



Written by [Bob Adelman](#) on March 6, 2015

Unanswered Questions in Hillary Clinton E-mail Scandal

It didn't take long for the apologists to respond to the [remarkable revelations](#) by the *New York Times* on Monday that Hillary Clinton (shown) not only used a private e-mail address for all of her correspondence while she was secretary of state from 2009 to 2013, but that she kept their contents out of reach of the government on a personal private computer server at her home.



The revelation came to light, according to the *Times*, when the State Department instituted new record-keeping practices, and requested copies of Clinton's e-mails. Two months later, after sorting, sifting, and winnowing through the e-mails — estimated by the *Times* to number in the millions — Clinton sent over 55,000 pages and then tweeted, "I want the public to see my e-mail. I asked State to release them. They said they will review them for release as soon as possible."

Clinton failed to answer any of the questions that the *Times'* revelation raised: Why didn't she follow standard State Department protocol which requires all e-mails to be stored on government computer servers with the highest level of security against hackers? Why did her staff turn away demands that she use State Department computers for her e-mails? Why are the contents of her e-mails stored on a personal server, out of reach of House committees and journalists seeking background on current events and historical context for future publications? How secure was her server from attack? Were her e-mails compromised in any way during her four-year stint as Obama's secretary of state? Why did she refuse to follow rules that her boss, President Obama, followed, using secure State Department and White House computers for all of his e-mails? Was she not aware that she, according to the *Times*, "may have violated federal requirements that officials' correspondence be retained as part of the agency's record"?

The outrage at such a self-dealing and deliberate intent to avoid full disclosure while maintaining control of personal e-mails that might someday prove useful to historians (and personally embarrassing to her) was almost immediate. Jason Baron, a lawyer and director of litigation at the National Archives and Records Administration, expressed his shock:

It is very difficult to conceive of a scenario ... where an agency would be justified in allowing its cabinet-level head officer [Clinton] to solely use a private email communications channel for the conduct of government business.... I can recall no instance in my time at the National Archives when a high-ranking official at an executive branch agency solely used a personal email account for the transaction of government business.



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Apparently, the *Times* could recall no such instance either: “Under federal law ... letters and emails written and received by federal officials, such as the secretary of state, are considered government records and are supposed to be retained so that congressional committees, historians and members of the news media can find them.”

Apologists for Clinton came out of the woodwork immediately, including Nick Merrill, her spokesman, who said that although her practice of using a private server for government purposes was unusual, she really had intended to comply with the “letter and the spirit of the rules.” Merrill was silent on why she had chosen to set up this private arrangement at her home just days before being confirmed by the Senate to her position. He waffled when asked about whether all those e-mails had been kept, or perhaps some had been erased, saying that Clinton had “every expectation that they would be retained” by those receiving them. Of course, he didn’t respond when asked if foreign leaders receiving them might be keeping them and making them available to those same government oversight committees and journalists.

Nor did Merrill respond to questions about why Clinton’s staff turned away recommendations by people at State that she use agency computers instead of a personal one, over security concerns. An employee at State said, under conditions of anonymity and job security, “We tried. We told people in her office that it wasn’t a good idea. They were so uninterested that I doubt the secretary was ever informed.”

Clay Johnson, a techie that served as lead programmer in 2004 for former Vermont Governor Howard Dean’s presidential campaign and who now is a senior fellow at the Soros-funded Center for American Progress, came up with an barely plausible reason: The main computers at State weren’t secure enough. According to Johnson, “It’s very plausible to me that someone walked up to Hillary Clinton and said, ‘The State Department’s mail server is compromised. It has been for years. For right now, use your email address for communications.’”

It’s also plausible that Johnson and the staff at State were so intimidated by the mere presence of Hillary Clinton that any suggestions not in line with her intentions were simply ignored. Here’s how Johnson expressed this fear: “There are two plausible explanations for no one [at State] saying anything about it. One is that Hillary Clinton is such a towering person and incredibly intimidating [that] people were afraid to say something because of her gravitas. Or, two, everyone knew that the State Department’s e-mail was insecure and they came up with a solution that Hillary should use her private email account.”

Another excuse for Hillary’s decision to “go private” was offered by State Department spokeswoman Marie Harf: The rules regarding the use of personal computers for government secrets weren’t formally issued by the National Archives and Records Administration until September 2013, nine months after Hillary had left State. It was unclear, if this was the case, why Clinton apologist Merrill didn’t mention it. Nor did he say anything about those insecure State Department servers that had been deemed unusable for months.

Judge Andrew Napolitano saw through the plausible denials for what they were: obfuscations designed to obscure the fact that Clinton had broken the law and was “in a lot of trouble” as a result. Keeping back a single e-mail is punishable by law, according to Napolitano, up to a year in jail and a \$100,000 fine for each such document withheld. The judge reminded Fox News reporter Martha MacCallum that not only is such behavior “potentially criminal,” but is what got General David Petraeus fired:

The general agreed to plead guilty for keeping classified secrets in a non-secure, non-government-



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approved venue — in the general’s case, a desk drawer in his home. In Mrs. Clinton’s case, the server is in her home, non-government secured and non-government approved. [With classified secrets there], that is a misdemeanor....

We do know she must have had classified secrets ... there are four levels of security clearances. She and the president and General Petraeus and the Secretary of Defense ... have the highest level.

Napolitano wasn’t done. If it can ever be shown that Clinton deliberately held back any requested e-mails, for whatever reason, “that exposes her to three years in jail, per document. And a conviction exposes her to disqualification from holding office in the future.”

This isn’t going to go away anytime soon. Secretary of State John Kerry just told the press that it’s going to take a while — a very long while — to sort through those 55,000 e-mails that Clinton agreed to release, despite his promise to do that review “as quickly as possible.” This coincides with the expected announcement of Clinton as a presidential candidate for the Democrat Party and Republican candidates are no doubt adding this major indiscretion to the growing list of illegal and opaque behaviors engaged in by Hillary Clinton that they will be sure to bring to the attention of the electorate in 2016.

Photo of Hillary Clinton: AP Images

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