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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 Chief Counsel and Staff Director*

January 25, 2018

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 Committee on the Judiciary is conducting oversight of the Department of Justice (DOJ), Federal Bureau of Investigation (FBI) and their investigation of classified information on former Secretary of State Hillary Clinton's private email server. On January 19, 2018, in response to previous requests from the Committee, DOJ produced to Congress 384 pages of text messages exchanged between Peter Strzok and Lisa Page.¹ However, according to a cover letter accompanying the production, the FBI did not preserve text messages between Mr. Strzok and Ms. Page between December 14, 2016 and May 17, 2017. The text messages that were provided raise serious concerns about the impartiality of senior leadership running both the Clinton and Trump investigations.

Pulling Punches in the Clinton Investigation.

On February 25, 2016, Strzok and Page discussed via text how many personnel from DOJ and FBI would be included in the Clinton investigation and what the best ratio should be. In that discussion, Ms. Page issued the following warning to Mr. Strzok, about dealing with Secretary Clinton:

Page: One more thing: she might be our next president. The last thing you need us going in there loaded for bear. You think she's going to remember or care that it was more doj than fbi?

Strzok: Agreed. I called Bill and relayed what we discussed. He agrees. I will email you and [redacted] same.²

¹ Letter from Stephen Boyd, Assistant Attorney Gen. for Legislative Affairs, Dep't of Justice, to Sen. Charles Grassley, Chairman, S. Comm. on the Judiciary (Jan. 19, 2018). The letter also included 384 pages of text messages between Mr. Strzok and Ms. Page.

² DOJ-PROD-0000060. Emphasis added.

Consideration of a Special Counsel.

On May 17, 2016, I wrote to FBI Director James Comey, expressing my concern that conflicts of interest existed between Attorney General Lynch and the Clintons due to her firm's prior representation of the Clintons in tax matters and the fact President Clinton nominated Ms. Lynch to be U.S. Attorney for the Eastern District of New York.³ In that letter I also asked then-Director Comey how Attorney General Lynch's conflicts in the Clinton investigation were any different than those of Attorney General Ashcroft's for which he recused himself. In the Plame matter, Ashcroft had prior professional associations with one of the suspects, just like Attorney General Lynch had in the Clinton investigation. Department regulations make clear that when there is a conflict of interest or "other extraordinary circumstances," and it is in the public interest, a special counsel should be appointed.⁴ In the Plame matter, then-Deputy Attorney General Comey believed a special counsel was necessary. However, to this day, Comey has failed to adequately explain the difference between the Plame and Clinton investigations.

Further, Attorney General Lynch's meeting on the tarmac with President Clinton days before Comey announced his decision not to recommend charges was described by Comey as the moment that "capped" his decision to publicly announce the closing of the investigation due to concerns about Lynch's independence.⁵ In public testimony, Comey voiced concerns that Lynch required him to refer to the Clinton investigation as a "matter," a term that matched the public position of the Clinton campaign at that time. Comey testified that Lynch's directive "confused and concerned me" and that it was "one of the bricks in the load that led me to conclude, 'I have to step away from the department if we're going to close this case credibly.'"⁶ On March 18, 2016, Strzok and Page engaged in a discussion about the possibility of a special counsel in the Clinton investigation and referenced Patrick Fitzgerald, who was the Special Counsel in the Valerie Plame matter:

Strzok: Thought of the perfect person D can bounce this off of[.]

Page: Who?

Strzok: **Pat** [] You gotta give me credit if we go with him. And delay briefing him on until I can get back and do it. Late next week or later.

Page: We talked about him last night, not for this, but how great he is. He's in private practice though, right? Suppose you could still bring him back. And yes, I'll hold.

³ Letter from Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary, to James B. Comey, Jr., Director, FBI (May 17, 2016).

⁴ 28 C.F.R. § 600.1.

⁵ Peter Baker, *Comey Raises Concerns About Loretta Lynch's Independence*, New York Times (June 8, 2017).

⁶ *Id.*

Strzok: Yes, he's at Skadden in Chicago. I haven't talked to him for a year or two. **Don't forget that Dag Comey appointed him as special counsel in the Plame matter, and that he was there for Comey's investiture.**

Strzok: I could work with him again. And damn we'd get sh*t DONE.

Page: I know. Like I said, we discussed boss and him yesterday.

Strzok: And it frustrates me, because Bill at his 7:15, brings up the whole matter in front of his DADs. One who is acting for Dina. **Who immediately goes to John and tell[s] him how Bill is stressed because all the stuff is going on about a special prosecutor.** Bill needs to learn to not talk to everybody about this when he's upset about it. And I guarantee that agent, while discreet, is certainly going to tell at least a few other people.⁷

Strzok: I'm sending [redacted] to the 8:30 with Jones so that I can meet with John.

Page: **Did he go so far as to talk about why we started talking special prosecutor?!**

Strzok: Don't think so. In my office talking to John[.]

Page: [redacted]⁸

Later, on May 13, 2016, Page texted Strzok:

Hey forgot to ask if you mentioned the whole special counsel thing to andy?⁹

Congress, and the American public, have a right to know whether the DOJ and FBI considered the appointment of a special counsel. Accordingly, please answer the following:

1. Did the FBI ever recommend a special counsel for the Clinton investigation? If not, why not? If so, did DOJ ever explain why it did not appoint one? Did Attorney General Lynch refuse?
2. Were there any legal memoranda or analyses of the issue prepared? Please provide all records relating to DOJ and FBI communications about the potential appointment of a special counsel for the Clinton investigation.

⁷ DOJ-PROD-0000072. Emphasis added.

⁸ DOJ-PROD-0000073. Emphasis added.

⁹ DOJ-PROD-0000127.

The FBI Chief of Staff Believed McCabe Should Recuse Himself from the Clinton Investigation.

On October 28, 2016, I wrote to then-Director Comey regarding a Wall Street Journal news article that reported a set of troubling facts about potential conflicts of interest in the criminal investigation into Secretary Clinton.¹⁰ That news article noted that Mr. McCabe's wife's political campaign received over half a million dollars from entities tied to Virginia Governor Terry McAuliffe.¹¹ It is well known that Gov. McAuliffe is a close friend and confidant of Hillary Clinton. The Wall Street Journal reported that 98% of the Gov. McAuliffe related donations to his wife came after the FBI launched the investigation into Secretary Clinton.¹²

In a reply to our letter, the FBI responded, “[b]ased on these facts, it did not appear that there was a conflict of interest – actual or apparent – that required recusal or waiver.”¹³ However, text messages on October 28, 2016, indicate that contrary to the FBI's December 2016 response, the Director's Chief of Staff apparently believed that Mr. McCabe actually did need to be recused at a later date. McCabe's recusal did not take place until one week before the presidential election – a fact that the FBI failed to disclose in its December 2016 response to the Committee.

Page: Rybicki just called to check in. **He very clearly 100% believes that Andy should be recused because of the “perception.”**

Strzok: God.

Page: Our statement affected the stock market.

Page: **Don't understand your email, if it's a matter similar to those we've been talking about lately, why no recusal before? Something different?**

Strzok: **I assume McAuliffe picked up.** But that doesn't make sense. He said he was interviewing, maybe he's headed into private practice.¹⁴

3. As Ms. Page asked, “why no recusal before? Something different?” If McCabe eventually recused himself one week before the election, why did he not do so sooner?
4. Why did the FBI fail to disclose McCabe's November 1, 2016 recusal in its December 14, 2016 response letter?

¹⁰ Follow up letters were also sent on May 2, 2017 and June 28, 2017.

¹¹ Devlin Barret, “Clinton Ally Aided Campaign of FBI Official's Wife,” Wall Street Journal (October 23, 2016). Available at <http://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114>

¹² *Id.*

¹³ Letter from FBI to Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary (December 14, 2016).

¹⁴ DOJ-PROD-0000305. Emphasis added.

5. Did Mr. McCabe's recusal have any relation to the reported McAuliffe investigation? Or was it related to private sector employment negotiations, and if so, with whom was he negotiating that would have triggered the recusal?

Transmitting Government Records on Non-Government Systems.

In addition, I have raised concerns in multiple letters to the FBI about whether the FBI's investigation was improperly narrow, focusing only on issues related to classified information, and not considering the alienation or destruction of federal records, whether classified or not, which is a crime under 18 U.S.C. § 2071.¹⁵ On April 10, 2016 and on June 3, 2017, respectively, Strzok said the following to Page:

Gmailed you two drafts of what I'm thinking of sending Bill, would appreciate your thoughts. Second (more recent) is updated so you can skip the first.¹⁶

...

Type on home computer and email to yourself.¹⁷

Additionally, in many messages they refer to related conversations they were having via iMessage, presumably on their personal Apple devices. It appears that Strzok and Page transmitted federal records pertaining to the Clinton investigation on private, non-government services. It is important to determine whether their own similar conduct was a factor in not focusing on and developing evidence of similar violations by Secretary Clinton and her aides.

In October 2015, then-Director Comey said, "If you know my folks...they don't give a rip about politics."¹⁸ Mr. Comey's statement may be true of the vast majority of rank and file agents. However, the more we learn about the Clinton investigation and how the DOJ and FBI handled it, the more clear it becomes that Director Comey was dead wrong about the key senior officials who were responsible for the investigation. They cared very much about politics, to the detriment of the Bureau's mission and objectivity.

¹⁵ On September 13, 2017, E.W. Priestap, the Assistant Director of the FBI's Counterintelligence Division, submitted a sworn declaration under penalty of perjury in two cases in the United States District Court for the District of Columbia. That sworn declaration attests that the FBI's Clinton Server Investigation was limited in scope to determining: 1) whether classified information was transmitted or stored on unclassified systems in violation of federal statutes; and 2) whether classified information was compromised by unauthorized individuals, to include foreign governments or intelligence services, via cyber intrusion or other means. The scope of the FBI's investigation was further limited to former Secretary Clinton's tenure at the Department of State (January 21, 2009 to February 01, 2013). ... In addition, the FBI also utilized legal process, to include grand jury subpoenas, to obtain additional repositories of e-mail. The FBI's use of legal process was limited due to the scope of the investigation[.] See also, Letter from Chairman Grassley to Director Comey (May 17, 2016), available at [https://www.judiciary.senate.gov/imo/media/doc/2016-05-17%20CEG%20to%20FBI%20\(Clinton%20Investigation%20Special%20Counsel\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2016-05-17%20CEG%20to%20FBI%20(Clinton%20Investigation%20Special%20Counsel).pdf); Letter from Chairman Grassley to Director Comey (Nov. 3, 2016), available at [https://www.judiciary.senate.gov/imo/media/doc/2016-11-03%20CEG%20to%20FBI%20\(Clinton%20Investigation%20Scope%20Limitation\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2016-11-03%20CEG%20to%20FBI%20(Clinton%20Investigation%20Scope%20Limitation).pdf).

¹⁶ DOJ-PROD-00000102.

¹⁷ DOJ-PROD-00000356.

¹⁸ Evan Perez, *FBI chief on Clinton investigation: My people 'don't give a rip about politics*, CNN (Oct. 1, 2015).

In addition to the aforementioned questions, please answer the following no later than February 8, 2018:

6. Please provide all records of communication, including emails, between Strzok and Page from July 10, 2015 to his removal from Special Counsel Mueller's office, relating to either the Clinton or Trump campaigns, or any related FBI investigations.
7. Does the FBI have any records of communication, including emails, between Strzok and Page from December 14, 2016 to May 17, 2017? If so, please provide those communications. If not, please explain why not.
8. Has the FBI been able to obtain texts between Strzok and Page from any other source, such as physical phones, carrier records, or any other source? Please explain.
9. Has the FBI asked Mr. Strzok or Ms. Page to voluntarily provide any information from their personal accounts? If so, have they been cooperative? If the FBI has not asked, please explain why not.
10. Has the FBI performed any voluntary searches of Strzok or Page's non-government phones or email accounts to determine whether federal records exist? Please explain why or why not?
11. How and on what date did the FBI discover that messages were missing?

I anticipate that your written reply and most 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. 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.

Should you have any questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary