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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 14, 2015

VIA ELECTRONIC TRANSMISSION

Mr. David E. Kendall
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Dear Mr. Kendall:

Recent news reports indicate that as Secretary Clinton's attorney you had a security clearance that was used to possess her official emails. In fact, according to a Washington Post report, the Department of State allegedly instructed you on "appropriate measures for physically securing" her classified emails.¹ However, since that report, the Intelligence Community Inspector General (IC IG) notified the Judiciary Committee that at least two emails on Secretary Clinton's server were – and are – classified at the Top Secret/Sensitive Compartmented Information (TS/SCI) level. Importantly, according to the IC IG and Department of State Inspector General, the emails were classified at that level when created.

In light of that particular classification, which generally requires advanced protocols such as a Sensitive Compartmented Information Facility (SCIF) and other similar arrangements to possess and view, it appears the FBI has determined that your clearance is not sufficient to allow you to maintain custody of the emails. Consistent with that determination, the FBI is now in custody of not only the thumb drives previously in your possession that allegedly contain all of Secretary Clinton's emails, but also Secretary Clinton's personal server that was used to maintain the top secret emails outside of a government facility.²

Further reporting indicates that Secretary Clinton may have provided you copies of her emails in December 2014 and that government officials realized that the emails contained classified information in May 2015 yet the Department of State did not deliver a safe to store the

¹ Carol D. Leonnig, Rosalind S. Helderman, Tom Hamburger, "FBI looking into the security of Hillary Clinton's private email setup," WASHINGTON POST (August 4, 2015). Accessible at http://www.washingtonpost.com/politics/fbi-looks-into-security-of-clintons-private-e-mail-setup/2015/08/04/2bdd85ec-3aae-11e5-8e98-115a3cf7d7ae_story.html.

² Josh Gerstein, "Clinton aides vow not to destroy emails," POLITICO (August 8, 2015). Accessible at <http://www.politico.com/blogs/under-the-radar/2015/08/clinton-lawyer-details-server-surrender-as-aides-vow-212291.html>

thumb drives until July 2015.³ Thus, since at least May 2015 and possibly December 2014, it appears that in addition to not having an adequate security clearance, you did not have the appropriate tools in place to secure the thumb drives. Even with the safe, there are questions as to whether it was an adequate mechanism to secure TS/SCI material.⁴ Given the importance of securing and protecting classified information, especially TS/SCI material, it is imperative to confirm when, how, and why you, and any of your associates, received a security clearance in connection with your representation of Ms. Clinton and whether it was active while you had custody of Secretary Clinton's emails.

The transmission of classified material to an individual unauthorized to possess it is a serious national security risk. Moreover, if a person unauthorized to maintain custody of the classified materials does in fact maintain custody, it raises legitimate questions as to whether the information was properly secured from foreign governments and other entities. Many intelligence community personnel, uniformed personnel and the American people may be at risk when classified material is not properly secured. Accordingly, it is very important that the Judiciary Committee fully understand the events that have transpired.

Please answer the following questions:

1. When did you receive the security clearance in connection with the custody of Secretary Clinton's classified emails?
2. You reportedly held a clearance in connection with your representation of General Petraeus. When was that clearance terminated?
3. Besides you, were any employees or partners of Williams & Connolly (hereinafter "associates") granted access to view and/or possess Secretary Clinton's emails? If so, please name each associate.
4. What security clearance level did you have to maintain custody of Secretary Clinton's classified emails? What was the security clearance level for all associates?
5. Which government entity granted you and your associates a security clearance to be a custodian of Secretary Clinton's emails?
6. What was the primary purpose for that government entity granting you and your associates a security clearance?

³ Greg Gordon, Marisa Taylor, Anita Kumar, "Classified data found on emails in May; Clinton camp slow to protect secrets," *McCLATCHY DC* (August 13, 2015). Accessible at <http://www.mcclatchydc.com/news/nation-world/national/article31057029.html>

⁴ 32 C.F.R. § 2001.43 (Storage of classified information).

7. Did the Department of State request that you be provided a security clearance? If so, on what date was that request made and why?
8. Did the Department of State request that your associates be provided a security clearance? If so, on what date was that request made and why?
9. On what date did Secretary Clinton transfer the emails to you? On what date did she transfer them to your associates?
10. Does Secretary Clinton currently hold a clearance?
11. Do you currently hold a clearance in connection with your representation of Secretary Clinton? If so, when did you obtain it and from what agency?
12. Since the IC IG made a referral to the FBI pursuant to 50 U.S.C. §3381, has Secretary Clinton's security clearance been suspended pending the outcome of the inquiry?
13. Since the IC IG made a referral to the FBI pursuant to 50 U.S.C. §3381, has your security clearance or the security clearance of any associates been suspended pending the outcome of the inquiry?

Please number your responses according to their corresponding questions. Thank you in advance for your cooperation with this request. Please respond no later than August 24, 2015. If you have questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary