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Banana Republic: One System of Justice for the Powerful (Like Clinton) … and Another For Everyone Else

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FBI Director Comey's announcement that he doesn't think Hillary Clinton should be prosecuted for sharing government documents on her private, unsecured email server is very troubling ...

The FBI Re-Wrote 6 Criminal Laws to Let Clinton Off the Hook

Former FBI director Chris Swecker said Comey should have brought charges against Clinton:

> He seemed to be building a case for that and he laid out what I thought were the elements under the gross negligence aspect of it, so I was very surprised at the end when he said that there was a recommendation of no prosecution and also given the fact-based nature of this and the statement that no reasonable prosecutor would entertain prosecution, I don't think that's the standard.

Andrew McCarthy – former assistant U.S. attorney for the Southern District of New York, who led the 1995 terrorism prosecution against Sheikh Omar Abdel Rahman and eleven others, obtaining convictions for the 1993 World Trade Center bombing – notes:

> In essence, in order to give Mrs. Clinton a pass, the FBI rewrote the statute, inserting an intent element that Congress did not require. The added intent element, moreover, makes no sense: The point of having a statute that criminalizes gross negligence is to underscore that government officials have a special obligation to safeguard national defense secrets; when they fail to carry out that obligation due to gross negligence, they are guilty of serious wrongdoing. The lack of intent to harm our country is irrelevant. People never intend the bad things that happen due to gross negligence. I would point out, moreover, that there are other statutes that criminalize unlawfully removing and transmitting highly classified information with intent to harm the United States. Being not guilty (and, indeed, not even accused) of Offense B does not absolve a person of guilt on Offense A, which she has committed. It is a common tactic of defense lawyers in criminal trials to set up a straw-man for the jury: a crime the defendant has not committed. The idea is that by knocking down a crime the prosecution does not allege and cannot prove, the defense may confuse the jury into believing the defendant is not guilty of the crime charged. Judges generally do not allow such sleight-of-hand because innocence on an uncharged crime is irrelevant to the consideration of the crimes that actually have been charged. It seems to me that this is what the FBI has done today. It has told the public that because Mrs. Clinton did not have intent to harm the United States we should not prosecute her on a felony

> that does not require proof of intent to harm the United States. Meanwhile, although there may have been profound harm to national security caused by her grossly negligent mishandling of classified information, we've decided she shouldn't be prosecuted for grossly negligent mishandling of classified information. I think highly of Jim Comey personally and professionally, but this makes no sense to me. Finally, I was especially unpersuaded by Director Comey's claim that no reasonable prosecutor would bring a case based on the evidence uncovered by the FBI. To my mind, a reasonable prosecutor would ask: Why did Congress criminalize the mishandling of classified information through gross negligence? The answer, obviously, is to prevent harm to national security. So then the reasonable prosecutor asks: Was the statute clearly violated, and if yes, is it likely that Mrs. Clinton's conduct caused harm to national security? If those two questions are answered in the affirmative, I believe many, if not most, reasonable prosecutors would feel obliged to bring the case.

Shannen Coffin – who served in senior legal positions in the U.S. Department of Justice – writes:

> Comey simply ignored — or rewrote — the plain language of § 793(f), which does not require any showing of criminal intent. There is a reason that Congress did not require a showing of intent in this provision of the Espionage Act: to protect against even inadvertent disclosure or risk of disclosure of protected information where the perpetrator demonstrated gross disregard for the national security. How Comey could conclude that "no reasonable prosecutor" could make this case is inexplicable in light of his own words.
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> Even where the statutes prohibiting mishandling of classified information require intent, it is not exclusively intent to harm the national security (though that does play into some relevant statutes). Comey noted that his investigation looked at "a second statute, making it a misdemeanor to knowingly remove classified information from appropriate systems or storage facilities." That statute is 18 U.S.C. §1924(a), which provides that any federal official who "becomes possessed of documents or materials containing classified information of the United States, [and] knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year, or both [emphasis added]." Section 1924(a) does not require an intent to profit, to harm the United States, or otherwise to act in a manner disloyal to the United States. It only requires "intent to retain" classified documents at an unauthorized location, something Comey's own comments suggest was the case here. Again, the case for prosecuting in light of these facts was more than simply fairly debatable it was quite strong.

Indeed, the FBI rewrote 6 criminal laws in announcing that Clinton shouldn't be prosecuted.

Prosecutors HAVE Indicted For MUCH LESS

Less than a year ago, the FBI prosecuted a naval reservist for "unauthorized removal & retention of classified materials" … without any showing of malicious intent.

NSA whistleblower Kirk Wiebe told Washington's Blog today:

> I felt that the flame of "equal justice for all" in the US died today when Hillary is freed from prosecution having sent multiple, highly classified emails on a

> non-classified network, while [CIA whistleblower] Jeffery Sterling sits in jail having been prosecuted for contacting a reporter, and while [NSA whistleblowers] Ed Loomis, Bill Binney, Diane Roark, Tom Drake and I have our clearances suspended or revoked for simply blowing the whistle on non-Constitutional governmental activities, mismanagement, and widespread corruption.

John Kirakou – former CIA counterterrorism operations officer and former senior investigator for the Senate Foreign Relations Committee who blew the whistle on illegal torture by CIA officers, and was thrown in jail for it – points out:

> In my very first hearing, my judge … said that she would not respect precedent from the Tom Drake case, saying that a defendant in a national security case had to have criminal intent to be prosecuted for espionage. That begged the question of whether a defendant could then "accidentally" commit espionage. "That's exactly what it means," the judge said. I didn't stand a chance.
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> But in Hillary Clinton's case, it seems that everything rests on the notion of criminal intent. Did Hillary, then, set up her email server specifically to subvert the Freedom of Information Act (FOIA)? Did she set up her email server for the express purpose of passing classified information to people not entitled to receive it? … But that's not the standard ….
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> I don't care whether or not she had criminal intent. My own trial judge says that it doesn't matter. But if Hillary didn't have criminal intent, and that's the reason the Justice Department uses to not prosecute her, then Tom Drake and I, at the very least, deserve a pardon. Otherwise, the system really is as corrupt as so many Americans say it is.

Kirakou also points out:

> She revealed the names of undercover CIA officers by using her unclassified and unprotected personal email server. That may be a violation both of the Espionage Act of 1917 and the Intelligence Identities Act of 1982 (IIPA).

Bill Binney – the highest-level NSA whistleblower in history – tells Washington's Blog that Clinton and her staff took "the *most sensitive* intelligence … out of classified [NSA] reports and put excerpts in opensource on her server," and notes that the damage to U.S. intelligence is *tremendous*. And see this.

Clinton's Security Clearance Should Be Revoked …

Diane Roark – a former top staff member on the House Intelligence Committee – explained to Washington's Blog why Clinton should be disqualified from serving as president:

> Though nothing was found against any of us [high-level whistleblowers on mass surveillance by the NSA] after an investigation of over four years, and [Pulitzer prize-winning] reporter Risen even said publicly several times that he had not known any of us, our clearances were never returned. Obviously one cannot be POTUS without clearances, so Hillary should be disqualified on that ground alone. Though the President is the chief intel consumer, I would think

> agencies would withhold particularly sensitive items given her clear subordination of security to the goal of keeping her records private so she cannot be criticized and to enhance her political career.

NEVER BEFORE Has the FBI Publicized Its Recommendation

Former FBI Assistant Director Chris Swecker said:

> I've been involved in the criminal investigation for the FBI of Congressmen, Senators, and officials of every description …. I cannot ever remember any FBI director – or any FBI official – coming out with a referral and the substance of a recommendation. So that it in itself is highly, highly unusual.

Alex Emmons notes:

> Matthew Miller, who was a spokesman for the Department of Justice under Attorney General Eric Holder, called Comey's press conference an "absolutely unprecedented, appalling, and a flagrant violation of Justice Department regulations." He told The Intercept: "The thing that's so damaging about this is that the Department of Justice is supposed to reach conclusions and put them in court filings. There's a certain amount of due process there."
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> Legal experts could not recall another time that the FBI had made its recommendation so publicly.
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> "It's not unusual for the FBI to take a strong positions on whether charges should be brought in a case," said University of Texas law professor Steve Vladeck. "The unusual part is publicizing it."

The Rule of Law Is Dead In America

Bill Binney – the highest-level NSA whistleblower in history – told Washington's Blog:

> This shows our non existing justice system.

CIA whistleblower Kirakou notes:

> Comey's decision reflects the utter hypocrisy of the justice system in matters of national security.
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> If you are a whistleblower you can expect the entire weight of the US government to fall on your head. But if you are a well-connected political figure, or a friend of the president, you can violate the country's espionage laws with impunity and know that you'll get away with it.

Former top U.S. intelligence officials recently noted:

> The contrast between the copious evidence – some of it self-admitted – of Secretary Clinton's demonstrable infractions, on the one hand, and the very sketchy, circumstantial evidence used to convict and imprison Jeffrey Sterling,

> on the other, lend weight to the suspicion that there is one law for the rich and powerful in the United States and another for the rest of us.

NSA whistleblower Thomas Drake said a year ago:

> I think [Clinton] is vulnerable, but whether she enjoys what I call "elite immunity," we don't know …. For much lesser violations people have lost their jobs. But when you get to the higher ranks, it's like another set of rules.

Glenn Greenwald writes:

> What happened here is glaringly obvious. It is the tawdry by-product of a criminal justice mentality in which – as I documented in my 2011 book With Liberty and Justice for Some – those who wield the greatest political and economic power are virtually exempt from the rule of law even when they commit the most egregious crimes, while only those who are powerless and marginalized are harshly punished, often for the most trivial transgressions.
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> Had someone who was obscure and unimportant and powerless done what Hillary Clinton did – recklessly and secretly install a shoddy home server and worked with Top Secret information on it, then outright lied to the public about it when they were caught – they would have been criminally charged long ago, with little fuss or objection. But Hillary Clinton is the opposite of unimportant. She's the multi-millionaire former First Lady, Senator from New York, and Secretary of State, supported by virtually the entire political, financial and media establishment to be the next President, arguably the only person standing between Donald Trump and the White House.
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> Like the Wall Street tycoons whose systemic fraud triggered the 2008 global financial crisis, and like the military and political officials who instituted a worldwide regime of torture, Hillary Clinton is too important to be treated the same as everyone else under the law. "Felony charges appear to be reserved for people of the lowest ranks. Everyone else who does it either doesn't get charged or gets charged with a misdemeanor," Virginia defense attorney Edward MacMahon told Politico last year about secrecy prosecutions. Washington defense attorney Abbe Lowell has similarly denounced the "profound double standard" governing how the Obama DOJ prosecutes secrecy cases: "lower-level employees are prosecuted . . . because they are easy targets and lack the resources and political connections to fight back."
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> The fact that Clinton is who she is undoubtedly what caused the FBI to accord her the massive benefit of the doubt when assessing her motives, when finding nothing that was – in the words of Comey – "clearly intentional and willful mishandling of classified information; or vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; or indications of disloyalty to the United States; or efforts to obstruct justice."
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> But a system that accords treatment based on who someone is, rather than what they've done, is the opposite of one conducted under the rule of law.

Indeed, there are two systems of justice in America … one for the fatcats … and one for everyone else.

After all, the government *protects criminal* wrongdoing by prosecuting whistleblowers. The Obama administration has sentenced whistleblowers to *dozens of times* the jail time of all

other presidents COMBINED). And the government has framed whistleblowers with false evidence.

And yet the government goes to great lengths to protect the elites against charges of criminal wrongdoing.

As former prosecutor (and Clinton supporter) Chuck Hobbs puts it:

> With Comey indicating that over 100 emails analyzed by his agents contained some level of classified information, and with him further indicating that Clinton used her private servers in areas where "hostile actors" could have easily accessed her account, as a former prosecutor, I would think that a prosecution should be forthcoming; such would be the logical conclusion considering the facts that Clinton agreed not to break the law and that she broke the law either knowingly or negligently.
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> Comey's comments constitute a form of legal sophistry in that prosecutors did not need to prove that Clinton intended to commit a criminal act. Comey and staunch Clinton apologists keep providing cover by adding that element — intent — that simply is not needed. Indeed, under federal and state laws, negligence roughly means an "indifference" or careless attitude toward the proscribed conduct and with Comey calling the conduct "extremely careless," an argument can be made that Clinton was grossly negligent in her acts.
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> But the fact that no prosecution is pending this day is so not because Clinton was right or has been vindicated, but because the Washington elites in both major political parties protect their own. Generally, I am not prone to conspiracy theories, but I do not find it coincidental that last week, former President Bill Clinton just happened to force a meeting with Attorney General Loretta Lynch — in private — on an airport tarmac in Arizona only days before Lynch's employee, James Comey, announces his recommendation that no charges should be pursued. Or that on the same day that Comey announces his decision, that his big boss — President Obama — just happens to be campaigning with Clinton in Charlotte, North Carolina.
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> But even if each of the above were coincidental, we cannot ignore that any other career Foreign Service officer or governmental official with security clearances would have been charged with a criminal offense, fired or both. Most would have faced arrest and indictment by federal agents and prosecutors, not a public press conference where the head of the FBI makes arguments usually proffered by defense counsel that has been retained at great expense by the accused. If for no other reason, this is disconcerting because the only thing that keeps our nation of laws intact is belief that no person is above the law. But since the two major parties' presumptive candidates — Democrat Hillary Clinton and Republican Donald Trump — both have skeletons in their closets, ranging from public corruption to marital assault, and with neither ever having had to endure a peregrination through the justice system at any point in their adult lives, it becomes more obvious than ever that the rich and powerful seem to know instinctively that when accused of wrongdoing, absolutely nothing will come of it, no matter how serious the allegations.

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