

“GLITCH!” FBI’S THREE LEAKED CLAIMS ABOUT THE DELAY IN OBTAINING A WARRANT FOR HUMA’S EMAIL

The other day, the WSJ had a story that included this detail about the gap between the time FBI realized there were Huma Abedin emails on a computer seized in the Anthony Weiner investigation and when they got a warrant to read them.

The FBI had searched the computer while looking for child pornography, people familiar with the matter said, but the warrant they used didn’t give them authority to search for matters related to Mrs. Clinton’s email arrangement at the State Department. Mr. Weiner has denied sending explicit or indecent messages to the minor.

In their initial review of the laptop, the metadata showed many messages, apparently in the thousands, that were either sent to or from the private email server at Mrs. Clinton’s home that had been the focus of so much investigative effort for the FBI. Senior FBI officials decided to let the Weiner investigators proceed with a closer examination of the metadata on the computer, and report back to them.

At a meeting early last week of senior Justice Department and FBI officials, a member of the department’s senior national-security staff asked for an update on the Weiner laptop, the people familiar with the matter said. At that point, officials realized that no one had acted to obtain a warrant, these

people said. [my emphasis]

While I and actual experts on Fourth Amendment law had already started asking about the legality of finding emails implicating Huma while searching a computer seized for an investigation into underage sexting, the revelation that FBI somehow forgot to get a warrant for two to three weeks raised even bigger questions.

In the last day, both the NYT and the WaPo have provided different explanations about it (though they use it to explain the time lapse between discovering the emails and informing Congress, not getting a warrant). The NYT reported that the FBI had to write custom software to be able to read Weiner's emails without at the same time reading Huma's.

The F.B.I. has not explained why three weeks passed between the time the bureau obtained the laptop and when Mr. Comey told Congress about it. After an F.B.I. computer analysis response team in New York copied the laptop's hard drive, bureau employees began examining the information on the computer.

That is when agents realized that Ms. Abedin's emails were on the laptop, but they did not have the authority to view them without a warrant.

The F.B.I. needed custom software to allow them to read Mr. Weiner's emails without viewing hers. But building that program took two weeks, causing the delay. The program ultimately showed that there were thousands of Ms. Abedin's emails on the laptop.

Mr. Comey was not briefed in full on a plan to read the emails until last Thursday, Oct. 27. He informed Congress the next day. F.B.I. lawyers then had to obtain a second warrant to look at Ms. Abedin's emails, which happened last

weekend. [my emphasis]

WaPo reported that “glitches” delayed the FBI in separating Weiner’s emails from Huma’s.

Although investigators had discovered the emails in early October, software glitches prevented them from separating Abedin-related emails from the hundreds of thousands of messages recovered until Oct. 19 or 20, according to people familiar with the case.

While Comey had been quickly alerted by his deputy to the original find, he took no further action, allowing agents in the field to get a better idea of the scope of the material. Agents could use digital clues to decipher where emails had originated and been sent but were legally barred from reading the emails without a search warrant because they had been obtained in a separate investigation.

When agents formally recommended on Oct. 27 that the warrant be sought, Comey agreed and then felt obligated to inform Congress – which he did with his letter the following day. Comey’s only reference in the letter to the timing of his involvement was that he had been briefed the previous day. [my emphasis]

Note NYT says Comey was not briefing on the plan to read the emails until October 27. WaPo says that he was in the loop before then, then consulted again on obtaining a warrant on October 27. Those aren’t necessarily conflicting stories – I guess it depends on what “a plan to read the emails” means – but I find the distinction curious.

The real batshit thing, though, is the claim that the nation’s premiere law enforcement agency didn’t have a way to sift out Weiner’s emails from Huma’s, something even garden

variety cops have to do every day. Equally batshit is the claim they created a new piece of software to do so. Glitches? That's a word national security people use as a cover story.

There is no good explanation for why the FBI didn't have the technical means to do this. There is even less of an explanation for why, in a case involving such high profile people, the FBI would be struggling with "glitches."

Which leaves us where we were with WSJ's story: The FBI was fiddling with these emails for 3 weeks before "officials realized that no one had acted to obtain a warrant." And yet somehow, the FBI was able to show probable cause that these emails had some tie to a crime.

I do hope this is something Patrick Leahy insists on getting answers on, because the story stinks.