

How the FBI Could Force DOJ to Prosecute Hillary Clinton

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by Jim Geraghty

Could the Hillary Clinton e-mail saga end with FBI Director James Comey resigning in protest? Ken Cuccinelli, the former attorney general of Virginia, knows the laws regarding classified information firsthand. In his private practice, Cuccinelli defended a Marine lieutenant colonel court-martialed on charges of possessing such information outside a secure facility. He says Clinton's actions in the e-mail scandal clearly satisfy all five requirements necessary to sustain charges of mishandling classified material, and constitute a breach perhaps even more glaring than the one for which General David Petraeus was convicted. Like Petraeus, Clinton was clearly "an employee of the United States government." Like Petraeus, Clinton obtained and created "documents and materials containing classified information" through her work at the State Department. In response to a Congressional inquiry earlier this month, Lt. Charles McCullough, III, the inspector general of the intelligence community, declared that an intelligence official examined "several dozen e-mails containing classified information determined . . . to be . . . CONFIDENTIAL, SECRET, and TOP SECRET/SAP information" residing on Clinton's server. (SAP is an acronym for 'special access programs,' a level of classification above top secret.)

Like Petraeus, Clinton "knowingly removed such documents or materials." Cuccinelli points out that she actually committed this crime on a significant scale three separate times: First, by setting up her e-mail system to route messages to and through her unsecured server, then by moving the server to Platte River Networks, a private company, in June of 2013, and then by transferring the server's contents to her private lawyers in 2014. RELATED: Why the Justice Department Won't Work with the FBI on Clinton's E-mail Case Like Petraeus, Clinton did not have the authority to remove classified information from secure locations. "Simply being secretary of state does not allow Hillary Clinton to 'authorize herself' to deviate from the requirements of retaining and transmitting classified documents, materials, and information," Cuccinelli says. "There is no known evidence, and Clinton has not asserted, that her arrangement to use the private e-mail server in her home was undertaken with proper authority as it relates to classified documents, materials, or information." And like Petraeus, Clinton demonstrated the "intent to retain such documents or materials at an unauthorized location." A private residence can be an "authorized" location, and non-government servers and networks can be "authorized" to house and transfer classified materials, but there are specific and stringent requirements for such authorization, and there is no indication that Clinton undertook the steps necessary to obtain it for her house, her private server, Platte River Networks, or her lawyers. "If she had, she would not have offered the 'my house is guarded by the Secret Service' excuse," Cuccinelli says. Share article on Facebook share Tweet article tweet As FBI Director, Comey was completely in the loop on the decision to bring charges against Petraeus, so Clinton's case is familiar territory for him. Cuccinelli says that if the FBI's handling of Petraeus is any guide, Comey's agents are likely to recommend a Clinton indictment to the Department of Justice. Then, the issue becomes really high-stakes. There is no time limit on how long Attorney General Loretta Lynch and the DOJ can take in reviewing the FBI's recommendation and the evidence on which it's based. But if the Department of Justice gives the signal that they're going to ignore the FBI's investigations, or drag out their own review past election day, Cuccinelli — along with Judge Andrew Napolitano, Roger Stone, Charles Krauthammer, and other observers — predicts that Comey will resign in protest, and other high-level FBI officials could follow him out the door. More Clinton E-mail Scandal Hillary Can't Pin E-mailgate on the Vast Right-Wing Conspiracy Why the Justice Department Won't Work with the FBI on Clinton's E-mail Case State Department Seeks to Delay Release of Final Clinton E-mails until After Iowa & New Hampshire Not many people remember that Comey almost resigned a high-profile law-enforcement job once before, upset because he thought White House politics were overruling the law.

Back in 2004, Comey was Attorney General John Ashcroft's top deputy. The Justice Department determined that the Bush administration's domestic-surveillance program, run by the National Security Agency, was illegal. Ashcroft was hospitalized at the time with a pancreatic ailment, and his authority had been transferred to Comey during the hospitalization. Then—White House counsel Alberto R. Gonzales and President Bush's chief of staff, Andrew H. Card Jr., went to the hospital to persuade Ashcroft to re-authorize the program. Comey and then—FBI director Robert Mueller raced to the hospital to lobby Ashcroft against signing the authorization papers. Ultimately, Bush agreed with the Justice Department's assessment and scrapped the program. Comey later told Congress that he, Ashcroft, Mueller, and their aides had prepared a mass resignation in case the White House ignored or defied their legal assessment. In short, Comey's been willing to defy a White House before, as Obama acknowledged in announcing his nomination to head the FBI: To know Jim Comey is also to know his fierce independence and his deep integrity. Like Bob [Mueller], he's that rarity in Washington sometimes — he doesn't care about politics; he only cares about getting the job done. At key moments, when it's mattered most, he joined Bob in standing up for what he believed was right. He was prepared to give up a job he loved rather than be part of something he felt was fundamentally wrong. Is Comey still prepared to give up the job rather than be part of something he feels is fundamentally wrong? If, as those who know him suspect, it will much harder for the Department of Justice to ignore what his bureau has to say about Clinton's dangerous misconduct. — Jim Geraghty is the senior political correspondent for National Review. Read more at: <http://www.nationalreview.com/article/430343/hillary-clinton-email-scandal-fbi-director-james-comey-resign-protest>