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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

January 3, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Deputy Attorney General Rosenstein:

This Committee has previously written to the Department of Justice and the Federal Bureau of Investigation about the memoranda that former Director Comey created purportedly memorializing his interactions with President Trump.¹ My staff has since reviewed these memoranda in a Sensitive Compartmented Information Facility (SCIF) at the FBI, and I reviewed them in a SCIF at the Office of Senate Security. The FBI insisted that these reviews take place in a SCIF because the majority of the memos are classified. Of the seven memos, four are marked classified at the “SECRET” or “CONFIDENTIAL” levels. Only three did not contain classified information. FBI personnel refused to answer factual questions during the document reviews, including questions about the chain of custody of the documents I was reviewing, the date that they were marked classified, and who marked them as classified.

According to press reports, Professor Daniel Richman of Columbia Law School stated that Mr. Comey provided him four of the seven memoranda and encouraged him to “detail [Comey’s] memos to the press.”² If it’s true that Professor Richman had four of the seven memos, then in light of the fact that four of the seven memos the Committee reviewed are classified, it would appear that at least one memo the former FBI director gave Professor

¹ Letter from Hon. Charles E. Grassley, Hon. Dianne Feinstein, Hon. Lindsey Graham, and Hon. Sheldon Whitehouse, Senate Judiciary Committee, to Acting Director Andrew McCabe, Federal Bureau of Investigation (May 17, 2017).

² *Comey Memos Reportedly Had Classified Info*, FOX NEWS (July 10, 2017) (“Richman told Fox News he received four memos from Comey”), <http://www.foxnews.com/politics/2017/07/10/comey-memos-reportedly-had-classified-info-trump-says-that-is-so-illegal.html>; Kyle Cheney, *Comey Associate Has Been in Contact with Senate Judiciary About Memos*, POLITICO (June 10, 2017), <https://www.politico.com/story/2017/06/09/comey-memos-senate-judiciary-dan-richman-239378>.

Richman contained classified information.³ Professor Richman later read a portion of one of the memos to a New York Times reporter.⁴

When the Committee contacted Professor Richman seeking copies of the memos Mr. Comey had provided him, he refused to provide them, did not say how many he had received from Mr. Comey, and refused to say whether he retained copies.⁵ It is unclear whether any of the memos reviewed by the Committee were retrieved from Professor Richman. The Committee has accordingly not determined which of the seven memos Mr. Comey provided him. Professor Richman did tell Committee investigators that he was working with the Special Counsel's Office, and he reportedly told the media that he had turned over to the FBI copies of the memos he'd received from Mr. Comey.⁶ If true, the Justice Department should know which memos were provided and be able to share that information with the Committee.

In order for the Committee to further assess this situation, please respond to the following in writing by no later than January 17, 2018:

1. Has the Justice Department or FBI in fact determined that any of the memoranda Mr. Comey sent Professor Richman contained classified information? If so, what steps were taken to retrieve and safeguard the information?
2. Which of the seven memoranda the FBI made available for the Committee's review did Mr. Comey give to Professor Richman?
 - a. When did Mr. Comey give Professor Richman the memoranda?
 - b. At the time that Professor Richman received the memoranda, were any marked as classified?

³ Professor Richman has stated that none of the memos were marked as classified when he received them. See Jake Tapper, *Comey Friend: No Memos Given to Me Were Marked Classified*, CNN (July 10, 2017), <http://www.cnn.com/2017/07/10/politics/comey-lawyer-no-memos-given-to-me-were-marked-classified/index.html>. However, as former Director Comey himself has stated: "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." See FBI National Press Office, *Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System* (July 5, 2016), <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>. So, if Mr. Comey failed to mark his memos as classified, but should have known that the subject matter was nonetheless classified, he still had an obligation to protect that information from improper disclosure.

⁴ Brian Ross & James Gordon Meek, *Comey Associate Denies Leaked Memos Contained Classified Information*, ABC NEWS (July 10, 2017), <http://abcnews.go.com/Politics/comey-associate-denies-leaked-memos-contained-classified-information/story?id=48551818>.

⁵ See Letter from Hon. Charles E. Grassley, Hon. Dianne Feinstein, Hon. Lindsey Graham, and Hon. Sheldon Whitehouse, Senate Judiciary Committee, to Professor Richman (June 8, 2017). Professor Richman declined to provide the memos and refused to state whether he retained copies during a call on June 13, 2017, with Committee investigators. On October 18, 2017, the Committee requested that Professor Richman participate in a voluntary transcribed interview with Committee staff. Through his attorney, he refused.

⁶ Kyle Cheney, *Comey Associate Says He Turned over Memos to the FBI*, POLITICO (June 13, 2017), <https://www.politico.com/story/2017/06/13/james-comey-daniel-richman-memos-fbi-239502>.

- c. At the time that Professor Richman received the memoranda, did any contain classified information, regardless of markings?
- d. Please explain the method by which Mr. Comey transmitted the memoranda to Professor Richman. If the transmittal was electronic:
 - i. Please provide the account information that Mr. Comey and Mr. Richman used.
 - ii. Please describe what steps the FBI has taken to recover all copies of any classified memoranda that might reside on computers, servers, or at other locations.
3. Have you initiated an investigation into the matter of whether Mr. Comey improperly disclosed classified information by providing these memoranda to Professor Richman? If so, what is the status of the investigation? If not, why not?
4. Has there been any review of whether the disclosure of the memoranda by Mr. Comey was otherwise improper, such as whether it violated his employment agreement or any Department rule or policy? If so, what is the status of the review? If not, why not?
5. When did the FBI mark the four memoranda as classified, and who made the classification decision?
6. As noted above, it has been reported that Professor Richman returned the memoranda to the FBI.⁷ If so, on what date did this occur?
7. Did anyone from the FBI or Special Counsel's Office discuss with Professor Richman this Committee's request for copies of the memos? If so, please provide all records related to any such communications.
8. Does Professor Richman still have possession of any of the memoranda or copies?

⁷ *Id.*

Thank you for your prompt attention to this matter. Please contact Patrick Davis of my Committee staff at (202) 224-5225 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a blue background highlight.

Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary