

CONNECTING THE DOTS ON THE HILLARY EMAILS

I maintain my belief that it is unlikely Hillary will be implicated in the investigation into her email practices, though it is quite possible that top aides like Jake Sullivan or Huma Abedin would be.

That said, I want to put three pieces of data together that have made me less sure of that – or the potential scope of this investigation.

The first is this AP story showing that top Clinton aides sought, but did not obtain, a blackberry like device that Hillary would have been able to use in a SCIF. [See update]

Clinton's desire for a secure "BlackBerry-like" device, like that provided to President Barack Obama, is recounted in a series of February 2009 exchanges between high-level officials at the State Department and NSA. Clinton was sworn in as secretary the prior month, and had become "hooked" on reading and answering emails on a BlackBerry she used during the 2008 presidential race.

"We began examining options for (Secretary Clinton) with respect to secure 'BlackBerry-like' communications," wrote Donald R. Reid, the department's assistant director for security infrastructure. "The current state of the art is not too user friendly, has no infrastructure at State, and is very expensive."

Reid wrote that each time they asked the NSA what solution they had worked up to provide a mobile device to Obama, "we were politely told to shut up and color."

Resolving the issue was given such

priority as to result in a face-to-face meeting between Clinton chief of staff Cheryl Mills, seven senior State Department staffers with five NSA security experts. According to a summary of the meeting, the request was driven by Clinton's reliance on her BlackBerry for email and keeping track of her calendar. Clinton chose not to use a laptop or desktop computer that could have provided her access to email in her office, according to the summary.

Standard smartphones are not allowed into areas designated as approved for the handling of classified information, such as the block of offices used by senior State Department officials, known by the nickname "Mahogany Row" for the quality of their paneling. Mills said that was inconvenient, because they had to leave their offices and retrieve their phones to check messages.

The story shows that some top aides (and presumably Hillary herself) were aware of the security concerns tied to using a blackberry in a SCIF (though Judicial Watch president Tom Fitton's statement that this shows an awareness of security concerns with the blackberry may overstate things).

Perhaps the most telling detail comes from this no-comment from former Department of Justice Director of Public Affairs, Brian Fallon:

Clinton campaign spokesman Brian Fallon declined to comment Wednesday.

Fallon has generally been much chattier about the drip drip drip tied to this story.

In any case, this story puts revelations in a Fox story from last week, describing Clinton sysadmin Bryan Pagliano's testimony as "devastating" because he helped tie the use of

particular devices to particular times.

The source said Pagliano told the FBI who had access to the former secretary of state's system – as well as when – and what devices were used, amounting to a roadmap for investigators.

"Bryan Pagliano is a devastating witness and, as the webmaster, knows exactly who had access to [Clinton's] computer and devices at specific times. His importance to this case cannot be over-emphasized," the intelligence source said.

The source, who is not authorized to speak on the record due to the sensitivity of the ongoing investigation, said Pagliano has provided information allowing investigators to knit together the emails with other evidence, including images of Clinton on the road as secretary of state.

The cross-referencing of evidence could help investigators pinpoint potential gaps in the email record. "Don't forget all those photos with her using various devices and it is easy to track the whereabouts of her phone," the source said. "It still boils down to a paper case. Did you email at this time from your home or elsewhere using this device? And here is a picture of you and your aides holding the devices."

Knowing that the FBI has evidence that Clinton's aides sought a way to obtain a secure blackberry, the detail that they're tying emails sent to what device they were sent from, suggests they may be trying to tie individual emails, and their content, to the device they were sent from. And remember, there's an entire Tumblr of pictures of Hillary using her (non-secure) blackberry.

Now consider what I laid out in this post, when John Cornyn made it clear Attorney General Loretta Lynch is the final decision maker on whether to act on an FBI recommendation to convene a grand jury and move toward an indictment.

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?

This felt like Cornyn had been sent by someone very high up in FBI (which is probably why Lynch responded so forcefully to make clear she's the boss of everyone at the Bureau) to pressure the Attorney General to let them convene a grand

jury. Now, it appears the basis for any grand jury is not just sending classified emails, but where and on what device those emails got sent.

Again, I still think Hillary is most likely safe. But I'm beginning to see how FBI might want to make a criminal case of sending classified information using insecure blackberries knowing they were insecure.

Update: Here are the emails. Note this seems to target Cheryl Mills more than Sullivan or Abedin (note her departure briefing is in there). It shows Mills directly receiving a bunch of briefing from NSA about the insecurities of BBs.

Also note: contrary to the emphasis of the AP piece, the issue appears not to be that NSA wasn't doing what they could do, but instead that Hillary's key staffers can be shown to have gotten technical briefing on the problems with BBs.