

TY CLEVENGER
21 Bennett Avenue #62
New York, New York 10033

telephone: 979.985.5289
facsimile: 979.530.9523

tyclevenger@yahoo.com
Texas Bar No. 24034380

October 20, 2016

Grievance Committee
United States District Court
Southern District of New York
500 Pearl Street, Room 820
New York, New York 10007

Re: Complaint of Attorney Misconduct

To Whom It May Concern:

I wish to file grievances against FBI Director James Brien Comey, Jr., U.S. Attorney General Loretta Lynch and Beth A. Wilkinson for their roles in destroying evidence sought by Congress and private litigants. Mr. Comey's address is 935 Pennsylvania Avenue, NW, Washington, DC 20535 and his phone number is (202) 324-6500. General Lynch's address is 950 Pennsylvania Avenue, NW, Washington, DC 20530-0009 and her phone number is (202) 514-2003. Ms. Wilkinson's address is 1900 M Street, NW, Suite 800, Washington, DC 20036, and her phone number is (202) 847-4000.

I have enclosed a letter from from four Congressional committee chairmen to General Lynch, and I incorporate that letter by reference. According to the letter, Mr. Comey, General Lynch, and Ms. Wilkinson were jointly responsible for the destruction of evidence that had been subpoenaed by various Congressional committees. Furthermore, the evidence was directly relevant to various Freedom of Information Act requests and related litigation that was pending in the U.S. District Court for the District of Columbia.¹

The New York Rules of Professional Conduct prohibit lawyers from destroying evidence: "A lawyer shall not... suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce." Rule 3.4(a)(1). To the extent that Mr. Comey's and General Lynch's conduct violated federal criminal statutes, *see* 18 U.S. Code §§ 1505 and 1519, they violated Rule 8.4(b). Furthermore, it appears that their role in the destruction of evidence violated subsections a, c, d, and h of Rule 8.4.

¹ *See, e.g.*, Case Nos. 1:15-cv-00684, 1:15-cv-00687, 1:15-cv-00689, 1:15-cv-00690, 1:15-cv-00692, 1:15-cv-00688, and 1:15-cv-00691, all of which are entitled *Judicial Watch, Inc. v. U.S. Department of State*, and Case No. 1:16-cv-00048, *Citizens United, Inc. v. U.S. Department of State*. You may wish to contact the attorneys representing Judicial Watch, Inc. and Citizens United, Inc. for more information about the relevance of the evidence that was destroyed. Paul Orfanedes is the director of litigation for Judicial Watch, and he may be reached at (888) 593-8442. Michael Boos is the general counsel for Citizens United, and he may be reached at (202) 547-5420.

Ms. Wilkinson is governed by the D.C. Rules of Professional Conduct because she is admitted in the District of Columbia and the relevant events occurred in that jurisdiction, *see* N.Y. Rule 8.5(b)(2)(ii) (governing choice of law for misconduct occurring outside of New York),² and the relevant D.C. rule is more explicit than its New York counterpart:

A lawyer shall not “[o]bstruct another party’s access to evidence or alter, destroy, or conceal evidence, or counsel or assist another person to do so, if the lawyer reasonably should know that the evidence is or may be the subject of discovery or subpoena in any pending or imminent proceeding. Unless prohibited by law, a lawyer may receive physical evidence of any kind from the client or from another person. If the evidence received by the lawyer belongs to anyone other than the client, the lawyer shall make a good-faith effort to preserve it and to return it to the owner, subject to Rule 1.6.”

D.C. Rule of Professional Conduct 3.4(a); *see also* 18 U.S. Code §§ 1505 and 1519. Rule 3.9 indicates that Rule 3.4(a) applies to legislative proceedings, therefore its prohibitions would apply to both the Congressional subpoenas as well as the FOIA litigation.

Mr. Comey and General Lynch will probably argue that they did not obstruct justice insofar as their respective agencies were investigating the emails that were later destroyed. I suppose that argument might carry some weight if this was merely a dispute between different agencies of the executive branch. As the attached letter indicates, however, a separate and co-equal branch of government had subpoenaed the evidence that Mr. Comey's agents destroyed. Likewise, various private litigants were seeking the same evidence via the judicial branch, and those facts were widely reported at the time, thus Mr. Comey, General Lynch, and Ms. Willkinson knew that the evidence had been subpoenaed and was subject to discovery requests. I am not aware of any statute or court ruling that would permit them to destroy evidence under those circumstances.

With respect to Ms. Wilkinson, I am somewhat impressed by the fact that she could convince the FBI to do something that she knew she could not legally do on her own, *i.e.*, destroy evidence for the benefit of her clients. On the other hand, the fact that she convinced the FBI director and the Attorney General to do her dirty work is not exactly something to be proud of. *See* D.C. Rule 8.4(a) (a lawyer shall not “[v]iolate or attempt to violate the Rules of Professional Conduct, *knowingly assist or induce another to do so, or do so through the acts of another*” (emphasis added)). The veneer of officiality – *i.e.*, the fact that the FBI destroyed the evidence rather than Ms. Wilkinson or her clients – does not change the fact that evidence was destroyed illegally.

According to the enclosed letter to General Lynch, the agreement to destroy evidence is memorialized in a letter drafted jointly by Ms. Wilkinson and officials from the Justice Department. The respondents should be directed to produce a copy of that letter.

² Mr. Comey and General Lynch are not members of the District of Columbia Bar.

I declare under penalty of perjury that the foregoing factual statements are true and correct to the best of my knowledge, as witnessed by my signature below. Please contact me via email (tyclevenger@yahoo.com) if additional information is needed. Thank you in advance for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Congressman Jason Chaffetz, Chairman
 House Government Oversight Committee
 Congressman Bob Goodlate, Chairman
 House Judiciary Committee
 Senator Charles Grassley, Chariman
 Senate Judiciary Committee
 Congressman Devin Nunes, Chairman
 House Permanent Select Comittee on Intelligence