

IN EXCHANGE ABOUT CLINTON EMAIL INVESTIGATION, LYNCH FORCEFULLY REMINDS SHE IS FBI'S BOSS

There's one last exchange in Wednesday's Senate Judiciary Committee hearing with Attorney General Loretta Lynch that deserves closer focus. It came during John Cornyn's round of questioning.

He structured his questions quite interestingly. He started by using the example of the Apple All Writs Act order to emphasize that FBI can't do anything without DOJ's approval and involvement. "I just want to make sure people understand the respective roles of different agencies within the law enforcement community – the FBI and the DOJ."

He then turned to an unrelated subject – mental health, particularly as it relates to gun crime – ending that topic with a hope he and Lynch could work together.

Then he came back to the respective roles of the FBI and DOJ. "So let me get back to the role of the FBI and the Department of Justice."

He did so in the context of Hillary's email scandal. He started by reminding that Hillary had deleted 30,000 emails rather than turning them over to State for FOIA review. Cornyn then raised reports that the government had offered Bryan Pagliano immunity (Chuck Grassley argued elsewhere in the hearing that that should make it easy for Congress to demand his testimony, as the WSJ has also argued). "It's true, isn't it, that immunity can't be granted by the FBI alone, it requires the Department of Justice to approve that immunity."

Lynch filibustered, talking about different

types of immunities, ultimately ceding that lawyers must be involved. She refused to answer a question directly about whether they had approved that grant of immunity. Which is when Cornyn moved onto trying to get the Attorney General to admit that she would have the final decision on whether to charge anyone in the email scandal.

Cornyn: Let me give you a hypothetical. If the FBI were to make a referral to the Department of Justice to pursue a case by way of an indictment and to convene a grand jury for that purpose, the Department of Justice is not required to do so by law, are they?

Lynch: It would not be an operation of law, it would be an operation of our procedures, which is we work closely with our law enforcement partners—

Cornyn: Prosecutorial discretion—

Lynch: —it would also be consulting with the Agents on all relevant factors of the investigation, and coming to a conclusion.

Cornyn: But you would have to make to the decision, or someone else working under you in the Department of Justice?

Lynch: It's done in conjunction with the Agents. It's not something that we would want to cut them out of the process. That has not been an effective way of prosecuting in my experience.

Cornyn: Yeah, I'm not suggesting that you would cut them out. I'm just saying, as you said earlier, you and the FBI would do that together, correct? Just like the Apple case?

Lynch: We handle matters together of all types.

Cornyn: If the FBI were to make a referral to the Department of Justice to

pursue criminal charges against Mr. Pagliano or anyone else who may have been involved in this affair, does the ultimate decision whether to proceed to court, to ask for the convening of a grand jury, and to seek an indictment, does that rest with you, or someone who works for you at the Department of Justice?

Lynch: So Senator with respect to Mr. Pagliani [sic] or anyone who has been identified as a potential witness in any case, I'm not able to comment on the specifics of that matter and so I'm not able to provide you—

Cornyn: I'm not asking you to comment on the specifics of the matter, I'm asking about what the standard operating procedure is, and it seems pretty straightforward. The FBI does a criminal investigation, but then refers the charges to the Department of Justice, including US Attorneys, perhaps in more celebrated cases goes higher up the food chain. But my simple question is doesn't the buck stop with you, in terms of whether to proceed, to seek an indictment, to convene a grand jury, and to prosecute a case referred to you by the FBI?

Lynch: There's many levels of review, at many stages of the case, and so I would not necessarily be involved in every decision as to every prosecutorial step to make.

Cornyn: It would be you or somebody who works for you, correct?

Lynch: Everyone in the Department of Justice works for me, including the FBI, sir.

Cornyn: I'm confident of that.

Grassley: Senator Schumer.

Schumer: Well done, Attorney General,
well done.

I'm not entirely sure what to make of this: whether Cornyn was setting this up for the future, or whether he was trying to lay out Lynch's responsibility for a decision already made. But given the reports that FBI Agents think someone should be charged (whether because of the evidence or because Hillary is Hillary), it sure felt like Cornyn was trying to pressure Lynch for her role in decisions already discussed. Indeed, I wonder whether Cornyn was responding to direct entreaties from someone at the FBI, possibly quite high up at the FBI, about Lynch's role in this case.

Whatever he was trying to do, it may lead to some folks in the FBI getting a stern talking to from their boss, Loretta Lynch.