

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

April 11, 2018

The Honorable Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Deputy Attorney General:

Last night, Rachel Maddow revealed that MSNBC has obtained handwritten notes taken on March 30, 2017, by Dana Boente, who served in several top positions at the Department of Justice, memorializing a telephone conversation he had that day with FBI Director James Comey. These notes relate to a troubling conversation Director Comey had with President Donald Trump, who urged him to lift the “cloud” of the Russia investigation and “to get out” that the President was not under criminal investigation.¹

Although President Trump has called Director Comey a liar, these contemporaneous notes offer direct and potent corroboration of Director Comey’s testimony before the Senate Select Committee on Intelligence on June 8, 2017, that President Trump asked him to “lift the cloud” of the Russia investigation and “to get it out” that the President was not under investigation.²

Rachel Maddow also reported on another document indicating that someone at the Department of Justice appears to have improperly tried to classify Mr. Boente’s notes—despite the fact that there was no classified information contained within them.

Specifically, she obtained a copy of a letter sent to Mr. Boente on January 17, 2018, from E.W. Priestap, the Assistant Director of the Counterintelligence Division of the FBI, who wrote:

¹ *Exclusive: Handwritten Notes Appear to Back Comey Claims on Trump*, The Rachel Maddow Show, MSNBC (Apr. 10, 2018) (online at www.msnbc.com/rachel-maddow/watch/exclusive-handwritten-notes-appear-to-back-comey-claims-on-trump-1207929923864).

² *Calling Comey a Liar, Trump Says He Will Testify Under Oath*, New York Times (June 9, 2017) (online at www.nytimes.com/2017/06/09/us/politics/trump-comey.html); *Statement for the Record by James B. Comey*, Senate Select Committee on Intelligence (June 8, 2017) (online at www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf).

(U) This letter serves as confirmation under my authority as a Federal Bureau of Investigation (FBI) Original Classification Authority (OCA) that your handwritten notes derived from your March 30, 2017 conversation with former FBI Director James Comey are UNCLASSIFIED.³

This letter also indicates that someone at the Department of Justice sought to classify Mr. Boente's notes without ever consulting with him. The letter states:

(U) Understanding that your notes were marked as TOP SECRET by an employee of the Department of Justice without your consultation, this letter memorializes a duly authorized OCA finding that the contents of your notes are not TOP SECRET (or classified at all).⁴

It is unclear why anyone at the Department of Justice improperly sought to classify these notes. However, if these reports are accurate, it appears possible that someone at the Department of Justice may have attempted to prevent the public release of these notes by misusing the classification process, but that career officials at the FBI intervened to reject this effort.

Under Executive Order 13526, *Classified National Security Information*, officials may not abuse the classification process to conceal information that may be incriminating:

In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security.⁵

The Oversight Committee has jurisdiction over the classification process and has investigated multiple instances of officials abusing the classification process to conceal negative information. For example, we recently sent a letter to the Department of Defense raising concerns about the Trump Administration's effort to classify negative information about the rapidly deteriorating security situation in Afghanistan.⁶

³ *Exclusive: Letter Informing Dana Boente That His Notes Are Not Classified*, Maddow Blog (Apr. 10, 2018) (online at <https://twitter.com/MaddowBlog/status/983877879581888512/>).

⁴ *Id.*

⁵ Exec. Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010) (online at www.archives.gov/files/isoo/policy-documents/cnsi-eo.pdf).

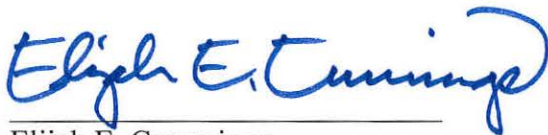
⁶ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Ranking Member Stephen F. Lynch, Subcommittee on National Security, to Secretary James N. Mattis, Department of Defense (Mar. 15, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-15.EEC%20Lynch%20to%20DOD%20re.Afghanistan.pdf>).

For these reasons, we request that the Department of Justice produce, by April 26, 2018, the following documents relating to who was involved in these efforts to classify Mr. Boente's March 30, 2017, handwritten notes:

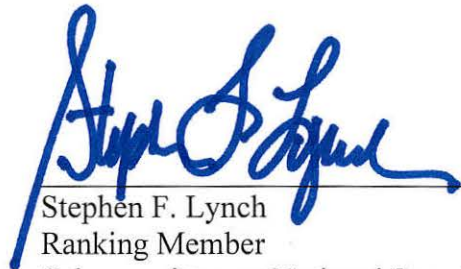
- (1) all documents and communications in the custody, control, or possession of the Department of Justice relating to any efforts to designate as CLASSIFIED any information contained within the handwritten notes of Mr. Boente;
- (2) all communications within the Department of Justice, as well as with officials and entities outside the Department of Justice, relating to any efforts to designate as CLASSIFIED any information contained within the handwritten notes of Mr. Boente; and
- (3) a list of officials at the Department of Justice who were involved in, informed of, consulted about, or aware of any efforts to designate as classified any information contained within the handwritten notes of Mr. Boente.

Thank you for your prompt consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member



Stephen F. Lynch
Ranking Member
Subcommittee on National Security

cc: The Honorable Trey Gowdy, Chairman
Committee on Oversight and Government Reform

The Honorable Ron DeSantis, Chairman
Subcommittee on National Security, Committee on Oversight and Government Reform