Kenya's President Commutes Sentence Of 2,747 Death Row Prisoners

On October 24, 2016 Kenya's President Uhuru Kenyatta commuted the sentence of all 2,747 persons on death row to a sentence of life imprisonment. In addition, the president issued pardons to 102 prisoners serving long sentences. President Kenyatta's office issued the **following statement**:

> President Uhuru Kenyatta has signed commutation documents commuting all death sentences into life jail terms.
>
> Following the signing of the documents at State House, Nairobi, some 2747 death row convicts will now serve life imprisonment. This includes 2655 male convicts and 92 female convicts who will be removed from the death row to serve life sentences.
>
> The last commutation of death sentences to life imprisonment was done in 2009 by the then President Mwai Kibaki.
>
> Invoking the Power of Mercy provided for under Article 133 of the Constitution, President Kenyatta today also signed a pardon warrant and released 102 long-term serving convicts.
>
> The reprieve for the 102 convicts came after a thorough vetting by the Power of Mercy Advisory Committee.
>
> The Power of Mercy is a prerogative power conferred on the President by the Constitution and entails granting pardon to reformed and rehabilitated convicted criminal offenders deserving early release from prison.
>
> Present were Attorney General Githu Muigai, Interior Cabinet Secretary Joseph Nkaissery, Power of Mercy Advisory Committee Secretary Michael Kagika Prisons Commissioner General Isaiah Osugo, and Chief of Staff and Head of Public Service Joseph Kinyua.

Kenya's President Uhuru Kenyatta (wikileaks.org)

The blanket commutation of all death sentences by Kenyatta and in 2009 by his predecessor, President Mwai Kibaki, and the pardoning of large numbers of prisoners is not unprecedented. On October 20, 2002 Iraq's President Saddam Hussein issued a **decree ordering** "a complete, comprehensive and final amnesty" for all prisoners in Iraq. The prisoners were ordered to be "freed immediately." Many thousands of prisoners were released from Abu Ghraib in Baghdad and the other prisons in Iraq. It was reported that in response to President Hussein's decree there were "Tens of thousands of people, dancing and singing their delight... Joyful relatives of prisoners waved portraits of Saddam in the air, singing their gratitude." On March 20, 2003 the United States and several allies invaded Iraq and toppled Iraq's government. President Hussein was executed on December 30, 2006, after being found guilty of crimes against humanity.

Iraq's President Saddam Hussein (biography.com)

Sources:

Death row convicts get a reprieve, Press Release, The Presidency -- Official Website of the President of Kenya, October 24, 2016

Saddam empties Iraq's jails, *The Telegraph* (London), Oct. 21, 2002

James Comey Is Most Dishonest FBI Director In U.S. History

By Hans Sherrer

Dishonesty by state and federal prosecutors and law enforcement officers was involved in a majority of the thousands of known wrongful conviction cases. With only a few exceptions, those people were steamrolled because they lacked the wealth to hire competent lawyers, private investigators and experts, or they lacked the insider/political connections that would have either outright deterred their prosecution, or prevented their prosecution after their exclusion following an honest review of the evidence. That systemic corruption is reflected in Justice Denied's logo that shows the snake of evil tilting the scales of justice.

The converse of an innocent person being unable to avoid a wrongful conviction because they lack money or insider/political connections, is a blatantly guilty person avoiding conviction for the crimes they did commit because they have the money or political connections necessary to do so.

FBI Director James Comey

There is nothing new about this. The great investigative reporter George Seldes (1890-1995) began his newspaper career in Pittsburgh in 1909. One of Seldes' early assignments as a reporter was to investigate a complaint by a female employee of a large store that she had been raped by the owner's son. Seldes obtained evidence substantiating the woman's claim. Seldes wrote a story exposing the rapist that he expected to be printed. His story wasn't published. When Seldes asked why, he was told the advertising department sent a copy of his story to the store's owner. The owner was told the story would run if he didn't increase his advertising with the paper. The owner agreed to increase his advertising, and the story was killed. That incident was a rude awakening of Seldes to the unseemly reality that insider connections could protect a criminal from getting his or her just deserts. That reality was reinforced many times during his career. Seldes describes many such incidents in his autobiographical book, "Tell The Truth And Run" (New York: Greenberg, 1953).

FBI's Investigation of Hillary Clinton's use of a private e-mail server while Secretary of State

Hillary Clinton was the U.S. Secretary of State from February 2009 to February 2013.

On July 5, 2016 FBI Director James B. Comey Jr. issued a statement regarding the FBI investigation of Clinton's use of personal e-mail systems during her time as Secretary of State.

Comey described that based on a criminal referral from The Intelligence Community Inspector General, the FBI began an investigation of Clinton's use of personal e-mail systems for government work during her time as Secretary of State. That investigation discovered that Clinton used multiple private

Comey cont. on p. 17

Comey cont. from p. 16

computer servers to store her State Department related emails that were sent and received from her private domain, and she used at least 13 devices to transmit and receive State Department related emails using her private domain. Two of the locations where those servers were located were the basement of Clinton's home in Chappaqua, New York, and in the bathroom closet of Platte River Networks located in Denver, Colorado.

Clinton was required to provide the State Department with all work related documents when she left office in 2013 and left government employment.

In 2014 Clinton returned about 30,000 of her emails that were on her private servers.

The FBI investigation found:

- 110 e-mails in 52 email chains contained Classified information at the time they were sent or received.
- Eight of those email chains contained information that was at the Top Secret/Special Access level at the time they were sent. The chains involved Clinton both sending e-mails about Top Secret matters and receiving e-mails from others about the same matters.
- 36 of those email chains contained Secret information at the time. The chains involved Clinton both sending e-mails about Secret matters and receiving e-mails from others about the same matters.
- Eight of those email chains contained Confidential information (lowest level of classification). The chains involved Clinton both sending e-mails about Confidential matters and receiving e-mails from others about the same matters.
- 2,000 additional e-mails were "up-classified" to their correct status as Confidential upon review of the emails by the agency from which they originated. (The senders of those 2,000 emails erred by failing to classify them at the time the e-mails were sent.)

So the FBI determined there were a total of 2,110 emails containing classified information among the approximately 30,000 emails Clinton turned over.

The FBI also discovered several thousand State Department related Clinton e-mails Clinton didn't turn over. Some were traced to her private servers from devices that were connected to Clinton's private e-mail domain. Others were found in the archived government e-mail accounts of people who sent or received emails to Clinton's private e-mail domain during her tenure as Secretary of State. Additional emails were recovered from forensic analysis of e-mail fragments found in the slack space of a Clinton server decommissioned in 2013. The FBI didn't find evidence any of those several thousand emails were deleted to conceal them from investigators.

The FBI determined three of the emails were classified at the time they were sent or received: one contained Secret information, and two contained Confidential information.

The FBI also determined there were likely other deleted work-related e-mails that Clinton did not return and that were not found elsewhere, and that could not be recovered because the devices they were on were either destroyed or cleaned to prevent their forensic recovery.

On March 4, 2015 the House of Representatives issued a subpoena for Clinton to produce all her emails.

After Clinton received the subpoena, 33,000 emails were deleted from her servers. Her lawyers allegedly selected the 33,000 emails withheld from disclosure as being personal concerning her yoga classes and her daughter Chelsea's wedding. The lawyers allegedly didn't read the contents, but only looked at the email's header information and search terms to determine they were personal. It is not possible to verify those emails weren't work related. Use of the Bleach-Bit computer program to delete the emails made them unreadable even by computer forensic analysis. Bleach-Bit default feature is to simply delete selected files. However, Clinton's surrogates went beyond deleting the files, by choosing to use Bleach-Bit's optional file shredding feature to completely obliterate her 33,000 emails. U.S. Congressman Trey Gowdy (R. SC) said that Clinton's use of Bleach-Bit to shred her emails made it "So even God couldn't read them."

The FBI investigation also found that Clinton used at least eight different devices -- including Blackberry mobile devices -- to send and receive emails while she was Secretary of State. A hammer was used to destroy several of those devices after Clinton was issued the subpoena to produce her emails.

Comey's conclusions about the handling of Clinton's emails

Comey commented about the 2,000 emails "up-classified" during the investigation because the email's sender failed to do so: "But even if information is not marked "classified" in an e-mail, participants who know or should know that the subject matter is classified are still obligated to protect it. ... There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for that conversation."

Comey **stated regarding** the use of Clinton's private email domain for official government business:

> "We also assess that Secretary Clinton's use of a personal e-mail domain was both known by a large number of people and readily apparent. She also used her personal e-mail extensively while outside the United States, including sending and receiving work-related e-mails in the territory of sophisticated adversaries. Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton's personal e-mail account.
>
> ...
>
> While not the focus of our investigation, we also developed evidence that the security culture of the State Department [under Clinton's leadership] in general, and with respect to use of unclassified e-mail systems in particular, was generally lacking in the kind of care for classified information found elsewhere in the government."

Comey didn't mention that Clinton allowed her lawyers -- who didn't have security clearance -- to have access to the contents of the thousands of classified emails on her private server.

Given the totality of the evidence, **Comey determined** there was substantial evidence Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information. ... None of these e-mails should have been on any kind of unclassified system, but their presence is especially concerning because all of these e-mails were housed on unclassified personal servers not even supported by full-time security staff, like those found at Departments and Agencies of the U.S. Government—or even with a commercial service like Gmail. ... Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information,

Comey cont. on p. 18

Comey cont. from p. 17

there is evidence that they were extremely careless in their handling of very sensitive, highly classified information."

Comey recommends the DOJ not prosecute Clinton for violating 18 U.S. Code § 793(f)

On July 1, 2016 -- two days after meeting alone with former President Bill Clinton on an otherwise deserted airplane on the tarmac at Phoenix's Sky Harbor International Airport — Attorney General Loretta Lynch announced **she would abide** — sight unseen — by the recommendation of FBI Director Comey about whether to prosecute Hillary Clinton regarding her use of a private computer server and private domain names for the sending and receiving of State Department related emails.

In his July 5 statement Comey's explained his recommendation to the Department of Justice:

> "In our system, the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect. ...
>
> Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case. Prosecutors necessarily weigh a number of factors before bringing charges. There are obvious considerations, like the strength of the evidence, especially regarding intent. Responsible decisions also consider the context of a person's actions, and how similar situations have been handled in the past.
>
> To be clear, 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. But that is not what we are deciding now.
>
> As a result, although the Department of Justice makes final decisions on matters like this, *we are expressing to Justice our view that no charges are appropriate in this case*."

Comey testifies before Full House Committee on Oversight and Government Reform

Two days after releasing his statement, Comey testified under oath on July 7 before the Full House Committee on Oversight and Government Reform. During his questioning by Trey Gowdy (R-SC) **Comey acknowledged** that Clinton wasn't truthful in stating:

- That "she never sent or received classified information over her private e-mail."
- That none of the emails she sent or received using her private e-mail were marked as classified.
- That she only used one device to send or receive emails over her private e-mail.
- That "all work-related e-mails were returned to the State Department" upon her leaving office. (Comey stated: "We found thousands that were not returned.")
- That "neither she nor anyone else deleted work related e-mails from her personal account."
- That "her lawyers read every one of the e-mails and were overly inclusive."[2]

Comey wasn't asked about Clinton's testimony during the Benghazi hearing on October 22, 2015 that her private email system used only one server, when it is known multiple servers were used.

Comey **also stated** that false exculpatory statements by a suspect are used "Either for substantive prosecution or evidence of intent in a criminal prosecution." To which Gowdy responded: "Exactly. Intent and consciousness of guilt right? ... In your old job, you would prove intent as you just referenced by showing the jury evidence of a complex scheme that was designed for the very purpose of concealing the public record and you would be arguing in addition to concealment the destruction you and I talked about or certainly the failure to preserve, you would argue all of that under the heading of intent. You would also be arguing the pervasiveness of the scheme, when it started, when it ended, and the number of e-mails whether they were originally classified or up classified. You would argue all of that under the heading of intent. You would also probably under common scheme or plan argue the burn bags of daily calendar entries or the missing daily calendar entries as a common scheme or plan to conceal. Two days ago, director, you said a reasonable person in her position should have known a private e-mail was no place to send and receive classified information. You're right. An average person does know not to do that. This is no average person. This is a former first lady. A former United State Senator, and a former secretary of state that the president now contends is the most competent qualified person to be president since Jefferson. He didn't say that in '08. But he says it now. She affirmatively rejected efforts to give her a state.gov account. She kept these private e-mails ... and only turned them over to congress because we found out she had a private e-mail account. So you have a rogue e-mail system set up before she took the oath.. thousands of what we now know to be classified e-mails, ...and this scheme took place over a long period of time and resulted in the destruction of public records. You say she was extremely careless, but not intentionally so. ...and my real fear is this. It's what the chairman touched upon. This double tracked justice system that is rightly or wrongly perceived in this country, that if you are a private in the Army and you e-mail yourself classified information, you will be kicked out. But if you are Hillary Clinton and you seek a promotion to Commander in Chief, you will not be. So what I hope you can do today is help the average person — the reasonable person you made reference to, the reasonable person understand why she appears to be treated differently than the rest of us would be. ..." (Testimony began at 33:36 min. mark of hearing audio recording.)

Comey reiterated some of his July 5 statement **in testifying**:

> "There was a statute passed in 1917 that on its face makes it a crime for someone to engage in gross negligence. [18 U.S. Code § 793(f)] Maybe in that circumstance you don't need to prove they were doing something unlawful. ... When I look at the facts we gather here, I see evidence of great carelessness, but I do not see evidence that is sufficient to establish that Secretary Clinton or those with whom she was corresponding both talked about classified information on e-mail and knew when they did it, they were doing something that was against the law." (Testimony began at 17:37 min. mark of hearing audio recording.)

Hundreds of Clinton's classified emails were accessed by up to five foreign governments

It was reported on November 3, 2016 that the Senate Homeland Security and Government Affairs Committee found evidence that in 2013 and 2014 five foreign intelligence agencies — that included Germany, China, and South Korea — may have successfully accessed Clinton's email servers known to have contained more than 400 classified emails — and possibly many

Comey cont. on p. 19

Comey cont. from p. 18

thousands of classified emails. [4]

After disclosure of the information, House Homeland Security Committee Chairman Michael McCaul (R-TX) **stated to Fox News**: "She exposed [information] to our enemies. Our adversaries have this very sensitive information… In my opinion, quite frankly, it's treason." McCaul said that Comey told him about the likely exposure of Clinton's emails to foreign spy agencies, before that information was made public.

Federal espionage statute 18 U.S.C. § 793(f) is strict liability crime

The federal Espionage Act criminalizes the mishandling, transmission, gathering, or losing of classified government information. the Espionage Act includes several crimes that are strict liability offenses. A violation of those crimes is proven by evidence of the person's conduct in committing the illegal action: evidence of whether they intended to commit the crime is irrelevant. One of those strict liability statutes is 18 U.S. Code § 793(f) — Gathering, transmitting or losing defense information:

> Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through *gross negligence* permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer — Shall be fined under this title or imprisoned not more than ten years, or both.

Section 793(f) plainly states that a conviction requires evidence that a person acted with "gross negligence." However, the statute does not contain any reference that the government needs to introduce any evidence of the person's mental state of intending to violate the law — only that he or she acted with "gross negligence." That is reflected in federal district court pattern jury instructions for § 793(f) that specifically states:

- First, that the defendant had been entrusted with or had lawful possession or control of;
- Second, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information relating to the national defense;
- Third, that the defendant permitted the above material to be removed from its proper place of custody or delivered to anyone in violation of the defendant's trust,

or to be lost, stolen, abstracted, or destroyed; and

- *Fourth, that the defendant did so through gross negligence*. [1]

Gross negligence is legally **defined as**, "A severe degree of negligence taken as reckless disregard. Blatant indifference to one's legal duty, other's safety, or their rights are examples." In other words, gross negligence is the opposite of being conscientious or careful.

A further explanation of what constitutes gross negligence is provided by its interpretation under the federal involuntary manslaughter law (18 U.S.C. Sec. 1112). Gross negligence is a required element the government must prove to secure a conviction. It was stated in *United States v. Pardee*, 368 F.2d 368, 374 (4th Cir. 1966): "If the resultant deaths were merely accidental or the result of a misadventure or due to simple negligence, or an honest error of judgment in performing a lawful act, the existence of gross negligence should not be found."

Congress' exclusion of the government from needing to prove a person intended to violate 18 U.S.C. § 793(f), was not accidental. Sections 793 (a) and (b) both require that the government must introduce evidence a person acted with the mental "intent or reason to believe" they were committing a crime, in to prove a violation of the law.

Congress considers a violation of the Espionage Act serious enough that under the Federal Whistleblower Protection Act a whistleblower is not exempt from prosecution for the release of classified information. Furthermore, the FWPA also doesn't bar a person from adverse employment action for unauthorized disclose of classified information. [3]

Summary of Comey's conclusion to not recommend prosecution of Hillary Clinton

FBI Director Comey's statement on July 5, 2016 brought to the forefront the fact that to secure a conviction under 18 U.S.C. § 793(f) the government is required to prove a person acted with "gross negligence" — i.e., "Blatant indifference to one's legal duty." — while there is no need for the government to present any evidence he or she intended to commit a crime.

Comey acknowledged in his Statement of July 5 there is evidence that Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information." During his Congressional testimony on July 7 he testified Clinton and her colleagues exhibited "great carelessness" in their handling of classified information in her emails. At a minimum "extremely careless" and "great carelessness" are comparable to "blatant indifference," and arguably much more severe. That would suggest that Comey would have no reasonable choice but to recommend prosecution given the years long disregard by Clinton and her colleagues of practicing even minimal protections of classified material -- that the Senate committee determined was likely accessed by the spy agencies of up to five foreign countries.

However, that isn't what he did. Instead, he recommended against prosecution by relying on the rationale that while there is evidence Clinton and her colleagues acted with "gross negligence" ("extremely careless') , he didn't think they intended to violate the law. Comey created that argument out of thin air, because Congress did not include a defendant's *intent* as an element of the crime -- only that they *acted* with "gross negligence." The pattern jury instructions described above make it clear there is no legal basis for his recommendation. The prosecution doesn't need to present *any* evidence of a defendant's intent (state of mind) to obtain a conviction for a violation of section 793(f), only evidence of what they did. A person's state of mind doesn't need to be mentioned at any time during a trial for an alleged violation of section 793(f), because it isn't an issue.

Thus, there is no legal validity for Comey's statement on July 5 that he had recommended against the DOJ prosecuting Clinton and her colleagues for their hundreds of alleged violations of 18 U.S.C. § 793(f).

Comey's Congressional testimony on July 7 reinforced his recitation of the facts in his July 5 Statement that the actions of Clinton and her colleagues regarding the handling of her private emails constituted "gross neg-

Comey cont. on p. 20

Comey cont. from p. 19

ligence." However, Comey's testimony set-forth compelling evidence that she had intent because she lied that "she never sent or received classified information over her private e-mail;" She lied that none of the emails she sent or received using her private e-mail were marked as classified.; She lied that she only used one device to send or receive emails over her private e-mail.; She lied that "all work-related e-mails were returned to the State Department" upon her leaving office.; She lied that "neither she nor anyone else deleted work related e-mails from her personal account."; and she lied that "her lawyers read every one of the e-mails and were overly inclusive."[2]

Furthermore, the public disclosure in early November that there is a 99% chance at least five foreign spy agencies accessed Clinton private servers and obtained hundreds of classified emails constitutes additional evidence that the actions of Clinton and her colleagues was "grossly negligent."

Consequently, there is no rational basis whatsoever for Comey's stated reasons for not recommending the prosecution of Clinton and her colleagues for violating section 793(f).

Lying to Congress and lying to the FBI are federal crimes

In addition to hundreds of violations of 18 U.S.C. § 793(f), there are other federal criminal statutes that Clinton could be charged with violating.

It is a **federal crime** under 18 U.S.C. § 1001 to make "any materially false, fictitious, or fraudulent statement or representation" to the FBI during an investigation. It isn't necessary for the person to be under oath, and the crime is committed when the person makes the untrue utterance. The government doesn't need to present any evidence the person intended to deceive. There have been many successful prosecutions for a violation of section 1001. The penalty is 5 years in prison and up to a $100,000 fine.

It is a **federal crime** under 18 U.S.C. § 1621 for a person to willfully assert to Congress "any material matter which he does not believe to be true." Also known as the perjury statute, there have been many successful prosecutions for a violation of section 1621. The penalty is 5 years in prison and up to a $100,000 fine.

Summary of Comey's conclusions regarding the prosecution of Hillary Clinton

Comey acknowledged that Clinton made "materially false, fictitious, or fraudulent statement[s] or representation[s]" to the FBI during her interview on July 2, 2016. Yet he didn't recommend to the DOJ that Clinton be prosecuted for each of her violations of 18 U.S.C. § 1001 for making false statements.

Comey acknowledged that Clinton made numerous materially false, fictitious, or fraudulent statements or representations during her sworn Congressional testimony on October 22, 2015. Yet he didn't recommend to the DOJ that Clinton be prosecuted for each of her violations of 18 U.S.C. § 1621 that committing perjury.

Comey acknowledged that Clinton and her colleagues "were extremely careless in their handling of very sensitive, highly classified information," and they exhibited "great carelessness" in their handling of that classified information. Yet he didn't recommend to the DOJ that Clinton and her colleagues be prosecuted for each of their violations of 18 U.S.C. § 793(f) for their gross negligence in handling classified information.

Consequently, it can be reasonable concluded that any competent assistant U.S. attorney would be able to successfully obtain convictions of Hillary Clinton for her cumulative total of hundreds of counts of violating 18 U.S.C. sections 1001, 1621 and 793(f). Convictions could also be obtained for many people involved in the mishandling of classified emails on Clinton's private server. Only a few of those potential defendants have been granted immunity by the DOJ.

Conclusion

There is no reasonably defensible professional explanation for Comey's conduct in failing to recommend that the DOJ pursue criminal charges against Hillary Clinton.

Endnote:

[1] Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina, 2016 Online Edition, p. 117
§ 793(f)(1)
Title 18, United States Code, Section 793(f)(1) makes it a crime to allow defense information to be lost or stolen through gross negligence. For you to find the defendant guilty, the government must prove each of the following beyond a reasonable doubt:

- First, that the defendant had been entrusted with or had lawful possession or control of;
- Second, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information relating to the national defense;
- Third, that the defendant permitted the above material to be removed from its proper place of custody or delivered to anyone in violation of the defendant's trust, or to be lost, stolen, abstracted, or destroyed; and
- Fourth, that the defendant did so through gross negligence.

[2] Either in her statement given to the FBI on July 2, or her congressional testimony on October 22, 2015 during the Benghazi hearings during which she swore under oath that she didn't use her private email server to send or receive emails that were marked classified at the time.

[3] Stephen I. Vladeck, The Espionage Act and National Security Whistleblowing After Garcetti, 57 Am. U. L. Rev. 1531, 1537 (2006).

[4] 'This is treason': Clinton's email server reportedly exposed to hackers of 5 spy agencies, **RT.com**, Nov. 4, 2016

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BleachBit.org (Clean your system and free disk space)

Lynch to accept recommendation of FBI, career prosecutors in Clinton email probe, By Del Quentin Wilber, Los Angeles Times, July 1, 2016

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