

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Fourteenth Congress

July 5, 2016

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

Dear Director Comey:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink that reads "Bob Goodlatte". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

BOB GOODLATTE
Chairman