

# **THE CLINTON EMAIL SCANDAL AND THE FBI'S INVESTIGATION OF IT**

## **An Interim Report**

A Majority Staff Report of the  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Senator Ron Johnson, Chairman



February 7, 2018

## Executive Summary

Given the recent interest in Congress's and this Committee's oversight of the Federal Bureau of Investigation (FBI) and the FBI's investigation of classified information on former Secretary of State Hillary Clinton's private email server, this interim majority staff report serves as an update on actions we have taken and what we have learned to date. As the Committee continues to investigate, Chairman Johnson has requested additional documents and materials from the Justice Department.

The FBI is the nation's premier law enforcement agency, and it is crucial that the public has full faith and confidence in its integrity and impartiality. Unfortunately, a number of actions taken by high-level FBI officials have legitimately called both into question.

Over the course of almost three years, since March 2015, Chairman Johnson has diligently utilized oversight letters in the Committee's attempt to obtain relevant information. The Committee has never held a hearing because the Chairman was not interested in creating a media frenzy show trial. Chairman Johnson simply wanted to get the facts, establish the truth, and hold people accountable.

Following the November 2016 election, President-elect Trump announced that his Justice Department would not pursue any further action against former Secretary Clinton—the voters had held her accountable.<sup>1</sup> Chairman Johnson agreed with this decision and considered the matter closed.

However, because of the Justice Department and the FBI's unusual management of the investigation and intrusion into the electoral process, charges of politicization arose from both sides of the political spectrum. The Office of Special Counsel ultimately initiated a Hatch Act investigation into FBI Director James Comey's public statements about the Clinton investigation.<sup>2</sup> The Justice Department Office of Inspector General (DOJ OIG) also initiated an investigation into Director Comey's actions.<sup>3</sup>

The DOJ OIG's investigation led to the discovery of the text message exchanges between FBI Deputy Assistant Director of the Counterintelligence Division Peter Strzok and FBI attorney Lisa Page. When presented with the content of these text messages, Special Counsel Robert Mueller immediately dismissed DAD Strzok from his investigative team.<sup>4</sup>

The Committee was not notified of the text messages between Strzok and Page by an official federal government source, but only learned of them from news reports. On December 6, 2017, Chairman Johnson and Chairman Grassley sent a letter to the Department of Justice

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<sup>1</sup> See Julie Hirschfeld & Michael D. Shear, *Donald Trump drops threat of new Hillary Clinton investigation*, N.Y. Times (Nov. 22, 2016).

<sup>2</sup> Off. of Special Counsel, Complaint No. HA-17-0515.

<sup>3</sup> Dep't of Justice Off. of Inspector Gen., DOJ OIG Announces Initiation of Review (Jan. 12, 2017).

<sup>4</sup> See Kathryn Watson, *FBI agent suspected of sending anti-Trump texts removed from Mueller team*, CBS News (Dec. 2, 2017).

requesting the text messages. The Justice Department produced a first tranche of text messages on December 12, 2017, and a second tranche on January 19, 2018.<sup>5</sup>

Although sometimes cryptic and disjointed due to their nature, these text messages raise several questions about the FBI and its investigation of classified information on Secretary Clinton’s private email server. Strzok and Page discussed serving to “protect the country from the menace” of Trump “enablers,” and the possibility of an “insurance policy” against the “risk” of a Trump presidency. The two discussed then-Attorney General Loretta Lynch knowing that Secretary Clinton would not face charges—before the FBI had interviewed Secretary Clinton and before her announcement that she would accept Director Comey’s prosecution decision. They wrote about drafting talking points for then-Director Comey because President Obama “wants to know everything we’re doing.” Strzok and Page also exchanged views about the investigation on possible Russian collusion with the Trump campaign—calling it “unfinished business” and “an investigation leading to impeachment,” drawing parallels to Watergate, and expressing Strzok’s “gut sense and concern there’s no big there there.”

The text messages raise several important questions that deserve further examination:

- Whether, and the extent to which, any personal animus and/or political bias influenced the FBI’s investigation;
- Whether, and the extent to which, the Obama Department of Justice or White House influenced the FBI’s investigation; and
- Whether, and the extent to which, any personal animus and/or political bias influenced the FBI’s actions with respect to President Trump.

This report is not intended to answer these questions, but to demonstrate that the information received warrants further inquiry to examine possible bias and wrongdoing within the FBI and the Justice Department. Any serious and impartial reader of this material should find it hard to deny the need for further inquiry.

The Committee, as the chief oversight committee of the Senate, has a responsibility to promote transparency and accountability throughout the federal government. The FBI and Justice Department are no exceptions—two critical institutions that must be above reproach from even the *perception* of bias. Due to the seriousness of the issues and the institutions involved, the Committee must carry out this obligation in parallel with the ongoing inquiry of the DOJ OIG and other congressional inquiries. Americans of all political stripes must have complete faith that federal law-enforcement agencies are, and will remain, independent, apolitical, and unbiased.

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<sup>5</sup> Letter from Stephen Boyd, Dep’t of Justice, to Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs (Jan. 19, 2018) [hereinafter “Jan. 19th Boyd letter”]; Letter from Stephen Boyd, Dep’t of Justice, to Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs (Dec. 12, 2017) [hereinafter “Dec. 12th Boyd letter”].

Although the Committee's work continues, this staff report highlights some of what has been learned and some of the key pieces of information received to date. In the interest of transparency, this staff report includes appendices with letters sent by Chairman Johnson as a part of the Committee's oversight, documents cited in the report, and text messages received by the Committee. A central component of the Committee's mission is promoting a more efficient, effective, and accountable government. Unlike prosecutors who enforce laws or inspectors general who make recommendations, the Committee pursues oversight with the goal of full transparency in order to promote public awareness and confidence in federal agencies, and to inform any necessary legislative reforms. As we continue to receive information, Chairman Johnson will continue to make every effort to keep the public informed about this important work.

## I. Background

The Committee conducts oversight of the entire federal government and has legislative jurisdiction over federal records and “the effectiveness of present national security methods, staffing, and procedures as tested against the requirements imposed by the rapidly mounting complexity of national security problems.”<sup>6</sup> In an effort to fulfill this responsibility, the Committee has been investigating former Secretary of State Hillary Clinton’s use of a private email server for official communication and her apparent mishandling of documents related to national security since March 2015.

The existence of Secretary Clinton’s private email account became publicly known in March 2013. A website called The Smoking Gun published several stories about how a hacker (later identified as Marcel Lehel Lazar, aka “Guccifer”) had broken into the AOL account of former Clinton aide Sidney Blumenthal.<sup>7</sup> The Smoking Gun identified the clintonemail.com domain for Secretary Clinton’s emails, and later showed screenshots of emails Blumenthal had sent to Secretary Clinton’s private email account, [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com).<sup>8</sup>

*Politico* reported at the time: “The hacker had apparently sorted the mail to list (and possibly download) the Word files attached to these specific emails, which include foreign policy and intelligence memos that were sent to Clinton when she served as Secretary of State.”<sup>9</sup>

Two years later, on March 2, 2015, the *New York Times* reported that Secretary Clinton “exclusively used a private email account to conduct government business while Secretary of State” from January 2009 to February 2013.<sup>10</sup> The article noted that Secretary Clinton did not have an official State Department email account during her tenure at the Department.<sup>11</sup>

On March 7, 2015, in an interview with President Obama, CBS News correspondent Bill Plante asked, “When did you first learn that Hillary Clinton used an email system outside the U.S. government for official business when she was Secretary of State?” President Obama answered: “The same time everybody else learned it through news reports.”<sup>12</sup>

On March 9, 2015, responding to press inquiries about the President’s interview with Plante, White House Press Secretary Josh Earnest stated: “The President was referring specifically to the arrangement associated with Secretary Clinton’s email. Yes, the President was aware of her email address. He traded emails with her. That shouldn’t be a surprise that the

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<sup>6</sup> S. Rule XXV(k); S. Res. 62, 115th Cong. (2017).

<sup>7</sup> See, e.g., *Hacker Begins Distributing Confidential Memos Sent To Hillary Clinton On Libya, Benghazi Attack*, The Smoking Gun (Mar. 18, 2013), <http://thesmokinggun.com/buster/sidney-blumenthal/hacker-distributes-memos-784091>.

<sup>8</sup> *Id.*; *Hillary Clinton’s private e-mail draws scrutiny*, The Smoking Gun (Mar. 3, 2015), <http://www.thesmokinggun.com/file/hrc-e-mails>.

<sup>9</sup> Breanna Edwards, *Report: Sidney Blumenthal hacked*, *Politico*, Mar. 15, 2013.

<sup>10</sup> Michael S. Schmidt, *Hillary Clinton used personal email account at State Dept., possibly breaking rules*, *N.Y. Times*, Mar. 2, 2015.

<sup>11</sup> *Id.*

<sup>12</sup> *Obama weighs in on Hillary Clinton’s private emails*, CBS News, Mar. 7, 2015.

President of the United States is going to trade emails with the Secretary of State. But the President was not aware that this was the email address that she was using exclusively for all her business. The president was not aware of that until that had been more widely reported.”<sup>13</sup>

Plante, however, was not asking about Secretary Clinton’s exclusive use of a private email system—only the President’s knowledge that Secretary Clinton had used a private system for official business.

With legislative jurisdiction over federal records and oversight jurisdiction over the entire federal government, the Committee on Homeland Security and Governmental Affairs joined the Committee on Foreign Relations and the Select Committee on Intelligence in writing our first oversight letter to the State Department Inspector General on March 12, 2015. Our investigation into this matter had begun.

### *1. The Committee’s Investigation*

In the 114th Congress, the Committee sent letters to the State Department, the Justice Department, the FBI, the Office of the Director of National Intelligence, the State Department Office of Inspector General, and the Intelligence Community Inspector General seeking various categories of information relating to Secretary Clinton’s private server.<sup>14</sup> The Committee also

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<sup>13</sup> The White House, Barack Obama Administration, Press Briefing by Press Secretary Josh Earnest, 3/9/2014, <https://obamawhitehouse.archives.gov/the-press-office/2015/03/09/press-briefing-press-secretary-josh-earnest-392014>.

<sup>14</sup> See Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Comey, Fed. Bureau of Investigation (Nov. 7, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Comey, Fed. Bureau of Investigation (Oct. 28, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Loretta Lynch, Dep’t of Justice (Sept. 9, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Loretta Lynch, Dep’t of Justice (July 11, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (July 11, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Clapper, Off. of Director of Nat’l Intel. (July 11, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Charles McCullough, Intelligence Community Inspector Gen. (July 11, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Steve Linick, State Dep’t Off. of Inspector Gen. (July 11, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Comey, Fed. Bureau of Investigation (July 5, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Loretta Lynch, Dep’t of Justice (Mar. 3, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (Feb. 22, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (Jan. 26, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Kerry, Dep’t of State (Jan. 13, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (Oct. 5, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Patrick Kennedy, Dep’t of State (Sept. 22, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Kerry, Dep’t of State (Sept. 21, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (Sept. 16, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Clapper, Off. of Director of Nat’l Intel. (Sept. 16, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Loretta Lynch, Dep’t of Justice (Sept.

requested information from private entities involved in securing and maintaining Secretary Clinton’s private server;<sup>15</sup> private parties responsible for providing IT support to Secretary Clinton, both in government and out;<sup>16</sup> and other relevant entities relating to Secretary Clinton’s server.<sup>17</sup> While the Committee received some information—especially from private entities—the Committee rarely received adequate responses from federal government agencies (see appendix B). Often, the FBI cited its ongoing criminal investigations as an excuse for declining to provide detailed answers. On October 21, 2015, at the request of now-Ranking Member

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14, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Kerry, Dep’t of State (Sept. 11, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (July 9, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep’t of State (June 23, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Steve Linick, State Dep’t Off. of Inspector Gen. (Mar. 18, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, Bob Corker, S. Comm. on Foreign Relations, & Richard Burr, S. Sel. Comm. on Intel., to Steve Linick, State Dep’t Off. of Inspector Gen. (Mar. 12, 2015).

<sup>15</sup> See Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Austin McChord, Datto Inc. (Aug. 22, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Victor Nape, SECNAP (Aug. 22, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Treve Suazo, Platte River Networks (Aug. 22, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Austin McChord, Datto Inc. (July 12, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Victor Nape, SECNAP (July 12, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Treve Suazo, Platte River Networks (July 12, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Austin McChord, Datto Inc. (Oct. 5, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Victor Nape, SECNAP (Oct. 5, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Treve Suazo, Platte River Networks (Aug. 11, 2015).

<sup>16</sup> See Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Justin Cooper, c/o Aaron Zebley, WilmerHale (May 12, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Bentel, Dep’t of State (Mar. 4, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Mar. 3, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Justin Cooper, c/o Aaron Zebley, WilmerHale (Dec. 7, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Ken Xie, Fortinet, Inc. (Nov. 5, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Oct. 8, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Sept. 14, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Sept. 4, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to David Brown, Web.com Group, Inc. (Aug. 26, 2015).

<sup>17</sup> See Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Marcel Lazar (June 14, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Marcel Lazar (Apr. 27, 2016); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to David Kendall, Williams & Connolly LLP (Nov. 4, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rorrie Gregorio, Clinton Exec. Servs. Corp. (Sept. 18, 2015); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to David Kendall, Williams & Connolly LLP (July 29, 2015).

Claire McCaskill, the Committee released emails and documents obtained from Platte River Networks, the company that maintained Secretary Clinton’s server after she left the State Department.<sup>18</sup>

In the 115th Congress, the Committee has requested information from the Justice Department, the FBI, the Justice Department Office of Inspector General, and the Office of Special Counsel.<sup>19</sup> Several of these requests remain outstanding (see Appendix B).

## ***2. Laws Governing the Protection of Classified Information***

Several federal statutes criminalize the mishandling of classified information. The Espionage Act, 18 U.S.C. §§ 793-798, prohibits various types of mishandling of “national defense information.” Section 793(a) prohibits obtaining information about national defense facilities and equipment “with intent . . . that the information is to be used to the injury of the United States.”<sup>20</sup> Section 793(b) prohibits obtaining photographs, plans, blueprints, and similar documents for the same intent,<sup>21</sup> while section 793(c) criminalizes receiving these types of documents for the purpose of harming the United States.<sup>22</sup> Section 793(d) prohibits someone with lawful access to national defense information from releasing it to someone not authorized to receive it.<sup>23</sup> Similarly, section 793(e) prohibits someone with unlawful access to national defense information from releasing it or failing to return it back to an authorized party.<sup>24</sup>

Section 793(f) prohibits the mishandling of classified material through one’s gross negligence.<sup>25</sup> This subsection does not require a specific intent to harm national security, and even without intent, it is considered a serious crime. Other American citizens have been charged under this statute for less serious actions.<sup>26</sup> The relevant portion of Section 793(f) reads:

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<sup>18</sup> “*Ongoing Migration from Central America: An Examination of FY2015 Apprehensions*”: Hearing before the S. Comm. on Homeland Security & Governmental Affairs, 114th Cong. (2015).

<sup>19</sup> Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rod Rosenstein, Dep’t of Justice (Jan. 31, 2018); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Michael E. Horowitz, Dep’t of Justice Off. of Inspector Gen. (Jan. 23, 2018); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Jan. 20, 2018); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Dec. 14, 2017); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Dec. 13, 2017); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rod Rosenstein, Dep’t of Justice (Dec. 6, 2017); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Michael E. Horowitz, Dep’t of Justice Off. of Inspector Gen. (Dec. 6, 2017); Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Adam Miles, Off. of Special Counsel (Sept. 8, 2017).

<sup>20</sup> 18 U.S.C. § 793(a).

<sup>21</sup> *Id.* § 793(b).

<sup>22</sup> *Id.* § 793(c).

<sup>23</sup> *Id.* § 793(d).

<sup>24</sup> *Id.* § 793(e).

<sup>25</sup> *Id.* § 793(f).

<sup>26</sup> *See, e.g., United States v. Roller*, 42 M.J. 264 (C.A.A.F. 1995) (service member inadvertently packing classified documents with his personal belongings on his last day before a transfer); *United States v. Gonzalez*, 16 M.J. 428 (C.M.A. 1983) (service member inadvertently intermingling classified messages with personal mail). *See also*



Whoever . . . having lawful possession or control of any document . . . relating to national defense, (1) through gross negligence permits the same to be removed from its proper place of custody . . . or (2) having knowledge that same has been illegally removed from its proper place of custody . . . and fails to make prompt report of such loss . . . Shall be fined under this title or imprisoned not more than ten years, or both.<sup>27</sup>

Section 794 prohibits transmitting national defense information to a foreign government,<sup>28</sup> and sections 795 to 797 criminalize the unauthorized use or creation of images of national defense facilities or equipment.<sup>29</sup> Section 798 prohibits the intentional disclosure of classified communications intelligence.<sup>30</sup>

Other federal statutes prohibit using a computer to willfully retain or transmit classified information,<sup>31</sup> disclosing the identity of a covert intelligence officer,<sup>32</sup> and publishing without authorization diplomatic material.<sup>33</sup> In addition, section 1924 of title 18 prohibits the removal of classified information with the intent to keep the information at an unauthorized location.<sup>34</sup> Former Clinton National Security Advisor Sandy Berger pled guilty to violating this statute. Berger was fined \$50,000, sentenced to serve two years of probation and 100 hours of community service, and stripped of his security clearance for three years.<sup>35</sup>

## **II. Initial Phases of the Committee’s Investigation and Information Obtained**

### ***1. Prior to the Strzok-Page text messages, the Committee had information that raised questions about Secretary Clinton’s actions and the FBI’s investigation***

Even before the receipt of text messages exchanged by Strzok and Page, the Committee had obtained information—in addition to other information in the public domain—that raised questions about Secretary Clinton and other Administration officials’ culpability in potentially mishandling classified information. This information includes:

1. Secretary Clinton allowed a private server to be set up in her home, in violation of State Department policy and federal IT standards, according to the State Department Office of Inspector General.<sup>36</sup> Director Comey repeatedly referred to her behavior as

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Indictment, *United States v. Smith*, CR 03-0429 (C.D. Cal. 2003) (FBI agent allowed Chinese informant to handle classified documents).

<sup>27</sup> 18 U.S.C. § 793(f).

<sup>28</sup> *Id.* § 794.

<sup>29</sup> *Id.* § 795-97.

<sup>30</sup> *Id.* § 798.

<sup>31</sup> *Id.* § 1030(a)(1).

<sup>32</sup> 50 U.S.C. § 3121.

<sup>33</sup> 18 U.S.C. § 952.

<sup>34</sup> *Id.* § 1024.

<sup>35</sup> Carol D. Leonnig, *Berger is fined for smuggling classified papers*, Wash. Post, Sept. 9, 2005.

<sup>36</sup> State Dep’t Off. of Inspector Gen., Office of the Secretary: Evaluation of Email Records Management and Cybersecurity Requirements, ESP-16-03 (May 2016) [hereinafter “State OIG audit”]. See 12 F.A.M. § 544.3 (“It is

“grossly negligent”—the legal standard under § 793(f)—in his original drafts of his public statement.<sup>37</sup> That phrase was subsequently edited to “extremely careless”—a legal distinction without a practical difference.

2. On August 18, 2015, when asked, “Did you wipe your server?,” Secretary Clinton stated, “What, like with a cloth or something?”<sup>38</sup> Over a year later, on August 25, 2016, Congressman Trey Gowdy announced that a software application called BleachBit had been used to wipe Secretary Clinton’s private server so that, in Congressman Gowdy’s words, “even God couldn’t read them.”<sup>39</sup> According to Secretary Clinton, her attorneys ultimately deleted over 30,000 emails that she deemed to be unrelated to her official duties.<sup>40</sup>
3. The FBI found that 110 emails in 52 separate email chains contained classified information at the time the emails were sent or received— including eight chains that contained Top Secret information, 36 chains that contained Secret information, and eight chains that contained Confidential information.<sup>41</sup> Another 2,000 emails were later determined to contain classified information.<sup>42</sup> This is why Director Comey originally referred to the “sheer volume” of classified information flowing through Secretary Clinton’s email server.<sup>43</sup> “Sheer volume” was later edited out from Director Comey’s statement, even though he cited “vast quantities” of classified material as a consideration weighing in favor of prosecution.<sup>44</sup>
4. According to Director Comey, Secretary Clinton “used her personal e-mail extensively while outside the United States, including sending and receiving work-related e-mails in the territory of sophisticated adversaries.”<sup>45</sup> As a result, Director Comey’s original statement assessed that “it is reasonably likely that hostile actors

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the Department’ general policy that normal day-to-day operations be conducted on an authorized [automated information system], which has the proper level of security control to provide nonrepudiation, authentication, and encryption, to ensure confidentiality, integrity, and availability of the resident information.”). An automated information system includes servers, laptops, tablets, and smartphones. *Id.* § 91. The Federal Information Management Security Act requires each agency head—here, the Secretary of State—to ensure the information security protections “commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—(i) information collected or maintained by or on behalf of the agency . . . .” 44 U.S.C. § 3554(a).

<sup>37</sup> SJC 000034, 142.

<sup>38</sup> John Wagner & Rosalind S. Helderman, *Hillary Clinton won’t say if he server was wiped*, Wash. Post, Aug. 18, 2015.

<sup>39</sup> *America’s Newsroom*, Interview with Congressman Trey Gowdy (Aug. 25, 2016).

<sup>40</sup> Amy Chozyck & Michael S. Schmidt, *Hillary Clinton tried to quell controversy over private email*, N.Y. Times, Mar. 10, 2015.

<sup>41</sup> Fed. Bureau of Investigation, 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) [hereinafter “Comey statement”].

<sup>42</sup> *Id.*

<sup>43</sup> SJC 000142.

<sup>44</sup> Comey statement, *supra* note 41.

<sup>45</sup> *Id.*

gained access to Secretary Clinton’s private email account.”<sup>46</sup> “Reasonably likely” was downgraded to “possible” in the final statement.<sup>47</sup>

5. A reference in Director Comey’s statement to the FBI’s “extensive work” done with the Intelligence Community was edited out of final versions.<sup>48</sup>
6. According to the State Department Office of Inspector General, Secretary Clinton could not account for any emails she sent or received from January 2009 to March 2009.<sup>49</sup> The Department of Defense later discovered, and provided to the inspector general, 19 emails that Secretary Clinton had exchanged with General David Petraeus.<sup>50</sup>

Additional information raised questions about the FBI’s investigation of Secretary Clinton’s handling of classified material:

7. In early May 2016, Director Comey emailed his draft statement clearing Secretary Clinton of any wrongdoing to FBI Deputy Director Andrew McCabe, FBI General Counsel James Baker, and FBI Chief of Staff James Rybicki.<sup>51</sup> This draft came a full two months before the FBI completed over a dozen interviews, including immunized testimony from Cheryl Mills and Heather Samuelson and testimony from Secretary Clinton.<sup>52</sup>
8. Attorney General Lynch reportedly directed the FBI to call its Clinton investigation a “matter.”<sup>53</sup>
9. On June 10, 2016, the FBI and Justice Department agreed to immunize key figures in the investigation, including Cheryl Mills and Heather Samuelson.<sup>54</sup> These agreements included side deals that required the FBI to destroy evidence on computer devices turned over to the FBI.<sup>55</sup> A more rigorous investigation might have utilized its full authority (including use of an empaneled grand jury) to compel testimony and obtain evidence.

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<sup>46</sup> SJC 000143.

<sup>47</sup> Comey statement, *supra* note 41.

<sup>48</sup> SJC 000142.

<sup>49</sup> State OIG audit, *supra* note 36.

<sup>50</sup> *Id.*

<sup>51</sup> SJC 000140.

<sup>52</sup> Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Dec. 14, 2017).

<sup>53</sup> Matt Apuzzo, Michael S. Schmidt, Adam Goldman, & Eric Lichtblau, *Comey tried to shield the F.B.I. from politics. Then he shaped an election*, N.Y. Times, Apr. 22, 2017.

<sup>54</sup> Comm. review of Justice Dep’t immunity agreements with Cheryl Mills & Heather Samuelson (Sept. 27, 2016).

<sup>55</sup> *Id.* See also *FBI agreed to destroy laptops of Clinton aides with immunity deals, lawmaker says*, Fox News, Oct. 3, 2016.

10. On June 27, 2016, Attorney General Lynch met with President Bill Clinton on the tarmac at Phoenix International Airport, before the FBI's investigation of Secretary Clinton had concluded.<sup>56</sup>
11. As a result of the controversy over her questionable meeting with President Clinton, on July 1, 2016, Attorney General Lynch announced she would accept the recommendation from the FBI on whether to pursue criminal charges.<sup>57</sup> (See point #5 below).
12. On July 2, 2016, the FBI and Justice Department allowed other fact witnesses to the investigation, including Mills and Samuelson, to be present during the interview of Secretary Clinton.<sup>58</sup> The FBI and Justice Department also allowed attorneys to represent multiple individuals involved in the investigation.<sup>59</sup> A more rigorous investigation might have separated witnesses in order to compare testimony and scrutinize discrepancies.
13. On July 5, 2016, FBI Director Comey held a press conference and read the statement he first began writing in May and announced Secretary Clinton's exoneration. The final statement, as detailed above, had been significantly edited to downplay the severity of Secretary Clinton's actions. Director Comey also stated that he had "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."<sup>60</sup> (See point #5 below).

**2. *The Strzok-Page text messages augment the information already received and raise additional questions about the FBI's investigation***

The Committee received a first tranche of text messages exchanged between Strzok and Page on December 12, 2017.<sup>61</sup> On January 19, 2018, the Committee received the second tranche, together with notice that text messages sent and received between December 14, 2016, and May 17, 2017, had not been preserved due to technical problems.<sup>62</sup>

It is important to remember that Strzok was the Deputy Assistant Director of the FBI Counterintelligence Division and Page was a senior FBI attorney. It is apparent by reviewing the text messages that both worked directly with and/or had close access to the top officials of the FBI. Both often referenced meetings and communications with Director Comey, Deputy

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<sup>56</sup> Matt Zapotosky, *Attorney General meets with former President Clinton amid politically charged investigation into his wife's email*, Wash. Post, June 30, 2016.

<sup>57</sup> Matt Zapotosky, *Attorney General pledges to accept FBI and Justice findings in Clinton email probe*, Wash. Post, July 1, 2016.

<sup>58</sup> Fed. Bureau of Investigation, 302 of Interview with Hillary Rodham Clinton (July 2, 2016).

<sup>59</sup> Rachel Bade, *Clinton aides unite on FBI legal strategy*, Politico, Apr. 1, 2016.

<sup>60</sup> Comey statement, *supra* note 41.

<sup>61</sup> Dec. 12th Boyd letter, *supra* note 5.

<sup>62</sup> Jan. 19th Boyd letter, *supra* note 5.

Director McCabe, Chief of Staff Jim Rybicki, and General Counsel Jim Baker, as well as senior Justice Department officials.

The text messages that have been provided offer an unvarnished—although sometimes cryptic—insight into the conduct within the upper echelons of the FBI. Because the texts do not provide a full and complete picture, further investigation and inquiry is necessary. But they do paint a picture of bias and animus, and certainly raise questions about possible corruption. Here are just a few of the more troubling text messages, and their relevance to the Committee’s investigation:

1. Throughout the primary and general elections, Strzok and Page repeatedly demonstrated hostility to then-candidate Trump and Republicans in general. Page called Trump a “loathsome human,” before writing “I can not [*sic*] believe Donald Trump is likely to be an actual, serious candidate for president.”<sup>63</sup> Strzok called Trump “an idiot” and opined Clinton “should win 100,000,000 – 0.”<sup>64</sup> Strzok and Page also used expletives to describe Trump.<sup>65</sup> Page also expressed disdain for Americans participating in the 2016 March for Life, writing that she “truly hate[s] these people.”<sup>66</sup> Strzok called Virginians who apparently voted against FBI Deputy Director McCabe’s wife for a local Senate seat “ignorant hillbillies [*sic*].”<sup>67</sup> These statements raise questions about whether personal political bias may have affected the FBI’s investigation.
2. On April 10, 2016, Strzok texted Page that he was “increasingly profoundly bothered by JB’s [*sic* – likely refers to James Baker] call and the lack of ANY heads up. Deeply. It was wrong given what I had already been asked to do.” He continued: “I’m not sure if I want to be part of this.” Page responded, “You are part of this and that’s not going to change. But I think you have every right to be angry and frustrated about being left out of the loop on your investigation, especially when you’re going to be left holding the bag. . . . Big big case, big big problems.”<sup>68</sup> From context, it appears that Page and Strzok may have been discussing an interview that President Obama gave to *Fox News Sunday*, taped earlier in the week but aired that day, in which President Obama noted that he “continued to believe that [Secretary Clinton] has not jeopardized America’s national security.”<sup>69</sup> This exchange raises questions about whether and how the President’s statement affected the FBI’s investigation.

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<sup>63</sup> DOJ-PROD-66, 71.

<sup>64</sup> DOJ-PROD-66.

<sup>65</sup> DOJ-PROD-214.

<sup>66</sup> DOJ-PROD-46.

<sup>67</sup> DOJ-PROD-28.

<sup>68</sup> DOJ-PROD-101-02.

<sup>69</sup> *Exclusive: President Barack Obama on ‘Fox News Sunday,’* Fox News, Apr. 10, 2016. The interview occurred at the University of Chicago Law School. *Id.* According to the President’s daily schedule, he was at the University of Chicago Law School on Thursday, April 7, 2016. See White House, Barack Obama Administration, What’s Happening, April 7, 2016 Schedule, <https://obamawhitehouse.archives.gov/blog?page=28#>.

3. Following candidate Trump’s apparent victory in the Republican primary, Strzok and Page discussed how his victory pressured the FBI to finish its investigation of Hillary Clinton.<sup>70</sup> On August 6, 2016, Page texted Strzok that he was “meant to protect the country from that menace,” linking to an article about Trump’s so-called “enablers.”<sup>71</sup> Strzok replied, “[O]f course, I’ll try and approach it that way. I just know it will be tough at times. I can protect our country at many levels, not sure if that helps.” This suggests that high-ranking FBI officials may have been contemplating actions outside their authority.
4. On June 30, 2016, Strzok and Page exchanged texts about edits to Director Comey’s statement. Strzok texted, “K. Rybicki just sent another version.” Page responded, “Bill just popped his head in, hopefully to talk to him.” (“Bill” likely refers to Bill Priestap, Strzok’s boss). Strzok replied, “Hope so. Just left Bill. . . . He changed President to ‘another senior government official.’”<sup>72</sup> In Comey’s final statement, even the reference to “another senior government official” might have been viewed as too incriminating, and it was stricken altogether.<sup>73</sup> Section 793(f) prohibits having knowledge, and failing to report, the existence of national defense documents that are mishandled through gross negligence. The changes in Director Comey’s statement to delete the reference to President Obama—taken with the President’s April 10 statements about the investigation—raise questions about whether the FBI sought to downplay President Obama’s role or awareness of Secretary Clinton’s conduct.
5. On July 1, 2016, following Attorney General Lynch’s announcement that she would follow the FBI’s recommendation in the Clinton investigation, Page wrote, “it’s a real profile in couragw [*sic*], since she knows no charges will be brought” against Secretary Clinton.<sup>74</sup> Director Comey held the exoneration announcement press conference on July 5, 2016. Appearing before the House Committee on Oversight and Government Reform on July 7, 2016, Director Comey testified that he “did not coordinate [his statement] with anyone. The White House, the Department of Justice, nobody outside the FBI family had any idea what I was about to say.”<sup>75</sup> These statements seem to be at odds. The statements by both Comey and Lynch were carefully crafted for public consumption. Page’s text message, in contrast, was never intended to see the light of day, was therefore more candid, and may have greater credibility. Because Director Comey’s July 7 statement was given under oath, this discrepancy requires further investigation.
6. On August 9, 2016, Page wrote to Strzok about Trump, “He’s not ever going to become president, right? Right?!”<sup>76</sup> On August 15, 2016, Strzok replied to Page, “I

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<sup>70</sup> DOJ-PROD-114 (“Now the pressure really starts to finish MYE...”).

<sup>71</sup> DOJ-PROD-215.

<sup>72</sup> DOJ-PROD-166.

<sup>73</sup> SJC 000064, 78.

<sup>74</sup> DOJ-PROD-167.

<sup>75</sup> “*Oversight of the State Department*”: *Hearing before the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. (2016).

<sup>76</sup> DOJ-PROD-216.

- want to believe the path you threw out for consideration in Andy’s office—that there’s no way he gets elected—but I’m afraid we can’t take that risk. It’s like an insurance policy in the unlikely event you die before you’re 40....”<sup>77</sup> Because of what these texts imply, they demand further investigation.
7. On September 2, 2016, Page wrote about preparing talking points for Director Comey because “potus wants to know everything we’re doing.”<sup>78</sup> This text raises additional questions about the type and extent of President Obama’s personal involvement in the Clinton email scandal and the FBI investigation of it.
  8. On September 28, 2016, Strzok wrote to Page, “Got called up to Andy’s earlier ... hundreds of thousands of emails turned over by Weiner’s atty to sdney, includes a ton of material from spouse. Sending team up tomorrow to review... this will never end...”<sup>79</sup> This text message raises questions about the timing of when senior FBI officials learned of the existence of relevant emails on the laptop belonging to Huma Abedin’s husband, former Congressman Anthony Weiner.
  9. On October 21, 2016, Strzok wrote to Page, “Also, work-wise, [redacted] called b/c [Deputy Assistant Attorney General George] Toscas now aware NY has hrc-huma emails via weiner invest. Told him we knew. Wanted to know our thoughts on getting it. George wanted to ensure info got to Andy. I told Bill.”<sup>80</sup> This text message raises additional questions about the timing of the FBI and the Justice Department’s awareness of the new emails.
  10. On October 28, 2016, Director Comey informed Congress that “[d]ue to recent developments,” the FBI was reopening its Clinton email investigation to review new emails that had been discovered “[i]n connection with an unrelated case.”<sup>81</sup> News reports on the same day indicated that the newly discovered emails were found on Congressman Weiner’s laptop.<sup>82</sup>
  11. Following Deputy Director McCabe’s recusal from the investigation, on November 2, 2016—as the FBI reviewed newly discovered emails on the laptop of Congressman Weiner—Page expressed frustration about “find[ing] out things, be[ing] unable to tell Andy, and powerless to stop them.”<sup>83</sup> Strzok responded, “Need you on the inside now more than ever. Truly. And no bs, your country needs you now. We are going

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<sup>77</sup> DOJ-PROD-222.

<sup>78</sup> DOJ-PROD-238. The Justice Department notified the Committee that it had redacted other text messages that were personal in nature or relating to other investigations. See Jan. 19th Boyd letter, *supra* note 5. Presumably, because this message was not redacted, the Department believes it may relate to the FBI’s investigation of classified information on Secretary Clinton’s private server.

<sup>79</sup> DOJ-PROD-272.

<sup>80</sup> DOJ-PROD-295.

<sup>81</sup> Letter from James B. Comey, Fed. Bureau of Investigation, to Richard Burr et al. (Oct. 28, 2016).

<sup>82</sup> Rosalind S. Helderman, Matt Zapotosky, & Sari Horowitz, *Computer seized in Weiner probe prompts FBI to take new steps in Clinton email inquiry*, Wash. Post, Oct. 28, 2016.

<sup>83</sup> DOJ-PROD-310.

- to have to be very wise about all of this.”<sup>84</sup> Page replied, “I am going to have to use Jim Baker a lot to get to the D. But I don’t trust he can convey details accurately!”<sup>85</sup> This exchange raises questions about Deputy Director McCabe’s role in the investigation prior to his recusal.
12. On November 3, 2016, Page wrote to Strzok, “The nyt [*sic*] probability numbers are dropping every day. I’m scared for our organization.”<sup>86</sup> This is likely a reference to the *New York Times* presidential election forecast, which gave Secretary Clinton as high as a 93 percent chance of winning on October 25, before dropping to an 85 percent change as of November 3.<sup>87</sup>
  13. On November 4, 2016, as the FBI finished its review of the emails on Congressman Weiner’s laptop, Page wrote to Strzok, “[T]he American presidential election, and thus, the state of the world, actually hangs in the balance.”<sup>88</sup>
  14. On November 6, 2016, Director Comey again wrote to Congress, stating that the FBI’s review of the newly discovered emails “ha[s] not changed our conclusions that we expressed in July with respect to Secretary Clinton.”<sup>89</sup>
  15. On Election Day 2016, Page wrote, “OMG THIS IS F\*CKING TERRIFYING.” Strzok agreed, “Omg, I am so depressed.”<sup>90</sup> Later that month she wrote, twice, about buying and reading *All the President’s Men*.<sup>91</sup> She also wrote, “Figure I needed to brush up on watergate [*sic*].”<sup>92</sup> These messages raise questions about whether personal political bias may have affected the FBI’s inquiry.
  16. On November 14, 2016, Page wrote, “God, being here makes me angry. Lots of high fallutin’ national security talk. Meanwhile, we have OUR task ahead of us....”<sup>93</sup> Combined with Strzok’s August 15 text about an insurance policy, further investigation is warranted to determine what they meant, what actions they might have taken as a result, and how their attitude affected their decision-making and performance.
  17. In the cover letter accompanying the second batch of texts, the Justice Department notified the Committee that texts between Strzok and Page dated between December

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> DOJ-PROD-314.

<sup>87</sup> *Who will be president?*, N.Y. Times, <https://www.nytimes.com/interactive/2016/upshot/presidential-polls-forecast.html>.

<sup>88</sup> DOJ-PROD-315.

<sup>89</sup> Letter from James B. Comey, Fed. Bureau of Investigation, to Richard Burr et al. (Nov. 6, 2016).

<sup>90</sup> DOJ-PROD-319-20.

<sup>91</sup> DOJ-PROD-322, 328.

<sup>92</sup> DOJ-PROD-322.

<sup>93</sup> DOJ-PROD-322.



- 14, 2016, and May 15, 2017 had not been archived and were therefore not available.<sup>94</sup> This is a crucial time period in which Strzok, as the Deputy Assistant Director of the FBI's Counterintelligence Division, was almost certainly involved in the FBI's investigation into Russian interference in the November 2016 election, and possible collusion with the Trump campaign. Given Strzok's unvarnished comments to Page critical of President Trump, it is certainly warranted for the Committee to obtain the text messages and other information during this time period.
18. On May 19, 2017, two days after Robert Mueller was appointed Special Counsel, Strzok and Page discussed the staffing of the Special Counsel investigation. Strzok wrote, "For me, and this case, I personally have a sense of unfinished business. I unleashed it with MYE. Now I need to fix it and finish it."<sup>95</sup> He appears to be referring to the upcoming inquiry when he later wrote "[a]n investigation leading to impeachment?"<sup>96</sup> These text messages raise questions about whether a personal animus may have been a consideration prompting Strzok to join Special Counsel Mueller's investigation.
19. Later in that same May 19 text exchange as Strzok and Page were discussing career assignment options, apparently including joining the Special Counsel probe, he added, "you and I both know the odds are nothing. If I thought it was likely, I'd be there no question. I hesitate in part because of my gut sense and concern there's no big there there."<sup>97</sup> This comment strongly underscores the need to obtain the missing text messages and other information regarding the FBI's actions and investigations into the Clinton email scandal and Russian involvement in the November 2016 election.
20. Text messages exchanged between Strzok and Page suggest that FBI officials used non-official email accounts and messaging programs to communicate about FBI business.<sup>98</sup> For example, on April 10, 2016—after Strzok expressed his frustration about being "left out of the loop"—he wrote 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."<sup>99</sup> In another exchange, on October 25, 2016, about a letter to Congress regarding the Clinton investigation, Page wrote, "Remind me I need to ask you something. Tomorrow is fine."<sup>100</sup> Strzok responded: "[S]ure. You can also imsg [iMessage] me."<sup>101</sup> Strzok and Page also discussed Page potentially receiving an FBI-issued iPhone for which the FBI information technology

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<sup>94</sup> Jan. 19th Boyd letter, *supra* note 5.

<sup>95</sup> DOJ-PROD-340.

<sup>96</sup> DOJ-PROD-341.

<sup>97</sup> DOJ-PROD-341.

<sup>98</sup> DOJ-PROD-102, 258.

<sup>99</sup> DOJ-PROD-102. "Bill" likely refers to Bill Priestap, Strzok's boss.

<sup>100</sup> DOJ-PROD-299.

<sup>101</sup> DOJ-PROD-300.

office proposed to stop following “security/monitoring” requirements.<sup>102</sup> These texts raise questions about the FBI’s retention of records associated with its investigation.

**3. *The Committee will continue to conduct its oversight of the FBI and the FBI’s investigation of Secretary Clinton’s handling of classified information***

On January 25, 2018, Justice Department Inspector General Michael Horowitz informed the Committee that his office “succeeded in using forensic tools to recover text messages from FBI devices, including text messages between Mr. Strzok and Ms. Page that were sent and received between December 14, 2016, and May 17, 2017.”<sup>103</sup> He indicated that he will provide copies to the Department, and that he “would have no objection to the Department providing its own records” to the Committee. The Committee will work to obtain those records as soon as possible.

The FBI’s conduct in relation to supplying the text messages between Strzok and Page only heightens concern about actions and intentions at the highest echelons of the FBI. The DOJ OIG obtained the initial batch of text messages on July 20, 2017.<sup>104</sup> Upon review, the OIG informed Special Counsel Mueller about the inappropriate attitude exhibited in the text messages, which led to Strzok’s reassignment off the Special Counsel team on July 27, 2017. Congress was not informed, and the Committee only learned of the text messages through news reports in early December—more than four months later.

On December 6, 2017, Chairman Grassley and Chairman Johnson jointly wrote the Justice Department and the DOJ OIG requesting the text messages and other information regarding their investigations. We received the second batch of text messages on January 19, 2018, together with notification of the missing text messages. In responding to the OIG’s requests for these text messages, the FBI—the premiere investigative agency in the world—presumably had known about the missing text messages since at least July 2017. Over the period of many months, the FBI was unable to recover those text messages to fully comply with document requests from the OIG and two Senate committees. And yet the OIG was able to recover those same missing text messages in less than one week. With these facts in mind, the Committee would be derelict if it did not question the actions and intentions of some higher level officials in the FBI. How can anyone not be concerned?

In an effort to continue obtaining information to answer these questions, Chairman Johnson expanded the investigation on January 31, 2018, to request emails, text messages, notes, voicemails, and other material from the FBI officials involved in the Clinton investigation.<sup>105</sup>

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<sup>102</sup> DOJ-PROD-231-232.

<sup>103</sup> Letter from Michael E. Horowitz, Dep’t of Justice Off. of Inspector Gen., to Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary (Jan. 25, 2018).

<sup>104</sup> Letter from Michael E. Horowitz, Dep’t of Justice Off. of Inspector Gen., to Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary (Dec. 13, 2017).

<sup>105</sup> Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rod Rosenstein, Dep’t of Justice (Jan. 31, 2018).

### III. Conclusion

We should all recognize the harm done to our rule of law when crimes go unpunished because government officials look the other way for the wealthy, famous, or powerful. Americans rightly expect a single and impartial system of justice for all, not one for the well-connected and a separate one for everyone else.

The information available to the Committee at this time raises serious questions about how the FBI applied the rule of law in its investigation of classified information on Secretary Clinton's private email server. We know that:

- The FBI did not use a grand jury to compel testimony and obtain the vast majority of evidence, choosing instead to offer immunity deals and allow fact witnesses to join key interviews.
- There were substantial edits to Director Comey's public statement that served to downplay the severity of Secretary Clinton's actions, and that the first draft of the memo was distributed for editing two months before key witnesses were interviewed.
- Director Comey stated that he had not consulted with the Justice Department or White House, when text messages suggest otherwise.<sup>106</sup> We have text messages in which two key investigators discuss an "insurance policy" against the "risk" of a Trump presidency, and "OUR task."<sup>107</sup>
- Messages discuss "unfinished business," "an investigation leading to impeachment," and "my gut sense and concern there's no big there there."<sup>108</sup>
- Senior FBI officials—likely including Deputy Director McCabe—knew about newly discovered emails on a laptop belonging to Anthony Weiner for almost a month before Director Comey notified Congress.
- Over the period of at least four months, the FBI did not recover five months' worth of text messages requested by DOJ OIG and two Senate committees; however, when pressed, DOJ OIG was able to recover missing texts in less than one week.

Taken together, this information warrants further inquiry. While some may discount the investigation for political reasons, we all have a great interest in ensuring the public has confidence in the integrity and independence of the FBI, the preeminent law enforcement agency in the world. Unlike prosecutors or inspectors general, the primary goal of congressional oversight is full transparency in order to promote public awareness and confidence in federal agencies. For these reasons, our important work will continue.

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<sup>106</sup> DOJ-PROD-167, 238.

<sup>107</sup> DOJ-PROD-222, 322.

<sup>108</sup> DOJ-PROD-340-41.

## **Appendix A: Letters Sent by Chairman Johnson**

### ***Letters to Government Entities***

1. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, Bob Corker, S. Comm. on Foreign Relations, & Richard Burr, S. Sel. Comm. on Intel., to Steve Linick, State Dep't Off. of Inspector Gen. (Mar. 12, 2015);
2. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Steve Linick, State Dep't Off. of Inspector Gen. (Mar. 18, 2015);
3. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (June 23, 2015);
4. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (July 9, 2015);
5. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Kerry, Dep't of State (Sept. 11, 2015);
6. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Loretta Lynch, Dep't of Justice (Sept. 14, 2015);
7. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Clapper, Off. of Director of Nat'l Intel. (Sept. 16, 2015);
8. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (Sept. 16, 2015);
9. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Kerry, Dep't of State (Sept. 21, 2015);
10. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Patrick Kennedy, Dep't of State (Sept. 22, 2015);
11. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (Oct. 5, 2015);
12. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Kerry, Dep't of State (Jan. 13, 2016);
13. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (Jan. 26, 2016);
14. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (Feb. 22, 2016);
15. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Loretta Lynch, Dep't of Justice (Mar. 3, 2016);
16. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Comey, Fed. Bureau of Investigation (July 5, 2016);
17. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Steve Linick, State Dep't Off. of Inspector Gen. (July 11, 2016);
18. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Charles McCullough, Intelligence Community Inspector Gen. (July 11, 2016);

19. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Clapper, Off. of Director of Nat'l Intel. (July 11, 2016);
20. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to John Kerry, Dep't of State (July 11, 2016);
21. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Loretta Lynch, Dep't of Justice (July 11, 2016);
22. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Loretta Lynch, Dep't of Justice (Sept. 9, 2016);
23. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Comey, Fed. Bureau of Investigation (Oct. 28, 2016);
24. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to James Comey, Fed. Bureau of Investigation (Nov. 7, 2016);
25. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Adam Miles, Off. of Special Counsel (Sept. 8, 2017).
26. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Michael E. Horowitz, Dep't of Justice Off. of Inspector Gen. (Dec. 6, 2017);
27. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rod Rosenstein, Dep't of Justice (Dec. 6, 2017);
28. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Dec. 13, 2017);
29. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Dec. 14, 2017);
30. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Christopher Wray, Fed. Bureau of Investigation (Jan. 20, 2018);
31. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Michael E. Horowitz, Dep't of Justice Off. of Inspector Gen. (Jan. 23, 2018);
32. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rod Rosenstein, Dep't of Justice (Jan. 31, 2018).

***Letters to Nongovernmental Entities***

33. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to David Kendall, Williams & Connolly LLP (July 29, 2015);
34. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Treve Suazo, Platte River Networks (Aug. 11, 2015);
35. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to David Brown, Web.com Group, Inc. (Aug. 26, 2015).
36. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Sept. 4, 2015);
37. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Sept. 14, 2015);
38. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Rorrie Gregorio, Clinton Exec. Servs. Corp. (Sept. 18, 2015);

39. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Victor Nappe, SECNAP (Oct. 5, 2015);
40. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Austin McChord, Datto Inc. (Oct. 5, 2015);
41. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Oct. 8, 2015);
42. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to David Kendall, Williams & Connolly LLP (Nov. 4, 2015);
43. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, to Ken Xie, Fortinet, Inc. (Nov. 5, 2015);
44. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Justin Cooper, c/o Aaron Zebley, WilmerHale (Dec. 7, 2015);
45. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Bryan Pagliano (Mar. 3, 2016);
46. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to John Bentel, Dep't of State (Mar. 4, 2016);
47. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Marcel Lazar (Apr. 27, 2016);
48. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Justin Cooper, c/o Aaron Zebley, WilmerHale (May 12, 2016);
49. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Marcel Lazar (June 14, 2016);
50. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Treve Suazo, Platte River Networks (July 12, 2016);
51. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Victor Nappe, SECNAP (July 12, 2016);
52. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Austin McChord, Datto Inc. (July 12, 2016);
53. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Treve Suazo, Platte River Networks (Aug. 22, 2016);
54. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Victor Nappe, SECNAP (Aug. 22, 2016);
55. Letter from Ron Johnson, S. Comm. on Homeland Security & Governmental Affairs, & Lamar Smith, H. Comm. on Science, Space & Tech., to Austin McChord, Datto Inc. (Aug. 22, 2016).

## **Appendix B: Outstanding Committee Requests**

### ***State Department***

- State Department guidance, instruction, training for review of classified information during Freedom of Information Act (FOIA) production of Secretary Clinton’s emails. (July 9, 2015 request).
- State Department’s efforts to mitigate the damage caused by classified information on Secretary Clinton’s private email server. (September 16, 2015 request).
- State Department legal analyses or guidance about the use of a private server for official business. (September 21, 2015 request).
- Whether the State Department created a classified email account for use by Secretary Clinton (September 21, 2015 request).
- State Department records of Secretary Clinton’s access of classified documents. (September 21, 2015 request).
- State Department records and communications sent or received by Huma Abedin, Jake Sullivan, Cheryl Mills, and Philippe Reines. (September 21, 2015 request).
- State Department’s communications with Secretary Clinton’s representatives about preserving and collecting email records on her private server. (September 22, 2015 request).
- State Department records withheld from FOIA litigation. (October 5, 2015 request).
- State Department records and communications about Secretary Clinton’s private email account, private email server, the security of her account, and preservation of records from her account. (February 22, 2016 request).
- State Department resources and costs relating to Secretary Clinton’s use of a private email server and related investigations. (July 11, 2016 request).

### ***Justice Department***

- Justice Department resources and costs relating to Secretary Clinton’s use of a private email server and related investigations. (July 11, 2016 request).
- Justice Department records and communications relating to the FBI’s investigation of classified information on Secretary Clinton’s private server. (January 31, 2018).
- Justice Department’s timing of awareness of the missing text messages exchanged between Peter Strzok and Lisa Page. (January 31, 2018).
- Emails exchanged between President Obama and Secretary Clinton while Secretary Clinton was in the “territory of a sophisticated adversary.” (January 31, 2018).

### ***Federal Bureau of Investigation***

- FBI’s efforts to assess classified information on Secretary Clinton’s private email server and recover classified information housed in an unauthorized location. (August 17, 2015).
- FBI resources and costs relating to Secretary Clinton’s use of a private email server and related investigations. (July 5, 2016 request).
- FBI’s basis for assessing that Secretary Clinton was “extremely careless” but not “grossly negligent.” (July 5, 2016 request).

- FBI's basis for reviewing additional emails recovered that relate to Secretary Clinton's use of a private email server. (October 28, 2016 request).
- FBI's timeline for identifying and reporting newly discovered emails recovered that relate to Secretary Clinton's use of a private email server. (November 7, 2016 request).
- FBI's consent for the FBI to release unredacted copies of the Office of Special Counsel's Hatch Act investigation of Director Comey. (December 13, 2017 request).
- FBI's evidence for changing Director Comey's statement that Secretary Clinton was "grossly negligent" to "extremely careless." (December 14, 2017 request).
- A complete list of all FBI employees involved in the FBI's investigation of classified information on Secretary Clinton's private email server. (December 14, 2017 request).
- FBI's basis for changing Director Comey's statement to remove a reference to the Intelligence Community. (December 14, 2017 request).
- FBI's basis for editing Director Comey's statement to downgrade the assessment that it was "reasonably likely" that hostile actors gained access to Secretary Clinton's private email server to merely that it was "possible." (December 14, 2017 request).
- FBI records destroyed connected to the FBI's investigation of classified information on Secretary Clinton's private server. (January 20, 2018 request).

***Office of the Director of National Intelligence***

- ODNI's efforts to mitigate the damage caused by classified information on Secretary Clinton's private email server. (September 16, 2015 request).
- ODNI resources and costs relating to Secretary Clinton's use of a private email server and related investigations. (July 11, 2016 request).

***Other***

- Interview request with Bryan Pagliano. (September 4, 2015 request).
- Interview request with Justin Cooper. (December 7, 2015 request).
- Interview request with John Bentel. (March 4, 2016 request).
- Interview request with Marcel Lazar (April 27, 2016 request).
- Records about Clinton Executive Services Corp. (September 18, 2015 request).



## **Appendix C: Source Material**

1. Correspondence;
2. Drafts of Director Comey's July 5, 2016, statement; and
3. Text messages exchanged between Peter Strzok and Lisa Page.