

The Politicization of the FBI

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Over the past year, facts have emerged that suggest there was a plot by high-ranking FBI and Department of Justice (DOJ) officials in the Obama administration, acting under color of law, to exonerate Hillary Clinton of federal crimes and then, if she lost the election, to frame Donald Trump and his campaign for colluding with Russia to steal the presidency. This conduct was not based on mere bias, as has been widely claimed, but rather on deeply felt animus toward Trump and his agenda.

In the course of this plot, FBI Director James Comey, U.S. Attorney General Loretta Lynch, FBI Deputy Director Andrew McCabe, FBI Deputy Director of Counterintelligence Peter Strzok, Strzok's paramour and FBI lawyer Lisa Page, FBI General Counsel James Baker, and DOJ senior official Bruce Ohr—perhaps among others—compromised federal law enforcement to such an extent that the American public is losing trust. A recent CBS News poll finds 48 percent of Americans believe that Special Counsel Robert Mueller's Trump-Russia collusion probe is “politically motivated,” a stunning conclusion. And 63 percent of polled voters in a Harvard CAPS-Harris Poll believe that the FBI withheld vital information from Congress about the Clinton and Russia collusion investigations.

I spent my early legal career as a federal prosecutor. I later supervised hundreds of prosecutors and prosecutions as a U.S. Attorney and as an Independent Counsel. I have never witnessed investigations so fraught with failure to fulfill the basic elements of a criminal probe as those conducted under James Comey. Not since former Acting FBI Director L. Patrick Gray deep-sixed evidence during Watergate has the head of the FBI been so discredited as Comey is now.

The Case of the Clinton Emails

The Hillary Clinton email scandal began in 2013 with the U.S. House of Representatives investigation into the attack on the American embassy in Benghazi, Libya, on September 11, 2012. It was during that investigation that accessing Secretary of State Clinton's emails became an issue. But it wasn't until *The New York Times* broke the story on March 2, 2015, that Clinton had a secret, personal server that things really took off.

Thousands of emails that the House at first requested, then subpoenaed, conveniently disappeared—remember those reports about BleachBit and the smashing of Clinton's numerous phones with hammers? Clinton and her aides

were, to say the least, not forthcoming. It was clearly time for the FBI and DOJ to act, using the legal tools at their disposal to secure the emails and other materials the House had subpoenaed. But that didn't happen.

One tool at their disposal was the grand jury—the *sine qua non* of a criminal investigation. Grand juries are comprised of 16 to 23 citizens who hear a prosecutor's case against an alleged criminal. The subject of the investigation is not present during the entire proceeding, which can last up to a year. A grand jury provides investigators with the authority to collect evidence by issuing subpoenas for documents and witnesses. FBI agents and prosecutors cannot themselves demand evidence. Only a grand jury can—or a court, in cases where a subpoena recipient refuses a grand jury's command to provide documents or to testify.

Incredibly, FBI Director Comey and Attorney General Lynch refused to convene a grand jury during the Clinton investigation. Thus investigators had no authority to subpoena evidence or witnesses. Lacking leverage, Comey then injudiciously granted immunity to five Clinton aides in return for evidence that could have been obtained with a subpoena. Even when Clinton claimed 39 times during a July 2, 2016, interview—an interview led by disgraced FBI agent Peter Strzok—that she could not recall certain facts because of a head injury, Comey refused the case agents' request to subpoena her medical records.

Comey claims he negotiated the immunity deals because of his concern about time. Yet the investigation was opened in the summer of 2015, nearly a year before he cut these deals. Compare this to the DOJ's handling of four-star Marine General James E. Cartwright, who pleaded guilty in October 2016 to a false statement about leaking classified information to *The New York Times*. In that case, the DOJ bragged about its use of subpoenas and search warrants.

Not only was there no grand jury, the FBI never issued a search warrant—something it does when there is concern a person will destroy evidence. Clinton deleted half her emails and then claimed, under penalty of perjury, that she had turned over to the government all emails that “were or potentially were” work-related. The FBI later found email chains classified as “secret” or “confidential” that she had not turned over. Still no search warrant was issued.

Comey’s dereliction did not stop at the failure to utilize essential prosecutorial tools. He violated several rules that prosecutors consider sacrosanct:

- Comey allowed one lawyer to represent four material witnesses, an arrangement ripe for the four to coordinate testimony.
- After needlessly giving immunity to two lawyers representing Clinton, Comey permitted both to sit in on her July 2, 2016, FBI interview—a patent conflict. He claimed he could not control who sat in on the “voluntary” interview. That’s nonsense. He could have convened a grand jury, subpoenaed Clinton, and compelled her to appear and be questioned without a lawyer or else plead the Fifth Amendment.
- Comey authorized the destruction of laptop computers that belonged to Clinton’s aides and were under congressional subpoena.
- Comey ignored blatant evidence of culpability. It is ridiculous to the general public and risible to those who have security clearances for Clinton to claim she thought that “(c)” placed after paragraphs in her emails meant the material was in alphabetical order rather than meaning it was classified. If she thought (c) indicated alphabetical order, where were (a) and (b) on the documents? Clinton and her supporters touted her vast experience as a U.S. Senator and Secretary of State, positions requiring frequent use of classified information and presumably

common sense. Yet neither experience nor common sense informed her decisions when handling classified materials.

- Comey and the FBI never questioned Clinton about her public statements, which changed over time and were blatantly false. “I did not email classified information to anyone” morphed into “I did not email anything marked ‘classified,’” which morphed into the claim that (c) did not mean what it clearly meant. False and changing statements are presented to juries routinely by prosecutors as evidence of guilt.
- Breaking DOJ protocols, violating the chain of command, and assuming an authority he never had, Comey usurped the role of the U.S. attorney general on July 5, 2016, when he announced that the case against Clinton was closed. He justified his actions saying that he no longer trusted Attorney General Lynch after her June 27, 2016, meeting with Bill Clinton on the tarmac at the Phoenix airport. This meeting took place at the height of the so-called investigation—just days before Peter Strzok interviewed Clinton on July 2. Thanks to the efforts of Judicial Watch to secure documents through the Freedom of Information Act, we now know that Comey was already drafting a letter exonerating Clinton in May 2016—prior to interviewing more than a dozen major witnesses. We also know that the FBI’s reaction to the impropriety of the tarmac meeting was not disgust, but rather anger at the person who leaked the fact of the meeting. “We need to find that guy” and bring him before a supervisor, stated one (name redacted) FBI agent. Another argued that the source should be banned from working security details. Not one email expressed concern over the meeting. An FBI director who truly had his trust shaken would have questioned the members of Lynch’s FBI security detail for the Arizona trip about how the meeting came to be. Comey didn’t bother.

Comey described Clinton's handling of classified information as "extremely careless," a clumsy attempt to avoid the legal language of "gross negligence" for *criminal* mishandling of classified information—and we later learned that Peter Strzok, again, was responsible for editing this language in Comey's statement. But practically speaking, the terms are synonymous. Any judge would instruct a jury to consider "gross negligence" as "extremely careless" conduct.

Comey claimed that "no reasonable prosecutor" would bring the case against Clinton. I have spent many years investigating federal crimes, and I can tell you that a reasonable prosecutor would have utilized a grand jury, issued subpoenas and search warrants, and followed standard DOJ procedures for federal prosecutions. In short, Comey threw the case. He should have been fired long before he was.

In late spring 2016, just weeks prior to Comey's July 5 press conference clearing Clinton of any crime, FBI Deputy Director Andrew McCabe ordered FBI agents in New York to shut down their investigation into the Clinton Foundation. Their objections were overruled. Sources have told me that McCabe also shut down an additional Clinton investigation. This is the McCabe who, while he was overseeing the Clinton email investigation, had a wife running for the Virginia State Senate and receiving more than \$460,000 in campaign contributions from a longtime Clinton loyalist, Virginia Governor Terry McAuliffe. Moreover, it was only after the news of Clinton's private server became public in *The New York Times* that McAuliffe recruited McCabe's wife to run for office. McCabe eventually recused himself from the Clinton probe, but that was one week before the 2016 election, after the decisions to clear Clinton and to pursue the Trump-Russia collusion investigation had already been made. So his recusal was meaningless.

In clearing legal impediments from Clinton's path to the Democratic nomination, Comey and his senior staff thought they had helped Clinton clinch the presidency.

Their actions put an end to a decades-long tradition of non-political federal law enforcement.

The Case of Trump-Russia Collusion

Rumors of collusion with Russia by Trump or the Trump campaign surfaced during the primaries in 2015, but gained in strength soon after Trump secured the Republican nomination in July 2016. Thanks to DOJ Inspector General Michael Horowitz, we now know that high-level FBI officials were involved in promoting these rumors. Among Horowitz's discoveries were text messages between FBI Deputy Director of Counterintelligence Peter Strzok and FBI lawyer Lisa Page that suggest an illegal plan to utilize law enforcement to frame Trump. The most revealing exchange we know of took place on August 15, 2016. Concerned about the outcome of the election, Strzok wrote:

I want to believe the path you threw out for consideration in [Andrew McCabe's] office—that there's no way [Trump] 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.

No amount of sugar coating or *post hoc* explanation of this and other texts can conceal the couple's animus against Trump and support for Clinton. Strzok's messages illustrate his commitment to Clinton's victory and Trump's defeat or, if Trump won, to an "insurance policy."

The term "insurance policy" obviously refers to the Trump-Russia collusion investigation, which to this day remains a probe with no underlying crime. This is not the talk of professional investigators, but of corrupt agents who have created two standards of justice based on their political leanings. It looks like a reprise of the schemes undertaken during an earlier era, under FBI Director J. Edgar Hoover,

that led to the creation of the Church Committee—a committee on which I served, and which tried to reform the FBI to prevent it from meddling in domestic politics.

At the heart of the Russia collusion scheme is the FBI's utilization of a document paid for by the Clinton campaign and the Democratic National Committee. Called the Steele Dossier because it was written by former British MI6 officer Christopher Steele, this document contains unsubstantiated information designed to taint Trump and his presidency. While Clinton partisans point out that candidate Clinton never referred to the Steele Dossier in her speeches, the fact is that she did not have to—the FBI hierarchy was doing it for her! Indeed, FBI General Counsel James Baker was recently reassigned because of his having leaked information about the Steele Dossier to the magazine *Mother Jones*.

Not one claim concerning Trump in the Steele Dossier has ever been verified by the FBI, according to Andrew McCabe himself in recent testimony to the House Intelligence Committee. The only confirmed fact is unsurprising: former Trump campaign adviser Carter Page traveled to Moscow on his own dime and met with various Russians—all perfectly legal.

Comey and then-CIA Director John Brennan laundered the Steele Dossier through the U.S. intelligence community to give it an aura of credibility and get it to the press. It was also used by the FBI and senior DOJ officials to secure wiretap warrants from a secret Foreign Intelligence Surveillance Act (FISA) court. Then its contents, via court-authorized FISA warrants, were used to justify the illegal unmasking of the identities of wiretapped Trump officials. The contents of these National Security Agency intercepts were put on spreadsheets and presented to members of President Obama's National Security Council (NSC)—specifically Susan Rice and Ben Rhodes—and subsequently leaked to the press. According to former NSC staff, President Obama himself read the FISA intercepts of Trump

campaign personnel. Unsurprisingly, there was no request for a leak investigation from either the FBI or the DOJ.

In sum, the FBI and DOJ employed unverified salacious allegations contained in a political opposition research document to obtain court-sanctioned wiretaps, and then leaked the contents of the wiretaps and the identities of political opponents. This was a complex criminal plot worthy of Jason Bourne.

The Pall Over the Special Counsel and the FBI

Layered over this debacle is a special counsel investigation unfettered by rules or law. Not surprisingly, James Comey triggered the special counsel's appointment—and he did so by design. According to Comey's testimony to the Senate Intelligence Committee, having been fired on May 9, 2017, he leaked official documents to his friend, Columbia Law School professor Daniel Richman, with the specific intent that Richman would leak them to the press. Reportage on that leak is what led Deputy Attorney General Rod Rosenstein to appoint Robert Mueller—a former FBI director and Comey's good friend—as special counsel to investigate allegations of Trump-Russia collusion.

Mueller's reputation has been damaged by a series of decisions that violate the ethical rules of appearances. For instance, he hired Democratic partisans as lawyers for the probe: Andrew Weissmann, who donated to Clinton and praised Acting Attorney General Sally Yates for disobeying Trump's lawful Presidential Order regarding a travel ban for residents of certain nations that harbor terrorists; Jeannie Rhee, who donated to Clinton and represented Ben Rhodes in the email probe and the Clinton Foundation investigation; and Aaron Zebley, who represented Clinton IT staffer Justin Cooper in the email server probe.

Mueller also staged a pre-dawn raid with weapons drawn on the home of Paul Manafort, rousing Manafort and his wife from their bed—a tactic customarily

reserved for terrorists and drug dealers. Manafort has subsequently been indicted for financial crimes that antedate his campaign work for Trump and that have nothing to do with Russia collusion.

Then there's the fact that when Mueller removed Strzok from the investigation in July 2017, he didn't tell anyone. The removal and its causes were uncovered by DOJ Inspector General Michael Horowitz. Why was such vital information concealed from the public? It is not, as is often claimed now, that Strzok was a minor figure. All the major decisions regarding both the Clinton and the Trump-Russia collusion investigations had been made under Strzok.

Significantly, Strzok also led the interview of General Michael Flynn that ended in Flynn pleading guilty to making false statements to the FBI. It is important to recall that Flynn's FBI interview was not conducted under the authority of the special counsel, but under that of Comey and McCabe. It took place during Inauguration week in January 2017. Flynn had met with the same agents the day before regarding security clearances. McCabe called Flynn and asked if agents could come to the White House. Flynn agreed, assuming it was about personnel. It was not.

Flynn had been overheard on a FISA wiretap talking to Russia's Ambassador to the United States, Sergey Kislyak. There was nothing criminal or even unusual about the fact of such discussion. Flynn was on the Trump transition team and was a federal employee as the President-Elect's national security advisor. It was his job to be talking to foreign leaders. Flynn was not charged with regard to anything said during his conversation with Kislyak. So why was the FBI interrogating Flynn about legal conduct? What more did the FBI need to know? I am told by sources that when Flynn's indictment was announced, McCabe was on a video conference call—cheering!

Compare the FBI's treatment of Flynn to its treatment of Paul Combetta, the technician who used a program called BleachBit to destroy thousands of emails on Hillary Clinton's computer. This destruction of evidence took place after a committee of the U.S. House of Representatives issued letters directing that all emails be preserved and subpoenaing them. Combetta first lied to the FBI, claiming he did not recall deleting anything. After being rewarded with immunity, Combetta recalled destroying the emails—but he could not recall anyone directing him to do so.

The word in Washington is that Flynn pleaded guilty to take pressure off his son, who was also a subject of Mueller's investigation. Always the soldier. But those who questioned Flynn that day did not cover themselves with law enforcement glory. Led by Strzok, they grilled Flynn about facts that they already knew and that they knew did not constitute a crime. They besmirched the reputation of federal law enforcement by their role in a scheme to destroy a duly elected president and his appointees.

A pall hangs over Mueller, and a pall hangs over the DOJ. But the darkest pall hangs over the FBI, America's premier federal law enforcement agency, which since the demise of J. Edgar Hoover has been steadfast in steering clear of politics. Even during L. Patrick Gray's brief tenure as acting director during Watergate, it was not the FBI but Gray personally who was implicated. The current scandal pervades the Bureau. It spans from Director Comey to Deputy Director McCabe to General Counsel Baker. It spread to counterintelligence via Peter Strzok. When line agents complained about the misconduct, McCabe retaliated by placing them under investigation for leaking information.

From the outset of this scandal, I have considered Comey a dirty cop. His unflinching commitment to himself above all else is of a pattern. Throughout his career, Comey has continually portrayed himself as Thomas Becket, fighting against

institutional corruption—even where none exists. Stories abound of his routine retort to anyone who disagreed with him (not an unusual happening when lawyers gather) during his tenure as deputy attorney general under President George W. Bush. “Your moral compass is askew,” he would say. This self-righteousness led agents to refer to him as “The Cardinal.” Comey is no Thomas Becket—he is Henry II.

A great disservice has been done to the dedicated men and women of the FBI by Comey and his seventh floor henchmen. A grand jury probe is long overdue. Inspector General Horowitz is an honest man, but he cannot convene a grand jury. We need one now. We need our FBI back.