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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.

[redacted] b5

[redacted] b5

[redacted] b5

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

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-------- Original message --------
From: "Baker, James A. (OGC) (FBI)" [redacted]
Date: 10/27/16 8:58 PM (GMT-05:00)
To: "James B. Comey" [redacted] @ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)" [redacted] b7E
Subject: RE: Here is what I have drafted.

I like it but my only question is [redacted] b5

[redacted]

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------- Original message -------
From: "James B. Comey" <[redacted] @ic.fbi.gov>
Date: 10/27/2016 8:40 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted] "Baker, James A. (OGC) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)" [redacted] b7E
Subject: Here is what I have drafted.

[redacted] b5

[redacted] b5

[redacted] b5

[redacted] b5

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

Dave

From: Baker, James A. (OGC) (FBI)
Sent: Thursday, October 27, 2016 8:58 PM b7E
To: James B. Comey <[redacted](O)1@ic.fbi.gov>; Rybicki, James E. (DO) (FBI) [redacted] Bowdich, David L. (DO) (FBI) [redacted]
Subject: RE: Here is what I have drafted.

[redacted] b5

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-------- Original message --------
From: "James B. Comey" <[redacted](O)1@ic.fbi.gov>
Date: 10/27/2016 8:40 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted] "Baker, James A. (OGC) (FBI)" b7E
[redacted] "Bowdich, David L. (DO) (FBI)" [redacted]
Subject: Here is what I have drafted

[redacted] b5

[redacted] b5

b5

[redacted] (DO) (FBI) b6 b7C

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) b6 b7C
Subject: Friday Evening Coverage

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 b7C

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 form 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 Weed 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) b6 b7C

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) b6 b7C
Subject: Saturday Coverage

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 b7C

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/thetwo-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

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

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-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.

James B. Comey

From: James B. Comey
Sent: Saturday, October 29, 2016 5:31 PM
To: [redacted](DO) (FBI) b6 b7C
Subject: RE: Saturday Coverage

Well done. Thanks.

-

-------- Original message --------
From: [redacted] (DO) (FBI)" [redacted] b6 b7C
Date: 10/29/16 2:42 PM (GMT-05:00) b7E
To: "James B. Comey" [redacted](O)1 [redacted]@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" [redacted] [redacted](DO) (FBI)" [redacted] "Kortan, Michael P. (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)" [redacted](DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" [redacted]
Subject: Saturday Coverage

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 b7C

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/thetwo-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-judiciary-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

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&region=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 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
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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) b6 b7C

From: [redacted] (DO) (FBI)

Sent: Sunday, October 30, 2016 7:02 PM

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) b6 b7C

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 b7C

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 reignited email controversy in hopes of sowing fresh doubts about Clinton's trustworthiness. "As far

on the reignited email controversy in hopes of sowing fresh 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.

Rybicki, James E. (DO) (FBI)

From:	Rybicki, James E. (DO) (FBI)
Sent:	Monday, October 31, 2016 5:02 PM
To:	James B. Comey
Subject:	Fwd: drafts
Attachments:	2016-10-31 DOJ to Leahy et al. DRAFT.docx; 2016-10-29 Carper-Leahy-Feinstein-Cardin to DOJ FBI.pdf; 2016-10-28 Cummings-Conyers to DOJ FBI.pdf; 2016-10-31 DOJ to Cummings-Conyers DRAFT.docx

-------- Original message --------
From: "Herring, Jason V. (CD) (FBI)" [redacted] b6 b7C b7E
Date: 10/31/16 11:42 AM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted] "Bowdich, David L. (DO) (FBI)" [redacted] "Steinbach, Michael B. (DO) (FBI)" [redacted] "Priestap, E. W. (CD) (FBI)" [redacted] "Strzok, Peter P. (CD) (FBI)" [redacted] "Moffa, Jonathan C. (CD) (FBI)" [redacted] "Baker, James A. (OGC) (FBI)" [redacted] "Anderson, Trisha B. (OGC) (FBI)" [redacted] (OGC) (FBI)" [redacted] "Kortan, Michael P. (DO) (FBI)" [redacted] OGC) (FBI)" [redacted]
Subject: FW: drafts

For visibility, attached are two letters received from the Hill since last Friday that request additional information and briefings. (A letter from Leahy, Feinstein, Carper, and Cardin... and a letter from Cummings and Conyers.) These letters from the Hill were addressed to both the AG and the Director. Also attached are proposed response letters by DOJ. The draft responses are short and sweet and answer the mail. I plan to give DOJ a thumbs up on these response letters unless anyone objects...

DOJ is hoping to get the response letters out late this afternoon just before COB.

Jason

From: O'Brien, Alicia C (OLA) [mailto:Alicia.C.O'Brien@usdoj.gov] b7E
Sent: Monday, October 31, 2016 11:27 AM
To: Herring, Jason V. (CD) (FBI) [redacted]
Subject: drafts

Thanks in advance.

Alicia C. O'Brien
Deputy Assistant Attorney General
Office of Legislative Affairs
(202) 305-8035
Alicia.C.O'Brien@usdoj.gov

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,

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

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

PRINTED ON RECYCLED PAPER

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

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

Herring, Jason V. (CD) (FBI)

From:	Herring, Jason V. (CD) (FBI)
Sent:	Monday, October 31, 2016 5:20 PM
To:	James B. Comey; Rybicki, James E. (DO) (FBI); Kortan, Michael P. (DO) (FBI)
Subject:	Fwd: 10-29-16 Letter to AG Lynch and Director Comey
Attachments:	2016-10-31 DOJ to Cummings-Conyers.pdf; 2016-10-31 DOJ to Carper-Leahy-Feinstein-Cardin.pdf

Sir,

Attached are the letters DOJ sent to the Hill today. They did coordinate with me in advance...

Jason

–

-------- Original message --------
From: "O'Brien, Alicia C (OLA)" <Alicia.C.O'Brien@usdoj.gov>
Date: 10/31/2016 3:58 PM (GMT-05:00)
To: "Herring, Jason V. (CD) (FBI)" [redacted] b7E
Cc: "Kadzik, Peter J (OLA) (JMD)" <Peter.J.Kadzik@usdoj.gov>, "Beers, Elizabeth R. (DO) (FBI)" [redacted]
Subject: RE: 10-29-16 Letter to AG Lynch and Director Comey

FYSA, finals attached.

Alicia C. O'Brien
Deputy Assistant Attorney General
Office of Legislative Affairs
(202) 305-8035
Alicia.C.O'Brien@usdoj.gov

From: Herring, Jason V. (CD) (FBI) [mailto [redacted] b7E
Sent: Monday, October 31, 2016 2:29 PM
To: O'Brien, Alicia C (OLA)
Cc: Kadzik, Peter J (OLA); Beers, Elizabeth R. (DO) (FBI)
Subject: RE: 10-29-16 Letter to AG Lynch and Director Comey

We are good with these responses.... Jason

From: O'Brien, Alicia C (OLA) [mailto:Alicia.C.O'Brien@usdoj.gov]
Sent: Monday, October 31, 2016 1:37 PM
To: Herring, Jason V. (CD) (FBI [redacted] b7E
Cc: Kadzik, Peter J (OLA) (JMD) <Peter.J.Kadzik@usdoj.gov>; Beers, Elizabeth R. (DO) (FBI) [redacted]

~~ATTORNEY CLIENT PRIVILEGED~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

[redacted] b7E

Subject: RE: 10-29-16 Letter to AG Lynch and Director Comey

Perfect, thanks.

Alicia C. O'Brien
Deputy Assistant Attorney General
Office of Legislative Affairs
(202) 305-8035
Alicia.C.O'Brien@usdoj.gov

From: Herring, Jason V. (CD) (FBI) [mailto:[redacted] b7E
Sent: Monday, October 31, 2016 1:32 PM
To: O'Brien, Alicia C (OLA)
Cc: Kadzik, Peter J (OLA); Beers, Elizabeth R. (DO) (FBI)
Subject: RE: 10-29-16 Letter to AG Lynch and Director Comey

Thanks, Alicia. I think your plan to send today is good. I think the letters are fine. I've circulated over here. I don't anticipate any objections. How about if I give you a thumbs up by 3:00 at the latest? Would that work?

Jason

From: O'Brien, Alicia C (OLA) [mailto:Alicia.C.O'Brien@usdoj.gov]
Sent: Monday, October 31, 2016 1:30 PM
To: Herring, Jason V. (CD) (FBI)[redacted] b7E
Cc: Kadzik, Peter J (OLA) (JMD) <Peter.J.Kadzik@usdoj.gov>
Subject: FW: 10-29-16 Letter to AG Lynch and Director Comey

Replying that we plan to send by COB today. The sooner the better on our end. Timing on your end?

Thanks again- Alicia

Alicia C. O'Brien
Deputy Assistant Attorney General
Office of Legislative Affairs
(202) 305-8035
Alicia.C.O'Brien@usdoj.gov

From: Goldberg, Daniel L. (OLA)
Sent: Monday, October 31, 2016 12:17 PM
To: O'Brien, Alicia C (OLA)
Cc: Kadzik, Peter J (OLA)
Subject: FW: 10-29-16 Letter to AG Lynch and Director Comey

b6 Per DOJ OIP
b7E

From: Batkin, Gabrielle (HSGAC) [mailto[redacted]
Sent: Monday, October 31, 2016 12:13 PM
To: Herring, Jason V. (CD) (FBI)[redacted]; Park, Chan (Judiciary-Dem)[redacted]; Kadzik, Peter J (OLA) <pkadzik@jmd.usdoj.gov>
Cc: Casey, Mike (Intelligence)[redacted] Lucius, Kristine (Judiciary-Dem)[redacted]; Lewis, Jessica (Foreign Relations)[redacted] Goldberg, Daniel L. (OLA) <dgoldberg@jmd.usdoj.gov>; Secreto, Jim (HSGAC)[redacted]

Subject: Re: 10-29-16 Letter to AG Lynch and Director Comey

Peter and Jason, Senator Carper is asking when he can expect a response today? Thanks.

From: Herring, Jason V. (CD) (FBI)
Sent: Saturday, October 29, 2016 4:06 PM
To: Park, Chan (Judiciary-Dem); Kadzik, Peter J (OLA) (JMD)
Cc: Casey, Mike (Intelligence); Batkin, Gabrielle (HSGAC); Lucius, Kristine (Judiciary-Dem); Lewis, Jessica (Foreign Relations); Goldberg, Daniel L. (OLA) (JMD)
Subject: RE: 10-29-16 Letter to AG Lynch and Director Comey

Letter received.

Regards. Jason

--

-------- Original message --------
From: "Park, Chan (Judiciary-Dem)" [redacted]
Date: 10/29/2016 3:57 PM (GMT-05:00)
To: "Kadzik, Peter J (OLA) (JMD)" <Peter.J.Kadzik@usdoj.gov>, "Herring, Jason V. (CD) (FBI)" [redacted] b6 Per DOJ OIP b7E
Cc: "Casey, Mike (Intelligence)" [redacted], "Batkin, Gabrielle (HSGAC)" [redacted] "Lucius, Kristine (Judiciary-Dem)" [redacted], "Lewis, Jessica (Foreign Relations)" [redacted] "Goldberg, Daniel L. (OLA) (JMD)" <Daniel.L.Goldberg@usdoj.gov>
Subject: 10-29-16 Letter to AG Lynch and Director Comey

Good afternoon,

Please see the attached letter to Attorney General Lynch and FBI Director Comey from Senators Carper, Leahy, Feinstein, and Cardin. Please let us know if you have any questions. We look forward to a prompt response. Thank you.

Chan

Chan Park
General Counsel
Senator Patrick Leahy, Ranking Member
U.S. Senate Committee on the Judiciary
Main: 202-224-7703
Direct [redacted] b6 Per DOJ OIP

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 31, 2016

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

This responds to your letter to the Attorney General and the Director of the Federal Bureau of Investigation (FBI), dated October 29, 2016, requesting additional information regarding the FBI's letter of October 28, 2016, related to the investigation into the use of a private email server by former Secretary Clinton. We are sending identical responses to the other Senators who joined in your letter.

The Department of Justice (the Department) appreciates the concerns raised in your letter. We assure you 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.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

~~ATTORNEY CLIENT PRIVILEGED~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~ **OSC HA-17-0515 FBI001629**

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 31, 2016

The Honorable Thomas R. Carper
United States Senate
Washington, DC 20510

Dear Senator Carper:

This responds to your letter to the Attorney General and the Director of the Federal Bureau of Investigation (FBI), dated October 29, 2016, requesting additional information regarding the FBI's letter of October 28, 2016, related to the investigation into the use of a private email server by former Secretary Clinton. We are sending identical responses to the other Senators who joined in your letter.

The Department of Justice (the Department) appreciates the concerns raised in your letter. We assure you 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.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

~~ATTORNEY CLIENT PRIVILEGED~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~ **OSC HA-17-0515 FBI001630**

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 31, 2016

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

This responds to your letter to the Attorney General and the Director of the Federal Bureau of Investigation (FBI), dated October 29, 2016, requesting additional information regarding the FBI's letter of October 28, 2016, related to the investigation into the use of a private email server by former Secretary Clinton. We are sending identical responses to the other Senators who joined in your letter.

The Department of Justice (the Department) appreciates the concerns raised in your letter. We assure you 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.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

~~ATTORNEY CLIENT PRIVILEGED~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~ **OSC HA-17-0515 FBI001631**

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 31, 2016

The Honorable Benjamin L. Cardin
United States Senate
Washington, DC 20510

Dear Senator Cardin:

This responds to your letter to the Attorney General and the Director of the Federal Bureau of Investigation (FBI), dated October 29, 2016, requesting additional information regarding the FBI's letter of October 28, 2016, related to the investigation into the use of a private email server by former Secretary Clinton. We are sending identical responses to the other Senators who joined in your letter.

The Department of Justice (the Department) appreciates the concerns raised in your letter. We assure you 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.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

~~ATTORNEY CLIENT PRIVILEGED~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 31, 2016

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

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Cummings and Congressman Conyers:

This responds to your letter to the Attorney General and the Director of the Federal Bureau of Investigation (FBI), dated October 28, 2016, requesting additional information regarding the FBI's letter of the same date related to the investigation into the use of a private email server by former Secretary Clinton.

The Department of Justice (the Department) appreciates the concerns raised in your letter. We assure you 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.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary

~~ATTORNEY CLIENT PRIVILEGED~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~ **OSC HA-17-0515 FBI001633**

[redacted](DO) (FBI) b6 b7C

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) b6 b7C
Subject: Monday night coverage

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 b7C

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 strict limit on official

wants the politically charged investigation to follow standard procedures, including a strict limit 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 Hilary 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)

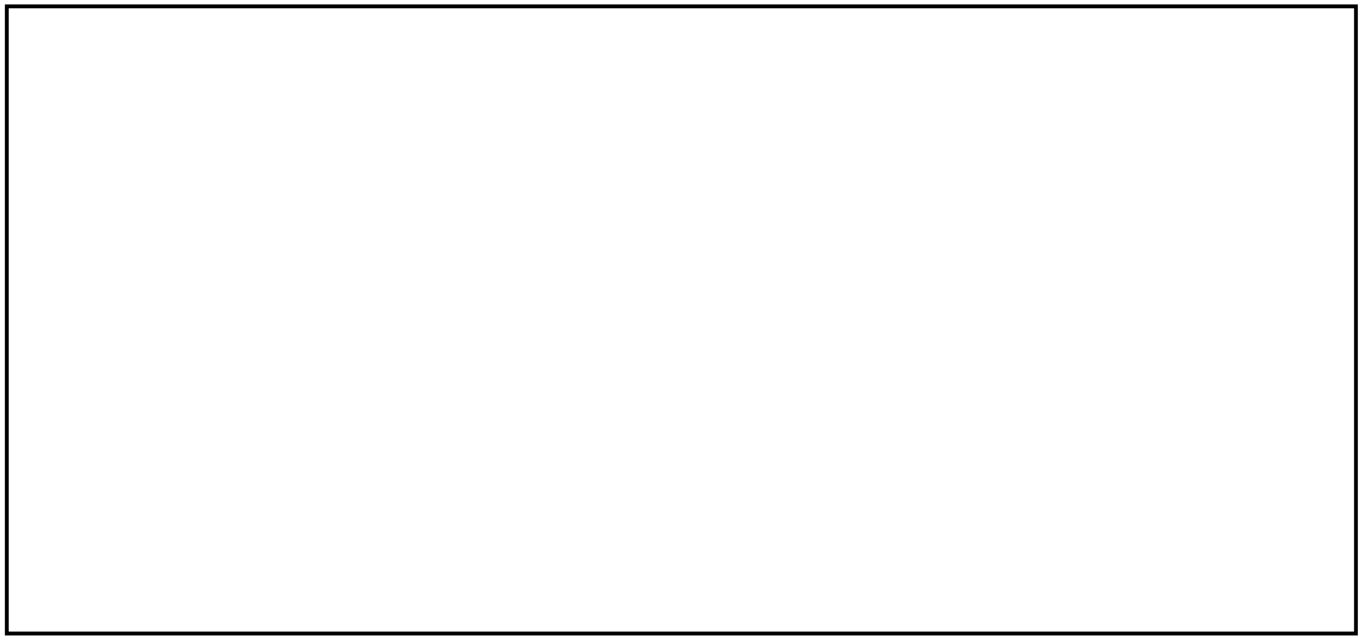
From: Rybicki, James E. (DO) (FBI)
Sent: Friday, November 04, 2016 5:22 PM
To: James B. Comey
Subject: Current Version
Attachments: 11.04.16 Letter.docx

Rybicki, James E. (DO) (FBI)

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

From: Rybicki, James E. (DO) (FBI)
Sent: Friday, November 4, 2016 5:22 PM
To: (O)1 @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 discussuon. 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)

[redacted] b5

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] (OGC) (FBI); [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); [redacted] Anderson, Trisha B. (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] Kortan, Michael P. (DO) (FBI); [redacted] Herring, Jason V. (CD) (FBI); [redacted] Moffa, Jonathan C. (CD) (FBI); [redacted]
Subject: Current Version

b6
b7C
b7E

[redacted] (DO) (FBI) b6 b7C

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

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 b7C

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

http://www.wsj.com/articles/fbi-comey-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/2016/11/06/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

infuriated 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.
<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="imIn 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] b6 b7C b7E
Date: 11/6/16 7:15 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted]
Subject: Fwd: For Comey

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] (S) b6 b7C b7E
Date: 11/06/2016 5:56 PM (GMT-05:00)
To: "Turman, Kathryn M. (DO) (FBI)" [redacted]
Subject: For Comey

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:

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.

(S)

b6
b7C

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)" [redacted] b7E
Date: 11/6/16 9:31 PM (GMT-05:00)
To: "James B. Comey" <jcb.dir@ic.fbi.gov>
Subject: Fwd: For Comey

-

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Hang in there.
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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]
(S)

b6
b7C

Rybicki, James E. (DO) (FBI)

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] (S) b6 b7C
Subject: Fwd: Midyear thoughts
Attachments: Midyear thoughts.docx

-

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" <[redacted] (O)1. @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

[redacted] b6 b7C

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 <[redacted]@ic.fbi.gov> wrote:

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" <[redacted]@ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

Jim Comey

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 <(O)1 @ic.fbi.gov> wrote:

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" <(O)1 @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

Jim Comey

James B. Comey

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" < (O)1 @ic.fbi.gov>
Date: 11/8/16 4:23 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
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 (O)1 @ic.fbi.gov> wrote:

-

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" < (O)1 @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

Jim Comey

James B. Comey

From: James B. Comey
Sent: Monday, November 28, 2016 9:53 PM
To: [redacted](DO) (FBI) b6 b7C
Subject: RE: Monday evening coverage

So pretty solid support, then.

-------- Original message --------
From: [redacted] (DO) (FBI)" [redacted] b6 b7C
Date: 11/28/16 9:47 PM (GMT-05:00) b7E
To: "James B. Comey" <[redacted](O)1@ic.fbi.gov>, "Kortan, Michael P. (DO) (FBI)" [redacted] "Rybicki, James E. (DO) (FBI)" [redacted] [redacted] (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" [redacted]
Subject: Monday evening coverage

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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.
[redacted] b6 b7C

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 inquirywas 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

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.

2) The Hill: Juan Williams- Dark Days for the FBI
This story ends with the demise of James Comey as FBI chief.
Let's begin with the news that President-elect Trump has suggested he will not pursue criminal investigations by the FBI — and possible prosecution — of Hillary Clinton.
The only reason that qualifies as news is because the FBI chief has reduced the bureau to a nakedly political player, leaving behind its goal of serving justice for all. On the basis of Comey's behavior, Trump thinks it is within his power to direct the Justice Department and the FBI chief, until recently a registered Republican, to prosecute his political rival, Clinton. That twisted conclusion is not true as a matter of law. FBI investigations and federal prosecutions by the Justice Department are legally separate from the executive branch to prevent abuse of political power. As a matter of history, however, the FBI has sometimes abused its power in order to target political outsiders. J. Edgar Hoover's fascination with Martin Luther King Jr.'s sex life is one of the most infamous examples. Right now the FBI's proper role is so out of whack due to Comey's actions that some Democrats, fearing more to come, are asking the Obama White House to preemptively pardon Clinton.

3) National Review Online: A Memo for Attorney General Jeff Sessions
(Written by Robert Delahunty and John Yoo
President-elect Donald Trump and his attorney-general designate Jeff Sessions come to office seeking to restore public confidence in the fairness and impartiality of federal law enforcement. After eight years of Attorneys General Eric Holder and Loretta Lynch, Americans have lost confidence in the Department of Justice. Recognizing this, Trump declared on November 21 that he had ordered his transition team to prepare executive orders to sign "on Day One to restore our laws and bring back our jobs." The most urgent matter that Attorney General Sessions will face is that of deciding the fate of FBI director James Comey. Comey was appointed in 2013 for a statutory term of ten years. In principle, however, he can be removed by the president at any time. President Bill Clinton removed FBI director William Sessions about halfway through his term on charges that Sessions had misused official resources. Although President Clinton discharged Sessions for cause, the statute creating the FBI director does not limit the grounds for termination, and we believe that the president's constitutional authority of removal would allow him to fire Comey for any reason. Rather than firing the FBI director, however, it is more likely that the president would first request his resignation. We think that Director Comey should leave office for the good of the FBI and the nation.

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) b6 b7C

From: [redacted] (DO) (FBI)
Sent: Monday, November 28, 2016 9:57 PM
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.

-

-------- Original message --------
From: "James B. Comey" <[redacted](O)1@ic.fbi.gov>
Date: 28/11/2016 21:52 (GMT-05:00)
To: [redacted] (DO) (FBI)" [redacted] b6 b7C b7E
Subject: RE: Monday evening coverage

So pretty solid support, then.

-

-------- Original message --------
From: [redacted] (DO) (FBI)" [redacted] b6 b7C b7E
Date: 11/28/16 9:47 PM (GMT-05:00)
To: "James B. Comey" <[redacted](O)1@ic.fbi.gov>, "Kortan, Michael P. (DO) (FBI)" [redacted] "Rybicki, James E. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" [redacted]
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b6
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[redacted] b6 b7C

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 b7C

[redacted] b6 b7C

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 b7C

[redacted] b6 b7C b7E

Hamrick, Erica

From:	Shea, Carol (USAEO) [redacted]@usdoj.gov>	b6 Per EOUSA b7C Per EOUSA
Sent:	Thursday, February 16, 2017 5:29 PM	
To:	Hamrick, Erica	
Cc:	Macklin, Jay (USAEO)	
Subject:	Emailing - Certification (021617).pdf	
Attachments:	Certification (021617).pdf	

Here is the certification for the email production sent yesterday.

CERTIFICATION

I, [redacted] affirm that, to the best of my knowledge and belief, the first installment production of email records collected from Director James Comey's Federal Bureau of Investigation email accounts and provided to the U.S. Office of Special Counsel in partial response to Request No. 3 in OSC's November 14, 2016 Request for Information and Documents are true, accurate and complete copies of responsive records.

b6
b7C

[redacted]

[redacted] Supervisory Paralegal Specialist

Office of the General Counsel, FBI

2-16-17

Date

COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Friday, July 01, 2016 9:10 AM
To: RYBICKI, JAMES E. (DO) (FBI)
Subject: What I will say Tuesday on phone --- UNCLASSIFIED

Classification: UNCLASSIFIED
==========

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.
==========
Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Friday, July 01, 2016 12:39 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: --- UNCLASSIFIED
Attachments: MYE JBC June 30 2016 1622.pdf; MYE JBC June 30 2016.pdf.docx

Classification: UNCLASSIFIED
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Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

COMEY, JAMES B. (DO) (FBI)

From:	COMEY, JAMES B. (DO) (FBI)
Sent:	Friday, July 01, 2016 6:36 PM
To:	COMEY, JAMES B. (DO) (FBI)
Subject:	— UNCLASSIFIED
Attachments:	MYE JBC July 1 2016.docx; MYE JBC July 1 2016.pdf

Classification: UNCLASSIFIED

TRANSITORY RECORD

Classification: UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1410536-000

Total Deleted Page(s) = 88
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COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Saturday, July 02, 2016 4:53 PM
To: RYBICKI, JAMES E. (DO) (FBI)
Subject: FW: — UNCLASSIFIED
Attachments: MYE JBC July 1 2016.docx; MYE JBC July 1 2016.pdf

Classification: UNCLASSIFIED

Here is what I'm going with so far. [redacted] b5

[redacted]

From: COMEY, JAMES B. (DO) (FBI)
Sent: Friday, July 01, 2016 6:36 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: — UNCLASSIFIED

Classification: UNCLASSIFIED

TRANSITORY RECORD

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

RYBICKI, JAMES E. (DO) (FBI)

From: RYBICKI, JAMES E. (DO) (FBI)
Sent: Saturday, July 02, 2016 6:45 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: MYE JBC July 2 2016 --- UNCLASSIFIED//~~FOUO~~
Attachments: MYE JBC July 2 2016.docx

Classification: UNCLASSIFIED//~~FOUO~~
~~ATTORNEY-CLIENT PRIVILEGED INFORMATION/DELIBERATIVE PROCESS PRIVILEGED DOCUMENT~~
==========
TRANSITORY RECORD

[redacted] This version will be uploaded for tomorrow. b5

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Classification: UNCLASSIFIED//~~FOUO~~

RYBICKI, JAMES E. (DO) (FBI)

From: RYBICKI, JAMES E. (DO) (FBI)
Sent: Monday, July 04, 2016 4:19 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: MYE FINAL For Delivery 07.05.16 --- UNCLASSIFIED//~~FOUO~~
Attachments: MYE FINAL For Delivery 07.05.16.pdf; MYE FINAL For Delivery 07.05.16.docx

Classification: UNCLASSIFIED//~~FOUO~~
~~ATTORNEY-CLIENT PRIVILEGED INFORMATION/DELIBERATIVE PROCESS PRIVILEGED DOCUMENT~~
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TRANSITORY RECORD
TRANSITORY RECORD

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Classification: UNCLASSIFIED//~~FOUO~~

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

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.

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000773

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.

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000774

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."

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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.

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000775

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).

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000776

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

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000777

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.

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~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000778

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.

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000779

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.

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OSC HA-17-0515 FBI000780

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."

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OSC HA-17-0515 FBI000781

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OSC HA-17-0515 FBI000782

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~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000784

Hamrick, Erica

From:	Macklin, Jay (USAEO) [redacted]@usdoj.gov>	b6 Per EOUSA b7C Per EOUSA
Sent:	Wednesday, February 15, 2017 7:57 PM	
To:	Hamrick, Erica	
Cc:	Shea, Carol (USAEO)	
Subject:	Document Production OSC File No. HA-17-0515	
Attachments:	r_Comey_UNet Search 1.pdf; r_Comey_FBINet Search 1.pdf; deletion_codes_-_Comey_2-13-17_Release.docx; Addl_docs_2-13-17.pdf; Signed DPP NDA.PDF	

Erica:

Please find attached responses to OSC's November 14, 2016 letter, Request No. 3:

Our first installment production of emails collected from Director Comey in response to your request to him seeking all documents he sent, received or that discussed the decisions concerning the communications identified in Request No. 3(a)-(d): Bates # OSC HA-17-0515 FBI000637, FBI000643 - FBI000665, FBI000670 - FBI000671, FBI000676 - FBI000784. These records are produced pursuant to the Non-Disclosure Agreement executed by you today pertaining to Deliberative Process Privileged material, a copy of which is attached.

We supplement our disclosure of hard copy records collected from Director Comey in response to your request to him seeking all documents he sent, received or that discussed the decisions concerning the communications identified in Request No. 3(a)-(d). Please see Bates # OSC HA-17-0515 FBI000624 - FBI000625. These records are also produced pursuant to the Non-Disclosure Agreement executed by you today pertaining to Deliberative Process Privileged material.

We also supplement our previous response to your Request No. 2, with reference to this additional policy: 28 C.F.R. Section 50.2.

Also included is a Deletion Code List. A certification for the email records will follow tomorrow.

We are continuing our review of responsive documents. We anticipate sending you another installment production of emails responsive to your request sometime next week.

Please let me know if you have any questions. Thank you.

Jay

DELETION CODES

G. THE LAW ENFORCEMENT PRIVILEGE – THE DISCLOSURE OF THIS INFORMATION COULD CAUSE HARM TO, IMPEDE, IMPAIR, OR HINDER AN INVESTIGATION AND/OR AN INVESTIGATIVE INTEREST OF THE FBI.

K. INFORMATION PROTECTED UNDER THE ATTORNEY-CLIENT PRIVILEGE.

M. INFORMATION WHICH IS NOT RESPONSIVE.

O-1. DIRECTOR COMEY'S EXECUTIVE E-MAIL ADDRESS.

S. PERSONAL IDENTIFYING INFORMATION RELATED TO LAW ENFORCEMENT PERSONNEL AND THEIR FAMILY MEMBERS, THE DISCLOSURE OF WHICH IS ROUTINELY GUARDED FOR SECURITY REASONS.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

50.10 Policy with regard to the issuance of subpoenas to members of the news media, subpoenas for telephone toll records of members of the news media, and the interrogation, indictment, or arrest of, members of the news media.
50.12 Exchange of FBI identification records.
50.14 Guidelines on employee selection procedures.
50.15 Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities.
50.16 Representation of Federal employees by private counsel at Federal expense.
50.17 *Ex parte* communications in informal rulemaking proceedings.
50.18 [Reserved]
50.19 Procedures to be followed by government attorneys prior to filing recusal or disqualification motions.
50.20 Participation by the United States in court-annexed arbitration.
50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.
50.22 Young American Medals Program.
50.23 Policy against entering into final settlement agreements or consent decree that are subject to confidentiality provisions and against seeking or concurring in the sealing of such documents.
50.24 Annuity broker minimum qualifications.
50.25 Assumption of concurrent Federal criminal jurisdiction in certain areas of Indian country.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.*, 1973c; and Public Law 107–273, 116 Stat. 1758, 1824.

§ 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

(a) *General.* (1) The availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice. The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.

(2) While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law and by representatives of the press and other media.

(3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement, to a considerable extent, reflects and formalizes the standards to which representatives of the Department have adhered in the past. Nonetheless, it will be helpful in ensuring uniformity of practice to set forth the following guidelines for all personnel of the Department of Justice.

(4) Because of the difficulty and importance of the questions they raise, it is felt that some portions of the matters covered by this statement, such as the authorization to make available Federal conviction records and a description of items seized at the time of arrest, should be the subject of continuing review and consideration by the Department on the basis of experience and suggestions from those within and outside the Department.

(b) *Guidelines to criminal actions.* (1) These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

(2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

(3) Personnel of the Department of Justice, subject to specific limitations

imposed by law or court rule or order, may make public the following information:

(i) The defendant's name, age, residence, employment, marital status, and similar background information.

(ii) The substance or text of the charge, such as a complaint, indictment, or information.

(iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.

(iv) 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.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

(5) Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

(6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

(i) Observations about a defendant's character.

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

(iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

(vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

(7) Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

(8) This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

(9) Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. [redacted] representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

(c) *Guidelines to civil actions.* Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal records of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

[Order No. 469–71, 36 FR 21028, Nov. 3, 1971, as amended by Order No. 602–75, 40 FR 22119, May 20, 1975]

§ 50.3 Guidelines for the enforcement of title VI, Civil Rights Act of 1964.

(a) Where the heads of agencies having responsibilities under title VI of the Civil Rights Act of 1964 conclude there is noncompliance with regulations issued under that title, several alternative courses of action are open. In each case, the objective should be to secure prompt and full compliance so that needed Federal assistance may commence or continue.

(b) Primary responsibility for prompt and vigorous enforcement of title VI rests with the head of each department and agency administering programs of Federal financial assistance. Title VI itself and relevant Presidential directives preserve in each agency the authority and the duty to select, from among the available sanctions, the methods best designed to secure compliance in individual cases. The decision to terminate or refuse assistance is to be made by the agency head or his designated representative.

(c) This statement is intended to provide procedural guidance to the responsible department and agency officials in exercising their statutory discretion and in selecting, for each noncompliance situation, a course of action that fully conforms to the letter and spirit of section 602 of the Act and to the implementing regulations promulgated thereunder.

I. ALTERNATIVE COURSES OF ACTION

A. ULTIMATE SANCTIONS

The ultimate sanctions under title VI are the refusal to grant an application for assistance and the termination of assistance being rendered. Before these sanctions may be invoked, the Act requires completion of the procedures called for by section 602. That section require the department or agency concerned (1) to determine that compliance cannot be secured by voluntary means, (2) to consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance, (3) to afford the applicant an opportunity for a hearing, and (4) to complete the other procedural steps outlined in section 602, including notification to the appropriate committees of the Congress.

In some instances, as outlined below, it is legally permissible temporarily to defer action on an application for assistance, pending initiation and completion of section 602 procedures—including attempts to secure voluntary compliance with title VI. Normally, this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for programs of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application.

Whenever action upon an application is deferred pending the outcome of a hearing and subsequent section 602 procedures, the efforts to secure voluntary compliance and the hearing and such subsequent procedures, if found necessary, should be conducted without delay and completed as soon as possible.

B. AVAILABLE ALTERNATIVES

1. Court Enforcement

Compliance with the nondiscrimination mandate of title VI may often be obtained more promptly by appropriate court action than by hearings and termination of assistance. Possibilities of judicial enforcement include (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements or compliance or desegregation plans filed pursuant to agency regulations, (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination, and (3) initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance.

The possibility of court enforcement should not be rejected without consulting the Department of Justice. Once litigation has been begun, the affected agency should consult with the Department of Justice before taking any further action with respect to the noncomplying party.

2. Administrative Action

A number of effective alternative courses not involving litigation may also be available in many cases. These possibilities include (1) consulting with or seeking assistance from other Federal agencies (such as

Rybicki, James E. (DO) (FBI)

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) - (M)

(M)

3(a)-(d)

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

Rybicki, James E. (DO) (FBI)

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.

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

James B. Comey

From: James B. Comey
Sent: Tuesday, November 08, 2016 3:37 PM
To: [redacted] (S) b6 b7C
Subject: Fwd: Midyear thoughts
Attachments: Midyear thoughts.docx

-

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" [redacted] (O)1 @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

[redacted] b6 b7C

From: [redacted] b6 b7C
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 [(O)1] @ic.fbi.gov> wrote:

-

——— Original message ———
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" [(O)1] @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

Jim Comey

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

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 [(O)1 @ic.fbi.gov> wrote:

-

----- Original message -----
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" [(O)1 @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss.

James B. Comey

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" (O)1 @ic.fbi.gov>
Date: 11/8/16 4:23 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" b7E
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 (O)1 @ic.fbi.gov> wrote:

-

------ Original message ------
From: "Rybicki, James E. (DO) (FBI)" b7E
Date: 11/8/16 3:00 PM (GMT-05:00)
To: "James B. Comey" (O)1 @ic.fbi.gov>
Subject: Midyear thoughts

Let me know when you have a moment to discuss

SUBJECT TO NON-DISCLOSURE AGREEMENT

Let me know when you have a moment to discuss.

Jim Comey

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

James B. Comey

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

b6
b7C

[redacted]

[redacted] Her suggestion is attached.

b5
b6
b7C

MCCABE, ANDREW G. (DO) (FBI)

From: MCCABE, ANDREW G. (DO) (FBI)
Sent: Wednesday, May 11, 2016 1:51 PM
To: PRIESTAP, E W. (CD) (FBI)
Cc: COMEY, JAMES B. (DO) (FBI)
Subject: RE: Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED

Thanks very much Bill . Great feedback.

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation
Work: [redacted]
Mobile: [redacted] (S)

b7E

From: PRIESTAP, E W. (CD) (FBI)
Sent: Friday, May 06, 2016 7:17 PM
To: MCCABE, ANDREW G. (DO) (FBI)
Subject: RE: Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED

Sir:

[redacted] and so wanted to provide you my initial thoughts.

b5
b6
b7C

[redacted]

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

b5

Thank you for sharing the below with me.
Bill

(K), (S)

SUBJECT TO NON-DISCLOSURE AGREEMENT

RYBICKI, JAMES E. (DO) (FBI)

From: RYBICKI, JAMES E. (DO) (FBI)
Sent: Friday, June 10, 2016 1:14 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: MYE --- UNCLASSIFIED//~~FOUO~~
Attachments: MYE thoughts 06-10-16.docx

Classification: UNCLASSIFIED//~~FOUO~~
~~DELIBERATIVE PROCESS PRIVILEGED~~ DOCUMENT
==========

==========
Classification: UNCLASSIFIED//~~FOUO~~

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

~~Attorney-Client Privileged Information~~
~~Deliberative Process Privilege~~

I've been trying to imagine what it would look like if I decided to do an FBI only press event to close out our work and hand the matter to DOJ. To help shape our discussions of whether that, or something different, makes sense, I have spent some time crafting what I would say, which follows. In my imagination [redacted] Here is what it might look like: b5

b5

[redacted]

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~
OSC HA-17-0515 FBI000677

COMEY, JAMES B. (DO) (FBI)

From:	COMEY, JAMES B. (DO) (FBI)
Sent:	Sunday, June 12, 2016 6:07 PM
To:	RYBICKI, JAMES E. (DO) (FBI)
Cc:	COMEY, JAMES B. (DO) (FBI)
Subject:	Current MYE document --- UNCLASSIFIED
Attachments:	MYE JBC June 12 2016.pdf

d\plainClassification: UNCLASSIFIED
==========

d\plainTRANSITORY RECORD

d\plain

d\plainHere is my near final. Please have the team review it. I have saved as PDF so the team reads it fresh and not as a track-change.

d\plain==========
Classification: UNCLASSIFIED

d\plain

COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Saturday, June 25, 2016 4:02 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: Current draft --- UNCLASSIFIED
Attachments: MYE JBC June 25 2016.pdf

Classification: UNCLASSIFIED

TRANSITORY RECORD

Most current draft attached.

Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

COMEY, JAMES B. (DO) (FBI)

From:	COMEY, JAMES B. (DO) (FBI)
Sent:	Sunday, June 26, 2016 5:38 PM
To:	RYBICKI, JAMES E. (DO) (FBI)
Subject:	FW: Current draft --- UNCLASSIFIED
Attachments:	MYE JBC June 25 2016.pdf

Classification: UNCLASSIFIED

Current version attached. [redacted] b5

From: COMEY, JAMES B. (DO) (FBI)
Sent: Saturday, June 25, 2016 4:02 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: Current draft --- UNCLASSIFIED

Classification: UNCLASSIFIED

TRANSITORY RECORD

Most current draft attached.

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Thursday, June 30, 2016 9:50 AM
To: RYBICKI, JAMES E. (DO) (FBI)
Subject: Current draft --- UNCLASSIFIED
Attachments: MYE JBC June 30 2016.pdf

Classification: UNCLASSIFIED
==========

==========
Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Thursday, June 30, 2016 10:24 AM
To: RYBICKI, JAMES E. (DO) (FBI)
Subject: Use this --- UNCLASSIFIED
Attachments: MYE JBC June 30 2016.pdf

Classification: UNCLASSIFIED
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Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Thursday, June 30, 2016 4:24 PM
To: RYBICKI, JAMES E. (DO) (FBI)
Subject: Most recent 4:22 pm --- UNCLASSIFIED
Attachments: MYE JBC June 30 2016 1622.pdf

Classification: UNCLASSIFIED
==========

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Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

Hamrick, Erica

From: Macklin, Jay (USAEO) [redacted]@usdoj.gov> b6 Per EOUSA
Sent: Friday, January 27, 2017 4:28 PM b7C Per EOUSA
To: Hamrick, Erica
Cc: Shea, Carol (USAEO)
Subject: Document Production OSC File No. HA-17-0515
Attachments: july.5.briefing.with.edit.pdf; goodlatte.letter.7.5.2016.pdf; Chron 1.pdf; Chron 2.pdf; Chron 3.pdf; Chron 4.pdf; [Untitled].pdf

Erica:

Please find attached an additional response to OSC's November 14, 2016 letter, Request No. 3:

The following paper records were collected from Director Comey in response to your request to him seeking all documents he sent, received or that discussed the decisions concerning the communications identified in Request No. 3(a)-(d): Bates #OSC HA-17-0515 FBI000431-FBI000436, FBI000508- FBI000511, FBI000542-554, FBI000561- FBI000564, FBI000622-FBI000623, and FBI000635- FBI000636. Additional paper records are being reviewed for responsiveness and/or privilege. Should additional responsive, non-privileged records be identified, we will supplement this production. In addition, as we have discussed, once the universe of privileged responsive material has been identified, we will address the issue of a privilege waiver and may supplement this disclosure following any such waiver.

Also included is a certification from FBI Chief of Staff James Rybicki.

Please let me know if you have any questions. Thank you.

Jay

Jay Macklin
General Counsel
Executive Office for U.S. Attorneys
Department of Justice
600 E Street, NW, Ste 5100
Washington, DC 20530
Direct Phone: [redacted] b6 Per EOUSA b7C Per EOUSA
Main Phone: 202-252-1600
Fax: 202-252-1650

BOB GOODLATTE, Virginia
CHAIRMAN

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

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,

BOB GOODLATTE
Chairman

COMEY, JAMES B. (DO) (FBI)

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.

OSC HA-17-0515 FBI000542

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

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.

###

BOB GOODLATTE, Virginia
CHAIRMAN

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

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,

BOB GOODLATTE
Chairman

CERTIFICATION

I, James Rybicki, affirm that, to the best of my knowledge and belief, the paper records collected from Director James Comey and provided to the U.S. Office of Special Counsel (OSC) in partial response to Request No. 3 in OSC's November 14, 2016 Request for Information and Documents are true, accurate and complete copies of responsive records.

James Rybicki, Chief of Staff, FBI

1/27/17
Date

Hamrick, Erica

From: Shea, Carol (USAEO) [redacted]@usdoj.gov> b6 Per EOUSA b7C Per EOUSA
Sent: Friday, April 07, 2017 3:44 PM
To: Hamrick, Erica
Cc: Macklin, Jay (USAEO)
Subject: Final production: OSC Hatch Act matter HA-17-0515
Attachments: DELETION_CODES.PDF; r_January_14_2017_email_to_Clapper.pdf; Certification 040717.pdf

Erica:

Please find the attached final response to OSC's November 14, 2016 letter, Request No. 3:

Our fifth installment production of emails and other electronic records collected from Director Comey in response to your request to him seeking all documents he sent, received or that discussed the decisions concerning the communications identified in Request No. 3(a)-(d): Bates # OSC HA-17-0515 FBI001827 - 1828.

Also included is a Deletion Code List for the redaction, and a Certification for both this production and the production we made on March 22, 2017 (fourth installment of electronic records).

This completes our responses to your November 14, 2016 Letter.

Sincerely,
Carol

Carol L. Shea
Deputy General Counsel
General Counsel's Office
Executive Office for United States Attorneys
600 E. Street, N.W., Suite 5100, BICN
Washington D.C. 20530
[redacted] b6 Per EOUSA b7C Per EOUSA

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COMEY, JAMES B. (DO) (FBI)

From: COMEY, JAMES B. (DO) (FBI)
Sent: Saturday, January 14, 2017 2:21 PM
To: 'James R. Clapper-DNI-'
Subject: RE: Today... --- UNCLASSIFIED

Classification: UNCLASSIFIED

Just having you next to me was enough. As odd as it sounds, I feel empathy for those folks who were so exercised at the end. They are in great pain and want to lash out at somebody to externalize that pain. Not dissimilar from victims of crime or terrorism, to be honest. And I have no doubt they honestly believe it is my fault.

I don't know whether what I did had an impact on the election. I surely hope not and the possibility makes me nauseous even now, but what they may never be able to understand is that I would do the same thing again. I simply cannot make decisions based on whose political ox may be gored by it. One of my lawyers actually asked during our deliberations in October whether I had contemplated that the decision we were about to make might help elect Donald Trump. I replied that I simply couldn't consider that, because down that road lies the end of an independent FBI. The only question is, what's the right decision in this situation? She agreed, but like a good advisor, wanted to raise the issue.

Anyhow, this is a hard time, but I love this mission, I love our people, and, as odd as it sounds, I wouldn't want to be anywhere else at this moment. Six months from now, who knows? Promise to come visit.

Jim

From: James R. Clapper-DNI- [mailto[redacted]
Sent: Friday, January 13, 2017 8:45 PM
To: COMEY, JAMES B. (DO) (FBI)
Subject: Today...

b3 Per ODNI
b6 Per ODNI

Classification: UNCLASSIFIED

Jim:

If I could've thought of something to say during the dramatic exchange at the end of our Star Wars Bar session, I would've....but I couldn't think of anything that would've helped.

I continue to be so impressed and amazed at your capacity for responding so articulately and gracefully to slings and arrows (which, by the way, you don't deserve) in highly charged circumstances. You have unmatched cool.

With great admiration and respect...

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

Jim

==========

Classification: UNCLASSIFIED

==========

Classification: UNCLASSIFIED

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

OSC HA-17-0515 FBI001828

CERTIFICATION

I, [redacted] affirm that, to the best of my knowledge and belief, the fourth and fifth installment production of email records collected from Director James Comey's Federal Bureau of Investigation email accounts and provided to the U.S. Office of Special Counsel in partial response to Request No. 3 in OSC's November 14, 2016 Request for Information and Documents are true, accurate and complete copies of responsive records.

b6
b7C

[redacted]

[redacted] Paralegal Specialist

Office of the General Counsel, FBI

4/7/17

Date

b6
b7C

DELETION CODES

S. PERSONAL IDENTIFYING INFORMATION RELATED TO LAW ENFORCEMENT PERSONNEL AND THEIR FAMILY MEMBERS, THE DISCLOSURE OF WHICH IS ROUTINELY GUARDED FOR SECURITY REASONS.

Hamrick, Erica

From: Macklin, Jay (USAEO) [redacted]@usdoj.gov> b6 Per EOUSA b7C Per EOUSA
Sent: Wednesday, March 22, 2017 7:22 PM
To: Hamrick, Erica
Subject: Document Production OSC File No. HA-17-0515
Attachments: Bates Numbers 574 and 575.pdf; Bates Numbers 624 and 625.pdf; deletion code - addl DR #2 docs.pdf; deletion codes - Comey 3-10-17 Release.pdf; Bates Numbers 670 and 671.pdf; r_Comey_UNet Search 2 Additional Docs..pdf; OCA.docs.pdf

Erica:

Please find attached responses to OSC's November 14, 2016 letter, Request No. 3:

Our fourth installment production of emails and other electronic records collected from Director Comey in response to your request to him seeking all documents he sent, received or that discussed the decisions concerning the communications identified in Request No. 3(a)-(d): Bates # OSC HA-17-0515 FBI000574 - FBI000575, FBI000624 – FBI000625, FBI000670 – FBI000671, FBI001707 – FBI001715, FBI001753 – FBI001826. All of these records are produced pursuant to the Non-Disclosure Agreements executed by you concerning Attorney Client Privileged material, Deliberative Process Privileged material, and Privacy Act protected information, copies of which you already have.

Also, please find attached supplemental responses to OSC's November 14, 2016 letter, Request No. 2:

OSC HA-17-0515 FBI001716 – FBI001752.

Also included are Deletion Code Lists for both groups of records.

We will provide a certification for this production shortly.

Sincerely,
Jay

Attorney-Client Privilege/Attorney Work Product: This communication, along with attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you received this message in error, please reply immediately to the send and delete this message.

DELETION CODES

A. INFORMATION WHICH IS PROPERLY CLASSIFIED PURSUANT TO EXECUTIVE ORDER, THE DISCLOSURE OF WHICH COULD REASONABLY BE EXPECTED TO CAUSE DAMAGE TO THE NATIONAL SECURITY OR THE CONDUCT OF THE GOVERNMENT'S INTERNATIONAL RELATIONS.

H. THE LAW ENFORCEMENT PRIVILEGE - THE DISCLOSURE OF THIS INFORMATION WOULD IMPEDE OR IMPAIR THE EFFECTIVENESS OF AN INVESTIGATIVE TECHNIQUE, METHOD OR PROCEDURE OF THE FBI.

M. INFORMATION WHICH IS NOT RESPONSIVE.

DELETION CODES

M. INFORMATION WHICH IS NOT RESPONSIVE.

O-1. DIRECTOR COMEY'S EXECUTIVE E-MAIL ADDRESS.

S. PERSONAL IDENTIFYING INFORMATION RELATED TO LAW ENFORCEMENT PERSONNEL AND THEIR FAMILY MEMBERS, THE DISCLOSURE OF WHICH IS ROUTINELY GUARDED FOR SECURITY REASONS.

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"[1] 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.[2]
  - 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).

[1] Privacy Act 5 USC 552a(b)
[2] 28 C.F.R. § 50.2 (2015).

- (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."[3]

    - 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.[4]

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;[5] 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."[6]

        - Strict liability is not imposed "for every affirmative or negligent action that might be said technically to violate the Privacy Act's provisions."[7]

        - 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."[8]

- 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.[9]

---

[3] Privacy Act 5 USC 552a(b)(9)
[4] 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 (9th 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").
[5] "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).
[6] 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
[7] Albright v. U.S., 732 F. 2d 181, 189 (D.C.Cir. 1984).
[8] Id.
[9] See Privacy Act 5 USC 552(i)(1)

OSC HA-17-0515 FBI000575

MCCABE, ANDREW G. (DO) (FBI)

From: MCCABE, ANDREW G. (DO) (FBI)
Sent: Wednesday, May 11, 2016 1:51 PM
To: PRIESTAP, E W. (CD) (FBI)
Cc: COMEY, JAMES B. (DO) (FBI)
Subject: RE: Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED

Thanks very much Bill . Great feedback.

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation
Work: [redacted] b7E
Mobile: [redacted] (S)

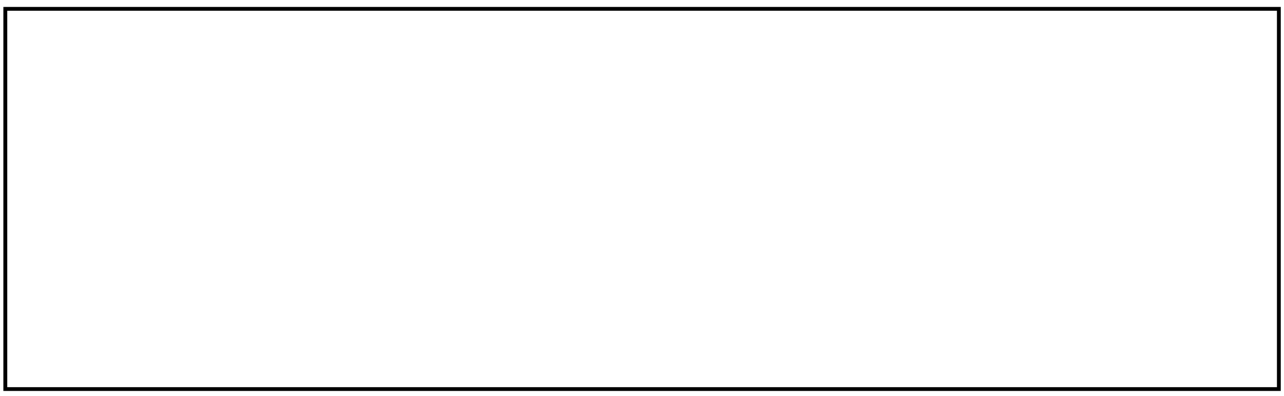
From: PRIESTAP, E W. (CD) (FBI)
Sent: Friday, May 06, 2016 7:17 PM
To: MCCABE, ANDREW G. (DO) (FBI)
Subject: RE: Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED

Sir:

[redacted] and so wanted to provide you my initial thoughts. b5 b6 b7C

[redacted]



b5

Thank you for sharing the below with me.
Bill

From: MCCABE, ANDREW G. (DO) (FBI)
Sent: Friday, May 06, 2016 5:32 PM
To: PRIESTAP, E W. (CD) (FBI); STRZOK, PETER P. (CD) (FBI); MOFFA, JONATHAN C. (CD) (FBI); [redacted] (OGC) (FBI)
Subject: FW: Midyear Exam --- UNCLASSIFIED
Importance: High

b6
b7C

Classification: UNCLASSIFIED

Folks:

The Director composed the below straw man in an effort to compose what a "final" statement might look like in the context of a press conference. This was really more of an exercise for him to get his thoughts on the matter in order, and not any kind of decision about venue, strategy, product, etc.

The Director asked me to share this with you four, but not any further. The only additional people who have seen this draft are Jim Rybicki and Jim Baker. Please do not disseminate or discuss any further.

I do not know if the boss will want to discuss this at the Monday update but please review it before the meeting just in case.

Thanks

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation
Work: [redacted]
Mobile [redacted] (S)

b7E

From: COMEY, JAMES B. (DO) (FBI)
Sent: Monday, May 02, 2016 7:15 PM
To: MCCABE, ANDREW G. (DO) (FBI); BAKER, JAMES A. (OGC) (FBI); RYBICKI, JAMES E. (DO) (FBI)
Cc: COMEY, JAMES B. (DO) (FBI)
Subject: Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED

TRANSITORY RECORD ~~ATTORNEY CLIENT PRIVILEGE~~
~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

Rybicki, James E. (DO) (FBI)

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

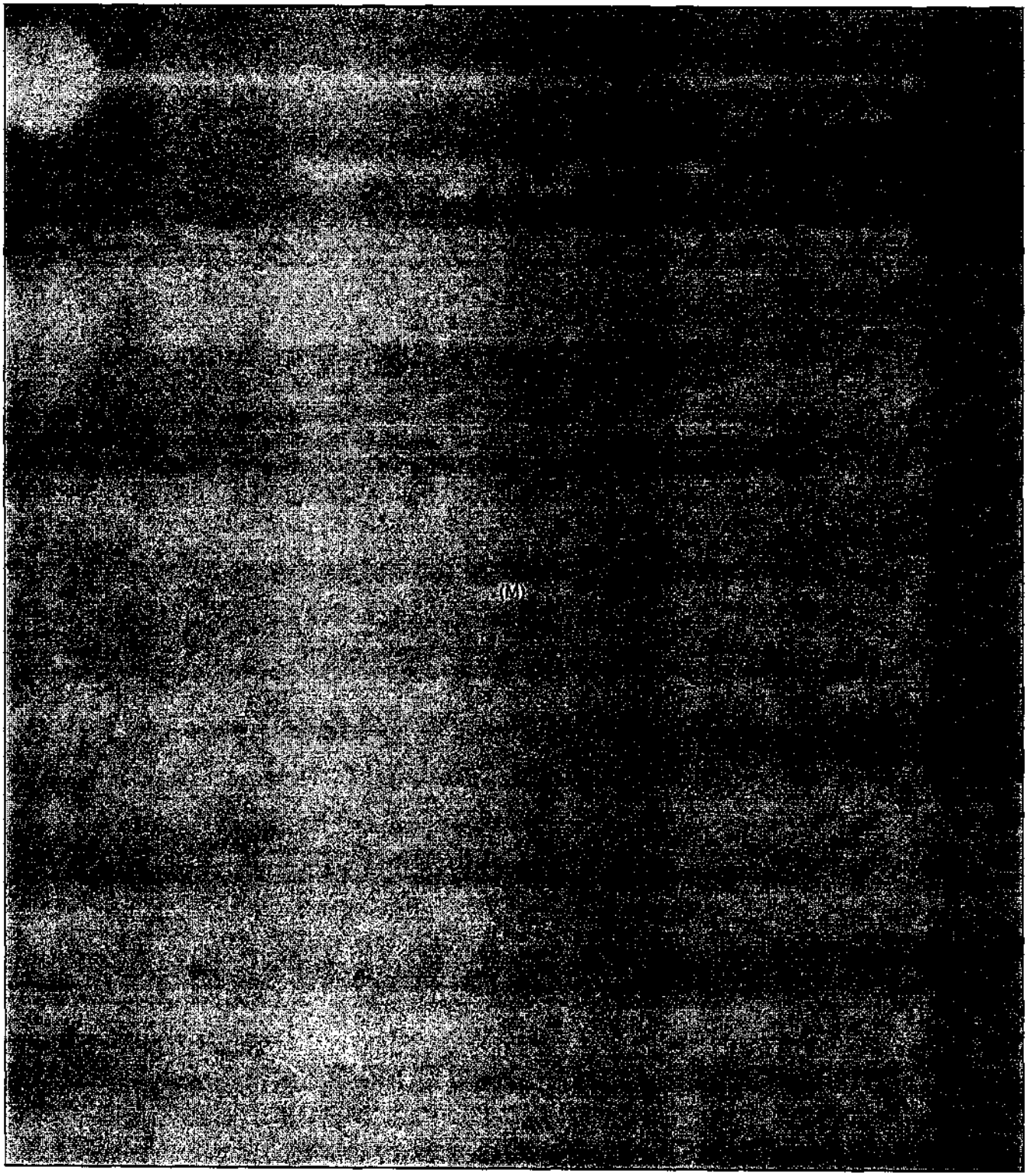
From: Kortan, Michael P. (DO) (FBI)
Sent: Tuesday, May 10, 2016 3:17 PM
To: Rybicki, James E. (DO) (FBI)[redacted] b7E
Subject: Brown Bag Issues list for Wed May 11

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

Office of Public Affairs

Reporter Pen and Pad – Current Issues
May 11, 2016

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



~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

Rybicki, James E. (DO) (FBI)

From: Rybicki, James E. (DO) (FBI)
Sent: Sunday, June 12, 2016 3:33 PM
To: James B. Comey; Mccabe, Andrew G. (DO) (FBI)
Subject: Fwd: D/FBI Tomorrow

[redacted] passing along. b5

--
-------- Original message -------- b6 Per FBI and NSC
From: "Price, Ned C. EOP/NSC" [redacted] b7C b7E
Date: 06/12/2016 3:30 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted] "Kortan, Michael P. (DO) (FBI)" [redacted], "Quinn, Richard P. (DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted]
Cc: "Woog, Carlin R. EOP/NSC" [redacted]
Subject: RE: D/FBI Tomorrow

b5 Per NSC

[redacted]

b6 Per FBI and NSC
-----Original Message----- b7C
From: Price, Ned C. EOP/NSC b7E
Sent: Sunday, June 12, 2016 1:45 PM
To: 'Rybicki, James E. (DO) (FBI)' [redacted] Campbell, Joshua S. (DO) (FBI)' [redacted]
Cc: Woog, Carlin R. EOP/NSC [redacted]
Subject: D/FBI Tomorrow

All,

b5 Per NSC

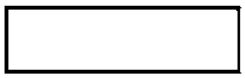
[redacted]

Thanks again,
Ned

Edward (Ned) Price
Spokesperson and Senior Director for Strategic Communications
National Security Council
[redacted]

b6 Per NSC

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~



b6 Per NSC

James B. Comey

From: James B. Comey
Sent: Sunday, June 12, 2016 3:34 PM
To: Rybicki, James E. (DO) (FBI); Mccabe, Andrew G. (DO) (FBI)
Subject: RE: D/FBI Tomorrow

Agree.

--

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 06/12/2016 3:32 PM (GMT-05:00)
To: "James B. Comey" [redacted]@ic.fbi.gov>, "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Subject: Fwd: D/FBI Tomorrow

[redacted] passing along. b5

--
-------- Original message -------- b6 Per FBI and NSC
From: "Price, Ned C. EOP/NSC" [redacted] b7C b7E
Date: 06/12/2016 3:30 PM (GMT-05:00)
To: "Rybicki, James E. (DO) (FBI)" [redacted] "Kortan, Michael P. (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted]
Cc: "Woog, Carlin R. EOP/NSC" [redacted]
Subject: RE: D/FBI Tomorrow

[redacted] b5 Per NSC

b6 Per FBI and NSC
-----Original Message----- b7C
From: Price, Ned C. EOP/NSC b7E
Sent: Sunday, June 12, 2016 1:45 PM
To: 'Rybicki, James E. (DO) (FBI)' [redacted] Campbell, Joshua S. (DO) (FBI)' [redacted]
Cc: Woog, Carlin R. EOP/NSC [redacted]
Subject: D/FBI Tomorrow

All,

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

b5 Per NSC

[redacted]

Thanks again,
Ned

Edward (Ned) Price
Spokesperson and Senior Director for Strategic Communications
National Security Council

[redacted]

b6 Per NSC

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

Mccabe, Andrew G. (DO) (FBI)

From: Mccabe, Andrew G. (DO) (FBI)
Sent: Sunday, June 12, 2016 3:51 PM
To: James B. Comey; Rybicki, James E. (DO) (FBI)
Subject: RE: D/FBI Tomorrow

Also agree

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation
W [redacted] b7E
M [redacted] (S)

From: James B. Comey
Sent: Sunday, June 12, 2016 3:34 PM
To: Rybicki, James E. (DO) (FBI) [redacted] Mccabe, Andrew G. (DO) (FBI) b7E
<Andrew.McCabe@ic.fbi.gov>
Subject: RE: D/FBI Tomorrow

Agree.

--

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" [redacted] b7E
Date: 06/12/2016 3:32 PM (GMT-05:00)
To: "James B. Comey" [redacted] (O)1 @ic.fbi.gov>, "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Subject: Fwd: D/FBI Tomorrow

[redacted] passing along. b5

--

-------- Original message -------- b6 Per FBI and NSC
From: "Price, Ned C. EOP/NSC" [redacted] b7C
Date: 06/12/2016 3:30 PM (GMT-05:00) b7E
To: "Rybicki, James E. (DO) (FBI)" [redacted] "Kortan, Michael P. (DO) (FBI)" [redacted] "Quinn, Richard P. (DO) (FBI)" [redacted] "Campbell, Joshua S. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted]
Cc: "Woog, Carlin R. EOP/NSC" [redacted]
Subject: RE: D/FBI Tomorrow

b5 Per NSC

[redacted]

~~SUBJECT TO NON-DISCLOSURE AGREEMENT~~

b5 Per NSC

[redacted]

b6 Per FBI and NSC
b7C
b7E

-----Original Message-----
From: Price, Ned C. EOP/NSC
Sent: Sunday, June 12, 2016 1:45 PM
To: 'Rybicki, James E. (DO) (FBI)' [redacted] Campbell, Joshua S. (DO) (FBI)' [redacted]
Cc: Woog, Carlin R. EOP/NSC [redacted]
Subject: D/FBI Tomorrow

All,

b5 Per NSC

[redacted]

Thanks again,
Ned

Edward (Ned) Price
Spokesperson and Senior Director for Strategic Communications
National Security Council
[redacted]

b6 Per NSC

[redacted] b6 b7C

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

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 comprehendible.

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] b6 b7C

Retired SSA [redacted]

[redacted]

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KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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

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.[1] 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

[1] *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.

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

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?

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 associatess 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

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) b6 b7C

From: [redacted] (DO) (FBI)
Sent: Wednesday, July 06, 2016 12:46 PM
To: 'Betourney, Chanda (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

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 b7C

From: Betourney, Chanda (Judiciary-Dem) [mailto[redacted] b6 b7C
Sent: Wednesday, July 06, 2016 12:06 PM
To: [redacted] (DO) (FBI)
Subject: FW: 2016-07-06 CEG to FBI (Clinton Investigation Transparency)

[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,

Chanda

Chanda Betourney
Chief Counsel, Civil Law and Oversight
Ranking Member
Senator Patrick Leahy
U.S. Senate Judiciary Committee
[redacted] b6 b7C
(202) 224-7492 (direct)

From: Davis, Patrick (Judiciary-Rep)
Sent: Wednesday, July 06, 2016 11:51 AM
To: [redacted] (DO) (FBI) b6 b7C
Cc: CEG (Judiciary-Rep); Foster, Jason (Judiciary-Rep); Flynn-Brown, Josh (Judiciary-Rep); Betourney, Chanda (Judiciary-Dem)
Subject: 2016-07-06 CEG to FBI (Clinton Investigation Transparency)

[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, Jason_Foster@judiciary-rep.senate.gov, [redacted] and me. b6 b7C

Thanks,
-Patrick

Patrick D. Davis
Investigative Counsel

OSC HA-17-0515 FBI001759

Chairman Charles E. Grassley
U.S. Senate Committee on the Judiciary
(202) 224-5225

OSC HA-17-0515 FBI001760

BOB GOODLATTE, Virginia
CHAIRMAN

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

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,

BOB GOODLATTE
Chairman

U.S. Department of Justice

Federal Bureau of Investigation

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

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

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During the course of the investigation, the FBI interviewed Department of State security employees and reviewed documents regarding cyber security, including the Boswell memorandum, which outlined an increase in cyber actors targeting the personal email accounts of State Department employees.[1] As Secretary Clinton did not believe she would or did receive classified emails on her personal email system, it is unclear that a warning of this nature would have had any impact on her conduct or intent.

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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.

Lastly, concerning questions related to whether other matters may be under investigation, consistent with prior statements, the FBI neither confirms nor denies the existence of non-public investigations.

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.

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Off. Pub. Affs. _____
Off. of Prof. Resp. _____
Rec. Mgmt. _____
Security _____
Training _____
Off. of EEOA _____

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United States Senate
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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 ☐

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Acting Assistant Director
Office of Congressional Affairs

U.S. Department of Justice

Federal Bureau of Investigation

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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Acting Assistant Director
Office of Congressional Affairs

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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Rec. Mgmt. ___
Security ___
Training ___
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1 - FBI ExecSec, Room 6147 TRIM #s 16/DO/2656, 16/DO/2437
1 – A/AD Herring
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JVH

MAIL ROOM ☐

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The Honorable Paul D. Ryan

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Office of Congressional Affairs

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Speaker
United States House of Representatives
Washington, DC 20515

AUG 16 2016

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Dep. Director _____
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EAD-CT/CI _____
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Adm. Serv. _____
CJIS _____
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Ctterrorism _____
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Cyber _____
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Laboratory _____
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Off. of the Gen. Coun. _____
Off of Intell. _____
Off. Pub. Affs. _____
Off. of Prof. Resp. _____
Rec. Mgmt. _____
Security _____
Training _____
Off. of EEOA _____

1 - FBI ExecSec, Room 6147 TRIM # 16/DO/2377
1 – A/AD Herring
1 - Ms. Beers

JVH

MAIL ROOM ☐

OSC HA-17-0515 FBI001783

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Acting Assistant Director
Office of Congressional Affairs

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

AUG 16 2016

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Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

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Office of Congressional Affairs

1 - The Honorable John Conyers
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

AUG 16 2016

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Chairman
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United States House of Representatives
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Asst. Dir.:
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Laboratory
Off. of Cong. Affs.
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Security
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1 - FBI ExecSec, Room 6147 TRIM # 16/do/2351
1 – A/AD Herring JVH 1 - Ms. Beers

MAIL ROOM ☐

OSC HA-17-0515 FBI001789

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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

AUG 16 2016

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Chairman
Permanent Select Committee on Intelligence
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Washington, DC 20515

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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.

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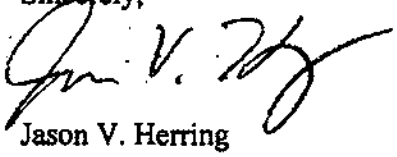

Jason V. Herring
Acting Assistant Director
Office of Congressional Affairs

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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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.

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Off. of the Gen. Coun. _____
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Off. of Prof. Resp. _____
Rec. Mgmt. _____
Security _____
Training _____
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1 - The Honorable Adam B. Schiff
Ranking Member
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515
1 - FBI ExecSec, Room 6147 TRIM #s TRIM # 16/DO/2374
1 – A/AD Herring JTH 1 - Ms. Beers

MAIL ROOM ☐

OSC HA-17-0515 FBI001795

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 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.

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Office of Congressional Affairs

1 - The Honorable Adam B. Schiff
Ranking Member
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United States House of Representatives
Washington, DC 20515

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

AUG 16 2016

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

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Office of Congressional Affairs

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Ranking Member
Committee on Homeland Security and
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United States Senate
Washington, DC 20510

The Honorable Ron Johnson
Chairman
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AUG 16 2016

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1 - FBI ExecSec, Room 6147 TRIM #s 16/DO/2350, 16/DO/2525, 16/DO/2600
1 – A/AD Herring
1 - Ms. Beers
JVH

MAIL ROOM ☐

OSC HA-17-0515 FBI001801

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Acting Assistant Director
Office of Congressional Affairs

U.S. Department of Justice

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
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Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs

Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform

Dear Messrs Chairmen:

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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.

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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
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Committee on the Judiciary
United States Senate
Washington, DC 20510

1 – Honorable Barbara Mikulski
Ranking Member
Committee on Appropriations
Subcommittee on Commerce, Justice, Science
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1 – Honorable Thomas R. Carper
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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.
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Committee on the Judiciary
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1 – Honorable Michael Honda
Ranking Member
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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

The Director's
Chief of Staff,
Jim Rybicki, has
approved this
document for
signature.

[redacted]
(OGC)

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October 28, 2016

Honorable Richard M. Burr
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Select Committee on Intelligence

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Dep. Director
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1 - [redacted] Room 7176
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MAIL ROOM

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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,

Elijah E. Cummings

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

John Conyers, Jr.

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

PRINTED ON RECYCLED PAPER

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

HARRY REID
NEVADA

DEMOCRATIC LEADER

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,

HARRY REID
United States Senator

THAD COCHRAN, MISSISSIPPI, CHAIRMAN
MITCH MCCONNELL, KENTUCKY
RICHARD C. SHELBY, ALABAMA
LAMAR ALEXANDER, TENNESSEE
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CHRISTOPHER A. COONS, DELAWARE
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TAMMY BALDWIN, WISCONSIN
CHRISTOPHER S. MURPHY, CONNECTICUT
BRUCE EVANS, STAFF DIRECTOR
CHARLES E. KIEFFER, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510–6025
http://appropriations.senate.gov

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 Shelby

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
Kolan L. Davis, Chief Counsel and Staff Director
Kristine J. Lucas, Democratic Chief Counsel and Staff Director

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

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

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,

Chuck Grassley

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

MIKE THOMPSON
Member of Congress

Anna G. Eshoo

ANNA ESHOO
Member of Congress

PRINTED ON RECYCLED PAPER

U.S. Department of Justice

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 Patrick J. Leahy
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 Thomas R. Carper
Ranking Member
Committee on Homeland Security and
Governmental Affairs

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

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

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

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

Dear Messrs. Chairmen:

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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

Dep Director
EAD-Adm
EAD-CT/CI
EAD-Cnm
EAD-Intell
EAD-LES
Asst Dir:
Adm Serv
CJIS
Ctrintell
Ctterronam
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
MAIL ROOM

1 - [redacted] Room 7176
1 - FBI ExecSec, Room 6147
1 - A/AD Herring JW H
1 - Ms. Beers

cc: See next page

b6
b7C

1 – Honorable Dianne Feinstein
Vice Chairman
Select Committee on Intelligence

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

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

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

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

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

Hamrick, Erica

b6 Per EOUSA
b7C Per EOUSA

From: Macklin, Jay (USAEO)[redacted]@usdoj.gov>
Sent: Friday, March 03, 2017 1:35 PM
To: Hamrick, Erica
Cc: Shea, Carol (USAEO)
Subject: Document Production OSC File No. HA-17-0515 Part 1 of 2 - Response on 3/3/17
Attachments: Signed ACP NDA; Signed Agreement; signed NDA; deletion codes - Comey 2-28-17 Release.pdf; r_Comey_UNet Search 2 Part 1a.pdf; r_Comey_UNet Search 2 Part 1b.pdf; r_Comey_UNet Search 2 Part 2a.pdf

Erica:

Please find attached responses to OSC's November 14, 2016 letter, Request No. 3:

Our third installment production of emails and other electronic records collected from Director Comey in response to your request to him seeking all documents he sent, received or that discussed the decisions concerning the communications identified in Request No. 3(a)-(d): Bates # OSC HA-17-0515 FBI001331 – FBI001567. This email is Part 1. Additional records will be sent in a second email labeled Part 2. I had to break up the documents due to size. All of these records are produced pursuant to the Non-Disclosure Agreements executed by you concerning Attorney Client Privileged material, Deliberative Process Privileged material, and Privacy Act protected information, copies of which are attached.

Also included is a Deletion Code List.

We are coming to a close with our rolling productions. We have only a few remaining records that I expect we will be able to produce to you early next week. We also owe you a certification for the productions this week and expect to send that to you next week.

Please let me know if you have any questions. Thank you.

Jay

DELETION CODES

G. THE LAW ENFORCEMENT PRIVILEGE – THE DISCLOSURE OF THIS INFORMATION COULD CAUSE HARM TO, IMPEDE, IMPAIR, OR HINDER AN INVESTIGATION AND/OR AN INVESTIGATIVE INTEREST OF THE FBI.

M. INFORMATION WHICH IS NOT RESPONSIVE.

O-1. DIRECTOR COMEY'S EXECUTIVE E-MAIL ADDRESS.

S. PERSONAL IDENTIFYING INFORMATION RELATED TO LAW ENFORCEMENT PERSONNEL AND THEIR FAMILY MEMBERS, THE DISCLOSURE OF WHICH IS ROUTINELY GUARDED FOR SECURITY REASONS.

[redacted] (DO) (FBI)

b6
b7C

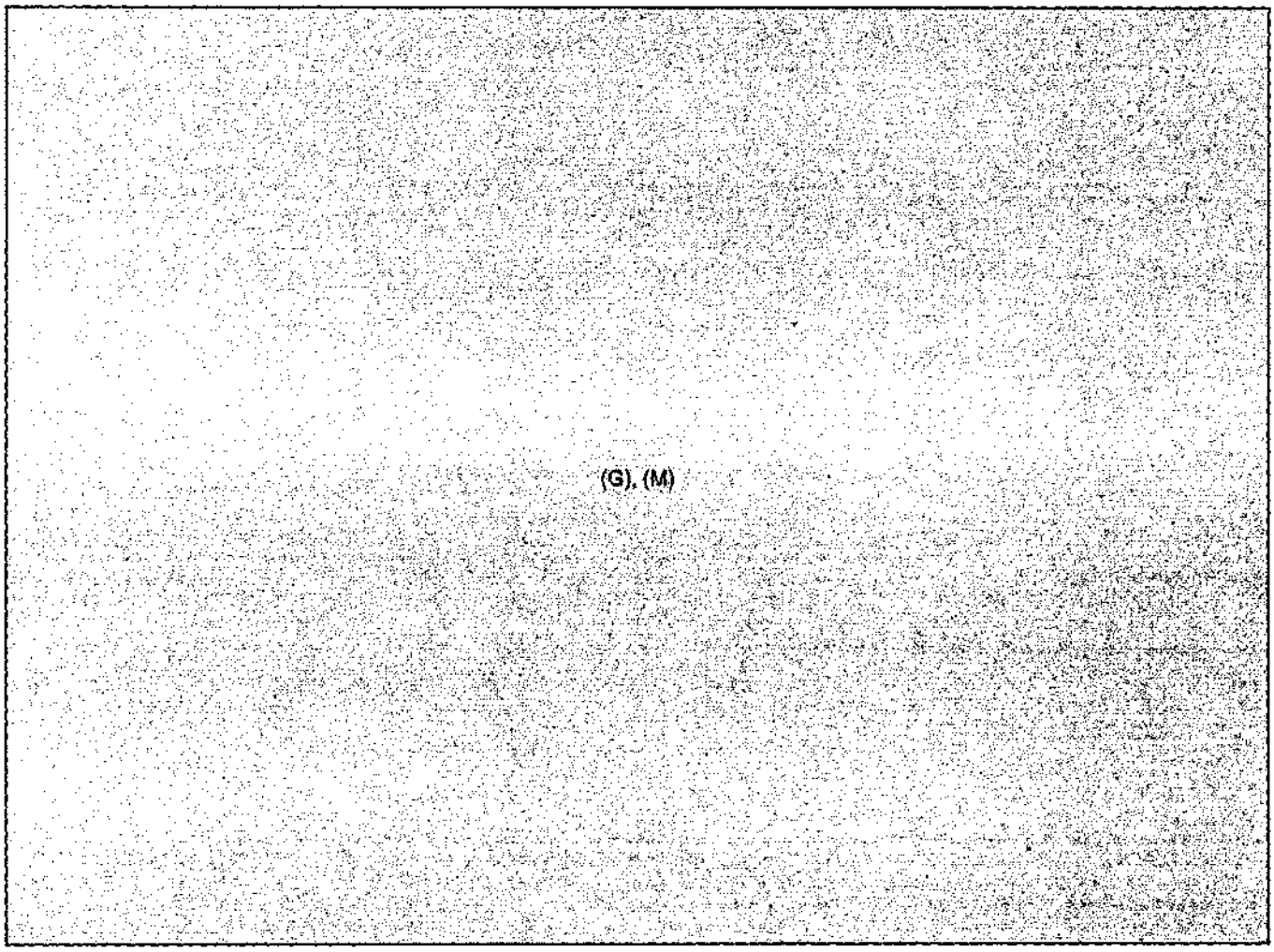
From: [redacted] (DO) (FBI)
Sent: Tuesday, July 05, 2016 5:23 PM
To: NPO
Subject: OPA Horizon - 7/5/16

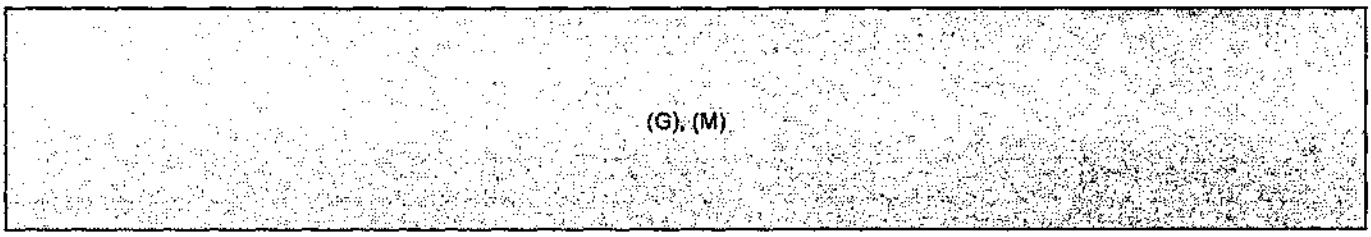
UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

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.





National Press Office
(o)
(c) (S)

b6
b7C
b7E

Rybicki, James E. (DO) (FBI)

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) - (M)

(M)

[redacted] (DO) (FBI) b6 b7C

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

Sir,
A note of thanks from retired EAD Glover.
[redacted] b6 b7C

From: John Glover [mailto:[redacted] (S)
Sent: Tuesday, July 05, 2016 8:38 PM
To: [redacted] b6 b7C
Subject: MY PERSONAL RESPONSE TO DIRECTOR' COMEY'S PRESS CONFERENCE RE SECRETARY CLINTON'S USE OF HER PERSONAL EMAIL SERVER

[redacted] b6 b7C

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)

From:	Rybicki, James E. (DO) (FBI)
Sent:	Friday, September 02, 2016 5:28 PM
To:	James B. Comey
Cc:	[redacted] (DO) (FBI)
Subject:	Upcoming Hearings
Attachments:	HOGR Transcript (07.07).docx; Overlapping Members.docx

b6
b7C

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 facilitates -- 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?

COMEY: 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?

COMEY: 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?

COMEY: 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.

COMEY: 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?

COMEY: 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?

COMEY: 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 unclassed 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. If 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 unequaled." 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 fit 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 themself (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 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 here 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 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?

COMEY: 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 Nishmura'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?

COMEY: 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?

COMEY: 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?

COMEY: 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 voluntary 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 possibly. 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 haven 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 uncleared (ph) people receive classified information? I don't think any of the correspondents on the classified e-mails were uncleared people. These were all people with clearances working, doing State Department business, on the unclassed (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.

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.

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 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.

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.

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.

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?

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.

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.