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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 30, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Wray:

The Senate Judiciary Committee has been investigating the circumstances surrounding Director Comey's removal, including his conduct in handling the Clinton and Russia investigations. On June 30, 2017, the Committee wrote to the Office of Special Counsel (OSC)¹ requesting transcripts of OSC's interviews with then-Director Comey's Chief of Staff, Jim Rybicki, and the Principal Deputy General Counsel of National Security and Cyberlaw, Trisha Anderson. OSC investigators had interviewed them as part of the OSC's investigation into whether then-Director Comey's actions in the Clinton investigation violated the Hatch Act.² OSC closed its inquiry after Mr. Comey's removal pursuant to its standard policy of not investigating former government employees. On August 8, 2017, the OSC provided transcripts of those interviews at the Committee's request.³ Since then, Committee staff has been asking the Department informally to explain the reasons for the extensive redactions to the transcripts.

According to the unredacted portions of the transcripts, it appears that in April or early May of 2016, Mr. Comey had already decided he would issue a statement exonerating Secretary Clinton. That was long *before FBI agents finished their work*. Mr. Comey even circulated an early draft statement to select members of senior FBI leadership. The outcome of an investigation should not be prejudged while FBI agents are still hard at work trying to gather the facts.

OSC attorneys questioned two witnesses, presumably Mr. Rybicki and Ms. Anderson, about Mr. Comey's July 5, 2016, statement exonerating Secretary Clinton. The transcript of what appears to be Mr. Rybicki's interview contains the following exchanges:

¹ OSC is the permanent, independent investigative agency for personnel matters, not Robert Mueller's temporary prosecutorial office within the Justice Department.

² Letter from Senator Harry Reid to James Comey (October 30, 2016). Mica Rosenberg, *Uproar over whether FBI chief broke law by raising new Clinton emails*, Reuters (October 31, 2016).

³ OSC first provided the transcripts to the Justice Department, which redacted significant portions of the transcripts without explanation. It redacted the names of the witnesses, even though those names were in the Committee's request.

Q: ... We talked about outcome of the investigation, ... how did the statement – I guess the idea of the statement come about?

A: Sure. We're talking about July 5th, correct?

Q: Yes. I'm sorry. July 5th.

A: The – so in the – **sometime in the spring** – again, I don't remember exactly when, I – early spring I would say, **the Director emailed a couple folks** – I can't remember exactly; I know I was on there, probably the Deputy Director, **not the full, what I'll call the briefing group**, but a subset of that – **to say, you know, again knowing sort of where – knowing the direction the investigation is headed, right, what would be the most forward-leaning thing we could do**, right, information that we could put out about it...And -- and, you know, by that -- you know, so that -- and **he sent a draft around** of, you know what - what it might look like. . . .

A: ...So that was the early spring.

Q: Yeah. And I think we've seen maybe that email where he sent it out, it was early May of 2016; does that sound about right?

A: That sounds right. That -- quite honestly, that strikes me as a little late, but may --

Q: Okay.

A: -- but again, I definitely remember spring. I had in my head like the April timeframe, but May doesn't seem out of the -- out of the realm.

Q: **And so at that point in time, whether it was April or early May, the team hadn't yet interviewed Secretary Clinton –**

A: **Correct.**

Q: **– but was there – I guess, based on what you're saying, it sounds like there was an idea of where the outcome of the investigation was going to go?**

A: **Sure.** There was a – right, there was – based on – [redacted section].

Similarly, the transcript of what appears to be Ms. Anderson's interview states:

Q: So moving along to the first public statement on the case or Director Comey's first statement the July 5, 2016 statement. **When did you first learn that Director Comey was planning to make some kind of public statement about the outcome of the Clinton email investigation?**

A: The idea, I'm not entirely sure exactly when the idea of the public statement um first emerged. Um it was, I just, I can't put a

precise timeframe on it um but [redaction]. And then I believe it was in early May of 2016 that the Director himself wrote a draft of that statement ...

Q: So when you found out in early May that there was, that the Director had written a draft of what the statement might look like, how did you learn about that?

A: [Redacted] gave me a hard copy of it...

Q: So what happened next with respect to the draft?

A: I don't know for sure um, I don't know. **There were many iterations, at some point there were many iterations of the draft that circulated...**

As of early May 2016, the FBI had not yet interviewed Secretary Clinton. Moreover, it had yet to finish interviewing sixteen other key witnesses, including Cheryl Mills, Bryan Pagliano, Heather Samuelson, Justin Cooper, and John Bentel.⁴

These individuals had intimate and personal knowledge relating to Secretary Clinton's non-government server, including helping her build and administer the device. Yet, it appears that the following key FBI interviews had not yet occurred when Mr. Comey began drafting his exoneration statement:

- | | |
|---|---|
| 1. May 3, 2016 – Paul Combetta | 9. June 10, 2016 – John Bentel |
| 2. May 12, 2016 – Sean Misko | 10. June 15, 2016 – Lewis Lukens |
| 3. May 17, 2016 – Unnamed CIA employee ⁵ | 11. June 21, 2016 – Justin Cooper |
| 4. May 19, 2016 – Unnamed CIA employee ⁶ | 12. June 21, 2016 – Unnamed State Dept. Employee ⁷ |
| 5. May 24, 2016 – Heather Samuelson | 13. June 21, 2016 – Bryan Pagliano |
| 6. May 26, 2016 - Marcel Lehel (aka Guccifer) | 14. June 21, 2016 – Purcell Lee |
| 7. May 28, 2016 – Cheryl Mills | 15. June 23, 2016 – Monica Hanley |
| 8. June 3, 2016 – Charlie Wisecarver | 16. June 29, 2016 – Hannah Richert |
| | 17. July 2, 2016 – Hillary Clinton |

Conclusion first, fact-gathering second—that's no way to run an investigation. The FBI should be held to a higher standard than that, especially in a matter of such great public interest and controversy.

Mr. Comey's final statement acknowledged "there is evidence of potential violations of the statutes regarding the handling of classified information" but nonetheless cleared Secretary Clinton because he claimed there was no intent or obstruction of justice. Yet, evidence of destruction of emails known to be under subpoena by the House of Representatives, and subject

⁴ Notably, some witnesses had been interviewed. However, their follow up interviews had not taken place yet.

⁵ The name of the interviewee was redacted from the publicly released version of the 302.

⁶ The name of the interviewee was redacted from the publicly released version of the 302.

⁷ The name of the interviewee was redacted from the publicly released version of the 302.

to congressional preservation requests, was obtained in interviews around the time that Mr. Comey began drafting his exoneration statement.⁸ Moreover, the Justice Department entered into highly unusual immunity agreements with Cheryl Mills and Heather Samuelson in June 2016—after Mr. Comey began drafting his exoneration statement—to review Clinton email archives on their laptops.⁹

The immunity agreements limited the FBI's ability to review Clinton email archives from Platte River Networks that were created after June 1, 2014, and before February 1, 2015, and which had been sent or received from Secretary Clinton's four email addresses during her tenure as Secretary of State.¹⁰ These limitations prevented the FBI from reviewing records surrounding a March 2015 conference call that Paul Combetta, an employee of Platte River Networks, had with David Kendall and Ms. Mills, the attorneys for Secretary Clinton.¹¹ After having been initially untruthful and then receiving his own immunity agreement, Mr. Combetta admitted in his third FBI interview, in May 2016, that after a March 2015 conference call with Secretary Clinton's attorneys, he used BleachBit to destroy any remaining copies of Clinton's emails.¹²

The limitations in the immunity agreements with Ms. Mills and Ms. Samuelson also kept the FBI from looking at emails after Secretary Clinton left office—the period in which communications regarding destruction or concealment of federal records would have most likely taken place.¹³ And finally, the agreements provided that the *Department would destroy* any records which it retrieved that were not turned over to the investigative team and *would destroy* the laptops.¹⁴ Despite public claims by the FBI that the laptops were not in fact destroyed, the purpose of that promise to destroy them has not been explained.¹⁵ However, Judiciary Committee staff reviewed the immunity agreements as part of their oversight work, so there is no

⁸ The House Oversight and Government Reform Committee subpoenaed the State Department for records on August 1, 2013. The House Benghazi Committee subpoenaed the State Department for its records on January 28, 2015. The first subpoena sent directly to Secretary Clinton that asked for her records was on March 4, 2015. According to the FBI's Letterhead Memorandum (LHM) summarizing its witness interviews in the Clinton investigation on "March 25, 2015, PRN held a conference call with President Clinton's staff" and also the "[i]nvestigation identified a PRN work ticket, which referenced a conference call among PRN, Kendall, and Mills on March 31, 2015." Mr. Combetta's 302 summary noted that he deleted Secretary Clinton's email archives on March 31, 2015 using BleachBit, a software program designed to prevent forensic recovery. This information was obtained by the FBI on May 3, 2016, around the time that Mr. Comey began drafting his exoneration statement. In addition to subpoenas, multiple congressional committees had already sent the State Department and Secretary Clinton preservation letters starting on September 20, 2012, prior to Mr. Combetta's deletions and Secretary Clinton's December 2014 instruction to her staff to delete her emails. *See also*, Letter from Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary, Representative Jason Chaffetz, Chairman, House Committee on Oversight and Government Reform, Representative Bob Goodlatte, Chairman, House Committee on the Judiciary, Representative Devin Nunes, Chairman, House Permanent Select Committee on Intelligence to Ms. Loretta Lynch, Attorney General, Department of Justice (Oct. 5, 2016) citing *Oversight of the Federal Bureau of Investigation: Hearing before the H. Comm. on the Judiciary*, 114th Cong. (2016); U. S. House Select Committee on Benghazi, Final Report (Dec. 7, 2016).

⁹ Letter from Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary, Representative Jason Chaffetz, Chairman, House Committee on Oversight and Government Reform, Representative Bob Goodlatte, Chairman, House Committee on the Judiciary, Representative Devin Nunes, Chairman, House Permanent Select Committee on Intelligence to Ms. Loretta Lynch, Attorney General, Department of Justice (Oct. 5, 2016).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Letter from Peter J. Kadzik, Assistant Attorney General, Dep't of Justice, to Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary (October 26, 2016).

question that the terms of the agreement called for the Department to destroy evidence that had not been fully and completely reviewed.¹⁶

It is unclear whether the FBI agents actually investigating the case were aware that Mr. Comey had already decided on the investigation's outcome while their work was ongoing. However, it appears that the answer to that question may be underneath some of the extensive redactions that the Department made to the transcripts.¹⁷ In testimony before Congress, Mr. Comey was asked whether his decision to not recommend charges "was [a] unanimous opinion within the FBI..." to which he responded, "[w]ell, the whole FBI wasn't involved, but the team of agents, investigators, analysts, technologists, yes."¹⁸ Seeing under the redactions is necessary for the Committee to assess Mr. Comey's testimony before Congress.

Pursuant to the Committee's responsibility and authority to review the circumstances of the Director's removal, please provide the following without redactions by September 13, 2017:

1. All drafts of Mr. Comey's statement closing the Clinton investigation, from his original draft in April or May to the final version.
2. All records related to communications between or among FBI officials regarding Comey's draft statement closing the Clinton investigation, including all memoranda or analyses of the factual or legal justification for the announcement.
3. All records previously provided to the Office of Special Counsel in the course of its now-closed Hatch Act investigation of Mr. Comey.

We anticipate that your written response and most of the responsive documents will be unclassified. 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. The Committee complies with all laws and regulations governing the handling of classified information. The Committee is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

¹⁶ Letter from Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary, Representative Jason Chaffetz, Chairman, House Committee on Oversight and Government Reform, Representative Bob Goodlatte, Chairman, House Committee on the Judiciary, Representative Devin Nunes, Chairman, House Permanent Select Committee on Intelligence to Ms. Loretta Lynch, Attorney General, Department of Justice (Oct. 5, 2016).

¹⁷ Office of Special Counsel, Interviewee Transcript #1 at 19-20; #2 at 25-33.

¹⁸ *Oversight of the State Department: Hearing before the Committee on Oversight and Government Reform, House of Representatives, One Hundred Fourteenth Congress, Second Session, July 7, 2016*. Washington: U.S. Government Publishing Office, 2016. Available at <https://oversight.house.gov/wp-content/uploads/2016/07/7-7-2016-Oversight-of-the-State-Department.pdf>, p. 33

Thank you for your attention to this important matter. Transparency is essential to restoring the public's trust in the FBI. If you have questions, please contact Josh Flynn-Brown of Chairman Grassley's staff at (202) 224-5225 or Lee Holmes of Chairman Graham's staff at (202) 224-5972.



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Lindsey O. Graham
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