

BOB GOODLATTE, Virginia
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
LAMAR S. SMITH, Texas
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
RAÚL R. LABRADOR, Idaho
BLAKE FARENTHOLD, Texas
DOUG COLLINS, Georgia
RON DeSANTIS, Florida
KEN BUCK, Colorado
JOHN RATCLIFFE, Texas
MIKE BISHOP, Michigan
MARTHA ROBY, Alabama
MATT GAETZ, Florida
MIKE JOHNSON, Louisiana
ANDY BIGGS, Arizona

JOHN CONYERS, JR., Michigan
RANKING MEMBER

JERROLD NADLER, New York
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
JUDY CHU, California
TED DEUTCH, Florida
LUIS V. GUTIÉRREZ, Illinois
KAREN BASS, California
CEDRIC L. RICHMOND, Louisiana
HAKEEM S. JEFFRIES, New York
DAVID CICILLINE, Rhode Island
ERIC SWALWELL, California
TED LIEU, California
JAMIE RASKIN, Maryland
PRAMILA JAYAPAL, Washington

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

September 26, 2017

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

We write to renew this Committee's recent call for a second special counsel, to investigate matters which may be outside the scope of Special Counsel Robert Mueller's investigation.¹ Such a step is even more critical given the recent revelation that former FBI Director James Comey had prepared a statement ending the investigation into former Secretary of State Hillary Clinton, before interviewing at least 17 key witnesses, including the former Secretary herself.² At least one former career FBI supervisor has characterized this action as "so far out of bounds it's not even in the stadium," and "clearly communicating to [FBI executive staff] where the investigation was going to go."³

Among those witnesses the FBI failed to interview prior to the Director's preparation of his statement were Cheryl Mills and Heather Samuelson, both of whom were close Clinton aides with extensive knowledge of the facts surrounding the establishment of a private email server. Last year, this Committee inquired repeatedly of the Justice Department about the facts surrounding Ms. Mills' and Ms. Samuelson's involvement.⁴ Our inquiries were largely ignored. Recently, we wrote to you to request responses to those and other unanswered questions

¹ "Goodlatte & Judiciary Republicans Call for Second Special Counsel to Address Issues Outside the Scope of Special Counsel Mueller's Investigation," July 27, 2017, *available at* <https://judiciary.house.gov/press-release/goodlatte-judiciary-republicans-call-second-special-counsel-address-issues-outside-scope-special-counsel-muellers-investigation/>.

² Letter from Senators Grassley and Graham to FBI Director Christopher Wray, August 30, 2017, *available at* [https://www.judiciary.senate.gov/imo/media/doc/2017-08-30%20CEG%20+%20LG%20to%20FBI%20\(Comey%20Statement\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-08-30%20CEG%20+%20LG%20to%20FBI%20(Comey%20Statement).pdf).

³ "Did James Comey Break Rules by Drafting Hillary Clinton Statement? FBI Experts Are Divided," Newsweek, September 1, 2017, *available at* <http://www.newsweek.com/comey-clinton-investigation-draft-statement-trump-658620>.

⁴ See, e.g., "Goodlatte Presses Justice Department on Secret Agreements with Top Clinton Advisors," October 3, 2016, *available at* <https://judiciary.house.gov/press-release/goodlatte-presses-justice-department-secret-agreements-top-clinton-advisors/>.

pertaining to the Clinton investigation.⁵ We have not received a response. However, as the most recent Comey revelations make clear, ignoring this problem will not make it go away.

As we pointed out at the time, both Ms. Mills and Ms. Samuelson received immunity for their cooperation in the Clinton investigation, but were nevertheless permitted to sit in on the interview of Secretary Clinton. That, coupled with the revelation that the Director had already drafted an exoneration statement, strongly suggests that the interview was a mere formality, and that the Director had already decided the case would be closed.

During our FBI Oversight hearing last year, Congressman John Ratcliffe questioned the Director about this very issue. In part, that exchange was as follows:

Mr. RATCLIFFE. Director, did you make the decision not to recommend criminal charges relating to classified information before or after Hillary Clinton was interviewed by the FBI on July the 2nd?

Mr. COMEY. After.

Mr. RATCLIFFE. Okay. Then I am going to need your help in trying to understand how that is possible. I think there are a lot of prosecutors or former prosecutors that are shaking our heads at how that could be the case. Because if there was ever any real possibility that Hillary Clinton might be charged for something that she admitted to on July the 2nd, why would two of the central witnesses in a potential prosecution against her be allowed to sit in the same room to hear the testimony?⁶

Why, indeed. Perhaps it was because, just as the Comey revelation suggests, the decision had already been made – prior to the interview of Secretary Clinton, Ms. Mills, Ms. Samuelson, or any of the other 14 potential witnesses – that Secretary Clinton would not be charged with any crimes for her conduct. President Obama had indicated as much, by stating publicly at the time that although Secretary Clinton showed “carelessness” in conducting government business on a private server, she had no intent to endanger national security. Of course, Secretary Clinton’s supposed lack of “intent to harm national security” is a red herring, since the law merely requires the government to show “gross negligence.”⁷

⁵ “Goodlatte & Judiciary Republicans Request Responses to Unanswered Oversight Letters Sent During Obama Administration,” July 21, 2017, *available at* <https://judiciary.house.gov/press-release/goodlatte-judiciary-republicans-request-responses-unanswered-oversight-letters-sent-obama-administration/>.

⁶ “Oversight of the Federal Bureau of Investigation,” Hearing before the H. Comm. on Judiciary, September 28, 2016, p. 87, *available at* https://judiciary.house.gov/wp-content/uploads/2016/09/114-91_22125.pdf.

⁷ 18 U.S.C. § 793(f). For a thorough account of this, see Andrew C. McCarthy, “It Wasn’t Comey’s Decision to Exonerate Hillary – It Was Obama’s,” *available at* <http://www.nationalreview.com/corner/451053/not-comeys-decision-exonerate-hillary-obamas-decision>.

Moreover, we note that not only did the former Director end the investigation prematurely -- and potentially at the direction, tacit or otherwise, of President Obama -- but he did so while declining to record the interviews of former Secretary Clinton or any of her close associates, as provided for by DOJ policy. The policy states:

This policy establishes a presumption that the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the United States Marshals Service (USMS) will electronically record statements made by individuals in their custody.

This policy also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances where the presumption does not apply. The policy encourages agents and prosecutors to consult with each other in such circumstances.⁸

Despite this, the DOJ and FBI declined to exercise their discretion to record the interview of former Secretary Clinton. This is truly inexplicable, given that the case was of keen national interest and importance, and involved a former Secretary of State and candidate for President of the United States who was accused of violating the Espionage Act. It only reinforces the sense that our nation's top law enforcement officials conspired to sweep the Clinton "matter" under the rug, and that there is, truly, one system for the powerful and politically well-connected, and another for everyone else.

In this case, it appears that Director Comey and other senior Justice Department and government officials may have pre-judged the "matter" before all the facts were known, thereby ensuring former Secretary Clinton would not be charged for her criminal activity. We implore you to name a second special counsel, to investigate this and other matters related to the 2016 election, including the conduct of the Justice Department regarding the investigation into Secretary Clinton's private email server.

Sincerely,



⁸ "Attorney General Holder Announces Significant Policy Shift Concerning Electronic Recording of Statements," available at <https://www.justice.gov/opa/pr/attorney-general-holder-announces-significant-policy-shift-concerning-electronic-recording> (emphasis added).

Steve King

Lamar Smith

Raul R. Labrador

Matt Meigs

Dy Coker

Andy Biggs

J. Jordan

Martha Roby

Mikigann

John Ratcliffe

Blake Fultz

John R. ...