agreement, the other one is the Classified Information Nondisclosure Agreement, both signed by Hillary Rodham Clinton. Without objection, so ordered. I now recognize the gentleman from Missouri, Mr. Clay, for five minutes.

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**Rep. Buck**

BUCK: Good morning, Director Comey.

COMEY: Morning, sir.

BUCK: Thank you for being here. I also respect your commitment to law and justice and your career. And I -- first question I want to ask you, is this hearing unfair? Has it been unfair to you?

COMEY: No.

BUCK: Thank you. One purpose of security procedures for classified information is to prevent hostile information -- hostile nations from obtaining classified information. Is that fair?

COMEY: Yes.

BUCK: And do -- did hostile nations obtain classified information from Secretary Clinton's servers?

COMEY: I don't know. It's possible, but we don't have direct evidence of that. We couldn't find direct evidence.

BUCK: I want to -- without making this a law school class, I want to try to get into intent. There are various levels of intent in the criminal law, everything from knowingly and willfully doing something all the way down, to strict liability. Would you agree with me on that?

COMEY: Yes.

BUCK: And in Title 18, most of the -- criminal laws in Title 18 have the words "knowingly" and "willfully" in them and that is the standard typically that United States attorneys prosecute under.

COMEY: Most do. Unlawfully, knowingly, willfully is our standard formulation for charging a case.

BUCK: And there are also a variety of others between the knowingly and willfully standard and the strict liability standard. And in many, like environmental crimes, have a much lower standard because of the toxic materials that are at risk of harming individuals. Is that fair?

COMEY: That's correct.

BUCK: Okay. Let's talk about this particular statute, 18 U.S.C. 1924. I take it we could all agree -- you and I can agree on a couple of the elements. She, Secretary Clinton was an employee of the United States.

COMEY: Correct.

BUCK: And as a result of that employment, she received classified information.

COMEY: Correct.

BUCK: And there is no doubt about those two elements. Now I don't know whether the next element is one element or two, but it talks about knowingly removed such materials without authority and with the intent to retain such material at an unauthorized location.

So I'm going to treat those as two separate parts of the intent element. First of all, do you see the word "willfully" anywhere in this statute?

COMEY: I don't.

BUCK: And that would indicate to you that there is a lower threshold for intent?

COMEY: No, it wouldn't.

BUCK: Why?

COMEY: Because we often -- as I understand, the Justice Department's practice and judicial practice will impute to any criminal statute at that level with a knowingly also requirement that you know that you're involved in criminal activity of some sort. A general mens rea requirement.

BUCK: So -- and you would apply that same standard to environmental (inaudible)?

COMEY: No, if it specifically says it is a negligence-based crime, I don't think a judge would impute that.

BUCK: But -- but Congress specifically omitted the word "willfully" from this statute, and yet you are implying the word willfully in the statute. Is that fair?

COMEY: That's fair.

BUCK: Okay. So what this statute does say is "knowingly removed such materials without authority." Is it fair that she knew that she didn't have authority to have this server in her basement?

COMEY: Yes, that's true.

BUCK: And she knew that she was receiving materials, classified information, in -- in the e-mails that she received on -- on her BlackBerry and other devices.

COMEY: I can't answer -- I'm hesitating as a prosecutor because it's always -- to what level of proof. I do not believe there's evidence beyond a reasonable doubt that she knew she was receiving classified information in violation of the requirements.

BUCK: But that's not my question.

COMEY: (Inaudible) evidence of that.

BUCK: That's not my question. My question, in fairness, is did she know that she was receiving information on the servers at her location?

COMEY: Oh, I'm sorry. Of course, yes. She knew she was using her e-mail system.

BUCK: And as secretary of state, she also knew that she would be receiving classified information.

COMEY: Yes, in general.

BUCK: OK. And did she then have the intent to retain such material at an unauthorized location? She retained the material that she received as secretary of state at her server in her basement and that was unauthorized.

COMEY: You're asking me did she have the -- I'm going to ask you the burden of proof question in a second. But did she have the intent to retain classified information on the server or just to retain any information on the server?BUCK: Well, we've already established that she knew, as secretary of state, that she was going to receive classified information in her e-mails. And so did she retain such information that she received as secretary of state on her servers in her basement?

COMEY: She did in fact -- there is, in my view, not evidence beyond certainly probable cause. There's not evidence beyond a reasonable doubt that she knew she was receiving classified information or that she intended to retain it on her server.

There's evidence of that but when I said there's not clear evidence of intent, that's what I meant. I could not, even if the Department Of Justice would bring that case, I could not prove beyond a reasonable doubt those two elements.

BUCK: Thank you very much.

**Rybicki, James E. (DO) (FBI)**

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Thursday, September 29, 2016 11:15 AM  
**To:** James B. Comey  
**Subject:** FW: HJC Oversight Hearing Transcript  
**Attachments:** HJC FBI Oversight 9-28-16.docx

-----Original Message-----

**From:** [redacted] (DO) (FBI)  
**Sent:** Thursday, September 29, 2016 11:03 AM  
**To:** Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>  
**Cc:** Kortan, Michael P. (DO) (FBI) [redacted]  
**Subject:** FW: HJC Oversight Hearing Transcript

b6 -1  
b7C -1

Here's the complete transcript from OCA.

[redacted]

-----Original Message-----

**From:** Beers, Elizabeth R. (DO) (FBI)  
**Sent:** Thursday, September 29, 2016 11:01 AM  
**To:** [redacted] (DO) (FBI); [redacted] (DO) (FBI); [redacted] Herring, Jason V. (CD) (FBI); [redacted] Kortan, Michael P. (DO) (FBI); [redacted]  
**Cc:** [redacted] (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI)  
**Subject:** HJC Oversight Hearing Transcript

b6 -1  
b7C -1

Attached is the final transcript from yesterday's hearing

Beth Beers  
FBI Office of Congressional Affairs:

[redacted]

b6 -1  
b7C -1

## House Judiciary Committee Holds Hearing on FBI Oversight

GOODLATTE:

Good morning. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time. We welcome everyone to this morning's hearing on oversight of the Federal Bureau of Investigation.

Before I begin this hearing, I want to take a few minutes to recognize the chief counsel of the Subcommittee on Crime, Terrorism, Homeland Security and Investigation, Caroline Lynch.

After 15 years working on Capitol Hill, Caroline has decided to move back to her home state of Arizona be close to her family and to pursue the next steps in her career. Needless to say, we are very sad to see Caroline go. During her time in Washington, D.C., Caroline worked for Representative John Shadegg both in his personal office and as chief counsel of the House Republican Policy Committee.

In 2006, Caroline came to work for the House Judiciary Committee and in 2008 she became chief counsel of the Judiciary Committee's Crime Subcommittee. At the committee, Caroline has had an enormous impact on the reform of our criminal and national security laws. Few people in Washington have done as much to promote the safety of our communities.

Caroline has overseen the drafting, negotiation and passage of critical legislation regarding the Foreign Intelligence Surveillance Act, the Electronic Communications Privacy Act and the most sweeping set of reforms to government surveillance practices in nearly 40 years, the USA Freedom Act among many other priority legislative initiatives.

Anyone who has met Caroline knows she is immensely intelligent, hard working, loyal and a discerning chief counsel. And of course, those people she has negotiated with have found her to be a skillful and formidable but fair advocate. Her team at the subcommittee know her to be a determined leader and a steadfast friend. I have appreciated Caroline's deep knowledge of criminal laws, the strength of her convictions and her courage to speak the truth in a place where it is rarely convenient to do so.

We wish Caroline well in her new endeavors and I thank her for her years of dedicated service to this committee, the U.S. House of Representatives and the American people.

(APPLAUSE)

And I know the ranking member, Mr. Conyers, would like to say a few words as well.

CONYERS:

Thank you very much, Chairman Goodlatte.

This is a -- indeed a unique moment in our history. And on behalf of the Democratic staff and Democratic members of the committee, I want to recognize Caroline Lynch for her hard work and her dedication for the past 10 years.

As chief crime counsel for the Republicans during this time, she worked collegiately with her Democratic colleagues on a broad range of criminal justice issues. The Crime Subcommittee is legislatively the



busiest subcommittee, to me, in all of Congress and every crime- related bill that has been enacted during her time here has had the benefit of her expertise.

There are many examples of this, but I will cite her role in helping members find common ground on Section 215 of the PATRIOT Act so that we could enact important reforms in the USA FREEDOM Act. This important law will both safeguard our national security and our civil liberties and it set a precedent for how we can proceed on such issues in the future. Her work on this legislation was essential to its ultimate success.

CONYERS:

We'll miss her insight on these issues as well as her friendship and her friendliness as she leaves the committee for other endeavors in her home state of Arizona. We wish you all the best.

(APPLAUSE)

GOODLATTE:

I think you would agree with me in saying that while her work is not quite done, today and the rest of the week, she has also been very critical to the bipartisan work that we have been doing here the past few years culminating in 11 bills so far passing out of this committee dealing with criminal justice reform and we thank you for the contribution you made for that.

And that work has been indeed very bipartisan and thank you all. We now welcome Director Comey to your fourth appearance before the House Judiciary Committee since your confirmation as the seventh director of the FBI. Needless to say, the past year since our last oversight hearing has been challenging for the FBI on a number of fronts that we hope to review with you today.

I want to begin by commending the men and women of the FBI and the NYPD and the New Jersey Police Department for their swift action in identifying and apprehending Ahmad Khan Rahami, who's cold and cowardly acts of terrorism last week injured 29 American citizens. This was the latest in a string of attacks stretching back to the 2013 Boston Marathon bombing and continuing through the terror attacks in San Bernardino, Orlando and Minneapolis.

They all share one common thread, namely radical Islam. This administration however, including the FBI, has coined this cancer with the euphemism of countering violent extremism. If the FBI and the rest of our national security apparatus continues its myopia about focusing on ethereal issues of extremism, their mission to protect the American people will always be one of following up on terrorism aftermath.

I look forward to hearing from you about how the FBI is working to proactively combat radical Islamic terrorism and put an end to this string of violence. While terrorism is a malignancy which must be purged, other events at home have called into question the confidence that Americans have historically held in a blind and impartial justice system. Former Secretary of State Hillary Clinton and the FBI's investigation into her seemingly criminal conduct is a case in point.

It seems clear that former Secretary of State Hillary Clinton committed multiple felonies involving the passing of classified information through her private e-mail server. The FBI however, declined to refer

the case for prosecution on some very questionable bases. This past Friday afternoon, the FBI released additional investigative documents from the Clinton investigation which demonstrate, among other things, that more than 100 of the e-mails on Secretary Clinton's private server contained classified information and that e-mails required to be preserved under federal law were in fact destroyed.

Even more alarming, we have recently learned that President Obama used a pseudonym to communicate with Secretary Clinton on her e-mail server. Why is this relevant? As Secretary Clinton's top aide, Huma Abedin acclaimed (ph), when informed by the FBI of the existence of an e-mail between her boss and the president, how is that not classified?

Armed with knowledge of the president's now known to be false claim that he only learned of Clinton's private e-mail account quote, "the same time everybody else learned it through news reports," did the FBI review why the president was also sending classified information over unsecure means. In effect, this president and the former secretary of state improperly transmitted communications through non-secure channels placing our nation's secrets in harm's way.

Secretary Clinton's decision to play fast and loose with our national security concerned not simply her daughter's wedding planning or yoga routine, but instead quoting you Director Comey quote, "seven e-mail chains concerned matters that were classified at the top secret special access program level when they were sent and received." Top secret special access programs contain some of the most sensitive secret information maintained by our government. This is a truly remarkable fact.

Were anyone of lesser notoriety than Hillary Clinton guilty of doing this, that person would already be in jail. For Americans unsure what a special access program, or SAP is, it is the kind of information that a war planner would use to defeat an enemy or even clandestine (ph) intelligence operation. The Wall Street Journal explained that a SAP usually refers to highly covert technology programs, often involving weaponry. Knowledge of these programs is usually restricted to small groups of people on a need-to-know basis.

For those wondering whether this kind of information on an unsecure server is a problem, you need read no further than the Huffington Post, which reported Hillary Clinton's private e-mail server, containing tens of thousands of messages from her tenure as Secretary of State was the subject of hacking attempts from China, South Korea and Germany after she stepped down in 2013. To conclude, let me ask everyone to engage in a thought experiment.

One of this nation's signature accomplishments in the war on terror was the raid on Abbottabad, Pakistan on May 2, 2011 that resulted in the killing of Osama bin Laden. That operation, which was conducted by an elite team of U.S. Navy special operators was of course, highly classified. Now imagine if you will, that classified information relating to the raid was passed through a non-secure e-mail server and was accessed by nations or individuals hostile to the United States.

Rather than a highly successful covert operation, we might have had a team of dead U.S. servicemen. Hillary Clinton chose to send and receive top secret information over a personal, unsecure computer server housed in her various homes and once reportedly placed in a bathroom closet. These actions, without a doubt, opened these communications to hostile interception by our enemies and those who wish America harm.

These facts, and not the imagined history I have asked you to contemplate, were the basis of the investigation by the FBI and these are the facts that you, Director Comey, chose to hold unworthy of a recommendation to prosecute, saying that no reasonable prosecutor would bring such a case. We, as Congress and the American people, are troubled how such gross negligence is not punished and why there seems to be a different standard for the politically well connected, particularly if your name is Clinton.

Mr. Director, I look forward to your testimony today.

And at this time I'm pleased to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

CONYERS:

Thank you, Chairman Goodlatte.

Welcome again, Director Comey, for your appearance here today.

The FBI's mission is a complex undertaking to protect the United States from terrorism, to enforce our criminal laws and to lead the nation's law enforcement community. That mission ought to mirror our own priorities in this committee. In the past few days for example, we have witnessed near fatal terrorist attacks in Minnesota, New York and New Jersey. These attacks underscore the growing fear that individuals can be moved to violence at home by the propaganda by ISIS and other terrorist groups abroad even though they have no direct connection to those organizations.

To me, this threat is dire. We should be doing all we can within our communities and within our constitutional framework to mitigate the danger. But will our majority here in the House use their time today to discuss these attacks? I suspect that they will not be in their focus in this campaign season. In Charlotte, in Tulsa, in Dallas, right here in Washington and in other cities across this country, our citizens demand answers to questions about race and policing and the use of lethal force by law enforcement.

Our police are under siege, often under-resourced and in some cases, hard pressed to build trust with the communities they serve. Director Comey, your continued work to foster lines of communication between police officers and the general public is commendable and necessary if we are to keep our citizens safe from harm. But will my colleagues discuss this pressing issue with the director of the FBI, for his leadership in the law enforcement community is paramount? I hope so.

I'm almost afraid their focus may be elsewhere. The FBI is the lead agency in the investigation of cyber-based terrorism. Computer intrusions. Online sexual exploitation and major cyber fraud. We've known for some years about the persistent cyber threat to our critical infrastructure. Now we hear reports of a new cyber threat to the very basis of our democratic process. Twice this summer, Director Comey, I wrote to you with my fellow ranking members to ask you to look into reports that Russian state actors are working to undermine our election process.

Without objection Mr. Chairman, I ask that both these letters be placed in the record.

GOODLATTE:

Without objection, they will be made a part of the record.

CONYERS:

Thank you. It is now the clear consensus of the intelligence community that the Russian government was behind the hack of the Democratic National Committee and not, as some suggested, somebody sitting on their bed that weights 400 pounds. Our -- on Friday we learned that from one report that the United States intelligence officials are seeking to determine whether an American businessman, identified by Donald Trump as one of his foreign policy advisers, has opened up private communications with senior Russian officials.

Including talks about the possible lifting of economic sanctions if the Republican nominee becomes president. The report cites to an unnamed quote, "senior U.S. law enforcement official," end quote, which I presume means someone in your orbit, Mr. Director. Without objection, I ask that this article, Mr. Chairman, be placed into the record as well.

GOODLATTE:

Without objection it will remain part of the record.

CONYERS:

Thank you. Let me be clear. If true, this allegation represents a danger to our national security and a clear violation of federal law, which expressly prohibits this type of back channel negotiation. And I'm not alone in describing the nature of this threat. Speaker Ryan himself has said that, "Russia is a global menace led by a devious thug, Putin should stay out of this election." end quotation

But will our majority join us in press you on this problem today, Director Comey? Instead I believe that the focus of this hearing will be more of the same, an attack on you and your team at the Department of Justice for declining to recommend criminal charges against Secretary Hillary Clinton.

In recent weeks, this line of attack has been remarkable only for its lack of substance. Your critics dwell in character assassination and procedural minutia like the proper scope of immunity agreements and your decision to protect the identities of individuals wholly unrelated to the investigation.

They want to investigate the investigation, Director Comey, and I consider that an unfortunate waste of this committee's time. With so many actual problems confronting this nation and so many of those challenges within your jurisdiction and ours, you would think my colleagues would set their priorities differently. I hope that they do and they listen to our conversation today. I thank the Chairman and I yield back.

GOODLATTE:

Thank you Mr. Conyers and without objection, all other member's opening statements will be made a part of the record. We welcome our distinguished witness and if you would please rise, I'll begin by swearing you in.

Do you solemnly swear that the testimony that you are about to give will be the truth, the whole truth and nothing but the truth, so help you God? Thank you, let the record reflect that the witness answered in the affirmative.

FBI Director James Comey is a graduate of the College of William and Mary and the University of Chicago Law School. Following law school, Director Comey served as an assistant United States attorney for both the Southern District of New York and the Eastern District of Virginia.

GOODLATTE:

He returned to New York to become the U.S. attorney for the Southern District of New York and in 2003, he served as the deputy attorney general at the Department of Justice.

Director Comey, we look forward to your testimony. Your written statement will be entered into the record in its entirety and we ask that you summarize your testimony in five minutes. You may begin. Welcome.

COMEY:

Thank you, Mr. Chairman, Mr. Conyers, members of the Judiciary Committee. It's good to be back before you, as the chairman said, for the fourth time. I have six more to go and I look forward to our conversations each time. I know that this morning there will be questions about the e-mail investigation and I'm happy to answer those to the absolute best of my ability.

In July when we closed this case, I promised unusual transparency and I think we've delivered on that promise in frankly an unprecedented way and I will do my absolute best to continue to be transparent in every way possible. But what I thought I would do, because I know we'll talk about that quite a bit, I want to just focus on some of the other things the FBI has been doing just in the last couple of weeks.

And my objective is to make clear to you and the American people the quality of the people who have chosen to do this with their lives, to do something that's not about money, that's not about the living, it's about the life that they make. And I just picked four different examples of things we've been working on to illustrate the quality of the folks, the scope of the work, which is extraordinary, and the importance of partnerships because it is true that the FBI does nothing alone.

So just to tick off four from four different parts of our organization, obviously as the chair and Mr. Conyers both mentioned, in the last couple of weeks, our folks in the New York area have been working in an extraordinary way with their partners at federal, state and local organizations of all kinds to bring to justice very quickly the bomber in New Jersey and New York attacks.

That work was done in a way, frankly, that would have been hard to imagine 15 years ago in a time of turf battles and worries about my jurisdiction, your jurisdiction, they should you how it should be done, how it must be done and I think we should all be very proud of them.

Second, within the last week, a hacker from Kosovo who worked for the so-called Islamic State, in hacking in and taking the identities and personal information of American military employees and then giving it to the Islamic State so they could target these people.

He was sentenced to 20 years in jail for that hacking, his name is Ardit Ferizi. Our great folks, together with lots of partners around the world, found this Kosovar in Malaysia and our Malaysian partners arrested him, brought him back to Virginia where he was just sentenced to 20 years for his hacking on behalf of the Islamic State. Terrific work by our cyber investigators and obviously as you know, we are doing an awful lot of work through our counter-intelligence investigators to understand just what mischief is Russia up to in connection with our election.

That is work that goes on all day every day, about which I'm limited in terms of answering questions but I wanted you to note that's a part of our work we don't talk about an awful lot but it's at the core of the FBI.

And the last one I want to mention is, two weeks ago a six year old girl was kidnapped off her front lawn in Eastern North Carolina in a stranger kidnapping. And all of law enforcement in North Carolina surged on that case, we rolled out Child Abduction Rapid Deployment Team, which is a capability we built around the country to help in just these kinds of situations.

These are agents and analysts who are expert at doing what has to be done in that golden 24 hours you have to try and save a child. And so we rolled those resources, we worked with our partners at state and local levels in North Carolina and overnight we found that little girl. We found that little girl chained by her neck to a tree in the woods alive, thank God, and she was rescued.

The picture that they showed that morning of that little girl with wide eyes and her long hair around her shoulders with still a thick chain around her neck connecting her to that tree is one I will never be able to get out of my own head because it's both terrible and wonderful. It's terrible because of what happened to this little girl, it's wonderful because together we found her and saved her. So I called the sheriff in North Carolina, I called our key team members who worked on that to thank them, and they told me that they were relieved and exhausted.

And that they are all hardened investigators but they stood that early morning in the command center and cried together because it almost never ends this way. So I said to the sheriff and our people, I wish we didn't live in a world where little girls were kidnapped off of their front lawns, where we had to do this kind of work but unfortunately we live in that world and because we do, I am so glad that those people and the rest of the people that work for the FBI are in that world. Because we are safer, we're better, because they have chosen to do this with their lives.

The best part of my job is the people I get to watch. To see their work, to admire their work, to support their work in any way that I can. They are doing extraordinary work for the American people across an incredible array of responsibilities. I know you know that and we're very grateful for the support you give to the men and women of the FBI and I look forward to our conversation about their work Mr. Chairman, thank you.

GOODLATTE:

Thank you Director Comey. We will now begin questioning under the five minute rule and I'll begin by recognizing myself.

You testified that the FBI did not investigate the voracity of Secretary Clinton's testimony to the Select Benghazi Committee under oath. We referred the matter to the United States attorney for the District of Columbia. Is the FBI now investigating the voracity of Secretary Clinton's testimony to the Select Benghazi Committee?

COMEY:

Thank you Mr. Chairman. The department has the referral, I think there were two referrals, has the referrals. Now it's pending and so there's -- I'm not going to comment on a pending matter at this point but the matter has been received by the Department of Justice. They have the letters from the committee.

GOODLATTE:

And you cannot tell us whether or not you are indeed investigating?

COMEY:

I can't.

GOODLATTE:

When do you expect that you'll be able to tell us more about this pending matter before the FBI?

COMEY:

I don't know, sir.

GOODLATTE:

Paul Combetta with Platte River Networks posted to Reddit asking, "how to strip out a VIP's very VIP e-mail address from a bunch of archived e-mail," end quote. He went on, quote, "the issue is that these e-mails involve the private e-mail address of someone you'd recognize and we're trying to replace it with a place folder address as to not expose it," end quote. This clearly demonstrates actions taken to destroy evidence by those operating Secretary Clinton's private server and by her staff.

Certainly Combetta did not take it upon himself to destroy evidence but had been instructed to do so by Secretary Clinton or her staff. My first question to you is was the FBI aware of this Reddit post prior to offering Mr. Combetta immunity on May 3, 2016?

COMEY:

I'm not sure. I know that our team looked at it, I don't know whether they knew about it before then or not.

GOODLATTE:

Isn't this information evidence of obstruction of justice and a violation of Mr. Combetta's immunity deal?

COMEY:

Not necessarily, no.

GOODLATTE:

Why not?

COMEY:

It depends on what his intention was, why he wanted to do and I think our team concluded that what he was trying to do was when they produced e-mails, not have the actual address, but have some name or placeholder instead of the actual dot-com address in the "from" line.

GOODLATTE:

Last week the American people learned that Cheryl Mills, Secretary Clinton's long-time confidant and former State Department chief of staff, and Heather Samuelson, counsel to Secretary Clinton in the State Department, were granted immunity for production of their laptops.

Why were they not targets of the FBI's criminal investigation?

COMEY:

Well target is someone on whom you have sufficient evidence to indict. A subject is someone who's conduct at some point during the investigation falls within the scope of the investigation. So certainly with respect to Ms. Mills, at least initially, because she was an e-mail correspondent, she was a subject of the investigation.

GOODLATTE:

Did the FBI find classified information on either of their computers?



COMEY:

I think there were some e-mails still on the computer that were recovered that were classified, is my recollection.

GOODLATTE:

Is that a crime?

COMEY:

Is what a crime sir?

GOODLATTE:

Having classified information on computers that are outside of the server system of the Department of State unsecured?

COMEY:

No, it's certainly something, without knowing more you couldn't conclude whether it was a crime. You'd have to know what were the circumstances, what was the intention around that? But it's certainly something, it's the reason we conducted a year long investigation to understand where e-mails had gone on an unclassified system that contained classified information.

GOODLATTE:

And what did you determine with regard to the e-mails found on her computer?

COMEY:

I hope I'm getting this right and my troops will correct me if I'm wrong, but they were duplicates of e-mails that had been produced because the e-mails had been used to sort before our production.

GOODLATTE:

Now both Cheryl Mills and Heather Samuelson were granted immunity for production of these computers, these laptops. Why were they then allowed to sit in on the interview with Secretary Clinton?

COMEY:

Might be -- the Department of Justice reached a letter agreement with the two lawyers to give them what's called act of production immunity, meaning nothing that's found on there -- the laptop they turn over -- will be used against them directly and which is a fairly normal tool in investigations.

They were -- Ms. Mills in particular was a member of the -- Secretary Clinton's legal team and so Secretary Clinton decides which of her lawyers come to voluntary interviews with the FBI.

GOODLATTE:

Is it usual to allow a witness or potential witness in a subsequent prosecution had one been undertaken to be present in the room when the FBI interviews another witness and potential target of an investigation?

COMEY:

The FBI has no ability to exclude or include any lawyer that a subject being interviewed chooses to have there.

GOODLATTE:

Even if the lawyer is a witness in the case? Can you cite any other instance in which a witness to a criminal investigation who has already been interviewed by the FBI has been allowed to accompany and server as legal counsel to the target of that investigation?

COMEY:

I can't from personal experience. It wouldn't surprise me if it happened. The Department of Justice -- excuse me, the FBI has no ability to decide who comes to an interview in a voluntary interview context. If it was a judicial proceeding, a judge could police who could be there. Obviously lawyers are governed by canons of ethics to decide what matters they can be involved in but it doesn't fall to us to say you can be in, you can't be in.

GOODLATTE:

But wouldn't you agree that it is a conflict of interest for them to serve as attorney for Secretary Clinton in this matter having been interviewed by the FBI as witnesses?

COMEY:

That's a question a lawyer has to answer for him or herself.

GOODLATTE:

You're a lawyer, Director Comey. What's your opinion of that?

COMEY:

Oh, I don't want to offer an opinion on that but that's something a lawyer has to decide for themselves. I assume with counsel and consulting our canons of ethics what matters you can be involved in and what you can't. But again, the bureau's role in conducting a voluntary interview is to interview the subject. Who they bring is up to them.

GOODLATTE:

How can you trust the voracity of Secretary Clinton's answers knowing that witnesses previously interviewed by the FBI were allowed to participate in the interview?

COMEY:

We assessed the answers based on what's said and all the other evidence we've gathered. It...

GOODLATTE:

Consultation with her quote, "attorneys who are also witnesses to what was previously done early and may have in fact themselves violated the law for which they requested and were granted immunity."

COMEY:

The answer's the same. We make the assessment based on what the witness says and the other evidence we've gathered in the case. Who's sitting there, to me, is not particularly germane.

GOODLATTE:

Thank you. My time has expired. The chair recognizes the gentleman from Michigan, Mr. Conyers for his questions.

CONYERS:

Thank you. Thank you so much. Director James Comey, twice this past week, the city of Charlotte, North Carolina has been shaken by the shooting deaths of black men. It's only one city out of many in this country looking for answers about the use of force by police. We on this committee are looking for answers too. You are a vocal advocate for better collection of information about violent encounters between police and civilian.

Has the FBI's ability to collect this information improved in the years since we have last discussed it and why are these statistics so important to our current discussion on the use of force by police?

COMEY:

Thank you Mr. Conyers. We're having passionate, important conversations in this country about police of use force in connection with encounters with civilians especially with African Americans. All of those conversations are uninformed today.

They're all driven by anecdote because as a country we simply don't have the information to know, do we have an epidemic of violence directed by law enforcement against black folks, do we have an epidemic involving brown folks, white folks, we just don't know.

And in the absence of that data, we're driven entirely by anecdote and that's a very bad place to be. I don't know whether there's an epidemic of violence. My instincts tell me there isn't but I don't know. I can't tell you whether shootings involving people of any different color are up or down or sideways and nor can anybody else in this country.

And so to discuss the money important things that are going on in this country, we need information and the government should collect it -- I can't think of something that's more inherently governmental than the need to use deadly force in an encounter during law enforcement work.

And so what's changed in the last year, which is really good news, is that everybody in leadership in law enforcement of the United States has agreed with this, and they've agreed the FBI will build and maintain a database where we collect important information about all such encounters involving the use of deadly force.

That will allow us to know what's going on this country so we can have a thoughtful conversation and resist being ruled by individual anecdotes. That's why it matters so much.

We're making progress. We will have this done, I'd like to have it done in the next year. Certainly in the next two years, this database will be up and running because everybody gets why it matters so much.

CONYERS:

Thank you. On August 30th, I wrote to you regarding Donald Trump's extensive connections to the Russian government. The letter cites to a number of troubling reports, some that suggest mere conflicts of interests, others that might suggest evidence of a crime.

Last Friday, we read a new report suggesting that Mr. Trump's foreign policy advisor has been meeting with high ranking sanctioned officials in Moscow to discuss lifting economic sanctions.

If Mr. Donald Trump becomes president, the same report quotes -- quote, "a senior United States law enforcement official who says that this relationship is being quote "actively monitored and investigated" end quotation.

Is the FBI investigating the activities of Mr. Trump or any advisor to the Trump campaign with respect to any line of communication between the campaign and the Russian government?

COMEY:

I can't say sir. As I said in response to a different question from the Chairman, we don't confirm or deny investigation.

CONYERS:

Well, more generally then, is it lawful for a private citizen to enter into official government negotiations with a foreign nation?

COMEY:

I don't think it's appropriate for me to answer that hypothetical.

CONYERS:

Well, in my view our research shows that it is not. The Logan Act 18 USC section 953 prohibits this conduct in my view. And finally, does Mr. Trump currently receive intelligence briefings from the FBI?

COMEY:

Both candidates and their running mates are offered on a regular basis briefings from the entire intelligence community. Some portion of the first briefing included an FBI segment, so yes.

CONYERS:

Does his staff attend those meetings as well?

COMEY:

No, just the candidate and the vice presidential candidate.

CONYERS:

And finally, if a member of either...

COMEY:

OK, no I'm wrong. I'm sorry, I've got to correct what I said. Each was allowed to bring two people and as I recall, Mr. Trump did bring two individuals with clearances to the briefing. Secretary Clinton did not. I'm sorry, I misstated that.

CONYERS:

All right. Finally, if a member of either campaign were engaged in secret back channel communications with a foreign adversary, could that line of communication pose a threat to national security?

COMEY:

Mr. Conyers, I don't think it's appropriate given that I'm not commenting on whether we have an investigation to answer hypotheticals that might make it look like I'm commenting on whether we have an investigation so I'd prefer not to answer that sir.

CONYERS:

Well, thank you for being here today and I thank the Chairman and yield back.

GOODLATTE:

The chair thanks the gentleman and recognizes the gentleman from Wisconsin, Mr. Sensenbrenner for five minutes.

SENSENBRENNER:

Thank you Mr. Chairman. Director Comey welcome.

Who authorized granting Cheryl Mills immunity?

COMEY:

I'm sorry?

SENSENBRENNER:

Who authorized granting Cheryl Mills immunity?

COMEY:

It's a decision made by the Department of Justice. I don't know at what level inside. In our investigations, the -- anything -- any kind of immunity comes from the prosecutors not the investigations.

SENSENBRENNER:

OK. Did she request immunity?

COMEY:

I don't know for sure what the negotiations involved. I believe her lawyer asked for act of production immunity with respect to the production of her laptop. That's my understanding but again the FBI wasn't part of those conversations.

SENSENBRENNER:

Now, its been a matter of public record that Secretary Clinton brought nine people into the room where two FBI agents were questioning her. Is that normal practice?

COMEY:

No, there is no normal practice. I've been in -- done interviews with a big crowd and some with just the subject. It's unusual to have that large a number but it's not unprecedented in my experience.

SENSENBRENNER:

Now, Cheryl Mills you know, also stated that she was an attorney.

I'm very concerned that when a fact witness represents a client who might be the target of an investigation, there's a conflict of interest and rather than letting Ms. Mills make a determination, would the FBI be willing to refer the matter of fact witness, Ms. Mills in this case representing a target, Secretary Clinton in this case, to the appropriate bar association for investigation?

COMEY:

That's not a role for the FBI. We're investigating -- even though I happen to be a lawyer, we're not lawyers, we're investigators. So that's a question for the legal part of the Department of Justice.

SENSENBRENNER:

OK, why did Ms. Mills request immunity? Was she hiding something or was she afraid that something would incriminate her that was on her laptop?

COMEY:

I don't know. That's a -- I'm sure that's a conversation she and her lawyer had and then her lawyer had with lawyers at the department. I just don't know.

SENSENBRENNER:

Well, there was an op-ed by Professor Jonathan Turley that appeared in the media that said that there are a lot of good cases scuttled by granting immunity and there was lots of immunity that was granted here.

Doesn't it concern you as an investigator that your chiefs in the Justice Department decided to become an immunity producing machine for many people who would have been very key witnesses should there have been a prosecution?

COMEY:

I don't think of it that way. Doesn't strike me there was a lot of immunity issued in this case. I know it's a complicated subject but there's all different kinds of immunity. There's probably three different kinds that featured in this case. Fairly typical in a complex white collar case especially as you try and work your way up towards your subject. So my overall reaction is, this looks like ordinary investigative process to me.

SENSENBRENNER:

Well, the target was not an ordinary target. I think we all know that and since you announced that there would be no prosecution of Secretary Clinton in July, there have been several very material issues that are troubling and would this not require a re-opening of the investigation to solve those issues?

COMEY:

I haven't seen anything that would come near to that kind of situation. I know there's a lot of questions, a lot of controversy, I'm very proud of the way this was done.

SENSENBRENNER:

Well, you know -- come on now, with all due respect, since you made this announcement there have been many more issues that came out that were not on the table prior to your announcement that the investigation against Secretary Clinton had been dropped and I think the American public is entitled to answers on this particularly since we have to know the extent of the classified information which ended up being on the private e-mail server.

All of us on this committee have got security clearances of some kind or another and I'm kind of worried that if I got some classified information and went back to my office and used an unsecured server to send it to somebody who may also have had classified information, I would be in big trouble. And I should be in big trouble if I did something like that.

SENSENBRENNER:

There seems to be different strokes for different folks on this and that's what Americans are concerned about, particularly when we're looking to elect someone to the highest office of the land and the leader of the free world. I don't think your answers are satisfactory at all, Mr. Comey. I do have a great deal of respect for you but I think that there's a heavy hand coming from some place else and with that I yield back.



GOODLATTE:

The chair thanks the gentleman and recognizes the gentleman from New York, Mr. Nadler for five minutes.

NADLER:

Thank you Mr. Chairman. First let me express my admiration and thanks to the FBI for their professional manner and excellent work they did in the bombings that occurred in New York about a block out of my district to apprehend this suspect within what, 48 hours and do everything was a very good indication of team work and professionalism and I congratulate on that.

Secondly, let me say that I think that the mud that is being thrown from the other side of this table here continually only because of the ongoing presidential elections in a case in which the FBI decided there was nothing to prosecute, it's over and we all know nobody would even be talking about it if Hillary Clinton weren't the presidential candidate. This is pure political maneuvering.

But let me talk about a case that may pose a current national security threat to the United States and ask you a few questions about that. In his earlier remarks, Mr. Conyers referenced an August 30th letter from the ranking members of a number of House committees.

That letter asked whether the FBI was investigating troubling connections between Trump campaign officials and Russian interests and whether they contributed to the illegal hacking of the Democratic National Committee and the Democratic National Campaign Committee. You're familiar with that letter, I think?

COMEY:

Yes, I'm familiar with the letter.

NADLER:

If I could ask you a few questions. The letter said this and I quote, "on August 8th, 2016, Roger Stone, a Donald Trump confidant revealed that he has communicated with WikiLeaks founder, Julian Assange about the upcoming release of additional illegally hacked Democratic documents. Mr. Stone made this statements during a Republican campaign event while answering a question about a potential October surprise.

Obviously if someone stating publicly that he's in direct communication with the organization that obtained these illegally hacked documents, I assume the FBI would want to talk to that person. Has the FBI interviewed Roger Stone about his communications with Julian Assange for his knowledge of how WikiLeaks got these illegally obtained documents?

COMEY:

I can't comment on that.

NADLER:

Mr. Stone stated that he has knowledge about upcoming leaks of additional illegally hacked documents. Has the FBI asked him about those communications?

COMEY:

I also can't comment on that.

NADLER:

Because it's an ongoing investigation?

COMEY:

I don't want to confirm whether there is or is not an investigation. That's why -- that's the way I answered Mr. Conyer's questions as well.

NADLER:

Director Comey, the FBI acknowledged in private -- in public statements and testimony that it was -- acknowledged that it was investigating Secretary Clinton's use of a private e-mail server and that was while the investigation was still ongoing. Now you can't comment on whether there's an investigation. Is there a different for Secretary Clinton and Donald Trump? If not, what is the consistent standard?

COMEY:

No, our standard is we do not confirm or deny the existence of investigations. There's an exception for that when there is a need for public to be reassured, when it's obvious, it's apparent given our activities, public activities that the investigation is ongoing but our overwhelming rule is we do not comment except in certain exceptional circumstances.

NADLER:

I know, aren't there exceptional circumstances when close officials to a candidate of a major political party for the United States says publicly that he's in communication with foreign officials and anticipates further illegal activity?

COMEY:

I don't think so.

NADLER:

Mr. Trump's campaign chairman, Paul Manafort resigned after failing to disclose his role in assisting a pro-Russian party in Ukraine. The Associated Press reported, and I quote, "Donald Trump's campaign chairman helped a pro-Russian party in Ukraine secretly route \$2.2 million in payments to two primary Washington lobbying firms in 2012 and did so in a way that affectively obscured the foreign political party's efforts to influence U.S. policy.

Has the FBI interviewed Mr. Manafort about his failure to disclose his work for this foreign government as federal law requires?

COMEY:

I have to give you the same answer Mr. Nadler.

NADLER:

Has the FBI interviewed Rick Gates, who reported that he still works for the Trump campaign about his involvement in this thing (ph)?

COMEY:

Same answer sir.

NADLER:

Director Comey, after you investigated Secretary Clinton, you made a decision to explain publicly who you interviewed and why. You also disclosed documents including those from those interviews. Why shouldn't the American people have the same level of information about your investigation with those associated with Mr. Trump?

COMEY:

I'm not confirmed that we're investigating people associated with Mr. Trump. In the matter of the e-mail investigation, it was our judgment, my judgment and the rest of the FBI's judgment that those were exceptional circumstances where the public needed...

NADLER:

OK my final question is the following, you investigated Secretary Clinton's e-mails and so-forth, everything we've been talking about. You concluded, I believe quite properly, that there was nothing to prosecute and you announced, in my opinion quite properly, that you had investigated it and there was nothing there, there was nothing to prosecute. That was proper.

But having announced that a prosecutorial agency announced that we've investigated so and so and we've decided to prosecute because, or we've investigated so and so and we've decided not to prosecute because.

Why is it appropriate for that prosecutorial agency to go further and say, even though we decided not to prosecute, we still think this person did this, that or the other thing and it was proper, improper, why is it proper for a prosecutorial agency to characterize your opinion of the propriety of the actions of someone who you have announced that you have decided there's nothing criminal and shouldn't be prosecuted?

COMEY:

It's a very hard decision, that's why it's the exception to the rule. It -- you do risk damaging someone who isn't convicted. The judgment I made in this case is given the unusual, in fact I hope unprecedented, nature of this investigation that it was appropriate to offer that transparency. Not an easy call, I really wrestled with it but I think I'm balancing...

NADLER:

Let me just say before my time expires that I think, and I'm just talking to myself, that that was highly inappropriate. That having determined that there was nothing to prosecute and having announced that quite properly, the prosecuting agency, the Department of Justice to comment with comments that will be looked upon as authoritative.

That what she did was right or wrong or good or bad is not the appropriate role of a prosecuting agency and risks, not in this case perhaps, but risks -- and I talk really now because of the future, I don't want to see that happen again.

With regard to anybody because it puts anybody, who did not commit a crime, who you have -- you or the Justice Department, whoever's determined, did not commit a crime and there's no evidence that's sufficient to prosecute isn't at the mercy of the opinion of an individual or individuals within the prosecuting agency and that's just not right under our system. I yield back.

GOODLATTE:

Time of the gentleman has expired. The chair recognizes the gentleman from Texas, Mr. Smith for five minutes.

SMITH:

Thank you Mr. Chairman. Director Comey thank you for those examples of the FBI's good work in your opening statement. I think we all appreciate what the FBI has done. My first question is this, would you re-open the Clinton investigation if you discovered new information that was both relevant and substantial?

COMEY:

It's hard for me to answer in the abstract. We would certainly look at any new and substantial information.

SMITH:

In general, and less impartializing (ph), in general if you discovered new information that was substantial and relevant, you would re-open an investigation, would you not?

COMEY:

Again, even in general, I don't think we can answer that in the abstract. What we can say is if any investigation of people have new and substantial information, we'd like to see it so we can make an evaluation.

SMITH:

OK, let me give you some examples and mention several new developments that I think have occurred and ask you if you have become aware of them. The first example is what the chairman mentioned a while ago.

An employee at a company that managed Former Secretary Clinton's private e-mail server said quote, "I need to strip out ABIP's (ph), bury BIP e-mail address from a bunch of archived e-mails. Basically they don't want the BIP's e-mail address exposed to anyone." I assume you're aware of that?

COMEY:

I'm aware of that.

SMITH:

OK, the same employee called a new retention policy designed to delete e-mails after 60 days a quote, "Hillary cover-up operation," and you saw that did you not?

COMEY:

Say the last, I'm sorry Mr. Smith, I couldn't hear the last...

SMITH:

Same employee called a new retention policy designed to delete e-mails after 60 days a Hillary cover-up operation. You saw that?

COMEY:

I don't know that particular language.

SMITH:

Oh, OK. We'll get you the source but you can take my word for it that that's what he said.

COMEY:

I will.

SMITH:

Another examples, a former Clinton Foundation employee who also managed the Clinton server destroyed devices used by Former Secretary Clinton by smashing them with a hammer. You're aware of that?

COMEY:

Yes.

SMITH:

OK. Two employees of the company that managed Former Secretary Clinton's server recently plead the fifth amendment to Congress to avoid self-incrimination. You're aware of that?

COMEY:

Yes.

SMITH:

OK, and then lastly, 15,000 more work related e-mails were discovered though there had been an attempt to wrongly delete them. And you're aware of that?

COMEY:

I think we discovered them.

SMITH:

Right. To me, Director Comey, what I cited are not the actions of innocent people. There is a distinct possibility that Mrs. Clinton or her staff directed others to destroy evidence in a government investigation which of course is against the law. So I would urge you to re-open your investigation. Do you want to comment on that?

COMEY:

I don't.

SMITH:

OK. I know you can't tell us whether you have or have not, but I believe I have given evidence of new information that is relevant and substantial that would justify re-opening the investigation. My next question is this, I know you have granted immunity to a number of individuals but if you had new information that is relevant and substantial, you would be able to investigate them further wouldn't you?

COMEY:

Not to quibble, the FBI doesn't grant immunity to anybody, the Department of Justice is able to grant very different kinds of immunity. Yes (ph) an immunity -- if new and substantial evidence develops either that a witness lied under a grant of use immunity or under any kind of immunity, of course the Department of Justice can pursue it.

SMITH:

OK.

COMEY:

Nobody gets lifetime immunity.

SMITH:

Right, OK. Thank you Director Comey. Last question is, as chairman of the Science Committee, I issued the FBI a subpoena on September 19th, 2016. The due date for a response was two days ago, September 26th. Your all (ph) staff has still not provided the requested information and documents.

Yesterday we pointed out to them that the Science Committee has jurisdiction over the National Institute of Standards and Technology, which sets standards for the Federal Information Security Modernization Act of 2014. I trust you intend to comply with the subpoena?

COMEY:

I intend to continue the conversations we've been having about the subpoena. As you know we've made a lot of documents available to at least six committees and the question of whether we should make additional -- to available to another committee is something that we're struggling with but talking to your folks about.

SMITH:

And to me there's no struggle if we have clear jurisdiction which we can demonstrate it, I think obligates you to comply with this subpoena.

COMEY:

Yes sir, we're not trying to be disrespectful. We're just not sure we see the jurisdictional issue the way that your folks do but we're continuing to talk about it.

SMITH:

OK, thank you Director Comey.

GOODLATTE (?):

The gentleman -- did the gentleman yield?

SMITH:

I'll yield to the gentleman from California.

ISSA:

Thank you, the chairman of full committee had asked something earlier and I just want to point out and ask to be placed in the record. According to the Maryland Code of Ethics, 19301.11, it specifically prohibits a former or current government officer and employee from acting as a counsel to someone that they represented in government. I'd like that to be placed in the record.

GOODLATTE:

Without objection, it will be made a part of the record.

ISSA:



In light of the fact that the Maryland Bar has this prohibition, would that have changed your view of allowing her in and saying you had no authority?

COMEY:

I'm not qualified nor am I going to answer questions about legal ethics in this forum. The FBI has no basis to exclude somebody from an interview who the subject of the interview says is on their legal team.

ISSA:

OK.

SMITH:

And thank you Director Comey, thank you Mr. Chairman. I yield back.

GOODLATTE:

The chair thanks the gentleman, recognizes the gentlewoman from California, Ms. Lofgren for five minutes.

LOFGREN:

Thank you Mr. Chairman and thank you Director Comey for once again appearing before this committee as you appear before so many committees here on the House. Sometimes I wonder how you get any work done at all that you are called up here so frequently. You know there's been a lot of focus on the private e-mail that Secretary Clinton used just as her predecessor Colin Powell used.

So far as I'm aware from the public comments, there's no forensic evidence that there was a breach of that service although theoretically you could intrude and not leave evidence. But there's been very little focus on the breach at the State Department e-mail system. Now its been reported in the press that this breach of the State Department e-mail system was one of the largest ever of a federal system and was accomplished by, according to the press, either China or Russia.

I'm wondering if you are able to give us any insight into whether it was in fact the Russians who hacked into the State Department e-mail system or whether that's still under investigation.

COMEY:

Not in this open forum I can't.

LOFGREN:

All right, I'm hoping that we can get some insight in an appropriate classified setting on that. Now we have watched with some concern, and I know you are also concerned, about the Russian intrusion into our election system.

The -- its been reported to us that the Russians hacked into the Democratic National Committee database. They also hacked into the Democratic Congressional Campaign Committee and it seems that they are making an effort to influence the outcome of this election.

We've been warned that the information stolen might not just be released but also be altered and forged and then released in an effort to impact the election here in the United States.

Yesterday there were press reports, and I don't know if they're accurate and I'm interested if you are able to tell us, that the Russians have also hacked the telephones of Democratic staffers and that there was a request for Democratic staffers to bring their cell phones into the FBI to have them mirrored. Can you tell us anything about that?

COMEY:

I can't at this point but I can say in response to the first part of your question, any hacking is something we take very seriously. Any hacking in connection with this nation's election system is something we take extraordinarily seriously.

The whole of government and so it is something the FBI is spending a lot of time on right now to try and understand, so what are they up to and what does it involve and what's the scope of it, to equip the president to decide upon the appropriate response. And so that's one of the reasons I have to be very careful about what I say about it. That work is ongoing.

I should make clear to folks, when we talk about our election system, there's been a lot of press reporting about attempts to intrude into voter registration databases. Those are connected to the internet, that's very different than the electoral mechanism in this country...

LOFGREN:

No I -- we have actually a hearing and I had the chance to talk to Alex Pedilla, who's the secretary of state in California. Number one they encrypt their database. Number two, even if you were to steal it, there's back ups that you couldn't steal so they can't really manipulate that but you could cause a lot of damage.

I mean you could create chaos on election day that would -- and you could target that chaos to areas where voters had a tendency to vote for one candidate over another in an attempt to influence the outcome.

So it's not a benign situation certainly and one that we want to worry. I want to just quickly touch on a concern I have also on cyber on Rule 41 and how the FBI is interpreting that. I'm concerned that the change as understood by the FBI would allow for one warrant for multiple computers but would include allowing the FBI to access victims' computers in order to clean them up.

The cyber security experts that I've been in touch with have raised very strong concerns about that provision, especially using malware's own signaling system to disable the malware.

The cyber experts who have talked to me and expressed concern believe that that ultimately could actually trigger attacks and so I'm wondering if you have any comments on how the FBI intends to use Rule 41 vis a vis malware on victims' computers.

GOODLATTE:

Thank you, the time of the gentlewoman has expired. The witness will be permitted to answer the question.

COMEY:

Thank you Mr. Chairman. I'm not an expert but one of the challenges we face especially in dealing with these huge criminal bot-nets, which have harvested and connected lots of innocent people's computer is, how do we execute a search warrant to try and figure out where the bad guys are and get them away from those innocent people and the challenge that we've been facing is to go to every single jurisdiction and get a warrant would take literally years.

And so we're trying to figure out, can we use Rule 41 to have one judge issue that order and give us that authority?

LOFGREN:

But -- Mr. Chairman, I know my time is expired, I'd just like to close my expressing the hope that the FBI might seek the guidance of some of the computer experts at our national labs on this very question of triggering malware attacks and I yield back.

GOODLATTE:

The point is well taken. The chair recognizes the gentleman from Ohio, Mr. Chabot for five minutes.

CHABOT:

Thank you Mr. Chairman. Director Comey, Chairman Goodlatte in his introduction of you mentioned that you're a graduate of the College of William and Mary and as you may well know, I'm a graduate of William and Mary as well.

Anyway, you may remember that our alma mater is very proud of something called the honor code. And I checked out the wording of the honor code to make sure that I was correct on it and I'll tell you exactly what it says.

It says, "as a member of the William and Mary community, I pledge on my honor not to lie, cheat or steal either in my academic or my personal life." Well, one of the people who's behavior you investigated, Hillary Clinton, didn't have the good fortune to attend the College of William and Mary but

she did attend Wellesley and I wondered whether they had an honor code and I found out, I looked it up, they do and they did.

And here's what it says, "as a Wellesley college student, I will act with honesty, integrity and respect. In making this commitment, I am accountable to the community and dedicate myself to a life of honor." Let me repeat part of that again, "I will act with honesty."

Now, I'm sure the young women attending Wellesley today, and those that have attended it in the past, are proud that one of their own could be the next president of the United States.

But a majority of the American people have come to the conclusion that Hillary Clinton is not honest and cannot be trusted, it's about two to one who say that she's dishonest.

In the latest Quinnipiac Poll for example, the question being, would you say that Hillary Clinton is honest or not, 65 percent said no and only 32 percent said yes, she is honest. Republican and Democrats not surprisingly were overwhelmingly one way or another, but Independents, 80 percent of them said no, she's not honest and only 19 percent of them said she is.

So, Director Comey, since you and your people were the ones who investigated Hillary Clinton's e-mail scandal, I'd just like to ask a couple of questions. First, Hillary Clinton claimed over and over that none of the e-mails that she sent contained classified information. Was she truthful when she said that?

COMEY:

As I said when I testified in July, there were -- I'm forgetting now, two, two and a half months, the exact number but there were 80 or so e-mails that contained classified information.

CHABOT:

OK, so she said they didn't contain classified information and they did so that sounds like not being truthful. Not trying to put words into your mouth but I think that's what that means. Hillary Clinton then came up with a fall-back position saying, well, none of the e-mails I sent were marked classified but that wasn't true either, was it?

COMEY:

There were three, as I recall, three e-mails that were within the body of the text portion marking that indicated they were classified confidential.

CHABOT:

And again, not putting words in your mouth but I think that means that no, she didn't tell the truth in that particular instance. Hillary Clinton said she decided to use a personal e-mail server system for convenience and that she had only had to carry around one Blackberry. Was she being truthful when she said she just used one device?

COMEY:

She used during her tenure as secretary of state, multiple devices, not at the same time but sequentially.

CHABOT:

OK again I'm going to take that as she said one and it was more. So therefore, not honest. And in fact, some of the devices were destroyed with a hammer as its already been mentioned. Is that the type of behavior that you would expect from someone who is being fully cooperative with an investigation, destroying devices containing potential evidence with hammer?

COMEY:

Well, we uncovered no evidence that devices were destroyed during the pendency of our investigation and so why people destroyed devices when there's no investigation is a question I'm not able to answer.

CHABOT:

OK, thank you and Mr. Director, a little less than two months Hillary Clinton, in talking about her e-mails, claimed that you said and I quote, "that my answers were truthful." PolitiFact by the way gave this claim a pants on fire rating. Did you say that she was telling the truth with respect to her e-mail claims?

COMEY:

I did not. I never say that about anybody. Our business is never to decide whether someone, whether we believe someone, our business is always to decide what evidence do we have that would convince us not to believe that person. It's an odd way to look at the world but it's how investigators look at the world.

CHABOT:

Thank you. Director Comey, it must have been, and I'm almost out of time, it must have been very awkward for you.

You're tasked with investigating a person who could be the next president of the United States and the current president of the United States has already pre-judged the case and telegraphed to you and the entire Justice Department that he, your boss, has come to the conclusion that there is not even smidgen of corruption.

His own words, before you've even completed your investigation. You were aware that he'd said that, weren't you?

COMEY:

Yes I saw those, they were reported in the press.

CHABOT:

OK and finally it just seems to me here that there was clearly a double standard going on, by for example, if anybody else had done this like a soldier or a serviceman who did virtually the same thing, they would've been prosecuted and were, but not Hillary Clinton. And that's a double standard and that's not the way it's supposed to work in America and I'm out of time, I yield back.

COMEY:

I disagree with that characterization but...

GOODLATTE:

The gentleman is permitted to respond.

COMEY:

I don't think so. I actually if I -- if we were to recommend she be prosecuted, that would be a double standard because Mary and Joe at the FBI or some other place, if they did this, would not be prosecuted. They'd be disciplined, they'd be in big trouble. In the FBI if you did this, you would not be prosecuted, that wouldn't be fair. OK.

GOODLATTE:

The time of the gentleman has expired, the chair recognizes the gentlewoman from Texas, Ms. Jackson Lee for five minutes.

JACKSON LEE:

Chairman thank you so very much. Many Americans have come to trust Hillary Clinton as a dedicated, committed public servant but I believe it's important as we address these questions, let me make one or two points. My colleagues have already made it and I look forward maybe to coming back to Washington to dealing with the potential Russian intrusion on the election system.

I'm not asking you Director at this time, and also the issue of connecting the dots as we deal with terrorism across America.

But I do want to acknowledge Eric Williams (ph), an outstanding detailee (ph) to this Judiciary Committee, thank him for his service and I want to thank the sack (ph) in Houston, Mr. Turner for helping us in the shooting that occurred in Houston as you well know that gave us a great deal of fear and scare just a couple of days ago.

But Director Comey, my Republican colleagues have questioned, second guessed and attacked you and your team of career FBI agents.

They disagree with the results of your investigation, they want you to prosecute or to ask the DOJ to prosecute Secretary Clinton regardless of the facts. So they've engaged in an almost daily ritual of holding hearings definitely trying to tear down the investigation and your recommendation.

I believe you testified previously that your recommendation in that case was unanimous and your investigation was carried out by what you called an all star team of career agents and prosecutors. Is that right?

COMEY:

Yes, these were some of our very best. And sometimes because I'm lucky enough to be the person who represents the FBI, people think it's my conclusion. Sure it's my conclusion but I'm reporting what the team thought and their supervisors and their supervisors. As I said, this was, as painful as it is for people sometimes, this was not a close call.

JACKSON LEE:

Let me continue. You have written that the case itself was not a cliffhanger. Is that right?

COMEY:

Correct, correct.

JACKSON LEE:

Recently Republicans have attacked the decision to provide limited immunity to individuals during the investigation.

For example, when Congressman Chaffetz learned about this he stated and I quote, "no wonder they couldn't prosecute a case, they were handing out immunity deals like candy." I understand that the FBI does not make the final call on immunity agreements, that was the DOJ, you made that clear.

So his statement was just wrong. But did you consult closely with DOJ before these immunity agreements were concluded by giving, by having facts?

COMEY:

Right, our job is to tell them what facts we'd like to get access to. The prosecutor's job is to figure out how to do that and so they negotiate, I think there were five limited immunity agreements. There are different kinds that they negotiated.

JACKSON LEE:

Did you or anyone at the FBI ever object to these decisions to grant immunity, did you think they made sense?

COMEY:

No, it was fairly ordinary stuff.

JACKSON LEE:

Was the FBI or DOJ handing out immunity agreements like candy?

COMEY:

That's not how I saw it. I didn't see it.

JACKSON LEE:

Congressman Gowdy, a good friend, also objected to granting immunity to Brian Pagliano and Mr. Combetta at Platte River networks.

He quoted, these are the two people that FBI decides to give immunity to, Brian and the guy at Platte River -- if it happened, those are the two that you would want to prosecute so you're giving immunity to the trigger people and everybody goes free. Do you agree with this assessment? Did the FBI screw up here and let everyone go free because of these limited immunity deals?

COMEY:

No I don't think so. The goal in an investigation like this is to work up and if people have information that their lawyers are telling you that you're not going to get without some limited form of immunity and they're lowered down, you try to get that information to see if you can make a case against your subjects.

JACKSON LEE:

Congressman Gowdy also said this about the FBI and I quote, I've been underwhelmed by an agency that I once had tremendous respect for.

Let me just say sitting on this Judiciary Committee for many, many years, going through a number of investigations, I have never been proud of an agency that has always been there when vulnerable people are hurting and when there is a need for great work. But my question to you is, what is your response to that, Director Comey? Do you believe these criticisms are fair?

COMEY:



I think questions are fair. I think criticism is health and fair. I think reasonable people can disagree about whether I should have announced and how I should have done it. What's not fair is any implication the bureau acted in any way other than independently, competently and honestly here.

That's just not true. I knew this going to be controversial, I knew there'd be all kinds of rocks thrown but this organization and the people who did this are honest independent people.

We do not carry water for one side or the other. That's hard for people to see because so much of our country, we see things through sides. We are not on anybody's side. This was done exactly the way you would want it to be done. That said, questions are fair. Feedback is fair.

JACKSON LEE:

Absolutely but the foot soldiers, we use that term in the civil rights movement, your agents on the ground, you take issue with whether or not they were compromised or they were adhering to somebody's message. Is that what you're saying?

COMEY:

Absolutely. You can call us wrong but don't call us weasels. We are not weasels, we are honest people and we did this in that way. Whether you disagree or agree with the result, this was done the way you want it to be done.

JACKSON LEE:

You were able to learn that Mr. Pagliano and Mr. Combetta, you learned what they had to say and if anyone provided statements to the FBI had actually provided evidence that Secretary Clinton had committed a crime, would you then have recommended prosecution to the DOJ?

COMEY:

Oh yes, if the case was there, very aggressively.

JACKSON LEE:

You sure you wouldn't have been a little nervous about doing so, a little intimidated?

COMEY:

No, I really don't care.

JACKSON LEE:

You don't look like it, you're kind of tall and that's...

COMEY:

I have a 10 year term, that's the beauty of this -- while there's a lot of challenging things about this job, one of the great things is I have a certain amount of job security and so no, either way we would have done what the facts told us should be done.

JACKSON LEE:

So are you now second guessing your decision regarding Hillary Clinton?

COMEY:

No.

(CROSSTALK)

JACKSON LEE:

Mr. Chairman, I want to thank the director and ask my colleagues to give the respect that this agency in this instance deserves. Thank you so very much for your service, I yield back.

GOODLATTE:

The chair thanks the gentlewoman, recognizes the gentleman from California, Mr. Issa for five minutes.

ISSA:

Thank you Mr. Chairman. Director, I've got a lot of concerns but one of them refers to Reddit.

At the time that the Department of Justice at your behest or your involvement gave Paul Combetta immunity, did you do so knowing about all of the posts he had on Reddit and capturing all of those posts in correspondence where he was asking where to wipe or completely erase on behalf of a very, VVIP so to speak?

COMEY:

I'm not sure sitting here. My recollection isn't -- and I'll check this and fix it if I'm wrong, that we had some awareness of the Reddit post. I don't know whether our folks had read them all or not. We had a pretty good understanding of what we thought he had done but that's my best recollection.

ISSA:

OK in the last week, en masse he's been deleting them from Reddit post. Is that consistent with preserving evidence? And I said that because there's still an ongoing interest by Congress and only in spite of Reddit's own senior, what they call flack team, trying to hide it only because a few people caught it, do we even know about and is this and other committees interested in getting the backups that may exist on these deletions.

I guess my question to you is, is he destroying evidence relevant to Congressional inquiries? And I'll answer it for you, yes he is and what are you going to do about it?

COMEY:

That's not something I can comment on.

ISSA:

Let me go into something that concerns this body in a very specific way. As a former chairman issuing subpoenas, I issued a subpoena and additionally I issued preserved letters in addition to that. Now Chairman Chaffetz issued whatever effectively preserved letters.

Some of them were directly to Hillary Rodham Clinton while she was still secretary. Others, the subpoena in the 2013 was to Secretary Kerry. These individuals destroyed documents pursuant, or took it out of federal custody, pursuant to our subpoena and our discovery.

As a result, they committed crimes. My question to you is, when I was a chairman and I wanted to grant immunity to somebody, I had to notice the Department of Justice and you were consulted, isn't that correct?

COMEY:

In a particular matter?

ISSA:

In any matter.

COMEY:

I don't know whether the FBI is consulted in that circumstance.

ISSA:

OK, for the record yes, the Department of Justice does not grant immunity without checking with federal law enforcement to see whether it will impact any ongoing investigation. That's the reason we have a requirement to give notice.

When the reverse was occurring, you were granting, handing out like candy according to some, immunity. Did you, or to your knowledge, Department of Justice confer with Chairman Goodlatte, Chairman Chaffetz, Chairman Smith or any of the other chairmen who had ongoing subpoenas and investigations?

COMEY:

Not to my knowledge.

ISSA:

So isn't there a double standard that when you granted immunity to these five individuals, you took them out of the reach of prosecution for crimes committed related to destruction of documents or withholding or other crimes pursuant to Congressional subpoenas?

COMEY:

I don't think anybody was given transactional immunity.

ISSA:

Oh really? Now we have not allowed to make your immunities public but I'm going to take the privilege of making one part of it public. I read them. You gave immunity from destruction to both of those attorneys, not just turning them, the documents over, specifically destruction. You did the same thing with these other two individuals, Brian and Paul Combetta. You gave them immunity from destruction.

COMEY:

Yes I don't think -- again, I could always be wrong but I don't have them in front of me...

ISSA:

Well, because you don't let us take them out of the skiff, it's a little hard for us too but the fact is when you read them...

(CROSSTALK)

COMEY:

... my answer -- I'm pretty sure that what was granted was use immunity. In the case of those two people coextensive with 18 USC 6001, which means no statement you make can be used against you directly or indirectly. Transactional immunity is sometimes given also by prosecutors, says you will not be prosecuted in any event for this set of facts. I don't think there was any transactional immunity.

ISSA:

Well, when I read for both of the attorneys that immunity was granted, it in both cases said destruction in addition to the turning over. Why was that -- why would you believe that was necessary or do you believe that would be necessary?

You wanted the document -- you wanted the physical evidence, why did you have to give them immunity from destruction of materials and because my time is expiring, when you look into it and hopefully get back to this committee, I'd like to know does that immunity apply only to destruction on the computers delivered so that other destructions by Cheryl Mills could still be prosecuted?

COMEY:

Yes, again my recollection is no transactional immunity was given. A protection of statements was given to the Combetta guy and Mr. Pagliano.

ISSA:

Thank you Mr. Chairman.

GOODLATTE:

The chair thanks the gentleman, recognizes the gentleman from Tennessee, Mr. Cohen.

ISSA:

Mr. Chairman. I would ask unanimous consent quickly that a group of documents be included and I'll summarize them. They're basically the letters and subpoenas that led up to the destruction of documents that were previously held for preservation. Additionally, the blog post from Reddit if those could all be placed in the record.

GOODLATTE:

Without objection, they will be a part of the record.

ISSA:

Thank you Mr. Chairman.

GOODLATTE:

Gentleman from Tennessee is recognized.

COHEN:

Thank you sir. Director Comey, would you consider the FBI's most important job presently fighting terrorism and threats to the homeland?

COMEY:

Yes, that's our top priority.

COHEN:

How much time do you think the FBI and you have spent responding to Congressional inquiries and on this particular e-mail investigation? Could you give me an idea how many man, months or years have been expended on responding to the different committees that have called you in time after time after time and repetitiously accused you of doing politics rather than being an FBI director.

COMEY:

I can't, I don't have any sense.

COHEN:

Could it be, would it be months of cumulative man hours or would it be years of cumulative man hours?

COMEY:

You know I don't know. A lot of folks have done a lot of work to try and provide the kind of transparency that we promised. Its been a lot by a lot of people. I just don't have a sense of the...

COHEN:

How many hours have you spent before Congress on this?

COMEY:

Testimony? Four hours and 40 minutes, without a bathroom break, I want a note for the record and whatever today is. Those would be the two main appearances. I was asked questions at Senate Homeland yesterday about this and then House Homeland in July I think. I'm guessing 10 hours or so.

COHEN:

And you prepared for this though and the 10 hours is just like the iceberg.

COMEY:

Oh, sure.

COHEN:

Could your time and the FBI's time better be used fighting terrorist threats here in America?

COMEY:

You know we're still doing it all so no one should think that we've taken a play off because we're also doing oversight. We do both.

COHEN:

In the case in New York where Mr. Rahami tried to detonate some bombs, did detonate a bomb, his father had accused him of being a terrorist at one time and he'd stabbed his brother and was in jail. Did the FBI interview him when he was in jail about his possible terrorist tendencies and his trips to Pakistan or Afghanistan?

COMEY:

I'll answer that -- I'm trying to be very circumspect in how I answer questions about the case because the guy's alive and is entitled to a fair trial and so I don't want to do anything that would allow him to argue he lost the ability to have a fair trial. The answer is we did not interview him when he was in jail in 2014.

COHEN:

Fourteen. And why would that be? You interviewed the father I believe, you might have talked to the brother, you might have talked to a friend. The best evidence was him. He's in jail, you didn't have to -- why did they not go and talk to him?

COMEY:

Yes, sitting here I don't want to answer that question yet. I've commissioned as I do in all of these cases a deep look back. We're trying to make the case now. We will go back very carefully, try to understand what decisions the agents made who investigated that and why and whether there is learning from that. So I don't want to answer it just now because I'd be speculating a bit.

COHEN:

Thank you sir. Some people have suggested you made a political calculation in your recommendation dealing with Secretary Clinton and the e-mails. Did you make a political calculation in your recommendation dealing with Secretary Clinton and the e-mails? Did you make a political calculation in coming to your ultimate decision?

COMEY:

None.

COHEN:

Some said that the -- on national television that Secretary Clinton's e-mails were destroyed after a direct implement (ph) Clinton campaign. You announced your decision, you stated publicly and I quote, "we found no evidence that Secretary Clinton's e-mails were intentionally deleted in efforts to conceal them." Is that not correct?

COMEY:

That's correct.

COHEN:

Others have said they lost confidence in the investigation and question the genuine effort in which it was carried out. Did the FBI make a genuine effort to carry out a thorough investigation?

COMEY:

Oh yes, very much.

COHEN:

And did you take some hits from the position you took when you announced your decision?

COMEY:

A few, yes.

COHEN:

Difficult.

COMEY:



Difficult but I just thought it was the right thing to do. I'm not loving this but I think it's important that I come and answer questions about it. As long as people have questions, I will try to answer them.

COHEN:

You're not loving this. Do you need a bathroom break?

COMEY:

No, no I'm good.

COHEN:

Setting a record?

COMEY:

I'll let you know at 4:40.

COHEN:

Thank you sir. And FBI billings (ph), we know what they shouldn't be named and you know my position on that and I hope you keep that well in mind. You're a credit to the FBI, you're a credit to government service and to your alma mater and I yield back the balance of my time.

GOODLATTE:

Chair thanks the gentleman and recognizes the gentleman from Iowa, Mr. King, for five minutes.

KING:

Thank you Mr. Chairman. I thank you Director for your testimony here before this committee. Again, listening in the exchange between yourself and Mr. Issa, I'd just like to confirm that you were confirming that Mr. Combetta made the Reddit posts?

COMEY:

No one (ph) confirming it. I think he did is my understanding but -- yes, that's my understanding. I think he did. I haven't dug into that myself. I've been focused on a lot of other stuff as we've talked about but I think that's right.

KING:

I certainly can accept that and I'd like to just go back to the interview with Hillary Clinton and how that all came about on that July 2nd date but first I'm looking at the dates of the conditional immunity documents that I've reviewed and I see that Mr. Pagliano had one dated December 22nd and another one dated December 28th.

Can you tell me what brought about that second agreement, why the first one wasn't adequate and if there was an interview with Mr. Pagliano in between those dates of December 22nd and 28th of 2015?

COMEY:

I think what it is and Mr. Gowdy and Mr. Marino will recognize this term, the first one is what we call a Queen For a Day Agreement, which was to govern an interview, so limited use immunity for an interview.

And I believe the second one is the agreement for use immunity in connection with the investigation. So it's sort of a try out for him to get interviewed for the prosecutors and investigators to poke at him and then the second one is the agreement they reached. I think that's right.

KING:

And so they said, if we're going to go any further we'll go off of the December 28th agreement. That'd be how I would understand that, your description.

COMEY:

I think they're both important to him and his lawyer but the first is an intermediate step to the second.

KING:

OK, thank you. Then were you aware of the president's statement on October 9th, 2015 when he has reported to -- and this what they reported on October 9th of 2015, that he said that Hillary Clinton would not have endangered national security?

COMEY:

Obviously, I don't know the dates but I remember public reporting on a -- on a statement like that.

KING:

And -- and the fall (ph) October -- and I'll state it as (inaudible) the report I have is October 9th. Then again on April 10th, 2016, it was reported that the president had said that Hillary Clinton was careless but not intentionally endangering national security.

Were you aware of that statement as well?

COMEY:

Yes.

KING:

And then I'd like it if you could characterize the interview sometime around, I believe, May 16th, it was reported that you said you intended to interview Hillary Clinton personally?

COMEY:

I never said that because I never intended that. I'm sure I didn't say that publicly.

KING:

Were you aware of the report that that was your public statement?

COMEY:

Yes. I think I read it and smiled about it. People imagine the FBI Director does things that the FBI -- doesn't do.

KING:

In fact, and I'm not disputing your answer, I've just simply, for the record, this is -- this is a record that is dated September 28th, 2016. "Buffalo News" (inaudible) your picture on it, and takes us back to -- that's when it was printed, excuse me -- takes us back to a document, May 16th, 2016, has a picture of you on the front of it, and I will ask to introduce it in the record.

It says, FBI director James Comey told reporters that he would personally interview Hillary Clinton, quote, "in coming days," close quote. And I would ask unanimous consent to introduce this article into the record.

GOODLATTE:

Without objection, it will be made a part of the record.

KING:

Thank you, Mr. Chairman. And -- and not as a matter, and I don't dispute your word on this, it's what the public expectation was hanging out there, is my real point. And then with that public expectation, I think the public was surprised to learn about who was or was not in that room.

Can you tell us who was in the -- who was in the room involved in either listening to or conducting the interview of Hillary Clinton on that date of July 2nd (ph), 2016?

COMEY:

I cannot tell you for sure. I can give you a general sense. The witness and her legal team and then on our side of the table, our agents, prosecutors from the Department of Justice, I don't know if (ph) any of our analysts were in there or not. But sort of our team, their team.

KING:

And how many of your team? How many FBI investigators?

COMEY:

I do not know for sure sitting here. I think we probably had 8 to 10 people on our side, prosecutors and agents. That is a noble fact. I just do not know it sitting here.

KING:

Prosecutors, did Loretta Lynch have her people in there?

COMEY:

If you mean Department of Justice lawyers, yes, sure.

KING:

So how many Department of Justice lawyers would have been there?

COMEY:

I do not know for sure. Again, I think it was probably about eight people, probably about four lawyers, about four from the FBI. But again, I could be wrong.

KING:

OK. I think I -- I think I got it (ph). So about around four investigators, around four potential prosecutors from the DOJ, a couple of attorneys for Hillary Clinton, Hillary Clinton herself. That would set the scene fairly closely?

COMEY:

I think the -- Secretary Clinton's team was bigger than that. I do not know the exact number.

KING:

OK. And then when you receive (ph) the counsel as to the recommendation you were to make to Loretta Lynch, I'm just going to just say -- go through this quickly. You did not review a videotape, an audiotape, or a transcript, so you would have had to rely upon the briefings from the people that were in the room who would have been your investigative team.

COMEY:

Yes, the agents -- the agents who conducted the interview, yes.

KING:

Uh-huh. And they were briefing off of notes that they had taken, which are now in the skiff, but (ph) redacted.

COMEY:

Right. They write them up in what is called an FBI 302 (ph).

KING:

And so Loretta Lynch had her people in the room and they would have had access to your investigators in the room and out of that came a piece of advice to you that she had already said she was going to hand that responsibility over to you as director of the FBI as to making the recommendation, which turned out to be the decision, on whether or not to indict Hillary Clinton.

GOODLATTE:

The time of the gentleman has expired. The director -- will answer the question.

COMEY:

I'm not sure I'm following entirely. There was no advice to me from the Attorney General or any -- any of the lawyers working for her. My team formulated a recommendation that was communicated to me and the FBI reached its conclusion as to what to do, uncoordinated from the Department of Justice.

KING:

Even though a justice was in the room with your investigators and I -- make that final comment and I yield back. Thank the Chairman.

GOODLATTE:

Chair thanks the gentleman. Recognize the gentleman from Georgia, Mr. Johnson, for five minutes.

JOHNSON:

Thank you, Mr. Chairman. Russian hacking into the databases of the Democratic National Committee and the Democratic Congressional Campaign Committee, as well as Russian hacks into the voter registration systems of Illinois (ph) and Arizona, serve as ominous warnings to the American people about the risks that our electoral processes face in this modern era.

Unfortunately, Trump Republicans in the House are as obsessed with Hillary Clinton's damn e-mails as Trump has been about President Obama's birth certificate. Just like the Donald closed his birth certificate investigation after five years of fruitless investigation, however, I predict that the Trump Republicans will at some point close this e-mail persecution.

The American people are sick of it. The attention of the American public is increasingly focused on the security of this nation's election infrastructure.

On Monday the ranking members of the House and Senate Intelligence Committees, Senator Dianne Feinstein and Congressman Adam Schiff, issued a joint statement setting forth the current status of this investigation.

It said this, and I quote, "Based on briefings we have received, we have concluded that the Russian intelligence agencies are making a serious and concerted effort to influence the U.S. election. They work closely with intelligence community individuals to be able to put that statement out to the American public."

Director Comey, I do not want to ask you about any classified information, but is their statement accurate?

COMEY:

I do not -- I cannot comment on that in this forum. As I said in my opening, we are investigating to try to understand exactly what mischief the Russians might be up to in connection with our political institutions and the election system, more broadly. But I do not want to comment on that at this point.

JOHNSON:

Free and fair elections are the linchpin of our society. A compromise or disruption of our election process is something that this Congress certainly should be looking into. Would you agree with that?

COMEY:

I cannot speak, sir, to what Congress should be looking into, but the -- the FBI is looking into this very, very hard for the reasons you say. We take this extraordinarily seriously.

JOHNSON:

Thank you. In June, the FBI's cyber division issued a flash alert to state officials warning that hackers were attempting to penetrate their election systems. The title of the flash alert was, and I quote -- quote, "targeting activity against State Board of Election systems," end quote.

JOHNSON:

The alert disclosed that the FBI is currently investigating cyber attacks against at least two states. Later in June, the FBI warned officials in Arizona about Russian assaults on their election system and hackers also attacked the election system in Illinois, where they were able to download the data of at least 200,000 or up to 200,000 voters.

In August, the Department of Homeland Security convened a conference call warning state election officials and offering to provide federal cyber security experts to help scan for vulnerabilities and yesterday it was announced that at least 18 states have already requested election cyber security help to defend their election systems.

Director Comey, since these flash alerts and warnings went out over this summer, I'd appreciate you letting us know whether or not there have been any additional attacks on state operations or databases since June.

COMEY:

There have been a variety of scanning activities, which is a preamble for potential intrusion activities as well as some attempted intrusions at voter registration databases beyond those we knew about in July and August. We are urging the states just to make sure that their deadbolts are thrown and their locks are on and to get the best information they can from DHS just to make sure their systems are secure.

And again, these are the voter registration systems. This is very different than the vote system in the United States which is very, very hard for someone to hack into because it's so clunky and dispersed. It's Mary and Fred putting a machine under the basketball hoop at the gym.

Those things are not connected to the internet but the voter registration systems are so we urge the states to make sure you have the most current information and your systems are tight because there's no doubt that some bad actors have been poking around.

JOHNSON:

All right and with that I will yield back the balance of my time and thank you sir.

GOODLATTE:

The chair recognizes the gentleman from Texas, Mr. Gohmert for five minutes.

GOHMERT:

Thank you Mr. Chairman and Director Comey thanks for being here. I was a bit astounded when you said the FBI is unable to control who a witness coming in voluntarily brings into an interview. I've seen a lot of FBI agents tell people who could come into an interview and who could not.

And in this case, and I'm sure you've heard some of the questions raised by smart lawyers around the country about providing immunity to people like Cheryl Mills in return for her presenting a laptop that you had every authority to get a subpoena.

And if you had brought a request for search warrant, based on what we now know, I would have had no problem signing that warrant so you could go get it anywhere you want. And in fact I've talked to former U.S. attorneys, AUSA's, who have said if an FBI agent came in and recommended that we give immunity to a witness to get her laptop that we could get with a subpoena or a warrant, then I would ask the FBI not to ever allow this agent on a case.

Can you explain succinctly why you chose to give immunity without a proffer of what was on the laptop, give immunity to Cheryl Mills while she was an important witness and you could have gotten her laptop with a warrant or a subpoena?

COMEY:

Sure, I'll give it my best shot. The immunity we're calling about here, and the details really matter that we're talking about, is Act of Production Immunity, which says, we want you to give us a thing. We won't use anything we find on that thing directly against you. Right, it's a fairly...

GOHMERT:

And I understand that and I understood that from reading the immunity deal and that's what's so shocking because she was working directly with Hillary Clinton and therefore it's expected since the evidence indicates she was pretty well copied on so many of the e-mails that Hillary Clinton was using that pretty much anything in there would've been usable against her. And you cleaned the slate before you ever knew.

Now, some of the immunities you gave, the last paragraph mentions a proffer. Was there a proffer of what the witness would say before the immunity deals were given to those that those immunities?

COMEY:

Can I answer first though your question about why I think it made sense to have active production immunity for Cheryl Mills' laptop?

GOHMERT:

I'd rather -- my time is so limited. Please.



COMEY:

OK, all right -- it's an important question and I think there's a reason why I answer it but I'll give it another time. The -- I think in at least one of the cases, and I'm mixing up the guys but with Mr. Combetta maybe also with Mr. Pagliano, no I got that reversed...

GOHMERT:

It's yes or no. Did you have a proffer from them as to what they would say before you gave them immunity?

COMEY:

I believe there was a proffer session governed by what I just referred to, is called a Queen for a Day Agreement, with at least one of them to try and understand what they would say but...

GOHMERT:

Because the deals that I have seen back 30 years ago before I went to the bench, the FBI would say, you in the DOJ, of course we know FBI can't give immunity, it has to come from DOJ just like it's not the FBI's job to say what a reasonable prosecutor should do or not do.

You give them the evidence and then you let them decide but a proffer is made saying this is what my client will say, then the DOJ decided based on that proffer, here's the plea we'll offer, here's the immunity we'll offer and if your client deviates from that proffer, the deal's off.

You got really nothing substantial. It's as if you went into the investigation determined to give immunity to people instead of getting a warrant. You gave immunity to people that you would need to make a case if a case were going to be made. And I know we have people across the aisle that are saying, well it's only because she's a presidential candidate.

It happens to be in my case, I wouldn't care whether she was a presidential candidate or not. What is important to maintaining a civilization with justice and fairness is a little righteousness where people are treated fairly across the board and it does not appear that in this case, it comports with anything that FBI agents with centuries of experience have told me, they'd never seen anything like this.

So one other thing, I know this happened before your watch, but under Director Mueller, Kim Jensen, who prepared 700 pages of training material for those who would go undercover and try to embed with Al- Qaeda.

It was wiped out because CAIR (ph) and some of the people that were unindicted co-conspirators named in your Holy Land Foundation trial, they said we don't like them. They do not allow agents to know what Kim Jensen put in that 700 pages that was so accurate, so good about Islam that we could embed people in Al-Qaeda and they wouldn't suspect them.

GOHMERT:

I would encourage you to start training your FBI agents so whether they're in San Bernardino, Orlando, New Jersey, wherever, they can talk to a radicalized Islamist and determine whether they're radicalized. Without Kim Jensen's typed (ph) material, you'll never be able to spot them again and we'll keep having people die. Thank you, my time's expired.

GOODLATTE:

The time of the gentleman has expired.

The director is permitted to respond if he chooses to do so.

COMEY:

I don't think I have anything at this point.

GOODLATTE:

The chair recognizes the gentlewoman from California, Ms. Chu, for five minutes.

CHU:

Thank you.

Director Comey, during this committee's oversight hearing last year, I asked you about the cases of Sherry Chen and Shao-jung Chi (ph), both U.S. citizens who were arrested by the FBI accused at different crimes related to economic espionage for China, only to have those charges dropped without explanation.

Since you last testified before the committee, both cases have been closed. Now, I know they may not be personally familiar with the individuals' cases or may not be inclined to comment on the facts of these cases to the committee today, however, would you be willing to provide a written explanation or possibly a summary of the investigations to clarify how and why the FBI handled the cases the way they did?

COMEY:

I don't want to commit to that sitting here. We would certainly consider what we can supply consistent with things like the Privacy Act. But we'll certainly consider it.

I'm familiar with the case. I remember our -- your questions about it last year. And so we'll take a look at what we can share with you. We can't obviously do it in an open forum in any event.

CHU:

I understand that, but I appreciate the consideration.

Now, I'd like to address a different topic. Director Comey, your agency recently introduced an online initiative aimed at promoting education and awareness about violent extremism called Don't be a Puppet. This program was designed to serve as a tool for teachers and students to prevent young people from being drawn toward violent extremism.

However, national education groups, faith groups and community organizations have raised serious concerns about the way in which the program presents the problem of violent extremism. Particularly troublesome is the website's charge that teachers and students should look for warning signs that a person may be on a slippery slope of violent extremism and to report activity that may -- may or may not be indicative of radicalization.

For instance, the website encourages students and teachers to report when others use unusual language or talk about traveling to suspicious places. The user of the website, however, is left to draw inferences about what constitutes a suspicious place or what language is unusual enough to be reported to a trusted authority.

For example, a trip to France or Germany, which hosts many far- right extremist groups, may not sound suspicious to many users, but a trip to Saudi Arabia or Iraq, home to various Muslim holy sites, possibly would.

So on August 9th, the American Federation of Teachers led a number of national groups in a letter written to you -- and Mr. Chair, I'd like to submit this for the record. And among the many concerns they raise is the potential for such initiatives to exacerbate the profiling and bullying of students of Middle Eastern background that -- that -- and what they -- over and above what they already experience.

So how do you respond to the concerns expressed by the American Federation of Teachers about the impact of the FBI's Don't be a Puppet program and the effect it may have on schools (ph) in immigrant communities?

COMEY:

Thank you for that. I'm glad they shared their feedback. Boy, I hope either before or after the feedback they go on and actually go through the Don't be a Puppet because I've done it. I honestly can't understand the concerns. It's a very common sense thing.

One of our big challenges is how -- if a kid starts to go sideways towards violence, the people closest to him are going to see something likely.

How do we get folks to a place where they're sensitized to make common sense judgments that this person may be headed in a very dangerous direction? It's never going to be perfect, but I actually think a lot of thought went into this, including faith groups, all kinds of civic groups to make sure we got something that was good common sense education for kids and for teachers.

And so I'm a -- I'm a little bit at a loss. Maybe we (ph) ought to meet with them, they can show me which parts of it they actually think are problematic. But I think it's a pretty darn good piece of work is my overall reaction.

CHU:

So -- so Director Comey, you've gone to the website and -- and looked at it. So what then would you consider to be a place that sounds suspicious or what would you consider to be an unusual language that somebody is speaking, so much so that a student should report them to the authorities?

COMEY:

I think what it says is speaking -- using unusual language not -- not -- not speaking Pesh (ph) to or French or German. I think it means speaking in an unusual way about things. And suspicious place -- Syria leaps to my mind.

If someone is talking to classmates about thinking about traveling to Syria, the classmates ought to be sensitized to that, the teacher ought to be sensitized to it so we can try and intervene with that kid before we have to lock them up for most of their life.

CHU:

But do you have evidence to show that this program is actually countering recruiting efforts by violent extremists?

COMEY:

I don't, but it sure makes a lot of sense to me. It seems like a common sense way to equip kids to resist the siren song that comes from radical Islamists or skinhead groups or hate groups of different kinds.

And so look, it's not -- I'm sure it's not perfect because nothing in life is. We'd welcome feedback, but the general idea makes a lot of sense to me.

CHU:

I yield back.

GOODLATTE:

The chair recognizes the gentleman from Ohio. Mr. Jordan, for five minutes.

JORDAN:

Thank you, Mr. Chairman.

Director, in your opening comments, you said this was an unusual case. I would say that's the understatement of the year.

Husband of the subject meets with the attorney general three days before Secretary Clinton is interviewed by the FBI. Nine people get to sit in with Secretary Clinton during that interview. One of those was her Chief of Staff Cheryl Mills, who was a subject of the investigation. Five people get some kind of immunity.

Five people get some kind of immunity, yet no one is prosecuted. Three of those people who get immunity take the Fifth in front of Congress and one of them doesn't even bother to show up when he's subpoenaed. Supposed to have been at that very chair you're sitting at.

And of course, the attorney general announces that she's going to follow your recommendations, even though she doesn't know what those recommendations are. The only time she's ever done that. So of course this was unusual. We've never seen anything like this.

Which sort of brings me to the post. I'd like to put up the post that some have talked about, which is the post by Mr. Combetta on Reddit. And you said earlier that you don't know if you examined this during your investigation, so let's examine it now. "I need to strip out a VIP's address from a bunch of archived e-mail. Basically, they do not want the VIP's e-mail address exposed to anyone."

Director, when I hear the term strip out e-mail address, I think somebody's trying to hide something, somebody's trying to cover up something. And this sort of raises an important question from these two sentences. Who's the they who wants something said hid? And who's the VIP who also wants something hid?

Director Comey, is it likely the VIP (inaudible) just the VIP, it's a very, very important person according to Mr. Combetta. Is it likely that person is Secretary Clinton?

COMEY:

Yes, sure.

JORDAN:

OK. And is it also likely that the "they" refers to her -- Secretary Clinton's staff and specifically Cheryl Mills?

COMEY:

I don't know that. Either her lawyers or some staff that had tasked him with the production.

JORDAN:

So one other thing that's important on that -- if we could put that back up. One other thing that's important is the date. The date at the top says July 24, 2014. So whenever I see a date -- I'm sure you do

the same thing -- I always look at what's happening about that same timeframe, what may have happened directly before that and maybe directly after that.

JORDAN:

So I went back to your reports that you guys had given to us. The first report back last month, August 18, 2016, page 15. On page 15 it says, during the summer of 2014, State Department indicated to Cheryl Mills a request for Clinton's work related e-mails would be forthcoming.

State Department gives Cheryl Mills a heads up that she's got to go round up all of Secretary Clinton's e-mail. On that same page, it says the House Select Committee on Benghazi had a recent agreement with the Statement regarding production of documents on July 23rd, 2014.

Just the day before, which I find kind of interesting. Then from your report that we got just last week, after reviewing several documents dated in and around July 23rd, 2014, Paul Combetta had a conversation with Cheryl Mills and after reviewing a July 24th, there's that date again, 2014 e-mail from Brian Pagliano, Paul Combetta explains, Cheryl Mills was concerns (ph), Clinton's then current e-mail address would be disclosed publicly.

So, sure looks to me like it's Secretary Clinton, as you said, but also that it's Cheryl Mills and Brian Pagliano who are urging Mr. Combetta to cover this stuff up. Do you agree?

COMEY:

With what you read it sure sounds like they're trying to figure out a way to strip out the actual e-mail address from what they produce.

JORDAN:

Well, they're actually trying to strip it all out, PSD file, everything. Here's the takeaway in my mind. Mills gets a heads up, Cheryl Mills gets a heads up in mid-summer of 2014.

July 23rd, the day before Mr. Combetta's Reddit post, the Benghazi Committee and the Senate Department reach an agreement on production of documents. Cheryl Mills has a conversation with Paul Combetta. He goes on Reddit then and tries to figure out how he can figure out how he can get rid of all this e-mail.

Even though he's not successful then, he has to do it later down the road with BleachBit, and then the clincher. The clincher, just last week, he's gone online and trying to delete these Reddit posts. He's trying to cover up his tracks, he's trying to cover up the cover-up. So I guess the question is, and someone's asked it earlier, in light of all this, are you thinking about re-opening the investigation?

COMEY:

I may have misunderstood what you said during the question. I don't understand that to be talking about deleting the e-mails. I understand it to be talking about removing from the from line, the actual e-mail address. And but anyhow, maybe I misunderstood you but...

JORDAN:

Well, this same guy later BleachBit, to Bleachbit, and did delete e-mails.

COMEY:

Sure, yes. That's...

JORDAN:

My question is, the guy you gave immunity to, the guy who took the fifth in front of us, is online trying to figure out how to remove e-mail addresses, change evidence, later uses BleachBit.

That guy, who won't testify in front of Congress, and he has correspondence with Cheryl Mills. Cheryl Mills, a subject of the investigation, Cheryl Mills who also got some kind of immunity agreement, Cheryl Mills who walked out for part of the questions during the interview with the FBI. Seems to me that's pretty compelling and the timeline's pretty compelling as well.

COMEY:

I'm not following compelling of what? There's no doubt that Combetta was involved in deleting e-mails.

JORDAN:

After conversations with Cheryl Mills.

COMEY:

He had the oh, S-H-I-T moment, as he told us, and that's why it was very important for us to interview this guy to find out who told you to do that, why did you do that, that's why he was giving you...

JORDAN:

Did you know about the Reddit post when you interviewed him?

COMEY:

As I said earlier, I think we did, I mean -- I think our investigators did. I'm not positive as I sit here.

JORDAN:

Mr. Chairman I -- I mean the guy is trying to cover up the Reddit post where he's trying to figure out how he can cover up the e-mail addresses and I find that compelling, particularly in light of the fact that just the day before he's talking with Cheryl Mills and the State Department is on notice that the Benghazi Committee wants these very documents.

JORDAN:

I find that compelling. Obviously, the FBI didn't, and this is just one more -- one more on that list of things that make this case highly unusual.

I yield back.

GOODLATTE:

The director is permitted to respond, if he chooses to do so.

COMEY:

No, I don't think so.

GOODLATTE:

The chair recognizes the gentleman from Florida, Mr. Deutch, for five minutes.

DEUTCH:

Thank you, Mr. Chairman.

Director Comey, the FBI is tasked with a very serious responsibilities. You're on the front lines trying to prevent terrorist attacks. You're investigating public corruption. And as I told your agents on a recent visit to your Miami field office, I'm grateful to you and your agents, all of the women and men of the FBI, for your dedication to and commitment to the pursuit of justice. We're most grateful.

Now, one critical responsibility of the FBI is to investigate when American citizens violate federal laws involving improper contacts with foreign governments.

Director Comey, if an American national goes outside government channels to negotiate with a foreign government on behalf of the United States, that's a very serious crime, one that would violate the Logan Act, which as you know, is the law that prohibits unauthorized people from negotiating with foreign governments in the place of the United States government.



Director Comey, would the FBI take allegations of Logan Act violations seriously? Is that within your jurisdiction?

COMEY:

Yes, it's within our jurisdiction.

DEUTCH:

And if you had credible evidence that someone had violated the Logan Act, would the FBI investigate that alleged violation of law?

COMEY:

I think we have done many Logan Act investigations over the years and we certainly will in the future.

DEUTCH:

And am I correct in assuming that you're familiar with publicly quoted comments from various intelligence sources that have said that Russia has targeted the United States with illegal state- directed hacking?

COMEY:

I'm aware of the published reports.

DEUTCH:

If an American citizen, Director Comey, conducted meetings with a Russian individual who has been sanctioned by the United States about potential weakening of U.S. sanctions policy, in violation of the Logan Act, would the FBI investigate?

COMEY:

I don't think it's appropriate to answer that. That gets too close to confirming or denying whether we have an investigation. It seems too close to real life. So I'm not going to comment.

DEUTCH:

OK. But there are -- you have investigated Logan Act violations? It's something that's clearly within your jurisdiction.

I appreciate, Director Comey, your confirming that the FBI would treat these potential violations of law both seriously and urgently. Because everything that I just outlined that you said the FBI would investigate, has apparently happened already.

Public reports suggest that the Logan Act may have been violated by Carter Page, one of the men Donald Trump singled out as a top foreign policy adviser, who now the campaign appears eager to revise Mr. Page's role, given the attention rightly being given to his illicit negotiations with a sanctioned Russian official.

I've read reports from Yahoo News from last week that law enforcement may already be looking into this issue and I assume we all agree that the allegations are very serious.

Russia, a nation that hacks America, a nation that continues to enable Assad -- the Assad regime to slaughter the Syrian people, a nation that threatens and violates the territorial integrity of its neighbors and our European allies -- it is a dangerous violation of federal law if Donald Trump's adviser, Carter Page, is engaging in freelance negotiations with Russia.

And here's what we know. In March, Donald Trump named Carter Page as a foreign policy adviser. In July, Mr. Page traveled to Moscow to give a speech that was harshly critical of the United States.

And during that trip, Mr. Page is reported to have also met with a Russian official named Igor Sechin, a member of Vladimir Putin's inner circle and the president of the petroleum company, Rosneft, who was sanctioned by the United States under executive order 13361 prohibiting him from traveling to the United States or conducting business with U.S. firms.

So, Mr. Sechin has a clear and personal interest in lifting U.S. sanctions against him and other top Russian officials put in place by President Obama after Russia's military action in Ukraine.

Now, if these two men met to discuss sanctions policy or lifting of sanctions under a potential Trump administration, this would be enormously concerning. Just last week, the press reported that U.S. intelligence officials are seeking to determine whether an American businessman identified by Donald Trump as one of his foreign policy advisers has opened up private communications with senior Russian officials, including talks about possible lifting of sanctions.

Mr. Comey, it is illegal if Trump's adviser met with Russians who have been sanctioned by the United States about lifting these sanctions. And I am grateful for your reassurances this morning that the FBI would investigate potential violations of the Logan Act by any individual who engages in unauthorized negotiations with a foreign government.

I remind my colleagues that Donald Trump invited Russia to hack the United States. I remind my colleagues that Donald Trump suggested breaking America's longstanding commitment to our NATO allies and weakening U.S. sanctions against Russia.

Is there a connection between these reckless and dangerous policy proposals and the potential violation of the Logan Act by Donald Trump's Russia adviser?

Mr. Comey, we appreciate very much the FBI's vigilance in pursuing justice.

Mr. Chairman, I yield back.

GOODLATTE:

The witness is permitted to respond if he chooses to do so.

The chair now recognizes the gentleman from Pennsylvania, Mr. Marino, for five minutes.

MARINO:

Thank you, Chairman.

Thank you, Director, for being here. I think we worked on a couple of cases together in our districts.

Would you clarify something for me on active production immunity? Does active production immunity go beyond the scenario that I'm going to state?

You ask for a computer from a witness. You give that witness act of production immunity that, in my interpretation, is that the agent who has that now in his or her hand, the witness is immune from the agent getting on the stand and saying that person -- this is that person's computer because they gave it to me.

Does it go beyond that? And -- or was there additional immunity for Ms. Mills stating that anything on that computer cannot be used against her?

COMEY:

As I recall it, Congressman, the act of production immunity for Ms. Mills was you give us this computer; we will not use -- "we" the Justice Department -- anything we find on the computer directly against you in connection with investigation or prosecution for mishandling of classified information.

I think that's how they defined it.

MARINO:

But that goes beyond act of production. Doesn't act of production simply state that I'm the agent; I can't get on the stand and say that belongs to that individual because they simply gave it to me. It sounds like more additional immunity was given that says "and what is on this we cannot hold against you."

COMEY:

I think of it as -- I still think of it as an act of production immunity. From my experience, that's what I would characterize that agreement. I guess you're right, there could be a more limited form of act of production immunity which simply says "your fact of giving us this object will not be used against you directly." I have to think through whether it can be parsed that way.

But I think I take your point.

MARINO:

So that's why I'm saying additional immunity was given. And I don't think it was warranted at that point.

Let me ask you this, we have both impaneled many grand juries, investigative grand juries. Why not impanel an investigative grand jury whereby you have reasonable suspicion that a crime may have been committed, and then you have the ability to get warrants, subpoenas, (inaudible) information, subpoena witnesses before the grand jury under oath.

And if they take the Fifth, if it's not the target, if they take the Fifth, they simply -- and say "I'm not going to talk to you," you can give them, whether it's use immunity, the A.G. can give them that, and you had that authority, and then transactional has to come from the judge.

And if they refuse to testify then, then you can say, fine, we're going to take you before a judge, hold you in contempt, and then you're going to sit in jail until you answer our questions.

Wouldn't that have been much simpler and more effective than the way this has gone about? I know that I've done it many, many times. And sometimes we find a situation where there isn't enough evidence, and most of the time we find there is enough evidence.

COMEY:

It's a reasonable question. The -- and I don't want to talk about grand jury in connection with this case or...

(CROSSTALK)

MARINO:

That's why I posed it the way I did.

COMEY:

Right. From our training, we know we're never supposed to talk about grand jury publicly.

MARINO:

Yes.

COMEY:

But I can answer more generally than that. Anytime you're talking about the prospect of subpoenaing a computer from a lawyer, it involves the lawyer's practice of law, you know you're getting into a big magilla.

MARINO:

Please let me interrupt here.

COMEY:

Sure.

MARINO:

I understand that clearly. Why did you not decide to go to an investigative grand jury? It would have been cleaner. It would have been much simpler. And you would have had more authority to make these witnesses testify -- not the target, but the witnesses testify.

That seems the way to go, Director. We've done it thousands of times. This just was too convoluted.

COMEY:

Again, I need to steer clear of talking about grand jury use in a particular matter. In general, in my experience, you can often do things faster with informal agreements, especially when you're interacting with lawyers.

In this particular investigation, the investigative team really wanted to get access to the laptops that were used to sort these e-mails. Those are lawyers' laptops. That is a very complicated thing. I think they were able to navigate it pretty well to get us access.

MARINO:

The media says that Mrs. Clinton repeated -- the media says -- 41 times that "I do not recall" or "I do not remember" or variations of that. Is that a fact?

COMEY:

I don't know. I have not counted. I have read the 302, obviously.

MARINO:

Wouldn't that have been taken into consideration?

COMEY:

I'm sorry?

MARINO:

Wouldn't that selective memory be taken into consideration?

COMEY:

Sure. The nature and quality of a subject's memory is always a factor.

MARINO:

My time is expired. Thank you, sir.

GOODLATTE:

The chair recognizes the gentlewoman from Washington state, Ms. Delbene, for five minutes.

DELBENE:

Thank you, Mr. Chair.

And thank you, Director Comey, for spending all this time with us today.

In 2010, the White House set up the vulnerabilities equities process, the VEP, and implemented it in 2014. So if you give the government a process for determining whether, how, and when to disclose vulnerabilities to technology companies so that they would be able to address those vulnerabilities and patch them.

And in a couple of situations, I know there was disclosure from the FBI. In April of this year, the FBI informed Apple of a security flaw in older versions of IOS and OS-10 -- its first vulnerability to Apple under the vulnerability equities process.

DELBENE:

In May of this year, the FBI Cyber Division warned the private sector about a fake USB device charger that can log the keystrokes of certain wireless keyboards. And that was 15 months after the FBI discovered the vulnerability.

In the warning, the FBI stated quote, "If placed strategically in an office or other location where individuals might use wireless devices, a malicious cyber actor could potentially harvest personally identifiable information, intellectual property, trade secrets, passwords or other sensitive information," end quote.

Other instances of the FBI using the VIP are scarce and indeed, there have been reports that it's rare for the FBI to use this process. And so I wanted to you know, ask you why this is and what's your view of the process?

COMEY:

Thank you for that question. The process seems to me to be a reasonable process to -- to in a structured fashion, bring everybody who might have an optic on this in the government together to talk about how do we think about disclosing a particular vulnerability to the private sector as against the equities that may be at stake in terms of national security, in particular.

So I think it makes sense to have such a process. The FBI participants in it -- when we come across a vulnerability that we know the vulnerability and it falls within the VIP's jurisdiction. I don't know the particulars of the case (ph) you said there was a 15 month delay in disclosing a particular vulnerability.

I don't know enough to react to that probably wouldn't react in an open forum in any event. But that's my overall reaction.

DELBENE:

And does every vulnerability discovered go through this process in terms of understanding whether or not you would disclose?

COMEY:

I think there's a definition of what falls under the process. You have to know the vulnerability so we have to have knowledge so what is it that allows it, the vulnerability to be exploited.

We didn't for example, in the San Bernardino case. We bought access but we didn't know the vulnerability, what was behind it. But I forget the definitions I sit (ph) here of which vulnerabilities have to be considered.

DELBENE:

And so is there another process that you might use that's different from the VEP or when you're looking at vulnerabilities and whether or not they...

COMEY:

For the VIP, I know our folks would routinely have made a disclosure to private entities. But I don't think there's a -- I don't know of a process outside of VIP.

DELBENE:

And so that -- but you're not sure if in every situation, the VIP is used whenever you discover a vulnerability?

COMEY:

Sounds like a circular answer but if it's a -- and obviously, I didn't read the VIP before coming here today. I -- we can get smart on it very quickly and have somebody talk to you about it.

But if it falls under the definition of things that have to be discussed at the VIP of course we do. I just can't remember what that definition is, exactly.

DELBENE:

OK I'm trying to understand if a vulnerability is discovered, if there's always a standard process that you would go through to understand whether or not that's -- that information would be disclosed and if that process is the VIP, that's the.

COMEY:

Yeah that's a great question, I don't know the answer to that whether there's a set of vulnerabilities that would fall outside of the VEP process. And if that's the case, how do we deal with it I -- I don't know sitting here.

DELBENE:

Thanks, if you have other feedback on that I'd appreciate that another time. In August, you said that stakeholders needed to take some time to collect information on the going dark issue and come back afterward to have an adult conversation.

And I agree with you and so I wondered if you had agreed that there's room for us to work together on ways to help law enforcement that don't include mandating a back door.

COMEY:

Totally. I keep reading that I'm an advocate of back doors, I wanna mend these back doors -- I am not. I have never advocated we have to have back doors. We have to figure out how we can solve this problem together and it has to be everybody who cares about it coming together to talk about it.

I don't know exactly what the answer is, frankly. I can see the problem which I think is my job is to tell people the tools you're counting on us to use to keep you safe. You're (ph) less and less effective, that's a big problem.

But what to do and how to do it is -- is a really complicated thing and I think everybody has to participate.



DELBENE:

Thank you. Thank you so much for that.

And I yield back, Mr. Chair.

GOODLATTE:

Chair thanks the gentlewoman.

Recognize the gentleman from South Carolina, Mr. Gowdy for five minutes.

GOWDY:

Well, thank you Mr. Chairman.

I wanna start by acknowledging progress, I think it's important that we do so. This morning, we've had nine straight Democrats talk to the FBI about e-mails without asking for immunity. That's a record.

And I suspect the reason that they have not asked for immunity from Director Comey is they would say they've done nothing wrong. I find that interesting because that's exactly what Heather Samuels said and Cheryl Mills attorneys said.

In fact, they said it just a few days ago and I'll -- I'll quote it, "The FBI considered my clients to be witnesses and nothing more." And then Ms. Mills and Ms. Samuels's attorney said this, I think this is the most interesting part, "The Justice Department assured us, my clients, that nothing wrong."

Well, Mr. Chairman if you're assuring subjects or targets or witnesses whatever you wanna call them that they've done nothing wrong, it does begs to the question, what are you seeking and receiving immunity from? I mean if you've done nothing wrong -- laptops don't go to the Bureau of Prisoners, Mr. Chairman, people do.

So the immunity was not for the laptop. The immunity was for Cheryl Mills. And if the Department of Justice says you've done nothing wrong, it does beg the question of why you are seeking or receiving immunity.

And it could be, Mr. Chairman, for a couple of different -- it could be for the classified information that was the -- the genesis of the investigation. It would be for the destruction of federal records which came from that initial investigation.

Or it could be both. Mr. Comey, I wanna -- I wanna ask you this. Did the bureau interview everyone who originated an e-mail that ultimately went to Secretary Clinton that contained classified information?

COMEY:

I don't think so, nearly everyone but not everyone.

GOWDY:

Well, you and I had a discussion the last time about intent. You and I see the statute differently. My opinion doesn't matter. Yours does, you're the head of the bureau.

But -- but in my judgment, you read an element into the statute that does not appear on the face of the statute. And then we had a discussion about intent. So why would you not interview the originator of the e-mail to number one, determine whether or not that originator had a conversation with the secretary herself?

COMEY:

We're a handful of people who we -- that the team decided it wasn't a smart use of resources to track down. One was a civilian in Japan as I recall who had forwarded something that somehow got classified as it went up.

And the other were a group of low level State Department people deployed around the world who had written things that ended up being classified. Nearly everyone was interviewed, but there was a small group that the team decided it isn't worth the resources.

GOWDY:

Well, to that extent, if you interviewed the overwhelming majority of the originators of the e-mail, will you make those 302s available to Congress because I counted this morning, 30-something 302s that we do not have.

COMEY:

OK I'll go back and check. My goal is maximum transparency consistent with our obligations under the law. I'll check on that.

GOWDY:

Well, I -- and I'll appreciate it for this reason, intent is awfully hard to prove. Very rarely do defendants announce ahead of time I intend to commit this crime, on this date, go ahead and check and code section, I'm gonna do it. That rarely happens.

So you have to prove it by circumstantial evidence, such as whether or not the person intended to set up an e-mail system outside the State Department, such as whether or not the person knew or should've known that his or her job involved handling classified information.

Whether or not the person was truthful about the use of multiple devices, whether or not the person knew that a frequent e-mailer to her had been hacked and whether she took any remedial steps after being put on notice that you're e-mail or someone who's been e-mailing with you prolifically had been hacked.

And whether or not -- and I think you would agree with this, director -- false exculpatory statements are gold in a court room. I would rather have a false exculpatory statement than a confession.

I would rather have someone lie about something and it be provable that that is a lie, such as that I neither sent nor received classified information. Such as, that I turned over all of my work- related e-mails.

All of that to me goes to the issue of intent. So I got two more questions then I'm gonna be out of time. For those who may have to prosecute these cases in the future, what would she have had to do to warrant your recommendation of a prosecution?

If all of that was not enough, because all of that's what she did. If all of that's not enough, then surely you cannot be arguing that you have to have an intent to harm the United States to be subject in this prosecution.

I mean that -- that's treason. That's not a violation of the statute.

COMEY:

No I think we'd have to be able to prove beyond a reasonable doubt a general awareness of the -- of the unlawfulness of your conduct. You knew you were doing something you shouldn't do.

And then, obviously that's the -- on the space (ph) of the statute itself, then you need to consider so who else has been prosecuted and what circumstances because it's all about prosecutorial judgment. But those two things would be the key -- key questions.

Can you prove that the person knew they were doing something they shouldn't do, a general criminal intent, general mens rea?

GOWDY:

But the -- but the way to prove...

(CROSSTALK)

COMEY:

...treated other people similarly?

GOWDY:

The way to prove that is whether or not someone took steps to conceal or destroy what they've done. That is the best evidence you have. That they knew it was wrong. That they lied about it.

COMEY:

It's awful -- it's very good evidence, always wanna look at that the subject said about their conduct.

GOWDY:

Well, and there's a lot, there's a lot. If you saw her initial press conference, it all falls under the heading of false exculpatory statement.

I'm out of time, Mr. Chairman.

But the director -- you started off by giving us examples of things the bureau has done. And -- and everyone of us who's worked with the FBI, that is -- that is the FBI that I know, the one that went and saved that girl in North Carolina. That is the FBI that I know.

What concerns me director, is when you have five immunity agreements and no prosecution. When you are allowing witnesses who happen to be lawyers, to happen to be targets, to sit in on an interview; that is not the FBI that I used to work with.

So I've been really careful to not criticize you, in fact I said it again this morning. They wanted to know was he gotten to (ph), did somebody corrupt him? No I just disagree with you. But it's really important to me that the FBI be respected.

And you -- you gotta help us understand because it looks to be like some things were done differently that I don't recall being done back when I used to work with them.

And with that, I will yield back to the chairman.

COMEY:

Can I respond to that?

GOODLATTE:

Yes you may.

COMEY:

I hope some day when this political craze is over, you will look back on this. Because this is the FBI you know and love. This was done by pros in the right way. That's the part I have no patience for.

Sorry, sir.

GOODLATTE:

The chair recognizes the gentleman from Rhode Island Mr. Cicilline for five minutes.

CICILLINE:

Thank you, Mr. Chairman.

And thank you Director Comey for your extraordinary service to our country and please convey to the professionals at the FBI my gratitude for their exemplary service to the people of this country.

And particularly, I want to acknowledge the extraordinary prompt and effective response to the recent bombings in New Jersey and New York.

It's just another example of this extraordinary agency and your extraordinary leadership. Director Comey, many of us have expressed a concern about the growing incidence of gun violence in this country.

We expressed condolences and concern following the recent mass shootings in Burlington, Washington where five people lost their lives. We shared the same sentiments after incidents in Aurora and Newton and Charleston but as more Americans lose their lives to senseless gun violence, this Congress has been absolutely silent and inactive on this issue.

So I'd like to really turn to you and your career in public service and both as U.S. attorney and now as the FBI director, with so much experience in dealing with the consequences of gun violence and ask you to kind of share with us what you think might be some things Congress could do to help reduce gun violence in this country?

I know -- if I recall correctly in 2013 during confirmation hearings, you at least alluded to your support for universal background checks, bans on illegal trafficking of guns, assault weapons and high capacity magazines. So I'm wondering what you think would be effective for us to do to help reduce the incidence of gun violence in this country.

COMEY:

Thank you Congressman. And you're exactly right, we do spend a lot of time thinking, investigating and mourning the deaths in mass shootings. I think it's really important though the bureau not be in the policy business and be in the enforcement business. And so I'm going to respectfully avoid your question honestly, because I think we should not be in the place of -- we should be a factual input to you, we should not be suggesting particular laws with respect to guns or anything else.

CICILLINE:

So let me ask you Director about a very specific enforcement challenge. I introduced a piece of legislation called the Unlawful Gun Buyer Alert Act to get at this issue of a default (ph) process. This is where people buy a gun, they purchase a gun but they are not permitted to buy one under law but the three day time period has elapsed and between 2010 and 2014, 15,729 sales to prohibited persons occurred.

That means people who are not lawfully permitted to buy a gun got a gun 15,000 times. So my legislation would require that when that happens that local enforcement is notified. They can then make a decision, should we go prosecute this person who's now in possession of a gun illegally, should we execute a search warrant but they would at least be put on notice.

In your community, a person who should not have a gun bought one, so they can take some action. Would that make sense in terms of your enforcement responsibilities?

COMEY:

It might. I know ATF is notified in those circumstances.

CICILLINE:

Which of course is a very different set of priorities for ATF. Do they go and actually execute a warrant and charge somebody? But there are state and local prohibitions on that, that could be acted upon. So would it also make sense to notify local law enforcement?

COMEY:

It might. I'd want to think through and ask ATF how do they think through the de-confliction issues that might arise there but it's a reasonable thing to look at.

CICILLINE:

The second -- my next question, Director, is there has been a recent discussion about implementing stop and frisk in cities to address crime even at the national level.

And although the data shows that this disproportionately targets people of color, and just to give you some context, in 2011 when stop and frisk activity reached an all-time high in New York City, police stopped 685,000 people. Fifty-three percent of those individuals were black, 34 percent were Latino and nine percent were White.

More than half were aged 14 to 24 years old and of the 685,000 people that were stopped and frisked, 88 percent were neither arrested nor received any sort of citation. Do you believe this stop and frisk policy is an effective tactic to address crime in our nation's cities?

What would a federal implementation look like that Mr. Trump has called for and how can Congress minimize racial profiling and discriminatory ineffective techniques like stop and frisk and instead promote activities that build trust and confidence between the police and the community?

COMEY:

I don't know what a federal program would look like because we're not in the policing business. We're investigative agencies at the federal level. But the Terry stop, the stop and frisk is not a term we use in the federal system, the Terry stop, which is the stop of an individual based on reasonable suspicion that they're engaged in criminal activity, is a very important law enforcement tool. To my mind, its effectiveness depends upon the conversation after the stop.

When it's done well, someone has stopped, then they are told, I stopped you because we have a report of gun with a gray sweatshirt who matches you. That's why I stopped you sir, I'm sorry.

Or I stopped you because I saw you do this behavior. Because the danger is, what's an effective law enforcement technique can become a source of estrangement for a community and you need the help of the community. So it's an important tool when used right and what makes the difference between right and wrong is what's the nature of the conversation with the person you've stopped.

CICILLINE:

Thank you Director. Mr. Chairman I would just like to finally associate myself with the remarks of Congressman Deutch regarding the Logan Act violations and the remarks of many of colleagues regarding the attempts by the Russians to interfere with our democracy and electoral process and take great comfort in the director's commitment to continue to understand this as an important responsibility of the agency to protect the integrity of our democracy and with that I yield back.

GOODLATTE:

The chair thanks the gentleman. The chair recognizes the gentleman from Utah, Mr. Chaffetz, and as I do so I want to thank him for making, as chairman of the Oversight and Government Reform Committee, this very nice hearing room available to us while the Judiciary Committee hearing room is under renovation so gentleman is recognized for five minutes with my thanks.

CHAFFETZ:

Well, and I appreciate the extra five minutes of questioning for doing so, so thank you very much. Director thank you for your accessibility, you have been very readily available and we do appreciate that.

This investigation started because the inspector general found classified information in a non-secure setting and the FBI went to a law firm and found this information. They seized at least one computer and at least one thumb drive, did you need an immunity agreement to get those?

COMEY:

It was not -- I don't think there was -- in fact, I'm certain there was no immunity agreement used in connection with that.

CHAFFETZ:

So, did it really take the FBI a full year to figure out that Cheryl Mills and Heather Samuelson also had computers with classified information on them?

COMEY:

No, it took us to that point in the investigation to insist that we try to get them.

CHAFFETZ:

Were you getting them because they had classified information or because there was some other information you wanted?

COMEY:

No, we thought those tools, as we understood it, that had been used to sort the e-mails and the investigative team very much wanted to understand if they could, whether there was an electronic tale of how that had been done because the big issue was, what did they delete, what did they keep...

CHAFFETZ:

But why did you need an immunity agreement? Why didn't they just cooperate and hand them over? The law firm did, didn't they?

COMEY:

Well, yes. That's a question really I can't answer. That's between a lawyer and her client and the Justice Department lawyers. For whatever reason, her lawyer thought it was in her interest to get an active production immunity agreement with the Department of Justice.

CHAFFETZ:

The FBI interviewed David Kendall's partner but did not interview David Kendall. Why didn't you interview David Kendall?

COMEY:

I don't remember. I don't remember that decision.

CHAFFETZ:

Going back to this Reddit post, this was put up on July 24th of 2014. You believe this to be associated with Mr. Combetta, correct?

COMEY:

Yes, I think that's right.

CHAFFETZ:



This is the one that Mr. Jordan put up about the need to strip out a VIP's very VIP e-mail address and a bunch of archived e-mails. This is a -- he's referring to a federal record, isn't he?

COMEY:

I don't know what exactly which records he's referring to.

CHAFFETZ:

How is this not a conscious effort to alter federal records? I mean the proximity to the date is just stunning.

COMEY:

Sorry, what's the question?

CHAFFETZ:

How is this not a conscious effort to alter a federal record?

COMEY:

Well, depending upon what the record was and exactly what he was trying to do and whether there would be disclosure to the people they were producing it to saying we changed this for privacy purposes. I just don't know sitting here.

CHAFFETZ:

These are documents that were under subpoena. These federal records were under subpoena, they were under a preservation order. Did Mr. Combetta destroy documents?

COMEY:

I don't know whether that was true in July of 2014 they were under subpoena.

CHAFFETZ:

Did he ultimately destroy federal records, Mr. Combetta?

COMEY:

No. I have no reason to believe he destroyed federal records.

CHAFFETZ:

He used BleachBit, did he not?

COMEY:

Yes, the question is what was already produced before he used the BleachBit. He definitely -- the reason he wanted immunity was he had done the BleachBit business after there was publicity about the demand from Congress for the records. That's a potential...

CHAFFETZ:

Not just publicity. There was a subpoena.

COMEY:

Right, that's...

CHAFFETZ:

And there was communication from Cheryl Mills that there was a preservation order, correct?

COMEY:

Yes.

CHAFFETZ:

And he did indeed use BleachBit on these records?

COMEY:

Sure.

CHAFFETZ:

So he...

COMEY:

That's why the guy wouldn't talk to us without immunity.

CHAFFETZ:

And so when you got him immunity, what did you learn?

COMEY:

We learned that no one had directed him to do that. That he had done it...

CHAFFETZ:

You really think that he just did this by himself?

COMEY:

I think his account, again I don't, I never affirmatively believe anybody except my wife but the question is do I have evidence to disbelieve him and I don't.

His account is credible that he was told to do it in 2014, screwed up and didn't do it. Panicked when he realized he hadn't and then raced back in and did it after Congress asked for the records and the New York Times wrote about them. That was his oh, S-H-I-T moment.

That was credible, again I don't believe people, but we did not have evidence to disbelieve that and establish someone told him to do that. No e-mail, no phone call, nothing. The hope was, if he had been told to do that, that'd be a great piece of evidence. If we give him immunity, maybe he'll tell us so and so told me so, so and so asked me to and then we're working up the chain.

CHAFFETZ:

But he did indeed destroy federal records and he was told at some point to do this, correct? Who told him to do that initially? When he was supposed to do it in December and he didn't do it, who told him to do that?

COMEY:

One of Secretary Clinton's staff members. I can't remember sitting here, we know that. One of her lawyers, it might have been Cheryl Mills. Someone on the team said, we don't need those e-mails anymore, get rid of the archived file.

CHAFFETZ:

This is what's unbelievable about this because there is classified information, there are federal records that were indeed destroyed and that's -- that's just the fact pattern. Let's go back to -- let's go back to this -- here's the other thing that I'll draw to your attention that is new.

September 15th of this year, I issued a subpoena from the Oversight and Government Reform Committee on these Reddit posts. Four days later they were destroyed, or taken down. They were deleted.

I would hope the FBI would take that into consideration. Again, we're trying under a properly issued subpoena to get to this information. Let's go to Heather Mills real quick.

CHAFFETZ:

How does the -- in the 2016 interview with Cheryl Mills, she says quote, "Mills did not learn" -- in the interview report that you -- the interview summary from the FBI, "Mills did not learn Clinton was using a private e-mail server until after Clinton's tenure."

Back -- also, you have this interview with Mr. Pagliano, who said he approached, quote, "Pagliano then approached Cheryl Mills in her office and relayed a State Department employee's concerns regarding federal records retention and the use of a private server. Pagliano remembers Mills replying that former secretaries of state had done similar things to include Colin Powell."

It goes then on to a page 10 -- and this is what I don't understand -- the FBI writes, "Clinton's immediate aides, to include Mills, Abedin, Sullivan," and - a redacted name - "told the FBI they were unaware of the existence of a private server until after Clinton -- Clinton's tenure at State or when it became public knowledge."

But if you look back at the email from -- from Heather Mills, if you go back to 2010, this is to Justin Cooper, OK, Mills to Cooper, who does not -- which you were -- he works for Clinton's. He doesn't work for the State Department.

"FYI, HRC email coming back. Is server OK?" Cooper writes back, "You are funny. We're on the same server." She knew there wasn't (ph) a server. When there was a problem with Hillary Rodham Clinton's e-mail, what did they do? She called the person, who has no background in this, who is not a State Department employee, no security clearance, and then tells the FBI, well, I never knew about that.

CHAFFETZ:

But there's direct evidence that contradicts this. How do you come to that conclusion and write that in the summary statement that she had no knowledge of this?

COMEY:

That's a question?

CHAFFETZ:

Yes.

GOODLATTE:

The time of the gentleman has expired, but the director will answer the question.

COMEY:

I don't remember exactly sitting here (ph) -- having done many investigations myself, there is always conflicting recollections of facts, some of which are central, some of which are peripheral. I don't remember sitting here (ph) about that one.

GOODLATTE:

The chair recognizes the gentleman from Florida, Mr. DeSantis, for five minutes.

DESANTIS:

Director Comey, violent crime is up in this country, isn't it?

COMEY:

Our UCR stats we just released show a rise in homicide and other violent crime -

DESANTIS:

Violent crime, I think, was about 4 percent. But the homicides were up 10 percent, is that correct?

COMEY:

10.8 percent.

DESANTIS:

And that's a pretty startling, concerning increase, do you agree?

COMEY:

Yes, it is concerning.

DESANTIS:

Now, I don't know if you have data on 2016, but is your sense that 2016 is going to look closer to 2015 or will it be - is there any indication that the rate's going to go back down?

COMEY:

No, we continue to see spikes in -- in some big cities in a way we can't quite make sense of. There's no doubt that's -- that some 15 to 30 cities are continuing to experience a spike. Whether that will drive the whole number up, I don't know.

DESANTIS:

Now the FBI has now assumed control of the - Dahir Adan, the Minnesota stabbing terrorist investigation. Is that confirmed that that was a terrorist attack at this point?

COMEY:

We're still working on it. It -- it does look like, at least in part, he was motivated by some sort of inspiration from radical Islamic groups. Which groups and how, we're not sure of yet.

DESANTIS:

But he was - he was praising Allah, was asking at least one of the potential victims whether they were Muslim, and I know ISIS did take the responsibility for it, correct?

COMEY:

They claimed responsibility, that is an - a dispositive for us, because they will claim responsibility for any savagery they can get their name on. But we're going through his entire electronic record and history of -- of all of his associations to try and understand that.

DESANTIS:

Now there was a report from the House Homeland Security last year that said that Minnesota was actually the number one source for ISIS fighters in the United States. One - do you acknowledge that that, or do you agree that that's true? And if so, why is Minnesota churning out so many jihadists?

COMEY:

I don't know for sure whether that's true, but it sounds about right. We have very few ISIL fighters from the United States, even - over the last two years, there have been a number of Somali American heritage young men who've gone to fight with Al-Shabaab in Somalia and -- and with ISIL.

I suspect the reason is that's one of the few areas in the United States where we have a large concentration that is susceptible to that recruiting. The great thing about America is everybody's kind of dispersed.

That's one of the areas where there's an immigrant Muslim community that seems to be susceptible for some reason. In -- in small measure, again, we're talking about eight people, I think the number is. But that -- that's my reaction to that.

DESANTIS:

But what's the FBI doing a deal with -- with the problem? You have an insular community that -- that -- that may make this problem more -- more significant. So how's the FBI combating that?

COMEY:

Oh, in a bunch of different ways. With (ph) lots of partners to make sure we know the folks in - in -- especially the Somalia-American community in Minneapolis. U.S. attorney there has done a great job -

DESANTIS:

have they been helpful with the FBI?

COMEY:

Very. Very. Because they don't want their sons or daughters involved in this craziness anymore than anybody else does.

DESANTIS:

Now with - with Paul Combetta, I'm just trying to figure out what happened here. He never said that he remembered anything from that March 25th phone conversation with the Clinton people. Of course, that was days before he BleachBitted the e-mails.

He never said he had any factual knowledge of anything that happened on that call. Is that his basic statement? Because I read the 302s (ph), he didn't really provide any information.

COMEY:

I can't remember for sure. It would be in the 302. You've probably seen it more recently than I have.

DESANTIS:

Well, I saw one 302 said that he pled the fifth, obviously, he was given immunity. Another said that there was an invocation of attorney-client privilege at one time in one of the other summaries. So I'm just trying to figure out, you know, what happened - with Combetta? Why was he not able to provide information?

He had immunity, this was something that was much more fresh in his mind than previous conversations with Clinton people would've been. And yet you said he was credible.

To me, feigning ignorance, that is not credible given the timeline where you have the time - "New York Times" saying that the server existed. The House immediately sends a subpoena. He has this conversation and then lo and behold a few days later all the e-mails are BleachBitted.

COMEY:

he told us that, with immunity, that no one directed him to do it, instructed him to do it. We developed no evidence to contradict that. Again, we're never in the business of believing people. The question is always what evidence do we have that establishes disbelief. We don't have any contrary evidence. His account is uncontradicted by hard facts.

DESANTIS:

Well it's -- it's -- he's in a situation where he has these things are now under a subpoena and he has conversations with people who they -- they potentially could implicate. Then he takes this - this action.

So I guess the question is, is it more reasonable to think that he just would have said, oh, you know what, I just need to all of a sudden BleachBit this stuff without any direction at all? I just find that to be something that is -- that is difficult to square.

Let me ask you this. In September, you sent a memo to your employees at the FBI basically defending the way the bureau handled this investigation. Why did you send that?

COMEY:

It was about how we were doing transparency, because it was all kinds of business about whether we were trying to hide stuff by putting it out on a Friday and I wanted to equip our workforce with transparency about how we were doing, our productions to Congress, so they can answer questions from their family and friends. I want them to know we're conducting ourselves the way they would want us to.

DESANTIS:

And you have -- because you mentioned former agents and people in the community, I mean, this has provoked some controversy within -- within the ranks of current and former agents?

COMEY:

Not within the FBI. Again, who knows what people don't tell the director, but I should've -- I should've asked Mr. Gohmert (ph).



If there are agents in the FBI who are concerned or confused about this, please contact me. We will get you the transparency you need to see that your brothers and sisters did this the way you would want them to.

DESANTIS:

All right. I'm out of time, but I will say just - when I was in the military, you had said no one would be prosecuted. I mean - and maybe that was just for civilian, but I can tell you that people, if you had compromised top-secret information, there would've been a court-martial in your future. And I yield back

GOODLATTE:

Would the director care to respond to that?

COMEY:

No. Fine (ph).

GOODLATTE:

It's a direct comparison to the finding of yourself that, as you test -- as you stated in your news conference, that no prosecutor could (ph) prosecute somebody under similar (ph) circumstances.

COMEY:

I understand Mr. DeSantis to be expressing a personal opinion. I -- I accept that at face value. I just haven't seen the cases that show me on the public record that that's true. But I accept - I accept his good faith.

GOODLATTE:

The chair recognizes the gentleman from Texas, Mr. Ratcliffe, for five minutes.

RATCLIFFE:

Thank you, Mr. Chairman. Director, did you make the decision not to recommend criminal charges relating to classified information before or after Hillary Clinton was interviewed by the FBI on July the 2nd?

COMEY:

After.

RATCLIFFE:

OK, then I'm going to need your help in trying to understand how that's possible.

I think there's a lot of prosecutors or former prosecutors that are shaking our heads in (ph) how that could be the case, because if there was ever any real possibility that Hillary Clinton might be charged for something that she admitted to on July the 2nd, why would two of the central witnesses and the (ph) potential prosecution against her be allowed to sit in the same room to hear the testimony?

Now I've heard your earlier answers today. You said that, well, it was because the interview was voluntary and -- and they were her lawyers. But I think you're skirting the real issue there, Director.

First of all, the fact that it was voluntary, it didn't have to be, right? You could've impaneled an investigative grand jury. She could've been subpoenaed. And I know you've said that you can't comment on that. And I don't really care about the decision about whether or not there should've been a grand jury here.

But since you didn't have one, it -- it goes to the issue at hand about whether or not this interview should've ever taken place. With - (inaudible) respect to the answers that you've given, the FBI and the Department of Justice absolutely control whether or not the interview is going to take place with other witnesses in the room.

Because the simple truth is -- under the circumstances, as you've described, those interviews never take place.

If there was ever any possibility that something Hillary Clinton might've said on July 2nd could have possibly resulted in criminal charges, that might possibly resulted in a trial against or relating to this classified information, well then to use your words, Director, I don't think that there's any reasonable prosecutor out there who would've allowed two immunized witnesses central to the prosecution approving the case against her to sit in the room with the interview -- the FBI interview of the subject of that investigation.

And if I heard you earlier today, in your long career I heard you say that you've never had that circumstance. Was that - did I hear you correctly?

COMEY:

That's correct, but -

RATCLIFFE:

OK. And I never have either, and I've never met a prosecutor that's ever had that. So to me, the only way that an interview takes place with the two central witnesses and the subject of the investigation is if the decision has already been made that all three people in that room are not going to be charged.

COMEY:

Can I respond?

RATCLIFFE:

Yes, please.

COMEY:

I know in our political life (ph) sometimes people casually occur - accuse each other of being dishonest, but if colleagues of ours believe I am lying about when I made this decision, please urge them to contact me privately so we can have a conversation about this.

All I can do is tell you again, the decision was made after that because I didn't know what was going to happen in that interview. She maybe lied during the interview in a way we can prove (ph) - let me finish.

I would also urge you to tell me what tools we have, as prosecutors and investigators, to kick out of an interview someone that the subject says is their lawyer.

RATCLIFFE:

That's not my point. The interview never should've taken place if you were going to allow the central witnesses that you needed to prove the case to sit there and listen to the testimony that the subject was going to give. It never happens. It never happened to you and it's never happened to me or any other prosecutor that I've met.

And I know you've defended the people that were involved of this of being great (ph), but if it's never happened, I wonder why this is a case of precedent with respect to that practice that you and I have never seen in our careers.

COMEY:

You and I don't control the universe of what's happened. I suspect it's very unusual. A key fact, though, that maybe is leading to some confusion here, is we had already concluded we didn't have a prosecutable case against Heather Samuelson, or Cheryl Mills at that point. If they were targets of our investigation, maybe we would've canceled the interview, but frankly, our focus was on the subject. The subject at that point was Hillary Clinton.

RATCLIFFE:

All right. Let me move on.

According to the FBI's own documents, Paul Combetta was in his first interview on February the 18th, told FBI agents that he had no knowledge about the preservation order for the Clinton e-mails. Correct?

COMEY:

I don't know the dates of that, but I'm sure it's in the 302.

RATCLIFFE:

OK. But then two and a half months later on May the 3rd, his second interview, he made a 180 degree turn and he admitted that in fact he was aware of the preservation order and he was aware of the fact that that meant that he shouldn't disturb the Clinton e- mails. Correct?

COMEY:

Yes.

RATCLIFFE:

OK. Well, then, I need your help again here because when I was at the Department of Justice, your reward for lying to federal agents was an 18 USC 1001 charge or potential obstruction of justice charge, it wasn't immunity.

COMEY:

It depends on where you're trying to go with the investigation. It's a low-level guy, you're trying to move up in the chain, you might think about it differently.

RATCLIFFE:

Well, you -- he lied to an FBI agent. You don't think that's important?

COMEY:

It's very important. Happens all the time unfortunately. It's very, very important. Sometimes, you prosecute that person and end their cooperation. Sometimes, you try and sign them up.

RATCLIFFE:

But if they lie to an FBI agent after they're given immunity, they violated the terms of their immunity agreement.

COMEY:

Oh sure. After -- after the agreement.

RATCLIFFE:

And so that's my point. If -- he shouldn't have immunity anymore.

COMEY:

I'm sorry. I may have misunderstood you. He lied to us before he came clean under the immunity agreement and admitted that he had -- had deleted the e-mails.

RATCLIFFE:

No, not according to the FBI's documents. He had an immunity agreement in December of 2015. These interviews took place in February and March and May of this year, 2016.

COMEY:

Combetta?

RATCLIFFE:

Combetta.

COMEY:

OK. I'm -- then I'm -- I'm confused and misremembering. But I don't think that's right.

RATCLIFFE:

OK. Well, let me -- my time's expired, but I have one last question and I think that's important. At this point, based on everything, do you think that any laws were broken by Hillary Clinton or her lawyers?

COMEY:

Do I think that any laws were broken?

RATCLIFFE:

Yeah.

COMEY:

I don't think there's evidence to establish that.

RATCLIFFE:

OK. Well, I think you're making my point when you say there's no evidence to establish that. Maybe not in the way she handled classified information, but with respect to obstruction of justice -- and you've got a pen (ph) here, I just want to make sure the record's clear about the evidence that you didn't have that you can't use to prove.

So this comes from the FBI's own report. Says that the FBI didn't have the Clinton's personal Apple server used for Hillary Clinton work e-mails. That was never located, so the FBI could never examine it. An Apple Macbook laptop and thumb drive that contained Hillary Clinton's e-mail archives was lost, so the FBI never examined that. Two Blackberry devices provided to the FBI didn't, have SIM cards or SD data card. Thirteen Hillary Clinton personal mobile devices were lost, discarded or destroyed with a hammer, so the FBI clearly didn't examine those.

Various server backups were deleted over time, so the FBI didn't examine that. After the State Department and my colleague, Mr. Gowdy here, notified Ms. Clinton that her records would be sought by the Benghazi Committee, copies of her e-mails on the laptops of both of her lawyers, Cheryl Mills and Heather Samuelson, were wiped clean with BleachBit, so the FBI didn't review that.

After those e-mails were subpoenaed, Hillary Clinton's e-mail archive was also permanently deleted from the Platte River Network with BleachBit, so the FBI didn't review that. And also after the subpoena, backups of the Platte River server were manually deleted.

Now, Director, hopefully that list is substantially accurate because it comes from your own documents. My question to you is this. Any one of those in that very, very long list to me says obstruction of justice. Collectively, they scream obstruction of justice. And to ignore them, I think, really allows not just reasonable prosecutors but reasonable people to believe that maybe the decision on this was made a long time ago not to prosecute Hillary Clinton.

And with that, I yield back.

GOODLATTE:

Director, do you care to respond?

COMEY:

(inaudible), to ignore that which we don't have -- we're in a fact-based world, so we make evaluations based on the evidence we're able to gather using the tools that we have. So I -- it's hard for me to react to these things that you don't have. So that's my -- that's my reaction to it.

GOODLATTE:

The chair recognizes the gentleman from Texas, Mr. Farenthold, for five minutes.

FARENTHOLD:

Thank you very much.

Director Comey, thank you for being here. I know this is -- there are a lot of things you would probably much rather be doing than sitting on the hot seat, so to speak.

And here's where I'm coming from on this. You've been asked a lot of questions today about the Clinton investigation, and what I'm hearing from folks back in Texas -- and I'm just going to take (ph) a big picture view of this -- is this stuff just simply doesn't pass the smell test on a lot of -- a lot of (inaudible).

You just had my colleague from Texas, Mr. Ratcliffe, list a long list of things that y'all didn't have in the investigation. You've been asked earlier today, well, you know, would you re-open the investigation, what would it take to get you to re-open the investigation.

We've had five people given immunity, which basically we got nothing, when perhaps a plea (ph) agreement or something else might have worked. You have your interpretation in your -- in your previous testimony before Congress that Section 793F required intent, when in fact, the standard is -- is gross negligence. And it's just a long list of things that just have people scratching their heads going, "If this were to happen to me, I would be in a world of hurt, probably in jail."

And the -- how do you respond to people who are saying that this is not how average American would be treating (sic), this is only how Hillary Clinton would be treated?

COMEY:

Look, I've heard that a lot, and my -- my response is demand -- when people tell you that, that others have been treated differently, demand from a trustworthy source the details of those cases because I -- I'm a very aggressive investigator, I was a very aggressive prosecutor.

I have gone back through 40 years of cases, and I'm telling you under oath that to treat (ph), to prosecute on these facts would be a double standard, because Jane and Joe Smith would not be prosecuted on these facts.

Now, you'd be in trouble. That's the other thing I've had to explain to the FBI workforce. You use our -- an unclassified e-mails system to do our business, and in the course of doing our business talk about classified topics, you will be in big trouble with the FBI. I'm highly confident of that. I'm also highly confident, in fact certain, you would not be prosecuted. That's what folks tend to lump together.

So I care deeply about what people think about the justice system and that it not have two standards. It does not and this demonstrates it.

FARENTHOLD:

But you look at General Petraeus and his handling of classified information. You look at -- and I'll go back to what you're saying...

COMEY:

But when you look at it, demand to know the facts. I don't want to dump on General Petraeus because the case is over, but I would be happy to go through how very different that circumstance is than this circumstance.

FARENTHOLD:

And you talk about -- you tell your FBI agents if you do what we're investigating here with material from the FBI, you'll be in a world of trouble. I would assume that could potentially be fired. Is Hillary Clinton in -- she didn't get in any trouble at the State Department. The only trouble she's got now is trying to explain it to the American people.

COMEY:

She's not a government employee, so the normal range of discipline that would be applied to FBI employees if they did something similar doesn't apply. And I gather -- I think that's some of the reason for people's confusion, lumping these two together and their frustration, but it is what it is. And all I can tell people is demand the facts. When people tell you so and so's been treated differently, demand the facts on that.

FARENTHOLD:

All right. So if somebody were to -- let's just do a hypothetical. Let's say somebody here in Congress were to e-mail my personal e-mail some classified information and I -- I'm on my -- I get my phone -- it comes to my cell phone too, my personal e-mail comes to my personal cell phone. I look at it, go "Wow, that probably shouldn't be on there," and don't do anything.

I mean, to me, that's being grossly negligent with classified information and I should -- and that's a violation of 793F. And that's exactly what Hillary Clinton did I think. At what point -- at what point do you get to intent? The classified information was on an unsecure server, you knew it was there and you didn't do anything about it. To me, that's gross negligence period. I would think -- I would be prosecuted for that.

COMEY:

I'm confident that you wouldn't, but we'd just have to agree to disagree.

FARENTHOLD:

All right, if I ever get trouble...

COMEY:



Don't do it.

FARENTHOLD:

... I'll just (inaudible).

COMEY:

Don't do it. But I guess I can't control Congress. If you work for us, don't do it.

FARENTHOLD:

No, I have absolutely no intention of doing it.

So again, I -- I just want to say don't -- don't get frustrated when we continue to ask these questions because we're not badgering you because we want to badger you. We are talking to you because the American people are upset about this and don't think it was handled appropriately, and that's the basis at least of my questioning. And I thank you for appearing here.

COMEY:

And I totally understand that. I think there are lots of questions people have, which is why I've worked so hard to try and be transparent. There's never been this kind of transparency in a criminal case ever, but because I understand the questions and the importance of it, I've tried.

And I hope people will separate two things; questions about facts and judgment from questions and accusations about integrity. As I said before, you can call us wrong, you can call me a fool. You cannot call us weasels, OK? That is just not fair. And I hope we haven't gotten to a place in American public life where everything has to be torn down on integrity basis just to disagree. You can disagree with this. There is just not a fair basis for saying that we did it in any way that wasn't honest and independent. That's when I get a little worked up. Sorry.

FARENTHOLD:

I'm out of time.

GOODLATTE:

The chair recognizes the gentleman from Michigan, Mr. Bishop, for five minutes.

BISHOP:

Thank you.

Thank you, Director Comey. I appreciate your testimony here today. Just to follow up to all this discussion regarding the Clinton investigation, specifically with regard to the interview of Secretary Clinton, I'm holding in my hand a memorandum from Deputy Attorney General James Cole. It's dated May 12, 2014. This memorandum was issued to you and others on the policy concerning electronic recording of statements. Are you familiar with this...

COMEY:

Yes.

BISHOP:

... memorandum?

COMEY:

Mhm.

BISHOP:

The policy established a -- establishes a presumption that the FBI will electronically record statements made by individuals in their custody. Now, I know that Secretary Clinton was not technically in custody, but the policy also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances where that presumption does not exist.

BISHOP:

The policy also encourages agents and prosecutors to consult with each other in such circumstances, and given the magnitude of what we've been talking about today and the -- and the huge public interest in demand for information with regard to the public trust, I -- I think this is specifically important to this discussion. Now, you're aware of this policy, correct?

BISHOP:

Right, that applies to people that are in handcuffs. But not -- it also applies to -- the policy also encourages agents and prosecutors consider electronic recording in investigative matter -- in other matters where that presumption does not exist. Does it not?

COMEY:

Sure. The FBI doesn't do it, but sure I understand the -- they encouraged us to talk about it.

BISHOP:

So did -- did the agents then did not consider to conduct the interview in -- in a recorded situation then?

COMEY:

We do not record non-custodial interviews. Now, maybe someday folks'll urge us to change that policy, but we don't. And we sure wouldn't want to change it in one particular case.

BISHOP:

Well, that's the policy. I'm just reading the policy that's issued by the Deputy Attorney General, James Cole, that is to you and to others in the Department of Justice that establishes the policy. So I -- if you don't do it, I -- I assume that you're doing it against the policy of the Department of Justice.

COMEY:

No, that -- that policy only governs custodial interrogations. So people who have been locked up. We do not, and it is not inconsistent with Department of Justice policy, record non-custodial -- that is voluntary interviews where someone's not in our custody.

BISHOP:

Well, I'm reading this differently then because it does say that there's an exception that -- that it is within your discretion to -- to record such...

COMEY:

You could and, I don't know, maybe some other federal investigative agencies do. The FBI's practice is we do not record non-custodial interviews.

BISHOP:

OK, thank you, Director. I -- I want to pivot, if I can and build off Representative's Desantis' question with regard to the refugees attempting to enter the United States, and specifically with regard to Syrian refugees.

Wondering if you could tell me, we've -- we've talked about this -- this process and the fact that we do not have a process in place that we can rely upon. Even the kid (ph) before, when you testified and asked the question that it's -- we simply don't have enough information to ensure that we have the information that we need to ensure that these people are not a threat to our country.

Can you -- can you expand upon that now after a year? Can you tell me whether or not we've got more information, more capabilities to vet these refugees? And I say this because, in my district in Michigan,

in this fiscal year Michigan has taken the fourth most refugees of all states, 4,178, and we're the -- we've taken the third most for Iraq, the second most from Syria.

Michigan has absorbed enormous number of refugees, and I think you can understand our concern with regard to the fact that we don't have information necessary to identify whether or not they're a threat.

Can you assuage my concern, the concerns of my constituents, that we have a system in place that we can vet these individuals and they don't pose a threat to our country?

COMEY:

I can assuage in part and restate my concern in part. The -- our process inside the United States government has gotten much better at making sure we touch all possible source of information about a refugee.

The interview process has gotten more robust, so we've gotten our act together in that respect. The challenge remains, especially with respect to folks coming from Syria, we're unlikely to have anything in our holdings.

That is, with people coming from Iraq, the United States government was there for a very long period of time. We had biometrics, we had source information. We're unlikely to have that kind of picture about someone coming from Syria, and that's the piece I just want folks to be aware of.

BISHOP:

Has anything change in your vetting process? Have you updated it? Do you have any concerns with regard -- now we've seen an increased terrorist activity in the last six months, including New York, New Jersey, and Minneapolis.

Has anything changed in the vetting process? Can you be confident that foreign fighters or other refugees entering the country are not planning future attacks on our country?

COMEY:

Well, as I said, over the last year since I was last before you, the vetting process has gotten more effective in the ways I described. I'm in the business where I can't ever say there's no risk associated with someone.

So we wake up every day in the FBI worrying about who might have gotten through in any form or fashion to the United States or who might be getting inspired while they're here. So I can't ever give a blanket assurance.

BISHOP:

Director, I respect your opinion. And this is not a policy question, I'm asking you based on your personal opinion as a law enforcement officer that we rely upon to keep this country safe. Is there anything that you would do to ensure, as you said, that our country is safe with regard to this -- this refugee process?

COMEY:

Anything that I would do?

BISHOP:

Anything that you'd do, any recommendations you have for Congress, for this country that would ensure our safety.

COMEY:

I -- I'd (ph) shy away from assurances of safety given the nature of the threats we face. I do think that there may be opportunities to do more in the social media space with refugees in particular. And I -- and I talked to Jeh Johnson yesterday about it. I know there's (ph) a work in progress.

So much of people's lives, even if we don't have in our holdings, may be in the -- in digital dust that they've left in different places, are we harvesting that dust on people who want to come into this country in the best way. And I think there may be ground for improvement there.

BISHOP:

Thank you, Director.

And -- and I will yield back, but Mr. Chairman, I'd ask unanimous consent to enter the memorandum that I referenced earlier from -- dated May 12, 2014 into the record.

GOODLATTE:

Without objection, it will be made part of the record.

The chair recognizes the gentleman from Georgia, Mr. Collins, for five minutes.

COLLINS:

Thank you, Mr. Chairman.

Director Comey, I -- I appreciate you being here. You are, I believe, forthright, much more so (inaudible) you said as any criminal case we've had. But I'm also still in the military. I'm still in the Air Force Reserve. I went to my drill (ph) back in July.

I was hit by an amazing amount of questions from different servicemembers on this issue of how the secretary -- former secretary of State get to do this, and yet, we have members of the military who are prosecuted all the time.

Your statements earlier were fairly startling when you said, "I don't know of anybody else that's been (inaudible) this." Just since 2009, Department of Justice prosecuted at least seven people under the Espionage Act all for very similar cases. Now, you said go look at the facts. Well, we're looking at the facts in these cases.

The interesting one, and you know, you said that in looking back at your investigation, the (ph) mishandling or removal of classified information, we cannot find a case that will support bringing criminal charges on these facts. All right. Well, it didn't take nothing but a simple legal search to find a Marine -- the following. Now, I guess their name is not Jane or Joe, so they did get prosecuted, OK?

And this is the issue. Under 18 USC 793F, gross negligence. This is what the Marine did. Out of -- they took classified information that was put into a gym bag (inaudible) and took, all right? Simple mishandling.

Court of Appeals actually upheld this case, and is what they said, that the purpose of federal espionage statutes (ph) to protect classified documents from unauthorized procedures such as removal from proper place of custody, which would mean how you deal with this, regardless of means of removal, it was (inaudible) gross and was (ph) approximate cause of the document's removal.

It is -- and they quote United States vs. (inaudible), said it is clear the Congress' (ph) intent to create a hierarchy of offenses against national security ranges from (inaudible) to merely losing classified materials through gross negligence or the mishandling of.

COLLINS:

It was sort of also ironic for me that when I had to go back in July and this past month when I went back, I had to do my annual information assurance training.

They went through everything that we have to do with handling classified information.

I have been in a war zone, I've been in -- this is just common knowledge among most everybody in the world, obviously not to the secretary. How can you then explain to me this Marine's mistake in taking classified documents, or mishandling them, is more severe than the secretary of state who sent and received classified e-mails on a regular basis?

Including those that were originally classified, not those that were classified later, but were originally classified.

COMEY:

I'm familiar with the case and I'm quite certain it's not a 793F case. It was prosecuted...

COLLINS:

His conviction was under 793F.

COMEY:

Yes, I don't think -- I mean I'll go back and check again and I'd urge you to too. I'm pretty sure it's not under the gross negligence prong (ph) of 793F but it's a uniform court of military justice prosecution, not by the Department of Justice, am I remembering correctly?

COLLINS:

This was from and has appealed at in the U.S. Court of Appeals for the Armed Forces of the United States...

COMEY:

OK, OK, but regardless. I think even -- I don't think this is under the same provision but even there, that's a case involving someone who actually stole classified information, hard copies.

What people need to remember, and I don't say this to make little of it, I think it's a very matter, what happened here is, the secretary used an unclassified e-mail system, her personal system, to conduct her business.

COLLINS:

And let's just stop right there. That in and of itself, and I understand as an (inaudible), you've been through a lot of questions, I apologize. But let's just come back to the basics here. We're trying to parse that I didn't have such a sandy burger or all these others who confronted you, they took a hard copy.

In today's society and even understanding if you go through any insurance class or anything else, they tell you it cannot be on a personal laptop (ph). In fact, there was another chief petty (ph) officer who had classified information on a personal computer and went back and forth to work (ph).

That is not physical documents, it's on a -- to parse words like that is why the American people are fed up. They're fed up with the IRS commissioner when he does it, they're fed up here. I'm not attacking your -- I think you're one of the more upright people I've met. I think you just blew it. I think the attorney general blew it, I shared this with her, and I think when we come to this thing, there's no other way that you can say that there's no others that resemble this.

As a lawyer, you're taught all the time to take facts and put them -- they may not be exact, but they fit under the law. You can -- I mean, so I guess maybe I'm going to change the question because we're going to go down to a dead end. You're going to say...

(CROSSTALK)

COLLINS:

Now let me ask you this. I want to change the questions.

Do you honestly believe that a lady, a woman of vast intelligence, who was the first lady of the United States, who was a senator, who had access to classified information, all the members here do, who was secretary of state who had even further classification ability even beyond what we have here, do you believe that in this case, honestly she was not grossly negligent or criminal in her acts?

COMEY:

First of all, I don't believe anyone, other than my wife. My question is what evidence do I have to establish that state of mind and I don't believe I have evidence to establish it beyond a reasonable doubt.

COLLINS:

Then really what we're saying here is this, if she is -- and this is in essence to what you're saying, you said I can't prove it and I understand. There's a lot of folks out there in the law that they come to us all the time. I'm an attorney as well and they come to us, say this, it's not what we know, it's not what we think, it's what we can prove.

I get it but here's the problem with this and this is the person who's asking to lead this country. If she can hide behind this and gleamily (ph) get approval from the FBI through an investigation which has been covered here thoroughly, then I just do not understand.

She is either the most arrogant, which probably so, or the most insanely naive person we've ever met. Because when I actually show evidences of basically the same thing which you can take fact and correlate to law. This is why the Armed Forces right now have the term called the Clinton Defense.

I didn't know, I didn't mean to, it's on my -- it's the Clinton Defense. With questions like this, Director, we have (ph) give the ability now to where nobody takes this seriously and this is why people are upset.

When it was originally classified, she can tell all the stories she wants. She can have the back up from you that no prosecutor, which is again amazing to me, that a law enforcement would tell the prosecutor because how many times I've been on both sides of this, where the law enforcement agent said, I'm not sure we have a case here but when the prosecutor looks at it, the prosecutor says, yes there's a case here.

I don't really frankly, no offense, care if I'm in prosecuting, what the law enforcement -- if I can see the case and I can make it, that's my job, not yours. And yet now we have a whole system that has been turned upside down. Not because I don't believe your honesty of your people but I believe you blew it because you frankly didn't have the whole situation into effect where the FBI wouldn't look political and unfortunately, that's all you've become in this and it's a sad thing because y'all do great work.



You have done great work and you will do great work. But I think it's time to start bringing down the curtain. There's a wizard behind the thing, Mrs. Hillary Clinton, who is playing all of us because she's not that naive, she's not stupid.

She knew what she was doing because she was simply too bored. If she, God forbid, gets into 1600 Pennsylvania Avenue and just gets bored with the process, then God help us all. Mr. Chairman, I yield.

COMEY:

Mr. Chairman, there's two...

GOODLATTE:

The director is permitted to respond.

COMEY:

Yes, two pieces that I need to respond to. First, he said, hiding behind something. This case was investigated by a group of professionals. So if I blew it, they blew it too. Career FBI agents, the very best we have were put on this case and career analysts.

We are a team. No one hid behind anything. American citizens should insist that we bring criminal charges if we're able to investigate and produce evidence beyond reasonable doubt to charge somebody.

That should be true whether you're investigating me, or you or Joe Smith on the street. That's the way this case was done. It's about evidence and the rest of it I'll let go.

COLLINS:

Mr. -- I would and I apologize, if (inaudible) -- I'm not -- this is the problem though. When you take it as a whole, its been setup here this is a unique case. You talked about it being a unique case.

Director, this is a unique case because I truly, and I don't think you convinced hardly anybody except your own group, that I don't think you ever said they couldn't blow it, they blew it. Anybody else would have been prosecuted under this. In my humble opinion...

COMEY:

You're just wrong. You're just wrong. We'll just have to agree to disagree.

COLLINS:

Well, unfortunately there's a lot to disagree on this one, thank you Mr. Chairman.

GOODLATTE:

The time of the gentleman has expired. The gentleman from Idaho, Mr. Labrador is recognized for five minutes.

LABRADOR:

Thank you Mr. Chairman and Director Comey, I've always appreciated your testimony before this committee and I respect the work that you do for the FBI. When you made your recommendations to the Department of Justice to not prosecute Hillary Clinton, I actually disagreed with your decision but I appreciated your candor in explaining to the American people and to us those recommendations.

Since that decision I continued to view you as honorable and a strong leader for the critical federal agency. In fact, I did 20 town hall meetings over the recess and I was lambasted at every one of them, in fact I think I lost votes because I defended your integrity at every one of those town hall meetings. And I told them why, even though I disagreed with your conclusions, I thought you came from an honorable place.

LABRADOR:

However, as more and more information has come to light, I question the thoroughness and I'm not questioning your integrity, but the thoroughness and the scope of the FBI's investigation. In the past week, we have learned of the granted immunity to several key witnesses in the Clinton investigation including Hillary Clinton's former chief of staff and one of the individuals responsible for setting up her server.

And I'm really disappointed by this revelation, and confused as to why these immunity grants were necessary and appropriate given the circumstances.

It appears to me that the FBI was very early in this investigation -- too willing to strike deals and ensure that top officials could never be prosecuted for their role in what we now know was a massive breach of national security protocol. We have a duty to ensure that our FBI is still in the business of investigating criminal activity.

So at what point in the investigation was Cheryl Mills offered immunity?

COMEY:

Cheryl Mills was never offered immunity -- not to quibble, but she was given letter (ph) immunity to govern...

LABRADOR:

At what point?

COMEY:

June of 2016, so June of this year. So about 11 months into the investigation.

LABRADOR:

So to be clear, was she offered immunity for an interview and potential (ph) testimony or for turning over the laptop as evidence?

COMEY:

Turning over the laptop as evidence. It governed what could be done -- in terms of using it against her -- that laptop.

LABRADOR:

To your knowledge, was Cheryl Mills an uncooperative witness prior to the immunity deal?

COMEY:

I think our assessment was, she was cooperative -- I forget the month she was interviewed -- but she was interviewed fully before that.

LABRADOR:

And she always cooperated?

COMEY:

I think our assessment was -- again, this is the odd I look at the world -- we had no reason to believe that she was being uncooperative.

LABRADOR:

So could this investigation have been completed without these grants of immunity in place?

COMEY:

In my view, it couldn't be concluded professionally without doing our best to figure out what was on those laptops. So getting the laptops was very important to me and to the investigative team.

LABRADOR:

So in your vast experience as investigator, as a DOJ attorney, now as an FBI director; how many times have you allowed a person who is a material witness to a crime you're investigating to act as the lawyer in that same investigation?

COMEY:

"To let," is what I'm stumbling on. The FBI has no power to stop someone in a voluntary interview...

LABRADOR:

No, no, you're speaking -- let's just be honest. You allowed -- the FBI allowed Cheryl Mills to act as the attorney in a case that she was a material witness. How many times...

COMEY:

In the same sense that I'm allowing you to question me.

LABRADOR:

How many times...

COMEY:

I can't stop you from questioning me.

LABRADOR:

How many times have you done that prior?

COMEY:

I have not had an experience where the subject of the interview was represented by a lawyer who was also a witness in the investigation.

LABRADOR:

OK, so you have never had that experience?

COMEY:

Not in my experience.

LABRADOR:

You prosecuted terrorists and mobsters, right?

COMEY:

Correct.

LABRADOR:

And during your time in Justice, how many times did you allow a lawyer who was a material witness to the case that you were prosecuting to also act as the subject of -- as the attorney to the subject of that investigation?

COMEY:

As I said, I don't think I've encountered that situation where a witness -- a lawyer for the subject of the investigation was also a witness to the investigation.

LABRADOR:

So this was highly unusual to have...

COMEY:

In my experience, yes.

LABRADOR:

OK.

In your answer to Chairman Chaffetz, you indicated that you had no reason to disbelieve Paul Combetta when he told you that he erased the hard drive on his own, is that correct?

COMEY:

Correct.

LABRADOR:

However, in the exchange on Reddit, he said, "I need to strip out a VIP's e-mail address from a bunch of archived e-mails. Basically they don't want the VIP's e-mail address exposed to anyone." Those two statements are not consistent.

How can you say that he was truthful when he told you, nobody told him to act this way. But yet, you saw this Reddit account where it says where "they" told him that he needed to act in this way.

COMEY:

I think the assessment of the investigative teams --- those are two very -- about two different subjects. One is a year before about -- in the summer of 2014 -- about how to produce e-mails and whether there's a way to remove or mask the actual e-mail address, the HRC, whatever it is, dot com and the other is about actually deleting the content of those e-mails sitting on the server.

LABRADOR:

It seems like, in your investigation, you found time after time evidence of destruction, evidence of breaking iPhones and other phones -- all these different things -- but yet, you find that there's no evidence of intent.

And I'm a little bit confused as to your interpretation of 18 U.S.C. 793 (f). On the one hand you've said that Secretary Clinton couldn't be charged because her conduct was extremely careless, but not grossly negligent, correct?

COMEY:

That's not exactly what I said.

LABRADOR:

That is what you said today. But you have also said there was no evidence of her intent to harm the United States.

So -- but you will agree that a person can act with gross negligent or even act knowingly without possessing some additional specific intent? So which is it? Is it a lack of gross negligence that she had or a lack of intent?

COMEY:

In terms of my overall judgment about whether the case was worthy of prosecution, it is the lack of evidence to meet what I understand to be the elements of the crime, one. And two, a consideration of what would be fair with respect to how other people have been treated. Those two things together tell me, and I'm -- nothing has happened that's changed my view on this -- that no reasonable prosecutor would bring such a case.

The -- the specific intent question, yes, I agree that harm -- specific intent to harm the United States is a different thing than a gross negligence or a willfulness.

LABRADOR:

So just one last question.

You have talked about Mary and Joe. Now Mary and Joe would be disciplined at the FBI if they did what Hillary Clinton did. If Mary and Joe came to you and asked for a promotion immediately after being disciplined, would you give them that promotion?

COMEY:

It's tough to answer that hypothetical. It would depend upon the nature of the conduct and what discipline have been imposed.

LABRADOR:

And what if they ever ask for a promotion that would give them management and control of cybersecurity of your agency and the secrets of your agency after they had done these things? Would you give them that promotion?

COMEY:

That's a question I don't want to answer.

LABRADOR:

All right.

GOODLATTE:

The time of the gentleman has expired.

The Chair recognizes the gentlewoman from California, Ms. Walters, for five minutes.

WALTERS:

Hi, Director Comey.

Despite the absence of an intent Mens Rea, standard in 18 U.S.C. Section 79 - 793 (f) , you have said that there has never been a prosecution without evidence of intent. Thus, the standard has been read into the statute despite the specific language enacted. What exactly are the legal precedents that justify reading intent into the statute?

COMEY:

Well, my understanding of 793 (f) is governed by a couple of things. Three things, really.

One, the legislative history from 1917, which I've read and the one case that was prosecuted -- in the case. And those two things combined tell me that when Congress enacted 793 (f), they were very

worried about the gross negligence language, and actually put in legislative history -- we understand it to be something very close to willfulness.

Then the next hundred years of treatment of that actually tell me that the Department of Justice for a century has had that same reservation because they've only used it once. And that was in a case involving an FBI agent who was -- in an espionage context. So those things together inform my judgment of it.

WALTERS:

Considering the important of protecting classified information for national security purposes, a lot of people disagree that an intent standard should be read into that statute. What specific language would you recommend we enact to ensure gross negligence is the actual standard for the statute and not intent?

COMEY:

I don't think that's something the Bureau ought to give advice on. It's a good question as to what the standard should be. I could imagine federal employees being very concerned about how you draw the line for criminal liability, but I don't think that is something that we ought to advise on, the legislation.

WALTERS:

OK. Should we enact a Mens Rea standard for extreme carelessness for the statute?

COMEY:

Same answer, I think, is appropriate.

WALTERS:

Should we enact a civil fine?

COMEY:

A civil fine for mishandling classified information? I don't know, actually, 'cause it's already subject to discipline, which is suspension, or loss of clearance, or loss of job, which is a big monetary impact to the people disciplined. So I don't know is (ph) whether it's necessary.

WALTERS:

OK. I want to change subjects...



COMEY:

OK.

WALTERS:

...for my next question. As you know, the number of criminal background checks for non-criminal purposes, such as for employment decisions, continues to increase annually. I don't expect that you have this information on hand.

However, would you be willing to provide the committee and my staff with the number of criminal history record checks for fingerprint-based background checks that the FBI has conducted over each of the past five years? And what are your thoughts regarding whether the FBI has the capacity to process the increasing number of background check requests?

COMEY:

I'm sure we can get you that number, 'cause I'm sure we track it. So I'll make sure my staff follows up with you. I do believe we have the resources. Where we've been strained is on the background checks for firearms purchases.

The other background check processes we, my -- overall sense is we have enough troops to do that. We're able to -- we charge a fee for those and I think we're able to generate the resources we need.

WALTERS:

OK. Thank you. I yield back my time.

ISSA:

Could the gentlelady yield to me?

WALTERS:

Sure. I'd be happy to yield to you, Mr. Issa.

ISSA:

Thank you. Thank you. Director, some time ago you appeared before this committee and you -- you told us that you had exhausted all of the capability to unlock the San Bernardino iPhone, the 5C. Did that turn out to be true?

COMEY:

Still true.

ISSA:

That you had exhausted all of your capability?

COMEY:

That -- that the FBI had? Yes.

ISSA:

So shouldn't we be concerned from a cyber standpoint that you couldn't unlock a phone that, in fact, an Israel company came forward and unlocked for you? And a -- basically a Cambridge professor or student for 90 bucks has shown also to be able to do -- unlock and mirror or duplicate the memory.

Should - I mean, and this is purely a question of, you apparently do not have the resources to do that which others can do. Isn't that correct?

COMEY:

I'm sure that's true in a whole bunch of respects. But first I've got to correct you. I'm not confirming, you said an Israeli company? I'm not...

ISSA:

Well, OK. A -- a contractor for you reported to be for a million dollars unlocked the phone. So I would ask you to confirm. The phone got unlocked, right?

COMEY:

Yes, it did.

ISSA:

OK. So the technology could be created outside of ordering a company to essentially clandestine -- or, you know, reengineer their -- their software for you. Correct?

COMEY:

In this particular case, yes.

ISSA:

OK. And so you lack that capability. How can this committee know that you're in the process of developing that sort of technology, the equivalent of the Cambridge \$90 technology?

COMEY:

How can the committee know?

ISSA:

Yeah. I mean in other words, where are the assurances that you're going to get robust?

And, if we have an encryption working group that was formed between multiple committees, to no small extent because of your action of going to a magistrate and getting an order because you lacked that capability, and -- and were trying a new technique of ordering a company to go invent for you, the question is how do we know that won't happen again?

That you will go to the court, ask for something, when, in fact, the technology exists or could exist to do it in some other way? A technology that you should have at your disposal, or at least some federal agency should, like the NSA.

COMEY:

Well, first of all, it could well happen again, which is why I think it's great that people are talking about what we might do about this problem. It's an interesting question as to whether we ought to invest in us having the ability to hack into people's devices, whether that's the best solution.

It doesn't strike me as the best solution. But we are -- and I've asked for more money in the -- in the '17 budget, trying to invest in building those capabilities so when we really need to be able to get into a device, we can. It's not scalable and I'm not sure it will be thrilling to companies like Apple we're investing money, trying to figure out how to hack into their stuff.

ISSA:

Well isn't it, and I'll be brief, isn't it - isn't it true that we have clandestine organizations who have the mandate to do just that? To look around the world and to be able to find information that people don't know you can find, keep it secret, get it out there?

And my question to you is, shouldn't we, instead of giving you the money, simply continue to leverage other agencies who already have that mandate, and then ask you to ask them to be your conduit for that, when you have an appropriate need?

COMEY:

That's a reasonable question, maybe part of the solution. Real challenges in using those kinds of techniques in the bulk of our work, because it becomes public and exposed; that has to be an important part of the conversation.

ISSA:

Thank you. I yield back.

GOODLATTE:

The Chair recognizes the gentleman from Arizona, Mr. Franks for five minutes.

FRANKS:

Thank you Mr. Chairman. And thank you for being here Director Comey. Director Comey, I - the last thing I want to do is to - to lecture you on anything related to the law because I think you've given your whole life to that effort and I guess in the face of so many things already having been said here in the past, that all I can do is to try to sort of re-associate this in a reference of why there is a rule of law.

You know, we - we had that little unpleasantness in this (ph) late 1770's with England over this rule of law, because we realize there's really only two main ways to govern, and that is by the rule of men or the rule of law, and sometimes it's important for all of us just to kind of reconnect what this whole enterprise of America is all about, and I - again, don't seek to lecture you in that regard.

And I know, and -- and you'll have to forgive me for being a Republican partisan here, because I am very biased in this case, but I know that when you interviewed Mrs. Clinton, you were up against someone that - that really should have an earned Doctorate of duplicity and deception hanging on her wall.

I don't know that you probably could have interviewed a more gifted prevaricator, so I know you were up against the best. But having said that, when I - when I read the law here, that I know so many have already referenced, I think I maybe - that's the best way for me to do that, 18 U.S.C. 1924 provides that any federal official who quote "becomes possessed of documents or materials containing classified information of the United States, and knowingly removes such documents or materials without authority, and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year or both."

Now I didn't - didn't miss one word there. It does not require - that section does not require an intent to profit, it doesn't require harm to the United States or other wise to - to act in any manner disloyal to the United States, it only requires intent to retain, classified documents at an unauthorized location.

And - and I believe sir, in all sincerity to you - person to person-I believe that some of your comments reflected that that's what occurred. Over the last several months, I believe that's the case, and so I have to - it's my job to ask you again, why the simple clarity of that law was not applied in this case?

Because the implications here are so profound, for your children and mine, for this country, they are so profound.

And - and I - again, I don't envy your job, but I want to give you the reminder of the time to -- to help me understand why a law like this that any - any law school graduate, if we can't apply this one in this case, how in God's name can apply it in any case in the world, why does it - why is it even written? So, I'm going to stop there and ask your forbearance and just go for it.

COMEY:

Sure, no it's a reasonable question. That is the -- 18 U.S.C. 1924 is the misdemeanor mishandling statute that is the basis on which most people have been prosecuted for mishandling classified information -- have been prosecuted, it is not a strict liability statute.

I was one of the people, when I was in the private sector, who argued against strict liability criminal statutes. It requires, in the view of the Department of Justice and over long practice, proof of some criminal intent - not specific intent to harm the United States, but a general awareness that you're doing something that's unlawful, so you have to prove criminal intent.

So there's two problems in this case: one is developing the evidence to prove beyond a reasonable doubt that Secretary Clinton acted with that criminal intent, and second, even if you could do that, which you can't, looking at the history of other cases, what would be the right thing to do here, has anybody ever been prosecuted on anything near these facts?

And again, I keep telling the folks at home, when people tell you lots of people have been prosecuted for this, please demand the details of those cases, because I've been through them all.

So that combination of what the statute requires and the history of prosecutions told me, and again people can take a different view and it's reasonable to disagree, that no reasonable prosecutor would bring that case - that's - that in a nutshell is what it is.

FRANKS:

You said it was a reasonable question, it was a reasonable answer, but I - I can't find that in the statute. Thank you sir.

GOODLATTE:

The Chair recognizes the gentlemen from Louisiana, Mr. Richmond for five minutes.

RICHMOND:

Thank you - thank you Mr. Chairman. Director Comey, and I'm - I'm going down a completely path, our law enforcement in this country have a consistent enemy in a group called Sovereign Citizen and what I have seen in my district, we lost two officers in St. John Parish about four years ago and we just lost another three officers in Baton Rouge with another couple injured.

In the case in St. John Parish, we actually had the perpetrators on the radar in North Louisiana and at some point they moved to South Louisiana in my district, and we lost contact.

So, when St. John Parish deputies went to their trailer park, they had no idea what they were walking into, and they walked into an ambush with AR-15s and AK-47s, and the unimaginable happened.

RICHMOND:

So through (inaudible) and other things, are you all focused on making sure -- and I think there are about a hundred thousand of them, but are you all focused on making sure that our law enforcement has the best information when dealing with whether it's sovereign citizen or terrorist cells or other bad actors, that that information gets to the locals so they're not surprised and ambushed?

COMEY:

Well, we sure -- we sure are. And I don't know the circumstances of that case, but I -- I will find out the circumstances, in -- in two respects. We want, obviously, people to know when someone's wanted.

But, more than that, we have a known or suspected terrorist file that is -- should have information in that about people we are worried about so that if an officer's making a stop or going up to execute a search warrant, and they run that address of that person, they'll get a hit on the -- what we call the KST file. So that's our objective and, if there are ways to make it better, we want -- we want to.

RICHMOND:

Now let's switch lanes a little bit because this is one of -- I think an issue, when we start talking about criminal justice reform and we start talking about the FBI in my community and communities of -- of color and with elected officials, there seems to be two standards.

One for low-level elected officials, and then one for other people. So I guess the facts I will give you in -- in some of our cases, and you tell me if it sounds inconsistent with your knowledge of the law and your protocol.

But non-profit organizations where elected officials have either been on boards or had some affiliation with, when those funds are used in a manner that benefits them personally, they have been prosecuted. And I mean for amounts that range from anywhere from \$2,000 upwards to \$100,000.

Your interpretation of the law that, if a non-profit funds are used to benefit a person and not the organization, that that is a theft of funds. Because I believe that those are a lot of the charges that I have seen in my community. Would you agree with that?

COMEY:

Sure, could be, and I know from personal experience, having done these cases, that's often -- that's at the center of a case involving a corrupt official.

RICHMOND:

Now, let's take elected official out, and just take any foundation director or board director or executive director who would use the funds of a non-profit to pay personal debts or bills, or just takes money. You would agree that that would constitute a violation of the law? Criminal statute?

COMEY:

Potentially. On the federal side, potentially of wire fraud, mail fraud, or a tax charge. Potentially.

RICHMOND:

The -- the other thing that I would say is that, in our community we feel that it's selective prosecution. That if you're rich, you have another standard. That if you're an African-American, you have another standard.

And there are a number of cases that I will give you off line, but it appears that, and my concern, is the authority of your agents to decide that a person is bad, and then take them through holy hell to try to get to the ultimate conclusion that the agent made, and they don't let the facts get in their way.

RICHMOND:

And at the end of the day, you have business people who spend hundreds of thousand dollars to protect their reputation and to fight a charge that they ultimately win. But now they are broke, they're defeated, because when it comes out it says the United States of America versus you.

So I would just ask you to create a mindset within the department that they understand the consequences of leaks to the press, charges, and what happens if - when those charges are really not substantiated, you still break a person.

And I think that you all have a responsibility to be very careful with the awesome power that you all are given.

And with that, Mr. Chairmen, I think back - I yield back.

GOODLATTE:

Thanks, gentlemen. The director is welcome to respond if he...

COMEY:

I very much agree with what you said, congressman, at the end of that. The power to investigate is the power to ruin. Obviously charging people is -can also be ruinous.

So, it's when we have to be extraordinarily prudent in exercising fair, open minded and careful. So, I - I very much agree with that.

GOODLATTE:

The Chairman recognizes the gentlemen from Michigan, Mr. Trott for five minutes.

TROTT:

Thank you Mr. Chairman, and thank you Director for being here. And thank you for your service to our country.

And you - when you made your statement at the press conference on July 5, you said, "I have not coordinated or reviewed this statement in any way with the Department of Justice or any part of the government. They do not know what I'm about to say."

I have no reason to question your integrity, but is there any chance that someone working in your office or as part of this investigation knew what you were going to decide and recommend, and maybe told one of the Attorney General's staff what was about to - to happen on July 5?

COMEY:

Look, anything's possible. I - I would - I think I'd be willing to bet my life that didn't happen just because I know my folks.

TROTT:

So, here's why I ask. The facts give me pause. Investigation started in July of '15, many of us in Congress, including myself, suggested that the Attorney General should recuse herself because of her friendship with the Clinton's and because of her desire to continue on as Attorney General on a Clinton Administration.

Then she had the fortuitous meeting on the airplane with former President Clinton on June 30. Then on July 2 give or take, she came out and said, "You know, I've created an appearance of impropriety. And so I'm going to just follow whatever the FBI Director's recommendation is."

And then three days later, you had your press conference. And in your press conference you said, "In our system of justice, the prosecutors make the decisions about what charges are appropriate based on the evidence."

That's not what happened in this case. Ultimately you made the decision. Is that what happened?

COMEY:

I made public my recommendation. The decision to decline the was made at - at the Justice Department.

TROTT:



But - but before - before you had that press conference, you knew based on the Attorney General's public comments that she was going to follow whatever you recommended.

So, ultimately you made the decision in this case as to whether or not charges should be filed - filed against Secretary Clinton. Isn't - isn't that the reality of what happened?

COMEY:

I think that's a fair characterization. The only thing I'd add to that is I think she said - I don't remember exactly - that she would defer to the FBI and the career prosecutors at the Department of Justice.

But look, I knew that once I made public the FBI's view, that this wasn't a prosecutable case, that there was virtually zero chance that the Department of Justice was going to go in a different direction. But part of my decision was based on my prediction that there was the Department of Justice would prosecute on these facts in any event.

So, I think your characterization is fair, but I just wanted to add that - that color to it.

TROTT:

But see how some of us would look at the - the dates and the facts leading up to your press conference. And - and think OK, for a year we've been suggesting she's not the appropriate person to make the ultimate decision as to whether charges should be filed. She won't recuse herself.

And then three days before you come out with your recommendation, which she's already said she's going to follow, she basically decides to recuse herself. Those facts give me pause.

COMEY:

Yeah, I get why folks would ask about that. But I actually think it's - there are two dates that matter.

I think but what generated that was the - the controversy around her meeting with President Clinton, not - not the - the interview with Secretary Clinton.

TROTT:

That's - that's a whole 'nother discussion. So, let's - let's talk about Cheryl Mills.

So, you've said earlier today that it really wasn't up to you to weigh in on whether there's a conflict for Ms. Mills to act as Secretary Clinton's lawyer in the interview. But again, you're kinda taking your attorney hat on and off whenever it's convenient.

TROTT:

You - you - you decided that at the beginning of that interview, it was appropriate for you weigh in as a lawyer suggesting there was a conflict.

But then again, your recommendation is ultimately as a lawyer what's being done in this case. You see a little bit of inconsistency there or no?

COMEY:

No, I see the point about - look, I'd rather not have an attorney hat on at any time. I put it on because I thought that was what was necessary at the conclusion of this investigation but I stand by that. The agents of the FBI, it's not to them to try and kick out someone's lawyer.

TROTT:

What would've happened if you'd said Ms. Mills, because of the history here, you can't be in this interview?

COMEY:

I don't know. I don't know.

TROTT:

Could you have said that to her?

COMEY:

I guess you could. It would be well outside our normal role.

TROTT:

So, a number of times today you've said it really is no double standard and so now I'm just asking you as a citizen and not even in your capacity as director FBI.

Can you sort of see why a lot of Americans are bothered by a perceived double standard because if any of the gentlemen sitting behind you this morning, I assume (ph) are with the department, had done some of the things Ms. Clinton did and told some of the lies that she told, you said in your statement that this is not just under similar circumstances, there wouldn't be consequences.

In fact, there would be - they'd be subjected to administrative sanctions.

And now we have an election going on where she's seeking a pretty big promotion so maybe your point is she wouldn't be charged under similar facts but can you sort of see why so many people are bothered by the facts in this case given that really nothing happened to her and now she's running for president of the United States? I mean, just - can you see the - the optics on that are troubling?

COMEY:

Oh, I totally get that. That's one of the reasons I'm trying to answer as many questions as I can because I get that question but again, folks need to realize in the FBI if you did this you'd be in huge trouble. I'm certain of that. You'd be disciplined in some serious way, you might be fired. I'm also certain you would not be prosecuted criminally on these facts. Those are two different things.

TROTT:

And you've said that. I appreciate that tell me (ph) just as one quick question because I'm out of time, but Mr. Bishop started to talk about this and his district is affected as well in Michigan but my district in southeast Michigan has the third largest settlement of Syrian refugees of any city in the country behind San Diego and Chicago. That's Troy, Michigan.

And you said last Fall in front of a homeland security committee hearing that you really didn't have the data to properly vet the Syrian refugees that are trying to come in and you said that again this morning but, you know, last weekend I'm at a grocery store and a Starbucks and two different constituents walked up to me and said "can't you stop the president's resettlement of Syrian refugees into Troy Michigan? We're all afraid."

And they're based on, largely, your comment that we don't have the database to really vet these folks. Anything I can tell the folks back in Michigan that we're doing other than - all I say now is "we just have to wait for a new president because this president has increased the number of refugees by 60 and 30 percent year over year the last two years. We just have to wait for a new president."

I'd like to be able to say "the FBI is doing something different than they were doing last year when you made those comments."

COMEY:

Well, as I said earlier, they can know that we are - if there is a whiff about this person, somewhere in the U.S. government's vast holdings, we will find it. And the second thing they can know is if we get a whiff about somebody once they're in, we're going to cover that in a pretty tight way. What I can't promise people is that if - I can't query what's not in our holdings. That's the only reservation I offer to people.

TROTT:

Thank you, sir. I yield back.

GOODLATTE:

Director Comey, during questioning earlier there was a dispute that arose over the contents of one or more of the immunity letters that were issued particularly with regard to the issue of whether or not it contained immunity for destroying documents, e- mails.

The individual who was questioning you about that was chairman - former Chairman Issa of the Oversight and Government Reform Committee and I want him to be able to clarify because we have contacted the Department of Justice and asked them to read the immunity letters to us.

So, the gentleman's recognized briefly.

ISSA:

Thank you, Mr. Chairman. I'll try to be very brief. Under the immunity agreement with one or more individuals, we'll use Cheryl Mills as, clearly, one of the individuals. She negotiated a very, very good deal from what we can discover.

She did not just receive immunity related to the production of the drive, the computer, and the contents but in fact received immunity under 70 - 793, 18 USC 793 E and F. 1924 - USC 19 - 18 USC 1924 and, so called, David Petraeus portion 18 USC 2071.

And I'll focus on 2071. Her immunity is against any and all taking, destruction, or even obstruction, the way we read it, of documents classified or unclassified.

Now, the only question I have for you is - and I know you're going to put this to Justice and we may have to ask them separately - for the purposes of what you needed as an investigator because you were the person that wanted access to the computer, is that deal make any sense to in return for things which she could have objected to as an attorney and held back, but which had no know proffer of leading to some criminal indictment of somebody else.

She received complete immunity, as we read it, from obstruction or destruction of documents classified and unclassified and that's based on a re-review of the immunity agreement.

COMEY:

I think you're right. This is a question best addressed to Justice but I think you're misunderstanding it. As I understand it, this was a promise in writing from the Department of Justice if you give us the laptops, we will not use anything on the laptops directly against you in a prosecution for that list of offenses.

It's not immunity for those offenses if there's some other evidence. Now, that said, I'm not exactly sure why her lawyer asked for it because by that point in the investigation we didn't have a case on her to begin with.

ISSA:

Well, I understand that but based on the read it (ph) discovery and others, the they asked me to do it and you said so yourself it was probably Cheryl Mill, the they. You have a - an immune witness who has to tell you who they were.

If the they were told me to delete and that's Cheryl Mills then, in fact, you have evidence from an immune witness of a crime perpetrated by Cheryl Mills, the ordering of the destruction of any document classified or unclassified which clearly she seems to have done.

COMEY:

She wouldn't be protected from that. If we developed evidence that she had obstructed justice in some fashion, all she's protected from is we can't use as evidence something that's on the laptop she gave us.

ISSA:

So, with the...

COMEY:

...We can still prosecute her.

ISSA:

Right, so the information put into the record today which included these read it (ph) discoveries show that there is a they who asked to have the destruction of information under 18 USC 2071.

If she doesn't have immunity for that order, she could and, by definition, should be charged because ordering somebody else to destroy something as an attorney well after there were subpoenas in place that were very specific, that's clearly a willful act, isn't it?

JACKSON LEE:

Mr. Chairman, would you yield?

ISSA:

Of course.

JACKSON LEE:

Your line of questioning. First, let me show my cards. I believe that Cheryl Mills has an impeccable character as my line of questioning suggested that Director Comey and his staff have impeccable character. But my good friend, there's immunity given.

I don't think this applies to Ms. Mills and I looked at the sections that you're speaking of. If you take local, criminal, and state actions given to the worst of characters for variety of reasons, that was not the reason given to Ms. Mills.

I am assured that it is a lawyer that was trying to be the most effective council to Ms. Mills as possible.

ISSA:

Reclaiming my time, Gentle lady's point may be true. I'm only speaking to the director based on things were done that should not have been done. We now have evidence in front of this committee in the record of people destroying records of activities as late as a few days ago.

So, the fact that there still should be an open question, first of all, is could she be prosecuted and if in fact the they have told me to destroy this under the exact same statute that included David Petraeus' who was no longer on active duty, 18 USC 2071, there's at least a case to be made.

Now, the problem we have is the lawyer negotiated a set of terms which hopefully doesn't mean that she gets a free pass even if she willfully ordered the destruction of documents which it does appear she did.

And look, I'm - my job is not to - to be judge, jury, or hangman. My job is to look at what's been presented to us, ask the highest law enforcement officer in the land to, in fact, look into it because it does appear as though it is there.

JACKSON LEE:

A brief yield, my good friend.

ISSA:

Of course.

JACKSON LEE:

Certainly, we have a oversight responsibility of the director, I think he's been very forthright. But none of the actions of destruction can be attributed - I don't think we have anything in evidence to suggest that Ms. Mills contributed to the dictating or directing any destruction --

ISSA:

-- Well the gentle lady - the gentle lady may not have been here...

JACKSON LEE:

-- We can't speculate here.

ISSA:

The gentle lady may not have been here at the time but the director himself, when asked who would the they would have been in that order to destroy, at least said it probably was or likely could have been Cheryl Mills. We're not saying it is. What we're saying is you have an immune witness.

GOODLATTE:

The gentlemen will suspend.

ISSA:

Of course.

GOODLATTE:

The purpose of this was to set the record straight as to what the content of the document was. That has been accomplished and the debate will continue on -

JACKSON LEE:

Thank you, Mr. Chairman.

GOODLATTE:

Will continue on outside of this hearing room.

JACKSON LEE:

I only state (ph) we cannot speculate...

ISSA:

-- And I would only ask (ph) - and I would only ask that the director be able to review those documents at Justice (ph) and follow up with the committee, would be very helpful to all of us. I thank the chairman.

GOODLATTE:

The director has answered in the affirmative that he will do that.

COMEY:

Yes. We'll follow up.

GOODLATTE:

First of all, I want to thank Director Comey. We didn't make four hours and 40 minutes but we did almost make four hours and I know you've been generous with your time.

However, I will also say that I think a lot of the questions here indicate a great deal of concern about the manner in which this investigation was conducted, how the conclusions were drawn, and the close proximity to that and the meeting of the attorney general with former President Clinton on a tarmac at the same time she then said, well, I'm going to recuse myself and then shortly after that, you took over and announced your conclusions in this case which are hotly disputed as you can tell.

The committee and the oversight of government reform (ph) committee have referred to the United States attorney for the eastern district of - for the District of Columbia.

Referral based upon her testimony before the select committee on Benghazi suggesting that your statement at your press conference and your testimony before the oversight and government reform (ph) committee very clearly contradicted a number of statements she made under oath before that committee and I want to stress to you how important I think it is that we made that referral for the purpose of making sure that no one is above the law.

And in many cases regarding investigations, it is not just the underlying actions that are important but they are the efforts of people to cover those up through perjury, through obstruction of justice, through destruction of documents and so I would ask that this matter be taken very, very seriously as you pursue whatever actions the department chooses to take making sure that no one is above the law.

COMEY:

Thank you, sir.

GOODLATTE:

With that, that concludes today's hearing and I thank our distinguished witnesses for attending. Without objection, all members will have five legislative days to submit additional written questions for the witness or additional materials for the record and the hearing is adjourned.

CQ Transcriptions, Sept. 28, 2016 List of Panel Members and Witnesses

PANEL MEMBERS:

REP. ROBERT W. GOODLATTE, R-VA. CHAIRMAN

REP. LAMAR SMITH, R-TEXAS

REP. JIM SENSENBRENNER, R-WIS.

REP. DARRELL ISSA, R-CALIF.

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REP. JUDY CHU, D-CALIF.  
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REP. HAKEEM JEFFRIES, D-N.Y.  
REP. DAVID CICILLINE, D-R.I.

REP. SCOTT PETERS, D-CALIF.

WITNESSES:

FBI DIRECTOR JAMES COMEY

Source: CQ Transcriptions

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**Rybicki, James E. (DO) (FBI)**

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Thursday, October 27, 2016 8:14 PM  
**To:** James B. Comey  
**Subject:** Fwd: Draft of Congressional notification  
**Attachments:** Comey MYE update v5.docx

----- Original message -----

**From:** [REDACTED]  
**Date:** 10/27/16 7:46 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED] "Bowdich, David L. (DO) (FBI)" [REDACTED]  
[REDACTED] "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)" [REDACTED]  
[REDACTED] "Priestap, E. W. (CD) (FBI)" [REDACTED] "Anderson, Trisha B. (OGC) (FBI)" [REDACTED]  
**Cc:** "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
**Subject:** RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,  
[REDACTED]

b6 -1  
b7C -1

-----Original Message-----

**From:** [REDACTED] (OGC) (FBI)  
**Sent:** Thursday, October 27, 2016 5:00 PM  
**To:** Strzok, Peter P. (CD) (FBI) [REDACTED] Bowdich, David L. (DO) (FBI) [REDACTED] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [REDACTED]  
[REDACTED] Priestap, E. W. (CD) (FBI) [REDACTED] Anderson, Trisha B. (OGC) (FBI) [REDACTED]  
**Cc:** Moffa, Jonathan C. (CD) (FBI) [REDACTED]  
**Subject:** RE: Draft of Congressional notification

All - I've attached a new draft in which we attempt to address Trisha's comments.

-----Original Message-----

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Thursday, October 27, 2016 2:51 PM  
**To:** Bowdich, David L. (DO) (FBI) [REDACTED] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [REDACTED] Priestap, E. W. (CD) (FBI) [REDACTED]  
[REDACTED] Anderson, Trisha B. (OGC) (FBI) [REDACTED]  
**Cc:** [REDACTED] Moffa, Jonathan C. (CD) (FBI) [REDACTED]

b6 -1  
b7C -1

~~ATTORNEY-CLIENT PRIVILEGED~~

Subject: RE: Draft of Congressional notification

Attached incorporates Jim Baker's comments. It not address Trisha's from her recent email

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)

Sent: Thursday, October 27, 2016 1:54 PM

To: Bowdich, David L. (DO) (FBI); [REDACTED] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (DO) (FBI); [REDACTED] Priestap, E. W. (CD) (FBI); [REDACTED] Anderson, Trisha B. (OGC) (FBI); [REDACTED]  
Cc: [REDACTED] Moffa, Jonathan C. (CD) (FBI); [REDACTED]

Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [REDACTED] Jon and me.

Thanks,  
Pete

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Thursday, October 27, 2016 8:22 PM  
**To:** Rybicki, James E. (DO) (FBI)  
**Subject:** RE: Draft of Congressional notification

Looks good with a few changes: [redacted]

[redacted]

b5 -1

[redacted]

And one nit: [redacted]

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 10/27/16 8:14 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** Fwd: Draft of Congressional notification

----- Original message -----

**From:** [redacted]  
**Date:** 10/27/16 7:46 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)"  
[redacted] "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E.  
(DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)"  
[redacted] "Priestap, E. W. (CD) (FBI)" [redacted] "Anderson, Trisha B.  
(OGC) (FBI)" [redacted]  
**Cc:** "Moffa, Jonathan C. (CD) (FBI)" [redacted]  
**Subject:** RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,  
[redacted]

~~—ATTORNEY CLIENT PRIVILEGED—~~

-----Original Message-----

From: [redacted] (OGC) (FBI)  
Sent: Thursday, October 27, 2016 5:00 PM  
To: Strzok, Peter P. (CD) (FBI); [redacted] Bowdich, David L. (DO) (FBI); [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI); [redacted] Priestap, E. W. (CD) (FBI); [redacted] Anderson, Trisha B. (OGC) (FBI)  
Cc: Moffa, Jonathan C. (CD) (FBI); [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

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To: Bowdich, David L. (DO) (FBI); [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI); [redacted] Priestap, E. W. (CD) (FBI); [redacted] Anderson, Trisha B. (OGC) (FBI); [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CD) (FBI); [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
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Cc: [redacted] Moffa, Jonathan C. (CD) (FBI); [redacted]  
Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [redacted] Jon and me.

Thanks,  
Pete

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Thursday, October 27, 2016 8:25 PM  
**To:** Rybicki, James E. (DO) (FBI)  
**Subject:** RE: Draft of Congressional notification

One other nit. [redacted]

b5 -1

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 10/27/16 8:14 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** Fwd: Draft of Congressional notification

----- Original message -----

**From:** [redacted]  
**Date:** 10/27/16 7:46 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)"  
[redacted] "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)"  
[redacted] "Priestap, E. W. (CD) (FBI)" [redacted] "Anderson, Trisha B. (OGC) (FBI)" [redacted]  
**Cc:** "Moffa, Jonathan C. (CD) (FBI)" [redacted]  
**Subject:** RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,  
[redacted]

----- Original Message -----

**From:** [redacted] (OGC) (FBI)  
**Sent:** Thursday, October 27, 2016 5:00 PM

b6 -1  
b7C -1

~~ATTORNEY-CLIENT PRIVILEGED~~

18-cv-01448 FBI-395

To: Strzok, Peter P. (CD) (FBI) [redacted]; Bowdich, David L. (DO) (FBI) [redacted]; Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [redacted]; Priestap, E. W. (CD) (FBI) [redacted]; Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

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Cc: [redacted]; Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

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Cc: [redacted]; Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [redacted] Jon and me.

Thanks,  
Pete



**Rybicki, James E. (DO) (FBI)**

---

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Thursday, October 27, 2016 8:28 PM  
**To:** James B. Comey  
**Subject:** RE: Draft of Congressional notification

Copy. How about this - let's have a quick morning meeting at from 8 to 815a and then bring the team in to discuss right after that?

----- Original message -----

**From:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Date:** 10/27/16 8:22 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Subject:** RE: Draft of Congressional notification

b5 -1

Looks good with a few changes. [REDACTED]

And one nit: [REDACTED]

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 10/27/16 8:14 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** Fwd: Draft of Congressional notification

----- Original message -----

~~ATTORNEY CLIENT PRIVILEGED~~

18-cv-01448 FBI-397

From: [redacted]  
Date: 10/27/16 7:46 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)"  
[redacted] "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E.  
(DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)"  
[redacted] "Priestap, E. W. (CD) (FBI)" [redacted] "Anderson, Trisha B.  
(OGC) (FBI)" [redacted]  
Cc: "Moffa, Jonathan C. (CD) (FBI)" [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,

-----Original Message-----

From: [redacted] (OGC) (FBI)  
Sent: Thursday, October 27, 2016 5:00 PM  
To: Strzok, Peter P. (CD) (FBI) [redacted] Bowdich, David L. (DO) (FBI) [redacted] Baker, James  
A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI)  
[redacted] Priestap, E. W. (CD) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI)  
[redacted]  
Cc: Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All - I've attached a new draft in which we attempt to address Trisha's comments.

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 2:51 PM  
To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki,  
James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [redacted] Priestap, E. W. (CD) (FBI)  
[redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

Attached incorporates Jim Baker's comments. It not address Trisha's from her recent email

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 1:54 PM  
To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki,  
James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (DO) (FBI) [redacted] Priestap, E. W. (CD)  
(FBI) [redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [redacted] Jon and me.

Thanks,  
Pete

James B. Comey

From: James B. Comey  
Sent: Thursday, October 27, 2016 8:29 PM  
To: Rybicki, James E. (DO) (FBI)  
Subject: RE: Draft of Congressional notification

One other question:

[Redacted]

[Redacted]

b5 -1

----- Original message -----

From: "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
Date: 10/27/16 8:14 PM (GMT-05:00)  
To: "James B. Comey" <jcb.dir@ic.fbi.gov>  
Subject: Fwd: Draft of Congressional notification

----- Original message -----

From: [Redacted]  
Date: 10/27/16 7:46 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [Redacted], "Bowdich, David L. (DO) (FBI)"  
[Redacted], "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E.  
(DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)"  
[Redacted], "Priestap, E. W. (CD) (FBI)" [Redacted], "Anderson, Trisha B.  
(OGC) (FBI)" [Redacted]  
Cc: "Moffa, Jonathan C. (CD) (FBI)" [Redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,

[Redacted]

----- Original Message -----

From: [Redacted] (OGC) (FBI)  
Sent: Thursday, October 27, 2016 5:00 PM

b6 -1  
b7C -1

~~ATTORNEY-CLIENT PRIVILEGED~~

18-cv-01448 FBI-399

To: Strzok, Peter P. (CD) (FBI) [redacted] Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [redacted] Priestap, E. W. (CD) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All - I've attached a new draft in which we attempt to address Trisha's comments.

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 2:51 PM  
To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [redacted] Priestap, E. W. (CD) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

Attached incorporates Jim Baker's comments. It not address Trisha's from her recent email

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 1:54 PM  
To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (DO) (FBI) [redacted] Priestap, E. W. (CD) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [redacted] Jon and me.

Thanks,  
Pete

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Thursday, October 27, 2016 8:30 PM  
**To:** Rybicki, James E. (DO) (FBI)  
**Subject:** RE: Draft of Congressional notification

Sounds fine but let's circulate the language tonight.

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 10/27/16 8:28 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** RE: Draft of Congressional notification

Copy. How about this - let's have a quick morning meeting at from 8 to 815a and then bring the team in to discuss right after that?

----- Original message -----

**From:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Date:** 10/27/16 8:22 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Subject:** RE: Draft of Congressional notification

Looks good with a few changes. [Redacted]

b5 -1

And one nit: [Redacted]

----- Original message -----

From: "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
Date: 10/27/16 8:14 PM (GMT-05:00)  
To: "James B. Comey" <jcb.dir@ic.fbi.gov>  
Subject: Fwd: Draft of Congressional notification

----- Original message -----

From: [redacted]  
Date: 10/27/16 7:46 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)"  
[redacted] "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E.  
(DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)"  
[redacted] "Priestap, E. W. (CD) (FBI)" [redacted] "Anderson, Trisha B.  
(OGC) (FBI)" [redacted]  
Cc: "Moffa, Jonathan C. (CD) (FBI)" [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,

[redacted]

-----Original Message-----

From: [redacted] OGC) (FBI)  
Sent: Thursday, October 27, 2016 5:00 PM  
To: Strzok, Peter P. (CD) (FBI) [redacted] Bowdich, David L. (DO) (FBI) [redacted] Baker, James  
A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI)  
[redacted] Priestap, E. W. (CD) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI)  
[redacted]  
Cc: Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All - I've attached a new draft in which we attempt to address Trisha's comments.

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 2:51 PM  
To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki,  
James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [redacted] Priestap, E. W. (CD) (FBI)  
[redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CD) (FBI) [redacted]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

Attached incorporates Jim Baker's comments. It not address Trisha's from her recent email

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 1:54 PM

To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (DO) (FBI) [redacted] Priestap, E. W. (CO) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CO) (FBI) [redacted]  
Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [redacted] Jon and me.

Thanks,  
Pete

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Thursday, October 27, 2016 8:31 PM  
**To:** Rybicki, James E. (DO) (FBI)  
**Subject:** RE: Draft of Congressional notification

I will rewrite and send to you to circulate.

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 10/27/16 8:28 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** RE: Draft of Congressional notification

Copy. How about this - let's have a quick morning meeting at from 8 to 815a and then bring the team in to discuss right after that?

----- Original message -----

**From:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Date:** 10/27/16 8:22 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Subject:** RE: Draft of Congressional notification

Looks good with a few changes

[Redacted]

b5 -1

[Redacted]

[Redacted]

And one nit:

[Redacted]

----- Original message -----

~~ATTORNEY-CLIENT PRIVILEGED~~

18-cv-01448 FBI-404



From: "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
Date: 10/27/16 8:14 PM (GMT-05:00)  
To: "James B. Comey" [REDACTED]  
Subject: Fwd: Draft of Congressional notification

b6 -1  
b7C -1

----- Original message -----

From: [REDACTED]  
Date: 10/27/16 7:46 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [REDACTED] "Bowdich, David L. (DO) (FBI)"  
[REDACTED] "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Rybicki, James E.  
(DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Herring, Jason V. (CD) (FBI)"  
[REDACTED] "Priestap, E. W. (CD) (FBI)" [REDACTED] "Anderson, Trisha B.  
(OGC) (FBI)" [REDACTED]  
Cc: "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All -  
I've attached a new draft for discussion tomorrow am.

Thanks,  
[REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)  
Sent: Thursday, October 27, 2016 5:00 PM  
To: Strzok, Peter P. (CD) (FBI) [REDACTED] Bowdich, David L. (DO) (FBI) [REDACTED]; Baker, James  
A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI)  
[REDACTED] Priestap, E. W. (CD) (FBI) [REDACTED] Anderson, Trisha B. (OGC) (FBI)  
Cc: Moffa, Jonathan C. (CD) (FBI) [REDACTED]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

All - I've attached a new draft in which we attempt to address Trisha's comments.

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 2:51 PM  
To: Bowdich, David L. (DO) (FBI) [REDACTED] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki,  
James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (CD) (FBI) [REDACTED] Priestap, E. W. (CD) (FBI)  
[REDACTED] Anderson, Trisha B. (OGC) (FBI) [REDACTED]  
Cc: [REDACTED] Moffa, Jonathan C. (CD) (FBI) [REDACTED]  
Subject: RE: Draft of Congressional notification

b6 -1  
b7C -1

Attached incorporates Jim Baker's comments. It not address Trisha's from her recent email

-----Original Message-----

From: Strzok, Peter P. (CD) (FBI)  
Sent: Thursday, October 27, 2016 1:54 PM

To: Bowdich, David L. (DO) (FBI) [redacted] Baker, James A. (OGC) (FBI) <James.Baker@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Herring, Jason V. (DO) (FBI) [redacted] Priestap, E. W. (CO) (FBI) [redacted] Anderson, Trisha B. (OGC) (FBI) [redacted]  
Cc: [redacted] Moffa, Jonathan C. (CO) (FBI) [redacted]  
Subject: Draft of Congressional notification

b6 -1  
b7C -1

First cut from [redacted] Jon and me.

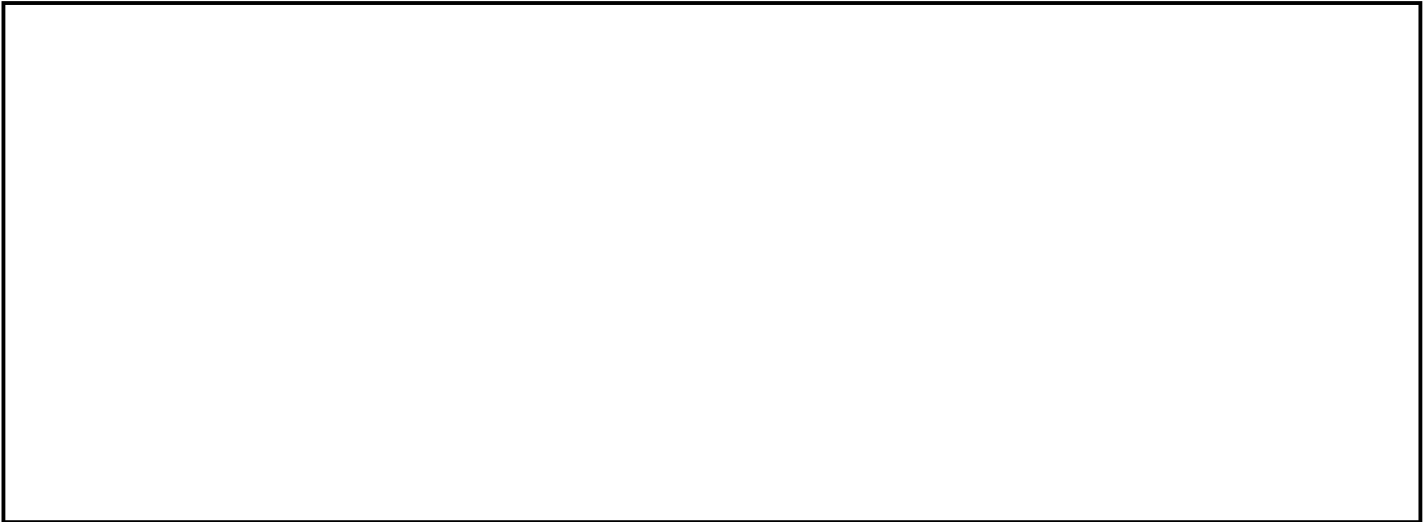
Thanks,  
Pete

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Thursday, October 27, 2016 8:41 PM  
**To:** Rybicki, James E. (DO) (FBI); Baker, James A. (OGC) (FBI); Bowdich, David L. (DO) (FBI)  
**Subject:** Here is what I have drafted.

b5 -1,2



**James B. Comey**

**From:** James B. Comey  
**Sent:** Thursday, October 27, 2016 9:00 PM  
**To:** Baker, James A. (OGC) (FBI); Rybicki, James E. (DO) (FBI); Bowdich, David L. (DO) (FBI)  
**Subject:** RE: Here is what I have drafted.

[Redacted]

b5 -1,2

----- Original message -----

**From:** "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>  
**Date:** 10/27/16 8:58 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [Redacted]  
**Subject:** RE: Here is what I have drafted.

b6 -1  
b7C -1

I like it but my only question is [Redacted]

b6 -1,2  
b7C -1,2

----- Original message -----

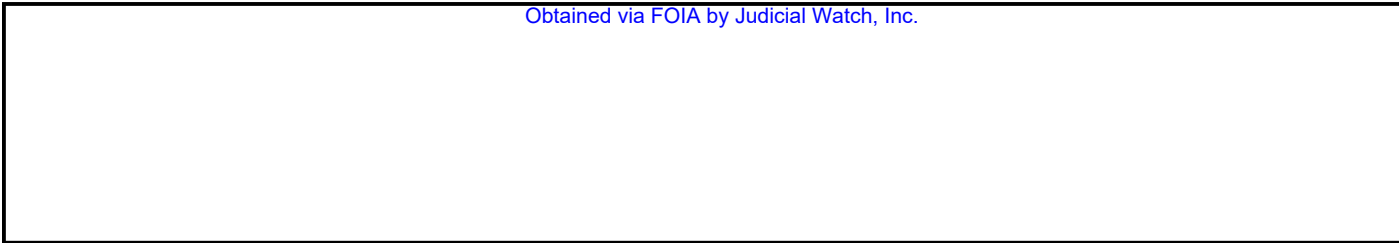
**From:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Date:** 10/27/2016 8:40 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [Redacted]  
**Subject:** Here is what I have drafted.

b6 -1  
b7C -1

[Redacted]

b5 -1,2

Obtained via FOIA by Judicial Watch, Inc.



**Bowdich, David L. (DO) (FBI)**

**From:** Bowdich, David L. (DO) (FBI)  
**Sent:** Thursday, October 27, 2016 9:30 PM  
**To:** Baker, James A. (OGC) (FBI); James B. Comey; Rybicki, James E. (DO) (FBI)  
**Subject:** RE: Here is what I have drafted.

From a non-lawyer, [redacted]

b5 -1,2

Dave

**From:** Baker, James A. (OGC) (FBI)  
**Sent:** Thursday, October 27, 2016 8:58 PM  
**To:** James B. Comey <jcb.dir@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) <James.Rybicki@ic.fbi.gov>; Bowdich, David L. (DO) (FBI) [redacted]  
**Subject:** RE: Here is what I have drafted.

b5 -1,2  
b6 -1  
b7C -1

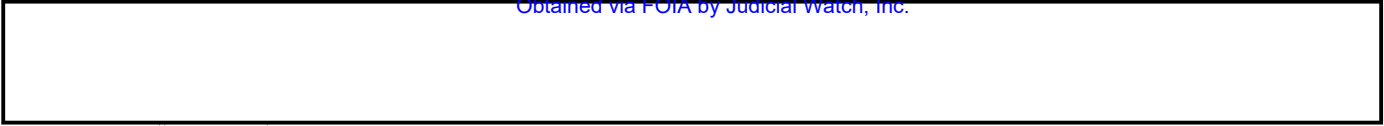
----- Original message -----

**From:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Date:** 10/27/2016 8:40 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Baker, James A. (OGC) (FBI)" <James.Baker@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [redacted]  
**Subject:** Here is what I have drafted.

b6 -1  
b7C -1

b5 -1,2

Obtained via FOIA by Judicial Watch, Inc.



[redacted] (DO) (FBI)

**From:** [redacted] (DO) (FBI)  
**Sent:** Friday, October 28, 2016 8:09 PM  
**To:** James B. Comey; Kortan, Michael P. (DO) (FBI); Rybicki, James E. (DO) (FBI); Quinn, Richard P. (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI)  
**Subject:** Friday Evening Coverage

b6 -1  
b7C -1

All,

Please see a summary of the major news stories that are on-line this evening. This obviously isn't a complete summary, but it is a summary of the major outlets.

Please let me know if you have any questions. Thank you.

[redacted]

b6 -1  
b7C -1

HRC's statement to the press in Iowa this weekend:

"I have now seen Director Comey's Letter to Congress. We are now 11 days out from what is perhaps the most important national election in our lifetimes. Voting is already underway in our country, so the American People deserve the full and complete facts immediately. The Director himself has said himself that he doesn't know if the emails referenced in his letter are significant or not. I'm confident, whatever they contain, will not change the conclusion reached in July. Therefore it is imperative that the Bureau explain this issue in question, whatever it is, without delay." (the statement continues, but it doesn't address any substance of the matter)

Relevant Q/A:

Q) Have you heard from Comey or from anyone at the FBI? Are you concerned any of these emails will reveal classified information?

"We have not been contacted by anyone. First we knew about it is, I assume, when you knew about it -- when this letter, sent to eight Republican members of the house was released. So we don't know the facts, which is why we are calling on the FBI to release all the information it has. Even Director Comey noted that this new information may not be significant, so let's get it out."

Q) There are reports that these reports came from devices that belonged to your aide, Huma and her husband. Can you comment?

"We've heard these rumors. We don't know what to believe. I'm sure there will be even more rumors. That's why it is incumbent on the FBI to tell us what they're talking about. Right now, your guess is as good as mine and I don't think that's good enough. So we've made it very clear that, if they're going to be sending this kind of letter that is only going originally to Republican members of the House, that they need to share whatever facts they claim to have with the American people and that's what I expect to happen."

1) **NY Times:** New Emails in Clinton Case Came From Devices Once Used by Anthony Weiner

WASHINGTON — A new trove of emails that appear pertinent to the now-closed investigation into Hillary Clinton's private email server was discovered after the F.B.I. seized at least one electronic device shared by Anthony D. Weiner and his estranged wife, Huma Abedin, a top aide to Mrs. Clinton, federal law enforcement officials said Friday. The F.B.I. is investigating illicit text messages that Mr. Weiner, a former Democratic congressman from New York, sent to a 15-year-old girl in North Carolina. The bureau told Congress on Friday that it had uncovered new emails related to the Clinton case — one federal official said



Congress on Friday that it had uncovered new emails related to the Clinton case — one federal official said they numbered in the tens of thousands — potentially reigniting an issue that has weighed on the presidential campaign and offering a lifeline to Donald J. Trump less than two weeks before the election.

NY Times Breakout Piece: [What We Know About Hillary Clinton's Private Email Server](#)

2) **Washington Post:** [FBI to Review Clinton Emails Found on Weiner's Computer](#)

Newly discovered emails found on a computer seized during an investigation of disgraced former congressman Anthony Weiner (D-N.Y.) have prompted the FBI to make new inquiries related to Hillary Clinton's private email server, according to three people familiar with the deliberations. FBI Director James B. Comey informed congressional leaders Friday that the agency would take "appropriate investigative steps" to determine whether the newly discovered emails contain classified information and to assess their importance to the Clinton server probe. The emails were found on a computer used jointly by both Weiner and his wife, top Clinton aide Huma Abedin, according to a person with knowledge of the inquiry. Federal officials have been examining Weiner's alleged sexually suggestive online messages with a teenage girl. The link to the Weiner probe was first reported by the New York Times.

Washington Post: [The FBI's October Surprise Just Made Hillary Clinton's Awful Week Even Worse](#)

Between Obamacare's rising premiums and the revelations of access-peddling by a top aide at the Clinton Foundation, this hasn't been a good week for Hillary Clinton's presidential campaign. But the news — announced Friday afternoon — that the FBI would be again looking into the private email server Clinton used as secretary of state takes her bad week into truly terrible territory. Here's what we know (and it's, admittedly, not all that much): The FBI came across emails related to Clinton's server as part of an "unrelated investigation," according to a letter sent by Director James B. Comey to congressional leaders Friday. "I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation," Comey wrote. Here's what we don't: Is this simply box-checking because of a handful of emails that were recently found? Or is this a re-examination of the whole shebang?

Washington Post: [The Clinton Campaign Sounds Pretty Angry with the FBI Right Now](#)

Hillary Clinton's campaign could have gone a few different ways with its response to the bombshell news that the FBI is looking into more emails related to its investigation of the Democratic nominee. It went with angry.

The campaign's just-released statement, from chairman John Podesta, is remarkable. It begins by not-so-subtly suggesting that this is at least partially a political response to Republicans' continued second-guessing of how the FBI handled its investigation, along with FBI Director James B. Comey's July conclusion that no "reasonable prosecutor" would bring charges against Clinton. "Upon completing this investigation more than three months ago, FBI Director Comey declared no reasonable prosecutor would move forward with a case like this and added that it was not even a close call," Podesta said. "In the months since, Donald Trump and his Republican allies have been baselessly second-guessing the FBI and, in both public and private, browbeating the career officials there to revisit their conclusion in a desperate attempt to harm Hillary Clinton's presidential campaign."

3) **NBC News:** [Emails Related to Clinton Case Found in Anthony Weiner Investigation \(with video\)](#)

The FBI revealed Friday it was reviewing a new batch of emails that "appear to be pertinent" to its previous investigation into Hillary Clinton's use of a private server — and multiple federal officials told NBC News they were found as part of an on-going probe of disgraced former New York congressman Anthony Weiner. The emails were found on a laptop that Weiner allegedly used to send inappropriate text messages and pictures to an underage girl, the sources told NBC News. Investigators also discovered Weiner's wife,

Huma Abedin, had used the same laptop to send emails to Clinton and now they are checking those messages to see if there was any classified information on them, the sources said.

#### 4) **NPR:** Anthony Weiner Investigation Leads FBI Back to Clinton Email Server Case

Newly discovered emails being examined by the FBI in relation to Hillary Clinton's email server came to light in the course of an unrelated criminal investigation of Anthony Weiner, a source familiar with the matter tells NPR's Carrie Johnson. Weiner is the estranged husband of close Clinton aide Huma Abedin; he has been under scrutiny for sending illicit text messages to an underage girl. Earlier Friday FBI Director James Comey notified members of Congress that the FBI had reopened its investigation into the handling of classified information in connection with the Democratic presidential candidate's use of a private email server while secretary of state. In a letter to the leaders of congressional oversight committees, Comey wrote: "In connection with an unrelated case, the FBI has learned of the existence of emails that appear to be pertinent to the investigation. I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation."

#### 5) **Politico Coverage**

a) Clinton Calls on FBI to Explain Decision to Review New Emails (this is similar to the statement at the top of this email)

Hillary Clinton demanded that the FBI explain its decision to inform Congress that it was reviewing new emails related to her private email server, calling it "imperative" that the bureau do so. "We've heard these rumors, we don't know what to believe," Clinton told reporters during a short gaggle in Iowa. "That is why it is incumbent on the FBI to tell us what they are talking about."

b) Podesta Calls on FBI's Comey to Release 'Full Details' of New Evidence in Clinton Email Probe

Hillary Clinton's campaign chairman John Podesta on Friday called on FBI Director James Comey to immediately release more details about the new evidence it is reviewing as part of its probe into Clinton's use of a private email server at the State Department.

He also pushed back against the idea that the FBI is re-opening its investigation, which concluded in July. Comey recommended that the Justice Department not bring charges against Clinton for allegedly mishandling classified information.

c) White House Got No Advance Notice of New Clinton Email Review

The White House found out through media reports that the FBI would be reviewing additional emails related to its investigation into Hillary Clinton's private server as secretary of state, a spokesman said Friday.

"We got it through press reports," principal deputy White House press secretary Eric Schultz told reporters during a gaggle aboard Air Force One.

Story Continued Below

FBI Director James Comey sent a letter to congressional committee chairmen earlier Friday informing them of new emails "that appear to be pertinent to this investigation." He added that the bureau would review the emails to determine whether they contained classified information.

"We had that letter after it was made public," Schultz said, "so we did not have advance warning."

6) **CNN:** Clinton Calls on FBI to Release "Full and Complete Facts" of Email Review

Hillary Clinton forcefully called on the FBI Friday to release "the full and complete facts" about its review of emails related to her personal server. In her first public comments since FBI Director James Comey told lawmakers earlier in the day that the bureau is reviewing new emails tied to the server, Clinton said it's "imperative" that the bureau provide more details about what it's doing in the final days of the campaign.

7) **Newsweek:** Why FBI Director Made Clinton Email Announcement Now

Why did FBI Director James Comey shock Washington on Friday with an announcement that the FBI "has learned of the existence of emails" related to Hillary Clinton's private email server, and what does it

mean? The truth is Comey didn't have a choice. Because the new information followed his sworn testimony about the case, Comey was obligated by Department of Justice rules to keep the relevant committees apprised. Under oath Comey had stated that the bureau had completed its review. Once he learned that there were new emails that required examination, Comey had to notify Congress that he had to amend his testimony because it was no longer true. Comey's letter to congressional committee chairs doesn't say his agents have discovered new witnesses or documents suggesting a criminal act occurred. Rather, he only suggests that evidence that has not yet been examined needs to be reviewed because it is relevant to the case.

8) **LA Times:** FBI Says That Emails Found In Anthony Weiner's Sexting Scandal May Have Links to Clinton Probe

Just as Hillary Clinton appeared to be cruising to election day with the wind at her back, the FBI rattled the presidential race Friday by announcing it is again probing emails that might be related to her private server, rekindling a politically damaging controversy for Clinton and reinvigorating Republicans scrambling to hold on to congressional seats. The surprise word from FBI Director James Comey came after his agency discovered new communications on a computer jointly used by close Clinton aide Huma Abedin and her estranged husband, Anthony Weiner, a former New York congressman, according to U.S. law enforcement officials. Investigators came across the emails while investigating whether Weiner violated federal law when exchanging sexually explicit texts with a 15-year-old girl in North Carolina, the official said.

[REDACTED] (DO) (FBI)

**From:** [REDACTED] (DO) (FBI)  
**Sent:** Saturday, October 29, 2016 2:42 PM  
**To:** James B. Comey; Rybicki, James E. (DO) (FBI); [REDACTED] (DO) (FBI); Kortan, Michael P. (DO) (FBI); Quinn, Richard P. (DO) (FBI); [REDACTED] (DO) (FBI); Campbell, Joshua S. (DO) (FBI)  
**Subject:** Saturday Coverage

b6 -1  
b7C -1

Good afternoon. A summary of today's news is below. Many of which are trying to advance the story beyond the basic facts surrounding the events that took place yesterday. As usual, I've included the title of the article, a link to the full article, and the first few relevant graphs of the piece.

Please let me know if you have any questions.

[REDACTED] b6 -1  
b7C -1

1) Newsweek: Hillary Clinton's Emails: The Real Reason the FBI Is Reviewing More of Them  
<http://www.newsweek.com/hillary-clinton-emails-fbi-comey-donald-trump-anthony-weiner-huma-abedin-514918>

The disclosure by the Federal Bureau of Investigation late on Friday, October 28 that it had discovered potential new evidence in its inquiry into Hillary Clinton's handling of her personal email when she was Secretary of State has virtually nothing to do with any actions taken by the Democratic nominee, according to government records and an official with knowledge of the investigation, who spoke to Newsweek on condition of anonymity. The revelation that the FBI has discovered additional emails convulsed the political world, and led to widespread (and erroneous) claims and speculation. Many Republicans proclaimed that the discovery suggests Clinton may have broken the law, while Democrats condemned FBI Director James Comey for disclosing this information less than two weeks before the election, claiming he did it for political purposes. Donald Trump, the Republican nominee, said the development showed his opponent had engaged in corruption "on a scale we have never seen before," while Clinton called for the FBI to release all of the information it has, saying the American people have a right to know everything.

2) New Yorker: James Comey's October Surprise <http://www.newyorker.com/news/john-cassidy/james-comeys-october-surprise>

On Friday morning, James Comey, the director of the Federal Bureau of Investigation, sent a letter to the heads of several committees on Capitol Hill, in which he said he wished to "supplement" the testimony he gave in July about the Bureau's investigation into Hillary Clinton's private e-mail server. During that testimony, Comey had defended his decision not to bring any charges in the case, even though his agents had found evidence that Clinton and her aides were, in his words, "extremely careless in their handling of very sensitive, highly classified information." In his letter on Friday, Comey wrote, "in connection with an unrelated case, the FBI has learned of the existence of emails that appear to be pertinent to the investigation. I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation." Comey added that the agency couldn't yet determine "whether or not this material may be significant or not," or "how long it will take us to complete this additional work."



3) NBC News: Clinton Emails Are Only the Latest Minefield for FBI Director Comey

<http://www.nbcnews.com/politics/2016-election/clinton-emails-only-latest-controversy-fbi-director-james-comey-n675006>

The man behind one of the biggest bombshells of the presidential election has never been one to follow tradition. Politically, FBI Director James Comey has been a registered Republican for most of his life. Personally and professionally, he is fiercely independent — so much so that President Barack Obama didn't hesitate to appoint him to his current position, despite Comey's history of donating to Republican presidential campaigns. A career prosecutor, 55-year-old Comey has a history of defying both political parties. But no past action has thrust him into the cross hairs quite like his announcement Friday — a mere week and a half before voters go to the polls — that a newly discovered batch of emails had prompted him to take another look at the email investigation that has dogged Democratic nominee Hillary Clinton throughout her candidacy. Friends say Comey's work has instilled in him a deep sense of doing the right thing, even if it's unpopular. That has meant positioning himself against big names in the past, including the Clintons, whom he has investigated twice before.

NPR: FBI Director Under Fire for Clinton Email Scrutiny Days Before Election <http://www.npr.org/sections/two-way/2016/10/29/499868601/fbi-head-under-fire-for-restarting-clinton-email-investigation-days-before-elect>

FBI Director James Comey is facing criticism for turning the agency's attention to newly discovered emails that could be linked to Hillary Clinton, again focusing on the former secretary of state just days before Election Day. Former prosecutors and former Department of Justice officials are questioning what Comey hopes to accomplish by announcing the investigation so close to the election. Comey notified members of Congress that the FBI was again looking into Clinton's use of a private email server. As NPR reported Friday, Comey's decision followed the discovery of emails that "came to light in the course of an unrelated criminal investigation of Anthony Weiner," who is being scrutinized for sexting an underage girl. But, as the Associated Press reported, it's "unclear what the emails contained, who sent them, or what connection they might have to the yearlong investigation the FBI closed in July without recommending criminal charges."

4) Christian Science Monitor: Why the FBI Dropped Email Bombshell on Hillary Clinton Now

<http://www.csmonitor.com/USA/Politics/2016/1028/Why-the-FBI-dropped-email-bombshell-on-Hillary-Clinton-now>

Heading into the final full week of the presidential election, the Federal Bureau of Investigation has given this most bizarre of elections perhaps its most remarkable twist. It informed Congress Friday that it is investigating whether there is classified information in new emails linked to Hillary Clinton. In July, the FBI had said its investigation of Mrs. Clinton's private server was finished. The disclosure raises the possibility of the FBI reopening the criminal investigation involving the Democratic presidential nominee just days before the election. It also raises the possibility that nothing whatsoever will happen and Clinton will be cleared.

The timing is extraordinary. The closest recent parallel was when the FBI on Oct. 10, 1972, suggested that President Nixon's reelection committee was linked to a campaign of political spying and sabotage. Though the scandal eventually led to Nixon's resignation, it had no significant effect on the election one month later. Nixon won in a landslide. But that was at a time of dramatically lower partisanship. In the current campaign, Friday's announcement could be explosive.

5) CNN: Top Justice Department Officials Objected to FBI Director's Decision to Notify Congress

<http://www.cnn.com/2016/10/28/politics/fbi-reviewing-new-emails-in-clinton-probe-director-tells-senate-j>

udiciary-committee/index.html

Attorney General Loretta Lynch and Deputy Attorney General Sally Yates objected to FBI Director James Comey's decision to notify Congress about his bureau's review of emails related to Hillary Clinton's personal server, law enforcement officials familiar with the discussion said. There was no direct confrontation between Lynch or Yates and Comey. Instead, the objections were conveyed to Comey by Justice Department staff, who advised the FBI chief his letter would be against department policy to not comment on investigations close to an election, the officials said. Department officials expressed concern that what Comey wanted to do was contrary to how the department does business given how close this was to the election and that it was contrary to department policies and procedures, one law enforcement source said.

6) Washington Post: Justice Officials Warned FBI That Comey's Decision to Update Congress Was Not Consistent With Department Policy [https://www.washingtonpost.com/world/national-security/justice-officials-warned-fbi-that-comeys-decision-to-update-congress-was-not-consistent-with-department-policy/2016/10/29/cb179254-9de7-11e6-b3c9-f662adaa0048\\_story.html](https://www.washingtonpost.com/world/national-security/justice-officials-warned-fbi-that-comeys-decision-to-update-congress-was-not-consistent-with-department-policy/2016/10/29/cb179254-9de7-11e6-b3c9-f662adaa0048_story.html)

Senior Justice Department officials warned the FBI that Director James B. Comey's decision to notify Congress about renewing the investigation into Hillary Clinton's private email server was not consistent with long-standing practices of the department, according to officials familiar with the discussions. The bureau told Justice Department officials that Comey intended to inform lawmakers of newly discovered emails. These officials told the FBI the department's position "that we don't comment on an ongoing investigation. And we don't take steps that will be viewed as influencing an election," said one Justice Department official who spoke on the condition of anonymity to describe the high-level conversations. "Director Comey understood our position. He heard it from Justice leadership," the official said. "It was conveyed to the FBI, and Comey made an independent decision to alert the Hill. He is operating independently of the Justice Department. And he knows it."

7) NY Times: Justice Department Strongly Discouraged FBI On Move in Email Case [http://www.nytimes.com/2016/10/30/us/politics/hillary-clinton-emails-fbi-anthony-weiner.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region&ion=top-news&WT.nav=top-news&\\_r=0](http://www.nytimes.com/2016/10/30/us/politics/hillary-clinton-emails-fbi-anthony-weiner.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region&ion=top-news&WT.nav=top-news&_r=0)

The day before the F.B.I. director, James B. Comey, sent a letter to Congress announcing that new evidence had been discovered that may be related to the completed Hillary Clinton email investigation, the Justice Department strongly discouraged the step and told him that he would be breaking with longstanding policy, three law enforcement officials said. Senior Justice Department officials did not move to stop him from sending the letter, officials said, but they did everything short of it, pointing to policies against talking about current criminal investigations or being seen as meddling in elections. That Mr. Comey moved ahead despite those protestations underscores the highly unusual nature of Friday's revelations, which added a dramatic twist to the final days of a presidential campaign and reignited a firestorm that Mrs. Clinton believed she had put behind her when the F.B.I. decided in July not to charge anyone in the investigation.

8) NY Times: FBI Chief Comey is Again in Political Crossfire Again over Emails <http://www.nytimes.com/2016/10/29/us/politics/fbi-clinton-emails-james-comey.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region&region=top-news&WT.nav=top-news>

James B. Comey, the F.B.I. director, faced a dilemma on Thursday when deputies briefed him about the discovery of a trove of emails that might be linked to the inquiry into Hillary Clinton's private email server that was closed months ago. Mr. Comey could immediately inform Congress about the emails, which were found in an investigation into former Representative Anthony D. Weiner. That unusual step, months after

found in an investigation into former representative Anthony D. Weiner, that unusual step, months after Mr. Comey had cleared Mrs. Clinton of any criminal wrongdoing in the email case, would risk accusations that he was unfairly harming her presidential campaign less than two weeks before the election. Or he could delay any announcement and examine the new emails more closely, risking criticism that he had suppressed important new information if it came out after the election, despite his pledges of "transparency" in the investigation.

9) WSJ: Hillary Clinton's Campaign Hits Back at FBI Chief James Comey <http://www.wsj.com/articles/hillary-clinton-campaign-criticizes-fbi-chief-james-comey-1477760553> (subscription req - I've included several paragraphs below)

Democratic presidential candidate Hillary Clinton's top advisers on Saturday sharply criticized Federal Bureau of Investigation Director James Comey's review of newly discovered emails and demanded the FBI provide the public with additional information to explain the new probe. Calling the FBI's actions "extraordinary," Clinton campaign chairman John Podesta said the FBI director's letter announcing the review was "long on innuendo and short on facts." Mr. Podesta blasted the FBI's actions, saying Mr. Comey "owes the public answers." "There's no evidence of wrongdoing, no charge of wrongdoing, no indication that this is even about Hillary," Mr. Podesta said. He said the director's "first duty" is to the American people to clarify the facts. On Friday, Mr. Comey sent a letter to Congress saying new evidence related to a closed investigation of Mrs. Clinton's email arrangement had been discovered. The FBI is now reviewing emails that were found during the search of a device in an FBI investigation of former Rep. Anthony Weiner, the estranged husband of top Clinton aide Huma Abedin. Mr. Podesta said Ms. Abedin turned over "everything" from her email to the State Department and to the FBI during the initial investigation. "She's been fully cooperative and of course we stand behind her," he said. He also said it was possible the emails under review are all duplicates of emails that have already been reviewed. Clinton officials said they don't know what is behind the new query. Mr. Podesta said that by releasing selective information, Mr. Comey has allowed partisans including Republican members of Congress to distort and exaggerate the new review. He said Mr. Comey has created confusion for voters, who cannot assess the significance of the announcement without more information. He said it was highly inappropriate for Mr. Comey to take this step 11 days before the election.

10) USA Today: Attorney General Lynch Objected to FBI Director Going Public with Email Review <http://www.usatoday.com/story/news/nation/2016/10/29/ag-lynch-objected-fbi-director-going-public-email-review/92949970/>

Attorney General Loretta Lynch objected to the decision by FBI Director James Comey to notify Congress that the bureau was reviewing newly discovered emails that might be related to the previously closed investigation of Hillary Clinton's handling of classified information, according to an official familiar with the matter.

Lynch's views were relayed to Comey just hours before the FBI director transmitted a letter to federal lawmakers indicating that investigators were reviewing the emails that may or may not have a bearing on the Clinton case that was closed in July, said the official who is not authorized to comment publicly. The official said Lynch was standing by long-held Justice Department policy that federal authorities should not take any action that may interfere with an election. While Lynch made her position clear, the official said Comey acted independently of the attorney general.



**James B. Comey**

**From:** James B. Comey  
**Sent:** Saturday, October 29, 2016 5:31 PM  
**To:** [redacted] (DO) (FBI) b6 -1  
**Subject:** RE: Saturday Coverage b7C -1

Well done. Thanks.

----- Original message -----

**From:** [redacted]  
**Date:** 10/29/16 2:42 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, [redacted] "Kortan, Michael P. (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" <Joshua.Campbell@ic.fbi.gov>  
**Subject:** Saturday Coverage

b6 -1  
b7C -1

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6) Washington Post: Justice Officials Warned FBI That Comey's Decision to Update Congress Was Not Consistent With Department Policy

[https://www.washingtonpost.com/world/national-security/justice-officials-warned-fbi-that-comeys-decision-to-update-congress-was-not-consistent-with-department-policy/2016/10/29/cb179254-9de7-11e6-b3c9-f662adaa0048\\_story.html](https://www.washingtonpost.com/world/national-security/justice-officials-warned-fbi-that-comeys-decision-to-update-congress-was-not-consistent-with-department-policy/2016/10/29/cb179254-9de7-11e6-b3c9-f662adaa0048_story.html)

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7) NY Times: Justice Department Strongly Discouraged FBI On Move in Email Case

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9) WSJ: Hillary Clinton's Campaign Hits Back at FBI Chief James Comey

<http://www.wsj.com/articles/hillary-clintons-campaign-criticizes-fbi-chief-james-comey-1477760553> (subscription req - I've included several paragraphs below)

Democratic presidential candidate Hillary Clinton's top advisers on Saturday sharply criticized Federal Bureau of Investigation Director James Comey's review of newly discovered emails and demanded the FBI provide the public with additional information to explain the new probe. Calling the FBI's actions "extraordinary," Clinton campaign chairman John Podesta said the FBI director's letter announcing the review was "long on innuendo and short on facts." Mr. Podesta blasted the FBI's actions, saying Mr. Comey "owes the public answers." "There's no evidence of wrongdoing, no charge of wrongdoing, no indication that this is even about Hillary," Mr. Podesta said. He said the director's "first duty" is to the American people to clarify the facts. On Friday, Mr. Comey sent a letter to Congress saying new evidence related to a closed investigation of Mrs. Clinton's email arrangement had been discovered. The FBI is now reviewing emails that were found during the search of a device in an FBI investigation of former Rep. Anthony Weiner, the estranged husband of top Clinton aide Huma Abedin. Mr. Podesta said Ms. Abedin turned over "everything" from her email to the State Department and to the FBI during the initial investigation. "She's been fully cooperative and of course we stand behind her," he said. He also said it was possible the emails under review are all duplicates of emails that have already been reviewed. Clinton officials said they don't know what is behind the new query. Mr. Podesta said that by releasing selective information, Mr. Comey has allowed partisans including Republican members of Congress to distort and exaggerate the new review. He said Mr. Comey has created confusion for voters, who cannot assess the significance of the announcement without more information. He said it was highly inappropriate for Mr. Comey to take this step 11 days before the election.

10) USA Today: Attorney General Lynch Objected to FBI Director Going Public with Email Review

<http://www.usatoday.com/story/news/nation/2016/10/29/ag-lynch-objected-fbi-director-going-public-email-review/92949970/>

Attorney General Loretta Lynch objected to the decision by FBI Director James Comey to notify Congress that the bureau was reviewing newly discovered emails that might be related to the previously closed investigation of Hillary Clinton's handling of classified information, according to an official familiar with the matter.

Lynch's views were relayed to Comey just hours before the FBI director transmitted a letter to federal lawmakers indicating that

Investigators were reviewing the emails that may or may not have a bearing on the Clinton case that was closed in July, said the official who is not authorized to comment publicly. The official said Lynch was standing by long-held Justice Department policy that federal authorities should not take any action that may interfere with an election. While Lynch made her position clear, the official said Comey acted independently of the attorney general.

[redacted] (DO) (FBI)

**From:** [redacted] (DO) (FBI) b6 -1  
**Sent:** Sunday, October 30, 2016 7:02 PM b7C -1  
**To:** James B. Comey; Rybicki, James E. (DO) (FBI); Kortan, Michael P. (DO) (FBI); Quinn, Richard P. (DO) (FBI); [redacted] (DO) (FBI); Campbell, Joshua S. (DO) (FBI); [redacted] (DO) (FBI)  
**Subject:** Sunday evening coverage

All,  
 Please see the coverage from the major news outlets and other pieces that stood out from the past 24 hours. Please let me know if you have any questions.  
 Thank you.

[redacted] b6 -1  
b7C -1

1) NY Times

a) Justice Department Seeks Quick Warrant to Review Emails

The Justice Department expects to obtain a search warrant very soon to review a large cache of emails belonging to a top aide to Hillary Clinton, federal law enforcement officials said on Sunday, as investigators moved to review as much of the information as possible before Election Day. It remains unclear, though, whether they can finish their work by then. Federal authorities said they would begin their search as soon as a judge signed the warrant. The precise timing is uncertain. Warrants are applied for and approved in secret, and the authorities would say only that they expected to begin their search soon. Agents in an unrelated investigation of the disgraced congressman Anthony D. Weiner discovered tens of thousands of emails belonging to the Clinton aide, his estranged wife, Huma Abedin.

b) 10 Questions (and answers) About the New Email Trove

Just days before Election Day, and with voters in many states already going to the polls, the F.B.I. director made a stunning announcement on Friday: Agents had discovered new emails that might be relevant to the completed investigation into Hillary Clinton's private server, a case that she had seemingly put behind her in July.

Never in recent history has the F.B.I. been so enmeshed in a presidential race. With a vague 166-word statement to Congress, the F.B.I. sent jolts through the campaign, leaving many voters puzzling over what to make of a case involving national security secrets, a disgraced congressman, racy text messages and a dispute among the country's top law enforcement officers.

b) On Clinton Emails, Did the FBI Director Abuse His Power (Opinion Piece)

The F.B.I. is currently investigating the hacking of Americans' computers by foreign governments. Russia is a prime suspect. Imagine a possible connection between a candidate for president in the United States and the Russian computer hacking. Imagine the candidate has business dealings in Russia, and has publicly encouraged the Russians to hack the email of his opponent and her associates. It would not be surprising for the F.B.I. to include this candidate and his campaign staff in its confidential investigation of Russian computer hacking.

But it would be highly improper, and an abuse of power, for the F.B.I. to conduct such an investigation in the public eye, particularly on the eve of the election. It would be an abuse of power for the director of the F.B.I., absent compelling circumstances, to notify members of Congress from the party opposing the candidate that the candidate or his associates were under investigation. It would be an abuse of power if



candidate that the candidate or his associates were under investigation, it would be an abuse of power if F.B.I. agents went so far as to obtain a search warrant and raid the candidate's office tower, hauling out boxes of documents and computers in front of television cameras.

## 2) WSJ: FBI in Internal Fued Over Hillary Clinton Probe (Subscription)

As federal agents prepare to scour roughly 650,000 emails to see how many relate to a prior probe of Hillary Clinton's email use, the surprise disclosure that investigators were pursuing the potential new evidence lays bare building tensions inside the bureau and the Justice Department over how to investigate the Democratic presidential nominee.

Metadata found on the laptop used by former Rep. Anthony Weiner and his estranged wife Huma Abedin, a close Clinton aide, suggests there may be thousands of emails sent to or from the private server that Mrs. Clinton used while she was secretary of state, according to people familiar with the matter. It will take weeks, at a minimum, to determine whether those messages are work-related from the time Ms. Abedin served with Mrs. Clinton at the State Department; how many are duplicates of emails already reviewed by the Federal Bureau of Investigation; and whether they include either classified information or important new evidence in the Clinton email probe.

(Note: remainder of this article is at the end of this email)

## 3) Washington Post:

### FBI Agents Knew of Clinton-Related Emails Weeks Before Director Was Briefed

The FBI agents investigating Hillary Clinton's use of a private email server knew early this month that messages recovered in a separate probe might be germane to their case, but they waited weeks before briefing the FBI director, according to people familiar with the case.

FBI Director James B. Comey has written that he was informed of the development Thursday, and he sent a letter to legislators the next day letting them know that he thought the team should take "appropriate investigative steps designed to allow investigators to review these emails."

That missive ignited a political firestorm less than two weeks before the election. Almost instantly, Comey came under intense criticism for his timing and for bucking the Justice Department's guidance not to tell Congress about the development.

## 4) Time Magazine

### Hillary Clinton Campaign Turns up Pressure on FBI Director Comey

Hillary Clinton's campaign on Sunday pressured FBI Director James Comey to release more details about the emails he says could be related to the investigation into her use of a private email server, including whether Comey had even reviewed them himself.

Tim Kaine, Clinton's running mate, said Comey owed it to the public to be more forthcoming about the emails under review by the FBI with only 10 days remaining before Nov. 8 election. Kaine's message aimed to counter Republican rival Donald Trump, who has seized on the reignited email controversy in hopes of sewing fresh doubts about Clinton's trustworthiness.

b) A similar article ran in Time and on the LawFareBlog, which has followed this case closely. That piece can be found [here](#) (excerpt below):

Yesterday, FBI Director James Comey threw the presidential election campaign into turmoil with a letter to Congress declaring that the Clinton email matter was, perhaps, not entirely done after all.

Ben analyzed this disclosure yesterday, and a great deal of digital ink has been spilled both blasting Comey's decision and trying to figure out what it means. The Clinton forces are furious, with the candidate declaring that "we are 11 days out from perhaps the most important national election of our lifetimes, voting is already underway in our country, so the American people deserve to get the full and complete facts immediately," and campaign chairman John Podesta saying, "it is extraordinary that we would see something like this just 11 days out from a presidential election." The Trump forces, meanwhile, are triumphant, with Trump—who only recently was calling the FBI corrupt—saying, "I have great respect for

the fact that the FBI and the Department of Justice are now willing to have the courage to right the horrible mistake that they made. This was a grave miscarriage of justice that the American people fully understood, and it is everybody's hope that it is about to be corrected." The chant from Trump's crowd yesterday: "Lock Her Up!" Below are eighteen questions on the subject of the campaign, the email investigation, and the actions taken by Comey and the FBI, along with our views as to the answers.

5) NBC News: FBI Obtains Warrant for Additional Clinton Emails; Reid Accuses FBI Director of Hatch Act Violation

The FBI obtained a warrant to search emails related to the Hillary Clinton private server probe that were discovered on ex-congressman Anthony Weiner's laptop, law enforcement officials confirmed Sunday. The warrant came two days after FBI director James Comey revealed the existence of the emails, which law-enforcement sources said were linked to Weiner's estranged wife, top Clinton aide Huma Abedin. The FBI already had a warrant to search Weiner's laptop, but that only applied to evidence of his allegedly illicit communications with an underage girl

6) CNN: FBI Had Emails Weeks Ago

The discovery of a trove of emails from one of Hillary Clinton's top aides occurred weeks ago, law enforcement officials told CNN. But the FBI didn't disclose the discovery until Friday, raising questions about why the information was kept under wraps and then released only days before the election. The emails from Clinton aide Huma Abedin were found on a computer belonging to her estranged husband, Anthony Weiner. CNN reported on September 22 that prosecutors in Manhattan had issued a subpoena for Weiner's communications as part of an investigation into alleged sexting with an underage girl.

7) Politico:

a) Senior Law Makers Confer With Comey Over Email Case

House Judiciary Committee Chairman Bob Goodlatte said on Sunday that he and the committee's top Democrat, Michigan Rep. John Conyers, had conferred over the weekend with FBI Director James Comey about the new review of emails that might involve Hillary Clinton's tenure as secretary of state. "We both encouraged him to make sure that the American people have as much information as possible before they have to make a decision on Nov. 8, based upon this stunning new development, that the bureau is examining new evidence in this case, that they said they had completed several months ago," Goodlatte said, explaining the conversation Saturday with Comey.

b) The Very Political James Comey (Magazine)

FBI Director James Comey's disdain for partisan politics is well known among his Justice Department colleagues. A respected former prosecutor who has held high-profile jobs in both Democratic and Republican administrations, this clean-cut father of five sees himself as a straight shooter who, in his own words, doesn't "give a hoot" about politics.

But the past four months have completely exploded that notion. Since July, by repeatedly caving to political pressures as he sought to resolve an investigation that has now been grievously compromised by his own public statements, the director has led the bureau into its most politically perilous chapter in generations—with the presidential campaign hanging in the balance. It's a crisis that's unprecedented in FBI history—and the endgame, with just over a week until Election Day, is anything but clear.

8) Chicago Tribune: Clinton Team: Comey Should Say if He's Read Emails

Hillary Clinton's campaign on Sunday pressured FBI Director James Comey to release more details about the emails he says could be related to the investigation into her use of a private email server, including whether Comey had even reviewed them himself. Tim Kaine, Clinton's running mate, said Comey owed it to the public to be more forthcoming about the emails under review by the FBI with only 10 days remaining before Nov. 8 election. Kaine's message aimed to counter Republican rival Donald Trump, who has seized on the e-mailed email controversy in hopes of causing fresh doubts about Clinton's trustworthiness. "As far

on the returned email controversy in hopes of solving their doubts about Clinton's trustworthiness. As far as we know now, Director Comey knows nothing about the content of these emails. We don't know whether they're to or from Hillary at all," Kaine said. The Virginia senator said if Comey "hasn't seen the emails, I mean they need to make that completely plain. Then they should work to see the emails and release the circumstances of those once they have done that analysis."

***NOTE: Here is the remainder of the WSJ article*** (I attempted to remove the large gaps, as those were placeholders for photos that I could not erase):

The new investigative effort, disclosed by FBI Director James Comey on Friday, shows a bureau at times in sharp internal disagreement over matters related to the Clintons, and how to handle those matters fairly and carefully in the middle of a national election campaign. Even as the previous probe of Mrs. Clinton's email use wound down in July, internal disagreements within the bureau and the Justice Department surrounding the Clintons' family philanthropy heated up, according to people familiar with the matter. The latest development began in early October when New York-based FBI officials notified Andrew McCabe, the bureau's second-in-command, that while investigating Mr. Weiner for possibly sending sexually charged messages to a minor, they had recovered a laptop with 650,000 emails. Many, they said, were from the accounts of Ms. Abedin, according to people familiar with the matter.

Those emails stretched back years, these people said, and were on a laptop that hadn't previously come up in the Clinton email probe. Ms. Abedin said in late August that the couple were separating.

The FBI had searched the computer while looking for child pornography, people familiar with the matter said, but the warrant they used didn't give them authority to search for matters related to Mrs. Clinton's email arrangement at the State Department. Mr. Weiner has denied sending explicit or indecent messages to the teenager.

In their initial review of the laptop, the metadata showed many messages, apparently in the thousands, that were either sent to or from the private email server at Mrs. Clinton's home that had been the focus of so much investigative effort for the FBI. Senior FBI officials decided to let the Weiner investigators proceed with a closer examination of the metadata on the computer, and report back to them.

At a meeting early last week of senior Justice Department and FBI officials, a member of the department's senior national-security staff asked for an update on the Weiner laptop, the people familiar with the matter said. At that point, officials realized that no one had acted to obtain a warrant, these people said.

Mr. McCabe then instructed the email investigators to talk to the Weiner investigators and see whether the laptop's contents could be relevant to the Clinton email probe, these people said. After the investigators spoke, the agents agreed it was potentially relevant.

Mr. Comey was given an update, decided to go forward with the case and notified Congress on Friday, with explosive results. Senior Justice Department officials had warned Mr. Comey that telling Congress would violate policies against overt actions that could affect an election, and some within the FBI have been unhappy at Mr. Comey's repeated public statements on the probe, going back to his press conference on the subject in July.

The back-and-forth reflects how the bureau is probing several matters related, directly or indirectly, to Mrs. Clinton and her inner circle.

New details show that senior law-enforcement officials repeatedly voiced skepticism of the strength of the evidence in the bureau's investigation of the Clinton Foundation, sought to condense what was at times a sprawling cross-country effort, and, according to some people familiar with the matter, told agents to limit their pursuit of the case.

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That led to frustrations among some investigators, who viewed FBI leadership as uninterested in probing the charity, these people said. Others involved disagreed sharply, defending FBI bosses and saying Mr. McCabe in particular was caught between an increasingly acrimonious fight for control between the Justice Department and FBI agents pursuing the Clinton Foundation case.

It isn't unusual for field agents to favor a more aggressive approach than supervisors and prosecutors think is merited. But the internal debates about the Clinton Foundation show the high stakes when such disagreements occur surrounding someone who is running for president.

The Wall Street Journal reported last week that Mr. McCabe's wife, Jill McCabe, received \$467,500 in campaign funds in late 2015 from the political action committee of Virginia Gov. Terry McAuliffe, a longtime ally of the Clintons and, until he was elected governor in November 2013, a Clinton Foundation board member.

Mr. McAuliffe had supported Dr. McCabe in the hopes she and a handful of other Democrats might help win a majority in the state Senate. Dr. McCabe lost her race last November, and Democrats failed to win their majority.

A spokesman for the governor has said that "any insinuation that his support was tied to anything other than his desire to elect candidates who would help pass his agenda is ridiculous."

Dr. McCabe told the Journal, "Once I decided to run, my husband had no formal role in my campaign other than to be" supportive.

In February of this year, Mr. McCabe ascended from the No. 3 position at the FBI to the deputy director post. When he assumed that role, officials say, he started overseeing the probe into Mrs. Clinton's use of a private email server for government work when she was secretary of state.

FBI officials have said Mr. McCabe had no role in the Clinton email probe until he became deputy director, and by then his wife's campaign was over.

But other Clinton-related investigations were under way within the FBI, and they have been the subject of internal debate for months, according to people familiar with the matter.

Early this year, four FBI field offices—New York, Los Angeles, Washington and Little Rock, Ark.—were collecting information about the Clinton Foundation to see if there was evidence of financial crimes or influence-peddling, according to people familiar with the matter.

Los Angeles agents had picked up information about the Clinton Foundation from an unrelated public corruption case and had issued some subpoenas for bank records related to the foundation, these people said.



The Washington field office was probing financial relationships involving Mr. McAuliffe before he became a Clinton Foundation board member, these people said. Mr. McAuliffe has denied any wrongdoing, and his lawyer has said the probe is focused on whether he failed to register as an agent of a foreign entity. Clinton Foundation officials have long denied any wrongdoing, saying it is a well-run charity that has done immense good.

The FBI field office in New York had done the most work on the Clinton Foundation case and received help from the FBI field office in Little Rock, the people familiar with the matter said.

In February, FBI officials made a presentation to the Justice Department, according to these people. By all accounts, the meeting didn't go well.

Some said that is because the FBI didn't present compelling evidence to justify more aggressive pursuit of the Clinton Foundation, and that the career public integrity prosecutors in the room simply believed it wasn't a very strong case. Others said that from the start, the Justice Department officials were stern, icy and dismissive of the case.

"That was one of the weirdest meetings I've ever been to," one participant told others afterward, according to people familiar with the matter.

Justice Department officials told the FBI at the meeting they wouldn't authorize more aggressive investigative techniques, such as subpoenas, formal witness interviews, or grand-jury activity. But the FBI officials believed they were well within their authority to pursue the leads and methods already under way, these people said.

About a week after Mr. Comey's July announcement that he was recommending against any prosecution in the Clinton email case, the FBI sought to refocus the Clinton Foundation probe, with Mr. McCabe deciding the FBI's New York office would take the lead, with assistance from Little Rock.

<!--[if ! lte IE 8]--> The Washington field office, FBI officials decided, would focus on a separate matter involving Mr. McAuliffe. Mr. McCabe had decided earlier in the spring that he would continue to recuse himself from that probe, given the governor's contributions to his wife's former political campaign.

Within the FBI, the decision was viewed with skepticism by some, who felt the probe would be stronger if the foundation and McAuliffe matters were combined. Others, particularly senior officials at the Justice Department, felt that both probes were weak, based largely on publicly available information, and had found little that would merit expanded investigative authority.

According to a person familiar with the probes, on Aug. 12, a senior Justice Department official called Mr. McCabe to voice his displeasure at finding that New York FBI agents were still openly pursuing the Clinton Foundation probe, despite the department's refusal to allow more aggressive investigative methods in the case. Mr. McCabe said agents still had the authority to pursue the issue as long as they didn't use those methods.

The Justice Department official was "very pissed off," according to one person close to Mr. McCabe, and pressed him to explain why the FBI was still chasing a matter the department considered dead. Others said the Justice Department was simply trying to make sure FBI agents were following longstanding policy not to make overt investigative moves that could be seen as trying to influence an election. Those rules discourage investigators from making any such moves before a primary or general election, and, at a minimum, checking with public integrity prosecutors before doing so.

"Are you telling me that I need to shut down a validly predicated investigation?" Mr. McCabe asked, according to people familiar with the conversation. After a pause, the official replied, "Of course not," these people said.

For Mr. McCabe's defenders, the exchange showed how he was stuck between an FBI office eager to pour more resources into a case and Justice Department leaders who didn't think much of the case, one person said. Those people said that following the call, Mr. McCabe reiterated past instructions to FBI agents that they were to keep pursuing the work within the authority they had.

Mr. McCabe's defenders in the agency said that following the call, he repeated the instruction that he had given earlier in the Clinton Foundation investigation: Agents were to keep pursuing the work within the authority they had.

Others further down the FBI chain of command, however, said agents were given a much starker instruction on the case: "Stand down." When agents questioned why they weren't allowed to take more aggressive steps, they said they were told the order had come from the deputy director—Mr. McCabe. Others familiar with the matter deny Mr. McCabe or any other senior FBI official gave such a stand-down instruction.

For agents who already felt uneasy about FBI leadership's handling of the Clinton Foundation case, the moment only deepened their concerns, these people said. For those who felt the probe hadn't yet found significant evidence of criminal conduct, the leadership's approach was the right response.

In September, agents on the foundation case asked to see the emails contained on nongovernment laptops that had been searched as part of the Clinton email case, but that request was rejected by prosecutors at the Eastern District of New York, in Brooklyn. Those emails were given to the FBI based on grants of partial immunity and limited-use agreements, meaning agents could only use them for the purpose of investigating possible mishandling of classified information.

Some FBI agents were dissatisfied with that answer, and asked for permission to make a similar request to federal prosecutors in Manhattan, according to people familiar with the matter. Mr. McCabe, these people said, told them no and added that they couldn't "go prosecutor-shopping."

Not long after that discussion, FBI agents informed the bureau's leaders about the Weiner laptop, prompting Mr. Comey's disclosure to Congress and setting off the furor that promises to consume the final days of a tumultuous campaign.

[redacted] (DO) (FBI)

**From:** [redacted] (DO) (FBI)  
**Sent:** Monday, October 31, 2016 8:50 PM  
**To:** James B. Comey; Rybicki, James E. (DO) (FBI); Kortan, Michael P. (DO) (FBI); Quinn, Richard P. (DO) (FBI); Campbell, Joshua S. (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI)  
**Subject:** Monday night coverage

b6 -1  
b7C -1

All, Please find tonight's news summary below. I tried to allow enough time to separate the coverage from the morning news clips, and include the stories that seem to be among the most mainstream, and those that gained traction in the news cycle throughout the day. Please let me know if you have any questions.

Thank you.

[redacted]

b6 -1  
b7C -1

1) NY Times

a) FBI Team Begins Review of Clinton Emails

The F.B.I. on Monday began loading a trove of emails belonging to a top aide to Hillary Clinton into a special computer program that would allow bureau analysts to determine whether they contain classified information, law enforcement officials said.

The software should allow them to learn relatively quickly how many emails are copies of messages they have already read as part of the investigation into the use of Mrs. Clinton's private server. The F.B.I. completed that investigation in July and, along with prosecutors, decided not to bring any charges against Mrs. Clinton or her aides.

"This is not a manpower issue," said one senior law enforcement official. "It's an issue of getting the emails into a program that can allow agents to look at them."

b) In War Between Candidates, Even FBI Is A Target

In July, after the F.B.I. director, James B. Comey, declined to bring charges against Hillary Clinton for her handling of classified emails, leading Democrats hailed his leadership.

"This is a great man," said Nancy Pelosi, the House minority leader. "We are very privileged in our country to have him be the director of the F.B.I." No one, added Harry Reid, the Senate minority leader, "can question the integrity" of Mr. Comey. But on Friday, after Mr. Comey revealed that the F.B.I. would review newly discovered emails potentially related to the case, Democrats changed their tune. Mr. Reid all but accused him of criminality, writing to Mr. Comey, "You may have broken the law." Mr. Comey, who was once so broadly admired that the Senate confirmed his appointment in 2013 by a vote of 93 to 1, has emerged as the most vivid example of how difficult it is for institutions to remain insulated from partisan combat in this hyperpolarized era.

2) Washington Post

a) Justice Department Promises to Move Quickly in Probe

The Justice Department moved Monday to quell the outrage and frenetic speculation surrounding FBI Director James B. Comey's disclosure last week that the bureau has resumed its investigation of Hillary Clinton's private email server after discovering a new trove of emails. The department signaled that it now wants the politically charged investigation to follow standard procedures, including a report back on official

wants the politically charged investigation to follow standard procedures, including a strict ban on official comments about the probe and the provision of updates to Congress through routine channels.

But after Comey's highly unusual disclosure last week rocked the final days of the presidential campaign, it may prove impossible for Justice to lower the temperature and regain control over how the investigation is conducted and depicted to the public. On Monday, criticism of Comey continued to mount, notably from prominent former law enforcement officials. Democrats and Republicans alike on Capitol Hill amplified their demands that Comey and Attorney General Loretta E. Lynch provide a more detailed account of the investigation into the emails, which were found on a computer belonging to former congressman Anthony Weiner (D-N.Y.) earlier this fall.

Justice is a staid and secretive department, and on Monday officials tried to restore that traditional bearing, trying to tamp down the highly public disclosures about a confidential investigation.

See also:

[Clinton Campaign Accuses Comey of Double Standard](#)

[FBI Director James Comey's Republican Critics Growing By the Hour](#)

3) [CNBC: FBI's Comey Opposed Naming Russians, Citing Election Timing -- Source](#) (This story was highly circulated tonight)

FBI Director [James Comey](#) argued privately that it was too close to Election Day for the United States government to name Russia as meddling in the U.S. election and ultimately ensured that the FBI's name was not on the document that the U.S. government put out, a former bureau official tells CNBC. The official said some government insiders are perplexed as to why Comey would have election timing concerns with the Russian disclosure but not with the Huma Abedin email discovery disclosure he made Friday. In the end, the Department of Homeland Security and The Office of the Director of National Intelligence issued [the statement on Oct. 7](#), saying: "The U.S. intelligence community is confident that the Russian Government directed the recent compromises of emails from U.S. persons and institutions, including from U.S. political organizations. ... These thefts and disclosures are intended to interfere with the U.S. election process."

4) NY Daily News:

[WH Defends Comey Amid Scathing Criticism over FBI's Reopening of Clinton Email Investigation](#)

Democrats blasted FBI Director James Comey over his decision to reopen the bureau's server investigation into Hillary Clinton's private server, the White House defended the agency chief Monday, insisting he was not attempting to sway next week's election.

President Obama "doesn't believe Director Comey is trying to influence the outcome of an election," White House Press Secretary Josh Earnest said during his daily press briefing.

"He's a man of integrity and character and principle," Earnest said of Comey, adding that he would not "defend or criticize" Comey's actions.

Earnest's comments came in response to repeated questions over Obama's thoughts about Comey's decision to notify top congressional committees by letter last Friday that the agency had uncovered a trove of new emails during a separate probe into Anthony Weiner's sexting, and would, in effect, reopen the investigation into Clinton's private email server.

5) [WSJ: Democrats Say Pledge of Speedy Email Review Falls Short](#) (subscription)

a) The Justice Department said in a letter to lawmakers Monday it would work with the FBI to resolve the Clinton email investigation as soon as possible, but the message appeared unlikely to tamp down the emotions surrounding the issue. Peter Kadzik, head of the Justice Department's legislative affairs office, sought to reassure angry Democrats that the new review of potential Clinton-related emails would be undertaken as swiftly as possible. In a five-sentence letter sent Monday, Mr. Kadzik wrote that "the Department will continue to work closely with the FBI and together, dedicate all necessary resources and take appropriate steps as expeditiously as possible."



The Justice Department letter offered no new information about the substance or the status of their review, confounding senior lawmakers from both parties who have demanded details about FBI Director James Comey's brief letter sent to Congress on Friday informing lawmakers of the new discovery.

#### b) White House Defends FBI Director Comey's Integrity

White House Press Secretary Josh Earnest said he would "neither defend nor criticize" Federal Bureau of Investigation Director James Comey's decision to announce the new developments in the Hillary Clinton email saga, a neutral stance that contrasts with the criticism coming from the Clinton campaign and other Democrats.

Mr. Comey had revealed Friday that the FBI was looking into new evidence related to an investigation of the Democratic presidential nominee's email. The news shook the presidential race, again putting Mrs. Clinton email troubles — thought to be largely behind her — back in the spotlight.

In remarks in Ohio on Monday, Mrs. Clinton said there was "no case here" and called into question the agency's motives in announcing the developments just 11 days before the presidential election. A day earlier, Senate Democratic leader Harry Reid accused Mr. Comey of violating a law barring federal officials from using their position to influence an election. In a letter to Mr. Comey, Mr. Reid wrote: "I led the fight to get you confirmed [by the Senate] because I believed you to be a principled public servant. With the deepest regret, I now see that I was wrong."

Mr. Earnest, however, said President Barack Obama thought Mr. Comey a man of integrity. "The president believes that Director Comey is a man of integrity, he's a man of principle and he's a man of good character. .... The president doesn't believe that he's secretly strategizing to benefit one candidate or one political party," Mr. Earnest said.

#### 6) NPR:

##### What the Law Says About FBI Director's Announcement

FBI Director James Comey's letter to Congress reporting a renewed look into emails that could be related to Hillary Clinton's private server rocked the presidential race on Friday. The Clinton campaign and supporters have jumped on Comey for making such a dramatic announcement so close to an election. The question being raised now is whether the timing and style of the announcement make it illegal.

#### THE CLAIM

Democrats allege this is more than just an 11th-hour inconvenience. Senate Democratic Leader Harry Reid says Comey may have violated a law known as the Hatch Act by making the investigation public this late in the election season. In a letter to Comey, Reid said the move revealed a "clear double standard" and accused Comey of using his position as FBI director to influence the election.

"In tarring Secretary Clinton with thin innuendo, you overruled longstanding tradition and the explicit guidance of your own Department. You rushed to take this step eleven days before a presidential election, despite the fact that for all you know, the information you possess could be entirely duplicative of the information you already examined which exonerated Secretary Clinton."

To further his claim of a double standard, Reid also accused Comey of sitting on evidence of ties between the Trump campaign and the Russian government.

#### THE CASE

The Hatch Act prohibits federal employees from using their official authority or influence to affect the result of an election.

An official complaint was filed with the Office of Special Counsel and the Office of Government Ethics by

Richard Painter, the chief White House ethics lawyer under the George W. Bush administration from 2005 to 2007. Painter wrote about his decision in [an op-ed for The New York Times](#) on Sunday, calling Comey's move "an abuse of power." He also added:

"The rules are violated if it is obvious that the official's actions could influence the election, there is no other good reason for taking those actions, and the official is acting under pressure from persons who obviously do want to influence the election."

Painter told NPR's *All Things Considered* Monday that Comey's first mistake was giving in to pressure from lawmakers who wanted to be kept posted on any further investigations related to Clinton.

"They do not have an obligation to do that," Painter said. "He never should have promised Congress that he would give them updates with respect to Secretary Clinton, when he doesn't do that with respect to anybody else, when it's clear that the only reason they want the information is politics."

And in the *Times*, Painter raises another concern about Trump and the Russian government, echoing Reid's claim of a double standard between the FBI's actions toward Clinton and the GOP candidate's public encouragement that Russia hack Clinton's emails.

"But it would be highly improper, and an abuse of power, for the F.B.I. to conduct such an investigation in the public eye, particularly on the eve of the election. It would be an abuse of power for the director of the F.B.I., absent compelling circumstances, to notify members of Congress that the candidate was under investigation. It would be an abuse of power if F.B.I. agents went so far as to obtain a search warrant and raid the candidate's office tower, hauling out boxes of documents and computers in front of television cameras.

"The F.B.I.'s job is to investigate, not to influence the outcome of an election."

Whether there was or wasn't good reason for Comey's announcement is certainly up for debate. Stephen Vladeck, constitutional law professor at the University of Texas, Austin, said on C-SPAN Monday that Comey's letter left him "flabbergasted" and "raises serious questions about the FBI director's judgment." (Story continues on website)

#### 7) The White House: ["We Won't Defend Nor Criticize Comey" On Hillary Emails](#)

President Barack Obama does not believe FBI Director James Comey is attempting to influence this year's presidential vote, Press Secretary Josh Earnest said Monday.

"The President doesn't believe that he's secretly strategizing to benefit one candidate or one political party," Earnest said. "He's in a tough spot, and he's the one who will be in a position to defend his actions in the face of significant criticism from a variety of legal experts, including individuals who served in senior Department of Justice positions in administrations led by presidents in both parties."

#### 8) NBC News: [FBI Winnowing Through Emails From Anthony Weiner's Laptop](#)

Out of the 650,000 emails found on former congressman Anthony Weiner's laptop, only a small number will likely be related to that case, a law enforcement official familiar with the investigation into emails related to the probe of Hillary Clinton's private server told NBC News on Monday.

The emails, uncovered during the FBI's separate investigation into Weiner's alleged illicit communications with an underage girl, are connected to Weiner's estranged wife, top Clinton aide Huma Abedin, and ended up on the same laptop.

**[Related: FBI Obtains Warrant for Newly Discovered Emails in Clinton Probe — as Reid Accuses Comey of Hatch Act Violation](#)**

The cache of emails goes back several years, the official told NBC News. Abedin she says she didn't know these emails were on the household computer.

9) CNN: Email Probe May Outlast Election Day

FBI officials are unlikely to finish their review of new emails potentially related to the investigation into Hillary Clinton's private server before the November 8 election.

Officials are constantly meeting and debating whether there's any more room for them to add clarity without further harming the situation. The initial work of cataloging top Clinton aide Huma Abedin's emails found on her estranged husband Anthony Weiner's laptop could be done in the next few days, US law enforcement officials told CNN.

But the investigators are expected to spend more time doing other work, including likely coordinating with other federal agencies to determine what -- if any -- classified materials are in the emails. This makes it unlikely there will be a resolution prior to the election.

**Rybicki, James E. (DO) (FBI)**

---

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Friday, November 04, 2016 5:22 PM  
**To:** James B. Comey  
**Subject:** Current Version  
**Attachments:** 11.04.16 Letter.docx



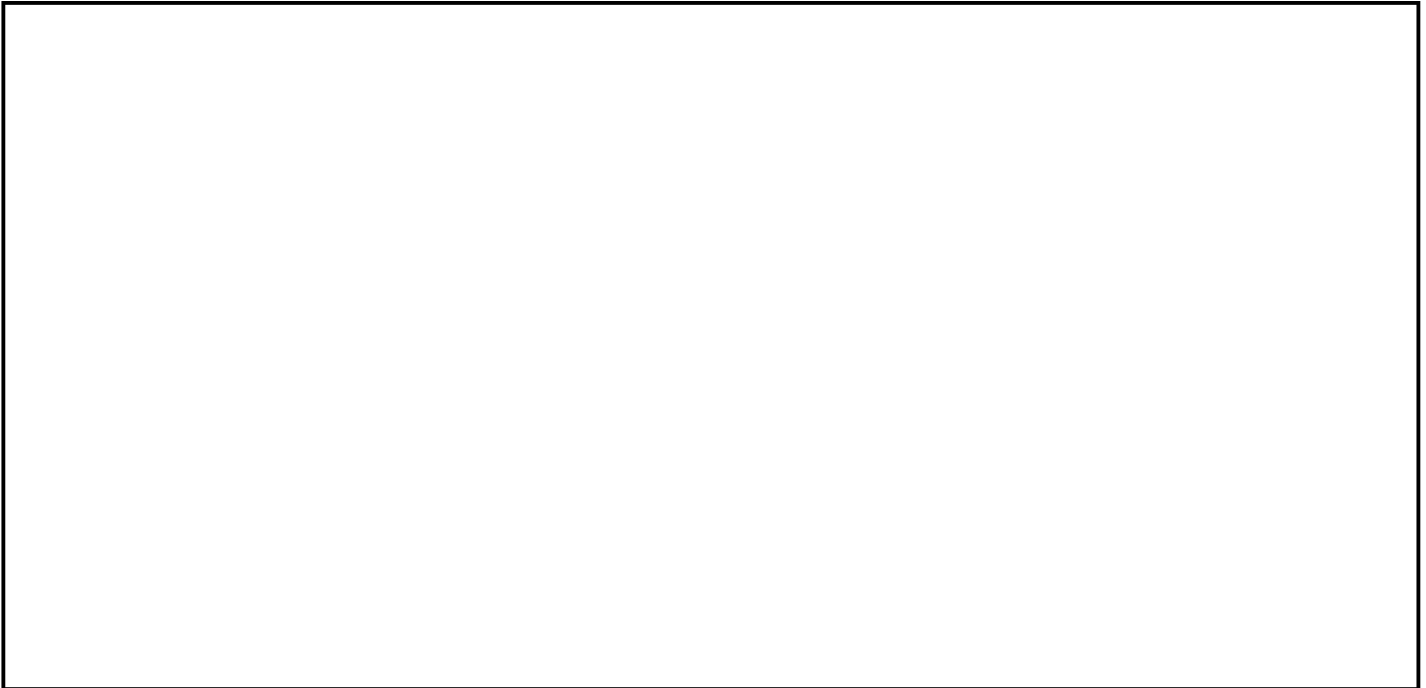
**Rybicki, James E. (DO) (FBI)**

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**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Saturday, November 05, 2016 12:36 PM  
**To:** James B. Comey  
**Subject:** Fw: Current Version

New draft version. I will call you after the 1pm call.

October 5, 2016 (12:33PM)



b5 -1

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**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Friday, November 4, 2016 5:22 PM  
**To:** jbc.dir@ic.fbi.gov  
**Subject:** Current Version

**Rybicki, James E. (DO) (FBI)**

---

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Saturday, November 05, 2016 11:04 PM  
**To:** James B. Comey  
**Subject:** New Proposal

~~PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE~~  
~~ATTORNEY WORK PRODUCT DELIBERATIVE PROCESS~~

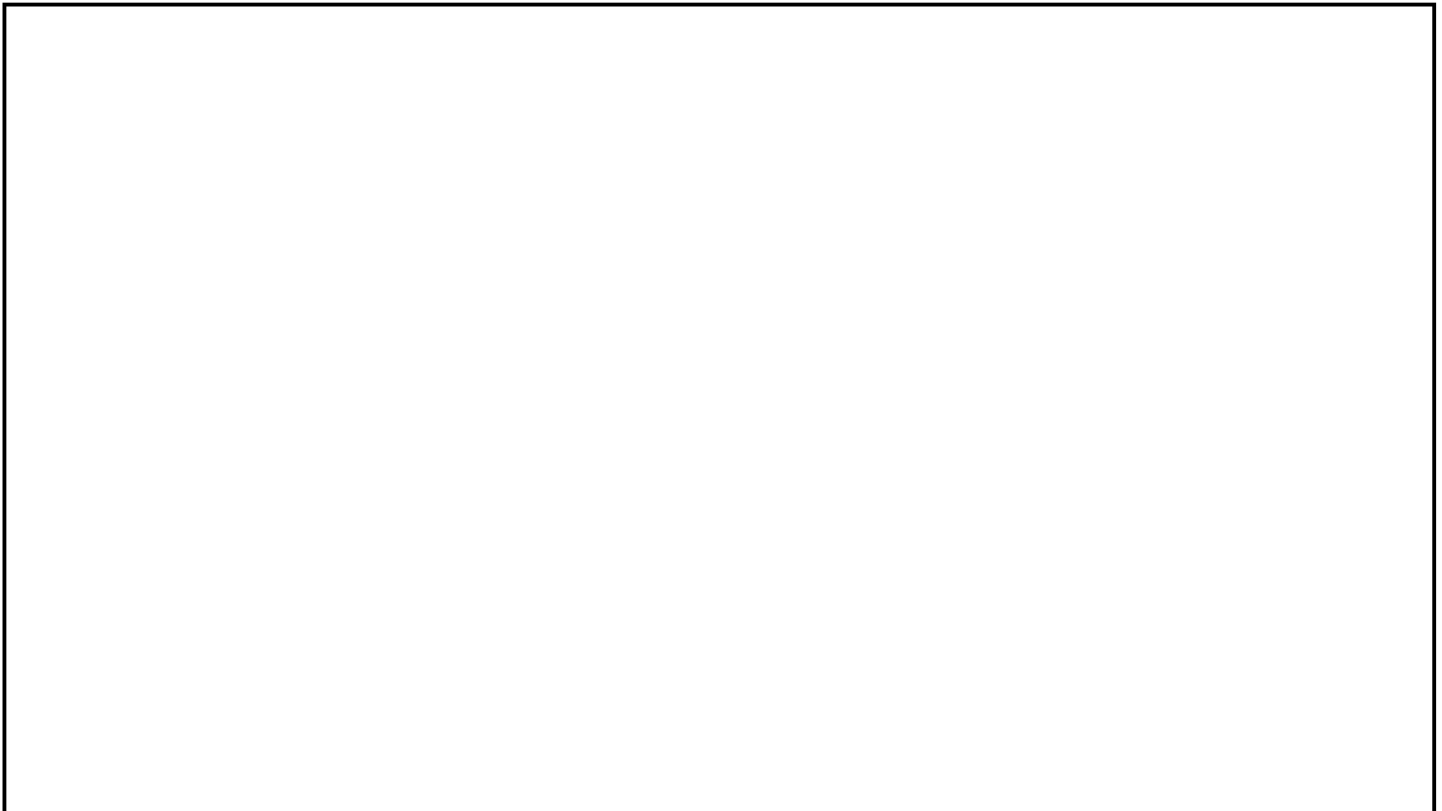
Folks,

Per our 1000pm conversation, below is a revised straw man for discussion. Again, we could use this if the review when completed supports such conclusions. My comments are again in ALL CAPS and in bold italics.

Jim

November 5, 2016 (1055 PM)

b5 -1,2



~~ATTORNEY-CLIENT PRIVILEGED~~

18-cv-01448 FBI-455

**Rybicki, James E. (DO) (FBI)**

---

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Sunday, November 06, 2016 12:27 PM  
**To:** James B. Comey  
**Subject:** FW: Current Version  
**Attachments:** 11.06.16 Letter.docx

---

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Sunday, November 06, 2016 12:26 PM  
**To:** [redacted] Strzok, Peter P. (CD) (FBI) [redacted]  
Bowdich, David L. (DO) (FBI) [redacted] Steinbach, Michael B. (DO) (FBI)  
[redacted] Priestap, E. W. (CD) (FBI) [redacted] Baker, James A. (OGC) (FBI)  
<James.Baker@ic.fbi.gov>; Anderson, Trisha B. (OGC) (FBI) [redacted]  
[redacted] Kortan, Michael P. (DO) (FBI) [redacted] Herring, Jason V. (CD)  
(FBI) [redacted] Moffa, Jonathan C. (CD) (FBI) [redacted]  
**Subject:** Current Version

b6 -1  
b7C -1

[redacted] (DO) (FBI)

---

**From:** [redacted] (DO) (FBI)  
**Sent:** Sunday, November 06, 2016 8:39 PM  
**To:** James B. Comey; Rybicki, James E. (DO) (FBI); Kortan, Michael P. (DO) (FBI); Quinn, Richard P. (DO) (FBI); [redacted] (DO) (FBI); [redacted] (DO) (FBI); Campbell, Joshua S. (DO) (FBI)  
**Subject:** Sunday evening coverage

b6 -1  
b7C -1

All,

Please see a summary of this evening's stories below. All pretty much carried the same narrative with the exception of the last two stories. I wanted to allow for enough time for the major news outlets to file their stories after the letter was released this afternoon. Please let me know if you have any questions. Thank you.

[redacted]

b6 -1  
b7C -1

1) NY Times:

Emails Warrant No New Action Against Hillary Clinton, FBI Says

The F.B.I. director, James B. Comey, told Congress on Sunday that he had seen no evidence in a recently discovered trove of emails to change his conclusion that Hillary Clinton should face no charges over her handling of classified information. Mr. Comey's announcement, just two days before the election, was an effort to clear the cloud of suspicion he had publicly placed over her campaign late last month when he alerted Congress that the F.B.I. would examine the emails. Based on our review, we have not changed our conclusion that we expressed in July with respect to Secretary Clinton," Mr. Comey wrote in a letter to the leaders of several congressional committees. He said agents had reviewed all communications to and from Mrs. Clinton in the new trove when she was secretary of state. The letter was a dramatic final twist in a tumultuous nine days for both Mrs. Clinton and Mr. Comey, who drew widespread criticism for announcing that the F.B.I. had discovered new emails that might — or might not — be relevant to its investigation of Mrs. Clinton, which ended in July with no charges. That criticism of Mr. Comey from both parties is likely to persist after the election.

2) Washington Post:

FBI Director Says Agency Once Again Won't Recommend Charges Over Clinton Email

FBI Director James B. Comey said Sunday that after reviewing newly discovered Hillary Clinton emails, his agency had again determined that the Democratic presidential candidate should face no criminal charges for her email practices, clearing a distraction that had dogged the final days of Clinton's campaign and providing perhaps the last twist of the wild 2016 election year. Comey notified key members of Congress of the finding in a letter sent Sunday afternoon, writing that that investigators had worked "around the clock" to review all the emails found on a device used by former congressman Anthony Weiner that had been sent to or from Clinton and determined that the emails did not change "our conclusions expressed in July." With the letter, Comey removed the pending FBI investigation from the last 48 hours of the campaign. But the central role the FBI has played in the political process for months could cause lingering trouble for the nation's top law enforcement agency, including personally for Comey, who must work with whoever is elected president on Tuesday.

3) WSJ:

FBI Says New Emails Don't Change Conclusions About Hillary Clinton

<https://www.wsj.com/articles/fbi-says-new-emails-dont-change-conclusions-about-hillary-clinton>

<http://www.wsj.com/articles/fbis-comey-says-new-emails-dont-change-conclusions-about-hillary-clinton-1478464650>

Just two days before polls close in the presidential race, the FBI said a review of new evidence gave it no reason to reverse its earlier recommendation that Hillary Clinton not face charges related to her email practices while secretary of state. The announcement Sunday by Federal Bureau of Investigation Director James Comey lifted a legal and political cloud that had hung over Mrs. Clinton's campaign for 10 days. Mr. Comey told lawmakers in a letter that nothing had been uncovered in a new batch of messages that altered the department's earlier conclusion that no prosecution of Mrs. Clinton was justified in the discovery of classified information on her private email server. The decision, following a breakneck review of the emails, ended a stretch of intense partisan rancor over the FBI's decision to reveal that it had uncovered new evidence believed related to the email server on a laptop belonging to Anthony Weiner, the estranged husband of Clinton aide Huma Abedin. The FBI found itself in the center of a political firestorm, facing calls from presidential nominee Donald Trump and other Republicans for charges to be brought against Mrs. Clinton, while fending off accusations from Democrats that the agency was improperly inserting itself into the election. When they started to review the thousands of new emails on the laptop, investigators expected the task would take weeks, if not longer, said people familiar with the matter. The only scenario that would significantly reduce that time frame, they said, was if many of the messages proved to be duplicates of ones previously found by investigators. That turned out to be the case, according to people close to the probe. Officials were also able to shorten the review by working around the clock and focusing on only emails sent to or from Mrs. Clinton.

By midday Sunday, officials identified a group of Clinton emails—they wouldn't say how many—that may have been new to investigators but weren't notably different from ones they had reviewed months earlier, said people familiar with the investigation.

Mr. Comey's letter Sunday said the FBI stands by its July decision not to recommend charges against Mrs. Clinton for potential loss or mishandling of classified material while in government, saying that the department has "reviewed all the communications that were to or from Hillary Clinton while she was secretary of state."

### 3) NPR:

FBI Affirms Decision Not to Charge Clinton, After Review of Weiner Emails

<http://www.npr.org/sections/thetwo-way/2016/11/06/500929164/comey-we-have-not-changed-our-conclusions-as-fbi-finishes-clinton-email-review>

Following up on his letter that set off a firestorm of speculation just two weeks before U.S. voters head to the polls to choose a new president, FBI Director James Comey says the investigative team that analyzed a new trove of emails that were either to or from Hillary Clinton has finished its work — and that the review doesn't change the findings he put forth in July, when he said no charges will be pursued against Clinton. "Since my letter, the FBI investigative team has been working around the clock to process and review a large volume of emails from a device obtained in connection with an unrelated criminal investigation," Comey wrote Sunday, in an official communication with 16 chairmen and ranking members of relevant House and Senate committees. "Based on our review, we have not changed our conclusions that we expressed in July with respect to Secretary Clinton," Comey wrote Sunday. Two sources familiar with the investigation tell NPR's Carrie Johnson the material the FBI recently discovered and reviewed largely contained copies of messages the agents had already seen or personal emails.

### 4) WSJ: FBI Says New Emails Don't Change Conclusions About Hillary Clinton

<http://www.wsj.com/articles/fbis-comey-says-new-emails-dont-change-conclusions-about-hillary-clinton-1478464650>

Just two days before polls close in the presidential race, the FBI said a review of new evidence gave it no reason to reverse its earlier recommendation that Hillary Clinton not face charges related to her email practices while secretary of state. The announcement Sunday by Federal Bureau of Investigation Director



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#### 5) Associated Press: FBI Director Tells Congress Review of Additional Emails Does Not Change Conclusion She Should Not Face Charges

<http://www.salon.com/2016/11/05/fbi-director-tells-congress-review-of-additional-clinton-emails-does-not-change-conclusion-she-should-not-face-charges/>

FBI Director James Comey abruptly announced Sunday that Hillary Clinton should not face criminal charges related to newly discovered emails from her tenure at the State Department, lifting a cloud of uncertainty that has shadowed the final days of her presidential campaign. In a letter to congressional lawmakers two days before Election Day, Comey said the FBI has worked "around the clock to process and review a large number of emails" obtained from a device belonging to Anthony Weiner, the disgraced former congressman and estranged husband of top Clinton aide Huma Abedin. Comey said the review has not changed the bureau's assessment from earlier this year that Clinton should not be prosecuted for her handling of classified information at the State Department. Clinton's campaign welcomed the FBI announcement.

"We're glad this matter is resolved," Jennifer Palmieri, Clinton's communications director, told reporters traveling with the campaign to Ohio. Clinton was infuriated by Comey's decision to alert Congress late last month that the FBI was reviewing new materials, calling it "unprecedented" and "deeply troubling." The decision shattered what had appeared to be Clinton's solid grip on the race and emboldened Republican Donald Trump.

#### 6) CNN:

##### FBI Clears Clinton, Again

FBI Director James Comey told lawmakers Sunday the agency hasn't changed its opinion that Hillary Clinton should not face criminal charges after a review of new emails. "Based on our review, we have not changed our conclusions that we expressed in July," Comey wrote in the new letter to congressional committee chairmen. Comey dropped a bombshell on the presidential race last month when he sent a letter to Congress saying the FBI had discovered emails in a separate investigation that could be connected to the now-closed probe of whether Clinton mishandled classified information. The move infuriated Democrats and emboldened Republican nominee Donald Trump. It's impossible to know before

interviewed Democrats and emboldened Republican nominee Donald Trump, it's impossible to know before results are tallied what impact Comey's actions -- first raising a vaguely worded red flag 11 days out, and then lowering it two days from the election -- will have on the contest. But the news could help Clinton put to rest a controversy that has dogged her in the 2016 race's closing days, helping Trump narrow a polling gap nationally and in key battleground states.

#### 7) NBC News:

FBI Completes Review of New Released Clinton Emails, Finds No Evidence of Criminality

<http://www.nbcnews.com/politics/2016-election/fbi-completes-review-newly-revealed-hillary-clinton-emails-finds-no-n678701>

FBI Director James Comey said Sunday that the bureau won't change the conclusion it made in July after it examined newly revealed emails related to the Hillary Clinton probe. "Based on our review, we have not changed our conclusions that we expressed in July with respect to Secretary Clinton," Comey wrote in a letter to 16 members of Congress. The investigative team had "been working around the clock to process and review" emails found on former New York congressman Anthony Weiner's laptop -- using a program that targeted only the emails to and from Clinton's closest aide, Huma Abedin, within the time when Clinton was secretary of state.

&lt;img class="img-responsive img\_inline" src="http://media3.s-nbcnews.com/j/newscms/2016\_44/1784446/161106-comey-letter-jhc-1604\_f230e20d23e60106c4e3f3ed02f95e73.nbcnews-fp-360-360.jpg" alt="Image:" title="Image:" itemprop="image:"/>in a statement, a Justice Department spokesman said, "The Department of Justice and the FBI dedicated all necessary resources to conduct this review expeditiously."

The news comes after the FBI announced it would review a new batch of emails that appeared to be "pertinent" to the investigation that was suspended in July, which had looked into Clinton's use of a private server.

Multiple federal sources told NBC News that the emails were found as a part of an ongoing probe into Weiner's alleged illicit communication with an underage girl.

#### 8) USA Today

##### a) FBI Declares It Is Finally Done Investigating Hillary Clinton's Email

In a stunning last-minute announcement, FBI director James Comey said Sunday the agency is still not recommending charges against Democratic presidential nominee Hillary Clinton after reviewing newly discovered emails. In a letter to lawmakers, Comey said the FBI is standing by its original findings, made in July, that Clinton should not be prosecuted for her handling of classified information over email as secretary of State.

"The FBI investigative team has been working around the clock to process and review a large volume of emails from a device obtained in connection with an unrelated criminal investigation," Comey said in the letter. "During that process we reviewed all of the communications that were to or from Hillary Clinton while she was secretary of State," Comey wrote. "Based on our review, we have not changed our conclusions that we expressed in July with respect to Secretary Clinton." Comey had rocked the presidential race with his announcement Oct. 28 that the FBI had uncovered a new trove of emails that might be relevant to the investigation of Clinton's use of a private email server. The emails were discovered on the computer of Anthony Weiner, the estranged husband of Clinton aide Huma Abedin. The announcement, as voters prepare to head to the polls Tuesday, added more drama to an already turbulent campaign season.

##### b) FBI's Comey Upended The Election, and Pretty Much Everyone on Twitter Was Upset

<http://www.usatoday.com/story/news/politics/onpolitics/2016/11/06/fbis-comey-upended-election-and-pretty-much-everyone-twitter-upset/93402324/>

FBI Director James Comey stepped into the 2016 spotlight again on Sunday with an announcement: The agency won't recommend charges against Hillary Clinton after all. Comey's statement came nine days after he announced a new review of the recently found emails that seemed "pertinent" to the investigation. That news upended the race: Polls in the days following showed Donald Trump gaining ground, and critics blasted Comey for intruding into the campaign. It was all for naught, Comey said Sunday. The hot takes on Twitter were swift, and pretty much everyone was upset. (story goes on to show examples -- of some of the Twitter reactions)

9) Politico: Will James Comey Survive The Clinton Email Flap?

<http://www.politico.com/story/2016/11/james-comey-fbi-clinton-230851>

James Comey isn't going to get out of the Clinton email investigation unscathed. After delivering yet another potentially game-changing missive — this one clearing Hillary Clinton of criminal wrongdoing in the email probe — the FBI director found himself caught in a unusual vortex, taking heavy flak from both sides of the aisle. The almost certain result will be further congressional hearings into both his agency's investigation and his own decision-making, from his unusual July press conference to clear Clinton of charges but rebuke her nonetheless, to his public release of investigative materials, to his shocking revelation on October 28 of new evidence, to yesterday's report that the evidence didn't amount to much, at least as far as Clinton herself is concerned. "In the days that come, we will have many questions about the FBI's handling of this investigation," Rep. John Conyers of Michigan, the ranking Democrat on the House Judiciary Committee, said Sunday in a statement, echoing comments from leading Republicans like Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa).



**Rybicki, James E. (DO) (FBI)**

---

**From:** Rybicki, James E. (DO) (FBI)  
**Sent:** Sunday, November 06, 2016 9:32 PM  
**To:** James B. Comey  
**Subject:** Fwd: For Comey

----- Original message -----

**From:** "Turman, Kathryn M. (DO) (FBI)" [REDACTED]  
**Date:** 11/6/16 7:15 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Subject:** Fwd: For Comey

b6 -1,4  
b7C -1,4

Hi Jim-

The email below is from [REDACTED] who is a retired civil rights and public corruption investigator. Feel free to share with the Director or not. I spent a lot of time with AG Reno during the Elian Gonzalez crisis talking about what he would understand and need at his developmental stage. She told me, "No matter what I decide, I am going to be fussed at and cussed at by someone. What actually matters is that I apply the best interpretation of the law and can look at myself in the mirror every day." It takes great courage to block out the noise and listen to the small, still voice.

Hang in there.  
Kathryn

----- Original message -----

**From:** [REDACTED]  
**Date:** 11/06/2016 5:56 PM (GMT-05:00)  
**To:** "Turman, Kathryn M. (DO) (FBI)" [REDACTED]  
**Subject:** For Comey

b6 -1,4  
b7C -1,4

Kath

If you think it's appropriate, can you forward this to the Director?

James Comey, Director of the FBI, appears to be the most honest, the "straightest shooter" of all the major

18-cv-01448 FBI-463

players in this election. That was his reputation before the Clinton email investigation, and his actions regarding it confirm that reputation. Other than an intense desire to project objectivity and fairness, why else would he risk taking the extraordinary steps he took to inform the public about an investigation of a major presidential candidate during the race, and the inevitable heat that resulted. Here's a list those steps, most of which are unprecedented for major FBI investigations:

1. Taking the case in the first place during the election
2. Defending his decision not to prosecute by discussing the evidence and reasoning that led to his conclusions (and remember, the Attorney General put that decision on him; he did not ask for it)
3. Re-opening the case when he became aware of new information
4. Making that step public
5. Devoting the resources to try and resolve the case before the election
6. Announcing his conclusions the Sunday before election day

As journalist Page Pate said, "Jim Comey may not have a friend left in Washington after all this is over, but the rest of America owes him our thanks." Thank you, Director Comey.



b6 -4  
b7C -4

**James B. Comey**

---

**From:** James B. Comey  
**Sent:** Monday, November 07, 2016 10:11 AM  
**To:** Rybicki, James E. (DO) (FBI)  
**Subject:** RE: For Comey

Thanks.

----- Original message -----

**From:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Date:** 11/6/16 9:31 PM (GMT-05:00)  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Subject:** Fwd: For Comey

----- Original message -----

**From:** "Turman, Kathryn M. (DO) (FBI)" [REDACTED]  
**Date:** 11/6/16 7:15 PM (GMT-05:00)  
**To:** "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>  
**Subject:** Fwd: For Comey

b6 -1,4  
b7C -1,4

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Hang in there.  
Kathryn

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From: [REDACTED]

Date: 11/06/2016 5:56 PM (GMT-05:00)

To: "Turman, Kathryn M. (DO) (FBI)" [REDACTED]

Subject: For Comey

b6 -1,4

b7C -1,4

Kath

If you think it's appropriate, can you forward this to the Director?

James Comey, Director of the FBI, appears to be the most honest, the "straightest shooter" of all the major players in this election. That was his reputation before the Clinton email investigation, and his actions regarding it confirm that reputation. Other than an intense desire to project objectivity and fairness, why else would he risk taking the extraordinary steps he took to inform the public about an investigation of a major presidential candidate during the race, and the inevitable heat that resulted. Here's a list those steps, most of which are unprecedented for major FBI investigations:

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6. Announcing his conclusions the Sunday before election day

As journalist Page Pate said, "Jim Comey may not have a friend left in Washington after all this is over, but the rest of America owes him our thanks." Thank you, Director Comey.

[REDACTED]

b6 -4

b7C -4

James B. Comey

From: James B. Comey  
Sent: Monday, November 28, 2016 9:53 PM  
To: [redacted] (DO) (FBI)  
Subject: RE: Monday evening coverage

b6 -1  
b7C -1

So pretty solid support, then.

----- Original message -----

From: [redacted]  
Date: 11/28/16 9:47 PM (GMT-05:00)  
To: "James B. Comey" <jcb.dir@ic.fbi.gov>, "Kortan, Michael P. (DO) (FBI)"  
[redacted] "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, [redacted]  
(DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)"  
[redacted] "Campbell, Joshua S. (DO) (FBI)" <Joshua.Campbell@ic.fbi.gov>  
Subject: Monday evening coverage

b6 -1  
b7C -1

All, I wanted to pass along four pieces I found on line tonight that posted within the past 24 hours based on the search criteria I've used for the past several weeks. To be sure, none of those included were traditional news stories. Rather, all of the pieces included were opinion columns. However, some were in the main-stream press, so I wanted to include them. As usual, I have the headline with a link to the larger story, as well as the first few relevant paragraphs. I'll continue to monitor more to see if we see an uptick in coverage after the holiday break.

There are also several stories involving the President Elect's meeting with Gen. Petraeus today, but I did not include those in this summary. I will do so should developments warrant.

Thank you.

b6 -1  
b7C -1

1) Washington Post

[This is Why The Push For Transparency May Have Cost Clinton the Election](#)

Hillary Clinton thinks James B. Comey cost her the presidency.

Eleven days before the election, the FBI director informed congressional leaders that newly discovered information might be relevant to the investigation of Clinton's use of a private email server while she was secretary of state. That inquiry was never formally closed, but months earlier, Comey made it clear that he would not seek prosecution. His new message was vague but provocative, and the campaign of Republican nominee Donald Trump immediately used it to reinforce its claim that the email story was "worse than Watergate." At the time Clinton was surging in the polls, and Trump's campaign seemed to be imploding under the weight of poor debate performances and accusations of sexual assault. Some observers argue that Comey's intervention stopped the decline and reduced Clinton's national lead by up to three points. Although it is impossible to prove causation, the letter may have depressed turnout on her behalf. Late-deciding voters broke for Trump in large numbers. Comey's action led to anger from the Clinton campaign.

including voters' views on Trump in large numbers. Comey's actions led to anger from the Clinton campaign and calls for his resignation from the left and the right. But the underlying story is not just about Comey or the FBI. Instead, it is about the perverse consequences of government transparency, and the fraught relationship between national security and the demands of democracy.

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(Written by Robert Delahunty and John Yoo)

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## 4) Daily Kos: Why Does Jim Comey Still Have a Job?

When James Comey decided to issue his extraordinary letter to Congress just eleven days before the election, his baseless intrusion was unprecedented and immeasurable. It was not just a violation of rules for both the FBI and the Justice Department, but a direct F-U to Hillary Clinton, Attorney General Loretta Lynch, President Obama, and the democratic process. It was enough that people from both parties were astonished by Comey's action. Though there were calls for Comey's resignation, many were concerned that for President Obama to sack the FBI director before the election would only make disruption worse. It's absolutely clear, from the moment he made his already staggeringly partisan decision to usurp the role of the Justice Department during the summer and administer a finger-shaking rebuke to Secretary Clinton while admitting that no crime had been committed, that James Comey was more concerned about his own PR than about genuine justice. It's November 28. The election is over. Why does James Comey still have a job? Sure, you could make the case that dismissing Comey in advance of the election had a downside. No matter how much partisanship, grandstanding, and plain poor judgement the man had demonstrated, telling him to pack his bags back then might be seen as an attempt to silence. That didn't

stop many from suggesting that Comey's actions demanded immediate termination. Through it all, Comey was perfectly at peace with himself.



[redacted] (DO) (FBI)

**From:** [redacted] (DO) (FBI) b6 -1  
**Sent:** Monday, November 28, 2016 9:57 PM b7C -1  
**To:** James B. Comey  
**Subject:** RE: Monday evening coverage

If you look at the sources, they are hardly neutral. Williams is the token liberal on Fox and the Daily Kos is slanted left. The Post piece was more analytical and the Yoo piece can be judged on its merits and that of the author.

I only included these pieces should they take hold in the coming days as a continuing narrative. My sense is that it won't, but this news cycle has been anything but predictable.

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----- Original message -----

**From:** "James B. Comey" <jcb.dir@ic.fbi.gov>  
**Date:** 28/11/2016 21:52 (GMT-05:00) b6 -1  
**To:** [redacted] b7C -1  
**Subject:** RE: Monday evening coverage

So pretty solid support, then.

--

----- Original message -----

**From:** [redacted]  
**Date:** 11/28/16 9:47 PM (GMT-05:00) b6 -1  
**To:** "James B. Comey" <jcb.dir@ic.fbi.gov>, "Kortan, Michael P. (DO) (FBI)" b7C -1  
[redacted] "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, [redacted]  
[redacted] (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)"  
[redacted] "Campbell, Joshua S. (DO) (FBI)" <Joshua.Campbell@ic.fbi.gov>  
**Subject:** Monday evening coverage

All, I wanted to pass along four pieces I found on line tonight that posted within the past 24 hours based on the search criteria I've used for the past several weeks. To be sure, none of those included were traditional news stories. Rather, all of the pieces included were opinion columns. However, some were in the main-stream press, so I wanted to include them. As usual, I have the headline with a link to the larger story, as well as the first few relevant paragraphs. I'll continue to monitor more to see if we see an uptick in coverage after the holiday break.

There are also several stories involving the President Elect's meeting with Gen. Petraeus today, but I did



not include those in this summary. I will do so should developments warrant.

Thank you.

b6 -1  
b7C -1

### 1) Washington Post

#### This is Why The Push For Transparency May Have Cost Clinton the Election

Hillary Clinton thinks James B. Comey cost her the presidency.

Eleven days before the election, the FBI director informed congressional leaders that newly discovered information might be relevant to the investigation of Clinton's use of a private email server while she was secretary of state. That inquiry was never formally closed, but months earlier, Comey made it clear that he would not seek prosecution. His new message was vague but provocative, and the campaign of Republican nominee Donald Trump immediately used it to reinforce its claim that the email story was "worse than Watergate." At the time Clinton was surging in the polls, and Trump's campaign seemed to be imploding under the weight of poor debate performances and accusations of sexual assault. Some observers argue that Comey's intervention stopped the decline and reduced Clinton's national lead by up to three points. Although it is impossible to prove causation, the letter may have depressed turnout on her behalf. Late-deciding voters broke for Trump in large numbers. Comey's action led to anger from the Clinton campaign and calls for his resignation from the left and the right. But the underlying story is not just about Comey or the FBI. Instead, it is about the perverse consequences of government transparency, and the fraught relationship between national security and the demands of democracy.

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b6 -4  
b7C -4

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, October 13, 2016 8:04 PM  
**To:** Comey, James B. (DO) (FBI); Division, Criminal (CRM)  
**Subject:** Hillary Clinton's Indictment

Director Comey & AG Lynch,

Thank God for Wikileaks. I also appreciate the fact that FBI and DOJ agents from your Hillary e-mail investigative team are now coming forward and saying that almost everyone on the team recommended that you indict her and 100% said that her security clearance should be taken away forever. Yet, you ignored your team, colluded with Obama and the Clintons, and had the audacity to say that your team agreed with you. Now, we have evidence that classified documents were hacked from her personal server - documents leaked by Wikileaks prove that Hillary talked about national security (i.e. an intelligence source in Libya), putting our nation at risk. There's no telling how many countries have info that they can hold over her head if she gets into office. It's time that you conduct yourselves as the apolitical establishment you are supposed to be and follow the law of the land. **INDICT HER OR RESIGN.**

[REDACTED]

b6 -4  
b7C -4

[Redacted]

b6 -4  
b7C -4

**From:** [Redacted]  
**Sent:** Monday, October 31, 2016 10:59 AM  
**To:** Comey, James B. (DO) (FBI)  
**Subject:** Recent Notification Regarding HRC's Email

Director Comey

As a [Redacted] I applaud your efforts in seeking the truth in regards to recently discovered emails involving Hillary Clinton and some of her associates. In order to allay fears of impropriety, investigations must be launched in ethical and morally guided administrations. Despite the blowback, the integrity of our political system and the investigating agency demands doing the "right thing" regardless of divisive feedback. When people fear the truth, law enforcement is often the brunt of attacks but right is right. Thank you. Most in our profession support you.

b6 -4  
b7C -4

[Redacted]

b6 -4  
b7C -4

FEDERAL BUREAU OF INVESTIGATION  
FOI/PA  
DELETED PAGE INFORMATION SHEET  
Civil Action# 18-cv-01448

Total Deleted Page(s) = 12  
Page 1 ~ Referral/Consult;  
Page 2 ~ Referral/Consult;  
Page 3 ~ Referral/Consult;  
Page 4 ~ Referral/Consult;  
Page 5 ~ Referral/Consult;  
Page 6 ~ Referral/Consult;  
Page 7 ~ Referral/Consult;  
Page 8 ~ Referral/Consult;  
Page 9 ~ Referral/Consult;  
Page 10 ~ Referral/Consult;  
Page 11 ~ Referral/Consult;  
Page 12 ~ Referral/Consult;

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X For this Page X  
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OFFICES *of* THE  
UNITED STATES ATTORNEYS

U.S. Attorneys » Resources » U.S. Attorneys' Manual » Title 1: Organization and Functions

## 1-7.000 - Media Relations

- 1-7.001 Purpose
- 1-7.110 Interests Must Be Balanced
- 1-7.111 Need for Confidentiality
- 1-7.112 Need for Free Press and Public Trial
- 1-7.210 General Responsibility
- 1-7.220 Designation of Media Representative
- 1-7.310 Department of Justice Components
- 1-7.320 United States Attorneys
- 1-7.330 Procedures to Coordinate with OPA
- 1-7.400 Coordination With United States Attorneys—Issuance of Press Releases
- 1-7.401 Guidance for Press Conferences and Other Media Contacts
- 1-7.500 Release of Information in Criminal and Civil Matters—Non-Disclosure
- 1-7.520 Release of Information in Criminal and Civil Matters—Disclosable Information
- 1-7.530 Disclosure of Information Concerning Ongoing Investigations
- 1-7.531 Comments on Requests for Investigations
- 1-7.540 Disclosure of Information Concerning Person's Prior Criminal Record
- 1-7.550 Concerns of Prejudice

1-7.600           Assisting the News Media

1-7.700           Freedom of Information Act (FOIA)

### **1-7.001 - Purpose**

The purpose of this policy statement is to establish specific guidelines consistent with the provisions of 28 CFR 50.2 governing the release of information relating to criminal and civil cases and matters by all components (FBI, DEA, INS, BOP, USMS, USAO, and DOJ divisions) and personnel of the Department of Justice. These guidelines are: 1) fully consistent with the underlying standards set forth in this statement and with 28 CFR 50.2; 2) in addition to any other general requirements relating to this issue; 3) intended for internal guidance only; and 4) do not create any rights enforceable in law or otherwise in any party.

### **1-7.110 - Interests Must Be Balanced**

These guidelines recognize three principal interests that must be balanced: the right of the public to know; an individual's right to a fair trial; and, the government's ability to effectively enforce the administration of justice.

### **1-7.111 - Need for Confidentiality**

Careful weight must be given in each case to protecting the rights of victims and litigants as well as the protection of the life and safety of other parties and witnesses. To this end, the Courts and Congress have recognized the need for limited confidentiality in:

- On-going operations and investigations;
- Grand jury and tax matters;
- Certain investigative techniques; and,
- Other matters protected by the law.

### **1-7.112 - Need for Free Press and Public Trial**

Likewise, careful weight must be given in each case to the constitutional requirements of a free press and public trials as well as the right of the people in a constitutional democracy to have access to information about the conduct of law enforcement officers, prosecutors and courts, consistent with the individual rights of the accused. Further, recognition should be given to the needs of public safety, the apprehension of fugitives, and the rights of the public to be informed on matters that can affect enactment or enforcement of public laws or the development or change of public policy.

These principles must be evaluated in each case and must involve a fair degree of discretion and the exercise of sound judgment, as every possibility cannot be predicted and covered by written policy statement.

### **1-7.210 - General Responsibility**

Final responsibility for all matters involving the news media and the Department of Justice is vested in the Director of the Office of Public Affairs (OPA). The Attorney General is to be kept fully informed of appropriate matters at all times.

Responsibility for all matters involving the local media is vested in the United States Attorney.

### **1-7.220 - Designation of Media Representative**

Each United States Attorney's Office and each field office of the various components of the Department shall designate one or more persons to act as a point of contact on matters pertaining to the media.

In United States Attorneys' offices or field offices where available personnel resources do not permit the assignment of a full time point of contact for the media, these responsibilities should be assigned to a clearly identified individual. (This, of course, could be the United States Attorney or field office head.)

### **1-7.310 - Department of Justice Components**

The public affairs officers at the headquarters level of the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Bureau of Prisons, United States Marshals Service, Office of Justice Programs, and Community Relations Service are responsible for coordinating their news media effort with the Director of OPA.

### **1-7.320 - United States Attorneys**

Recognizing that each of the 93 United States Attorneys will exercise independent discretion as to matters affecting their own districts, the United States Attorneys are responsible for coordinating their news media efforts with the Director of OPA in cases that transcend their immediate district or are of national importance.

[cited in USAM 1-3.000; 1-7.401]

### **1-7.330 - Procedures to Coordinate with OPA**

In order to promote coordination with the OPA, all components of the Department shall take all reasonable steps to insure compliance with the following:

- A. **International/National/Major Regional News.** As far in advance as possible, OPA should be informed about any issue that might attract international, national, or major regional media interest. However, the OPA should be alerted not to comment or disseminate any information to the media concerning such issues without first consulting with the United States Attorney.
- B. **News Conferences.** Prior coordination with OPA is required of news conferences of national significance.



- C. **Requests from National Media Representatives (TV, Radio, Wire Service, Magazines, Newspapers).** OPA should be informed immediately of all requests from national media organizations, including the television and radio programs (such as the nightly news, Good Morning America, Meet the Press and Sixty Minutes), national wire services, national news magazines and papers (such as the New York Times, U.S.A. Today, and the Wall Street Journal) regarding in-depth stories and matters affecting the Department of Justice, or matters of national significance.
- D. **Media Coverage Affecting DOJ.** When available, press clippings and radio/television tapes involving matters of significance should be forwarded to OPA.
- E. **Comments on Specific Issues (i.e., New Policies, Legislative Proposals, Budget).** OPC should be consulted for guidance prior to commenting on new policies and initiatives, legislative proposals or budgetary issues of the Department. This should not be interpreted to preclude recitation of existing well-established Departmental policies or approved budgets.

[cited in USAM 1-3.000; 1-7.401]

### **1-7.400 - Coordination With United States Attorneys—Issuance of Press Releases**

**By OPA or Headquarters.** In instances where OPA or the headquarters of any division, component or agency of the Department issues a news release or conducts a news conference which may affect an office or the United States Attorney, such division, component, or agency will coordinate that effort with the appropriate United States Attorney.

**Issuance of Press Release by Field Officers of Any Division.** In instances where local field officers of any division or component plans to issue a news release, schedule a news conference or make contact with a member of the media relating to any case or matter which may be prosecuted by the United States Attorney's office, such release, scheduling of a news conference or other media contact shall be approved by the United States Attorney. See the DOJ Organizations and Functions Manual at 28 for a discussion of press releases in cases involving the Internal Revenue Service.

[cited in USAM 1-3.000; USAM 1-7.401]

### **1-7.401 - Guidance for Press Conferences and Other Media Contacts**

The following guidance should be followed when Department of Justice components or investigative agencies consider conducting a press conference or other media contact:

- A. The use of a press release which conforms to the approval requirements of USAM 1-7.400 is the usual method to release public information to the media by Department of Justice components and investigative agencies. Press conferences should be held only for the most significant and newsworthy actions, or if a particularly important deterrent or law enforcement purpose would be served. Prudence and caution should be exercised in the

conduct of any press conference or other media contact.

- B. Press conferences about pending cases or investigations that may result in an indictment by all Department of Justice components and investigative agencies must be approved by the appropriate Assistant Attorney General or by the United States Attorney responsible for the case. In joint or multi-district cases the approving official should consult with other districts or divisions affected. If it is a national case, press conferences must be approved by the Director, Office of Public Affairs. See USAM 1-7.320 to 1-7.330.
- C. There are exceptional circumstances when it may be appropriate to have press conferences or other media outreach about ongoing matters before indictment or other formal charge. These include cases where: 1) the heinous or extraordinary nature of the crime requires public reassurance that the matter is being promptly and properly handled by the appropriate authority; 2) the community needs to be told of an imminent threat to public safety; or 3) a request for public assistance or information is vital. See USAM 1-7.530 to 1-7.550 and 28 C.F.R. 50.2.
- D. There are also circumstances involving substantial public interest when it may be appropriate to have media contact about matters after indictment or other formal charge but before conviction. In such cases, any communications with press or media representatives should be limited to the information contained in an indictment or other charging instrument, other public pleadings or proceedings, and any other related non-criminal information, within the limits of USAM 1-7.520, .540, .550, .500 and 28 C.F.R. 50.2.
- E. Any public communication by any Department component or investigative agency or their employees about pending matters or investigations that may result in a case, or about pending cases or final dispositions, must be approved by the appropriate Assistant Attorney General, the United States Attorney, or other designate responsible for the case. In joint or multi-district cases, the approving official should consult with other districts or divisions affected. If it is a national case, press conferences must be approved by the Director, Office of Public Affairs.
- F. The use of displays or handouts in either press conferences or other media outreach when it involves a pending case or an investigation that may lead to an indictment requires separate and specific approval by the officials authorizing approval as set forth in section B.
- G. All Department personnel must avoid any public oral or written statements or presentations that may violate any Department guideline or regulation, or any legal requirement or prohibitions, including case law and local court rules.
- H. Particular care must be taken to avoid any statement or presentation that would prejudice the fairness of any subsequent legal proceeding. See also 28 C.F.R. 16.26(b). In cases where information is based directly or indirectly on tax records, care should be taken to comply with any applicable disclosure provisions in the Tax Reform Act, section 6103 of

the Internal Revenue Code of 1986. The fact of conviction, sentences and guilty pleas may be reported in a press release based on information uttered in court as opposed to waiting for the publicly filed documents relating to the fact of conviction, plea or sentence. If you have any questions please contact the Tax Division. Special rules apply and should be closely followed to ensure that the identity of minors directly or indirectly is not revealed in juvenile proceedings.

- I. For press releases or other public comment concerning the filing of a request for commutation of a federal death sentence or whether such a sentence should be commuted, special rules apply. In clemency matters, the Department acts both as prosecutor and as advisor to the President on the issue of clemency. In order to ensure clarity about the role in which the Department is making a public comment and to ensure that there is no potential for infringement upon the President's prerogative in exercising his clemency powers or conflict in the Department's role in such matters, press releases or other comment to the press concerning the issue of clemency should be transmitted through the Office of Public Affairs to the Deputy Attorney General for final approval.
- J. Prior to conducting a press conference or making comments on a pending investigation regarding another DOJ component, the U.S. Attorney shall coordinate any comments, including any written statements, with the affected component.
- K. The Office of Inspector General is exempt from any approval requirement for media contacts. However, the Office of Inspector General should inform the Office of Public Affairs on public or other media issues.

[Added November 2003] [cited in USAM 1-7.401]

### **1-7.500 - Release of Information in Criminal and Civil Matters—Non-Disclosure**

At no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

### **1-7.520 - Release of Information in Criminal and Civil Matters—Disclosable Information**

Department personnel, subject to specific limitations imposed by law or court rule or order and consistent with the provisions of these guidelines, may make public the following information in any criminal case in which charges have been brought:

The defendant's name, age, residence, employment, marital status, and similar background information;

- A. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;

- B. The identity of the investigating and/or arresting agency and the length and scope of an investigation;
- C. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations; and
- D. In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate United States Attorney or Assistant Attorney General.

In civil cases, Department personnel may release similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest.

[cited in USAM 1-7.401]

### **1-7.530 - Disclosure of Information Concerning Ongoing Investigations**

- A. Except as provided in subparagraph B. of this section, components and personnel of the Department of Justice shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.
- B. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media.

[cited in USAM 1-3.000; USAM 1-7.401]

### **1-7.531 - Comments on Requests for Investigations**

Individuals, groups, or organizations often send letters to the Department of Justice or a Department component requesting that a person or entity be investigated for violations of law. Sometimes, the requestor then conducts a press conference or releases a statement leaving an implication that an investigation will result. This can cause media inquiries.

Receipt of a request to open an investigation may be publicly acknowledged. Care should be taken to avoid any implication that the referral will necessarily lead to an investigation. It should be pointed out that there is a distinction between "reviewing a request for an investigation" and "opening an investigation."

Any acknowledgment should state that such requests are referred to the proper investigative agency for review but that no decision has been made whether to proceed on the specific request

received. Finally, it should be noted that all substantiated allegations are reviewed in light of The Principles of Federal Prosecution (see USAM 9-27.000), and the Department does not ordinarily confirm or deny the existence or status of an investigation.

The same considerations apply if there is an investigation already underway when such a request is received. If the existence of an investigation is not public the same procedure should be followed as outlined above.

[Added November 2003] [cited in USAM 1-7.401]

### **1-7.540 - Disclosure of Information Concerning Person's Prior Criminal Record**

Personnel of the Department shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record either during an investigation or at a trial. However, in certain extraordinary situations such as fugitives or in extradition cases, departmental personnel may confirm the identity of defendants or subject and the offense or offenses. Where a prior conviction is an element of the current charge, such as in the case of a felon in possession of a firearm, departmental personnel may confirm the identity of the defendant and the general nature of the prior charge where such information is part of the public record in the case at issue.

[cited in USAM 1-7.401]

### **1-7.550 - Concerns of Prejudice**

Because the release of certain types of information could tend to prejudice an adjudicative proceeding, Department personnel should refrain from making available the following:

- A. Observations about a defendant's character;
- B. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
- C. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or to the refusal by the defendant to submit to such tests or examinations;
- D. Statements concerning the identity, testimony, or credibility of prospective witnesses;
- E. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;
- F. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

### **1-7.600 - Assisting the News Media**

- A. Other than by reason of a Court order, Department personnel shall not prevent the lawful efforts of the news media to photograph, tape, record or televise a sealed crime scene from outside the sealed perimeter.
- B. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, Department personnel with the prior approval of the appropriate United States Attorney may assist the news media in photographing, taping, recording or televising a law enforcement activity. The United States Attorney shall consider whether such assistance would:
1. Unreasonably endanger any individual;
  2. Prejudice the rights of any party or other person; and
  3. Is not otherwise proscribed by law.
- C. A news release should contain a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
- D. In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants, and to any multi-agency action in which Department personnel participate.
- E. Justice Department employees who obtain what may be evidence in any criminal or civil case or who make or obtain any photographic, sound or similar image thereof, in connection with a search or arrest warrant, may not disclose such material to the news media without the prior specific approval of the United States Attorney or Assistant Attorney General, who shall consider applicable regulations and policy, or upon a court order directing such production.

If news media representatives are present, Justice Department personnel may request them to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media declines to withdraw, Department personnel should consider cancelling the action if that is a practical alternative.

Exceptions to the above policy may be granted in extraordinary circumstances by the Office of Public Affairs.

[cited in USAM 1-3.000]

### **1-7.700 - Freedom of Information (FOIA)**

Nothing contained herein is intended to control access to Department of Justice records which are publicly available under provisions of the Freedom of Information Act (FOIA).

(28 U.S.C. 509) (Order No. 469-71, 367 F. 21028, No. 3, 1971. Amended by Order No. 602-75, 40 FR 22119, May 20, 1975)

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## General Information Regarding Disclosure to Media

Privacy Act of 1974: “No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant”<sup>1</sup> to written consent of the individual to whom the record pertains or under certain circumstances as described in the Privacy Act.

- (b)(3): Pursuant to a published routine use (which requires compatible purpose):
  - Central Records System, System of Records Notice 63 Fed. Reg. 8671, 8682 (Feb. 20, 1998): “Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2.”
  - Blanket Routine Use 3: allows disclosure to “members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the FBI, e.g., ... to provide notification of arrests...or to keep the public appropriately informed of other law enforcement or FBI matters or other matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal or civil cases will be governed by the provisions of 28 CFR 50.2)”
    - 28 C.F.R. §50.2: contains conditions and limitations for releasing certain information about criminal defendants such that the following information may be made public:
      - ❖ Defendant’s name, age, residence, employment, marital status, and similar background information.
      - ❖ Substance or text of the charge, such as a complaint, indictment, or information.
      - ❖ Identity of the investigating and/or arresting agency and the length or scope of an investigation.
      - ❖ Circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.<sup>2</sup>
  - Compatible Purpose: the purpose for which the FBI collected the information, must be compatible with the purpose for which we disclose it; e.g., collected for law enforcement purpose (investigation) so must have law enforcement purpose for disclosure (trust and faith in integrity of investigative process – legitimate public interest).

<sup>1</sup> Privacy Act 5 USC 552a(b)

<sup>2</sup> 28 C.F.R. § 50.2 (2015).

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- (b)(9): Disclosure is allowed “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.”<sup>3</sup>
  - Limitation: the above exception does not authorize the disclosure of a Privacy Act protected record to an individual Member of Congress acting on his or her own behalf.<sup>4</sup>

Penalties:

- If the court determines that the agency acted in a manner which was intentional or willful, the US is liable to the individual for actual damages (minimum of \$1,000) and costs of the action and reasonable attorney fees.
  - Intentional and willful: terms of art;<sup>5</sup> the Privacy Act’s legislative history indicates this standard is “[o]n a continuum between negligence and the very high standard of willful, arbitrary, or capricious conduct,” and that it “is viewed as only somewhat greater than gross negligence.”<sup>6</sup>
    - Strict liability is not imposed “for every affirmative or negligent action that might be said technically to violate the Privacy Act’s provisions.”<sup>7</sup>
    - Liability is imposed “only when the agency... commit[s] the act without grounds for believing it to be lawful, or by flagrantly disregarding others’ rights under the Act.”<sup>8</sup>
- Unauthorized disclosure of information is an OPR offense and the Privacy Act also contains criminal penalties for knowing, willful disclosure of protected information to any person or agency not entitled to receive it.<sup>9</sup>

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<sup>3</sup> Privacy Act 5 USC 552a(b)(9)

<sup>4</sup> OMB Privacy Act Implementation Guidelines and Responsibilities, 40 Fed. Reg. 28948, 28955 (July 9, 1975). *See also* Swenson v. United States Postal Service, 890 F.2d 1075 (9<sup>th</sup> Cir. 1989) (“the clear language of the Privacy Act exemption in §552a(b)(9) applies only to a house of congress or a committee or subcommittee, not to individual congressmen”).

<sup>5</sup> “The Privacy Act’s intent or willfulness requirement is peculiar to the act and must not be confused with less exacting standards parading under the same name from other common law or statutory sources.” *Convertino v. DOJ*, 769 F. Supp. 2d 139, 145-46 (D.D.C. 2011) (rev’d and remanded on other grounds) citing *White v. OPM*, 840 F.2d 85, 87 (D.C. Cir. 1988) (per curiam).

<sup>6</sup> 120 Cong. Rec. 40,406 (1974), reprinted in Source Book at 862, available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/LH\\_privacy\\_act-1974.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/LH_privacy_act-1974.pdf)

<sup>7</sup> *Albright v. U.S.*, 732 F. 2d 181, 189 (D.C.Cir. 1984).

<sup>8</sup> *Id.*

<sup>9</sup> See Privacy Act 5 USC 552(i)(1)

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