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OPINION | REVIEW & OUTLOOK

Jim Comey's Clinton Standard

He shows how she broke the law then rationalizes no indictment.

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For our money, the most revealing words in FBI Director James Comey's statement Tuesday explaining his decision not to recommend prosecuting Hillary Clinton for mishandling classified information were these: "This is not to suggest that in similar circumstances, a person who engaged in this activity would face no consequences. To the contrary, those individuals are often subject to security or administrative sanctions."

So there it is in the political raw: One standard exists for a Democratic candidate for President and another for the *hoi polloi*. We're not sure if Mr. Comey, the erstwhile Eliot Ness, intended to be so obvious, but what a depressing moment this is for the American rule of law. No wonder so many voters think Washington is rigged for the powerful.

Mr. Comey spent nearly all of his media appearance laying out the multiple ways in which Mrs. Clinton's use of a private email server for official State Department business had violated official policy and jeopardized America's secrets. Yet at the end he declined to recommend prosecution because her behavior was merely "extremely careless" rather than "grossly negligent" as the law requires. This is a rhetorical distinction without a difference that deserves to be mocked.

Mr. Comey's facts grossly—if we may use that word—belie his conclusion. Of the 30,000 work-related emails Mrs. Clinton turned over to State, 110 contained classified information at the time they were sent or received. Eight email chains

contained information judged to be Top Secret. The FBI also found three emails containing classified information among emails that Mrs. Clinton had deleted (rather than turned over to State)—but which the FBI was able to find through forensic analysis.

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The FBI chief's statement also had the effect of exposing the many lies Mrs. Clinton has told about her emails.

- Mrs. Clinton claimed she “did not email any classified material” over her private email. Mr. Comey refuted this with precise numbers.
- She said her private server was permitted under State policy. Mr. Comey said “none of these e-mails should have been on any kind of unclassified system.”
- She said the emails she sent or received weren't “marked” classified. Mr. Comey said that, marked or not, “participants who know or should know that the subject matter is classified are still obligated to protect it.”
- Mrs. Clinton said she used personal email merely for the “convenience” of using one device. Mr. Comey revealed that she had “used numerous mobile devices to view and send email on that personal domain” as well as numerous servers.
- Mrs. Clinton claimed she turned over all work-related email to State. Mr. Comey said the FBI found “several thousand” work-related emails that were not turned over. He also dropped the astonishing news that Mrs. Clinton's lawyers hadn't even read her emails when deciding what to turn in. They relied on “header information” and search terms, and then “cleaned their devices in such a way as to preclude complete forensic recovery.”
- Mrs. Clinton claimed her email was stored in a safe and secure manner, and not hacked. Mr. Comey said “hostile actors” had accessed the private account of “people with whom Secretary Clinton was in regular contact from her personal account.” Her personal email was known about and “readily apparent.”

He said she “used her personal email extensively while outside the United States, including sending and receiving work-related emails in the territory of

sophisticated adversaries.” Therefore, he added, “it is possible that hostile actors gained access to Secretary Clinton’s personal email account.”

Despite this list of indictable particulars, Mr. Comey concluded that none of it warrants a criminal prosecution. His justification is that her behavior didn’t meet the standard of “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.”

Yet the recent State Department Inspector General report disclosed emails showing that Mrs. Clinton and her staff were warned by State officials that her private email was vulnerable to hackers. She willfully and intentionally ignored those warnings. Mr. Comey knows that many federal employees have been prosecuted for mishandling classified information despite no evidence of ill intent. They were prosecuted merely for recklessly handling secrets. (See Michael Mukasey nearby.)

By a reasonable person’s standards, Mrs. Clinton’s decision to use a private server, to give her aides access to it, to email classified information on it, to fail to secure it, and to use it in hostile territory was grossly negligent. We can’t wait for the next minion prosecuted for mishandling secrets to invoke the “extremely careless” defense.

Mr. Comey justified what he called his “unusual statement” in the name of political “transparency.” But by declaring that no prosecutor should indict Mrs. Clinton, he also hurt the cause of political accountability. The decision to indict or not rests with prosecutors, not the FBI, as Mr. Comey noted. But now prosecutors can merely point to Mr. Comey’s public statement to justify taking no action. He could have passed on his evidence quietly, but instead he acted like a prosecutor while denying that he is one.

It is true that prosecutors must consider the context when deciding whether to press charges. But we wonder if Mr. Comey and the FBI would have shown the same forbearance had the target of their probe been someone less prominent or loved by the Washington establishment. Mr. Comey’s bosom friend, Patrick Fitzgerald, the special prosecutor he named to pursue Scooter Libby, showed no such restraint.

Most distressing is what this episode augurs for another Clinton Administration. Mrs. Clinton deliberately sought to evade the Federal Records Act, recklessly flouted laws on handling classified information, spent a year lying about it, and will now have escaped accountability. This will confirm the Clinton family habit, learned so painfully in the 1990s, that they can get away

with anything if they deny it long enough and are protected by a friendly media and political class.

The rule of law requires its neutral application. We almost wish Mr. Comey had avoided his self-justifying, have-it-both-ways statement and said bluntly that he couldn't indict Mrs. Clinton because the country must be spared a Donald Trump Presidency. It would have been more honest and less corrosive to democracy than his Clinton Standard.

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