



Written by [C. Mitchell Shaw](#) on December 7, 2015

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## Clinton's E-mail Evasions

When President Obama appointed Hillary Clinton as secretary of state, Clinton decided not to use an official government e-mail address hosted on an official government server. She elected instead to use a private e-mail server for handling both her private e-mails and those of the State Department. She used that private server throughout her tenure as secretary of state. Her alleged reason: convenience. Secretary Clinton supposedly made a conscious decision to place her own personal convenience above the security of the nation she was supposed to be serving. While that is not really surprising, it is — and ought to be — shocking.



AP Images

In the wake of the Benghazi attacks on September 11, 2012, investigations were launched into whether the attacks could have been prevented — or at least repelled — and whether the Obama administration, including the State Department, had attempted a coverup. It was during those investigations that Hillary's use of a private e-mail server first came to light.

While Hillary has downplayed both her actions and the investigation focused on her server, the FBI seems to be taking it seriously. In fact, though such cases are customarily handled by one of the many field offices around the country, the Clinton case is being handled out of the Hoover Building. It is highly unusual for a case such as this to be handled at FBI headquarters, but then again, this is an unusual case. The *New York Times* reported, "Given this inquiry's importance, senior F.B.I. officials have opted to keep it closely held in Washington in the agency's counterintelligence section, which investigates how national security secrets are handled."

## The Server Search

As a result of that investigation, Hillary was required to surrender her private server to the Department of Justice. She initially refused to turn over the e-mail server, saying, "The server contains personal communications from my husband and me and I believe I have met all of my responsibilities and the server will remain private." It rings with echoes of "I'm not going to have some reporters pawing through our papers. We are the president." It also rings of the standard dishonesty and he-said-she-said that is typical of the Clintons. The *Wall Street Journal* reported, "The former president ... has sent a grand total of two emails during his entire life, both as president, says Matt McKenna, his spokesman." Ironically, that report came out right before Hillary claimed that her reason for not turning over the server was that it "contains personal communications from my husband and me."

The former first lady appears to have had more pressing reasons for stalling the surrender of the server. She was having everything on it deleted. Once in the hands of the investigators, it was found to



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have been formatted to factory settings and was void of all data, though the data was not securely “wiped,” leaving it easily recoverable by investigators.

Hillary claimed not to be concerned, saying that she had stayed within the boundaries of the law because she “never sent or received any e-mail that was deemed classified, that was marked classified.”

In fact, at least a dozen e-mails found on her server early in the investigation were classified, and at least two were “Top Secret.” One e-mail is still classified. That particular e-mail was from her close aide, Huma Abedin. It was sent in April 2011. As Fox News reported in August, “In late spring, all three agencies confirmed to the intelligence community inspector general that the intelligence was classified when it was sent four years ago by Abedin to Clinton’s private account, and remains classified to this day.”

## **She Knew She Was Lying**

But did Hillary know that? The answer to that is found in two documents bearing her signature.

It is now known that Hillary signed two separate non-disclosure agreements (NDAs) as part of her job as secretary of state. The first deals with Sensitive Compartmented Information (SCI). The second is a more general NDA dealing with the protection of all classified information. The NDAs were made public as the result of an open-records request by the Competitive Enterprise Institute (CEI). Once CEI had the NDAs, it made them available to the *Washington Free Beacon*, which published them. The language of the NDAs removes all doubt that Hillary Clinton was aware of the criminal nature and inherent national security risks associated with her actions. Disregarding something is not ignorance; it is worse.

The NDAs signed by Secretary Clinton on her second day on the job spell out — in language so clear that the meaning of the word “is” is quite unambiguous — her responsibility in handling the sensitive information to which she would have access in her new job. One part of the first NDA reads, “I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation.” The agreement goes on to address how Secretary Clinton could be sure she was abiding by the letter and the spirit of the agreement. “I understand that it is my responsibility to consult with appropriate management authorities in the Department ... in order to ensure that I know whether information or material within my knowledge or control ... might be SCI,” the NDA says. Regardless of whether or not Hillary saw any indication that the e-mails were classified, she was required to keep State Department information secure unless she obtained specific permission to release it.

And yet, before the ink of her signatures could dry, Hillary made the decision to re-purpose Bill’s old e-mail server into her own private server to be used for official government business. She has defended the decision, not on the grounds that it was the best choice for the nation she swore and accepted the responsibility to protect, but on the grounds of convenience.

NDAs are fairly common and many Americans have signed such agreements as a condition of employment. Failing to abide by those agreements is cause for dismissal, civil action, and possible criminal charges. As a matter of integrity and simple self-interest, most people would take that seriously and ask themselves what the NDA requires of them and what it prohibits.

But there’s a special type of narcissism that seems to have set up permanent residence in the minds of Bill and Hillary Clinton. The rules that apply to everyone else simply don’t apply to them. They keep



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straight faces while telling the biggest lies. It's almost as if they believe it when they say, "I did not have sexual relations with that woman, Monica Lewinski," and "I never sent or received any e-mail that was deemed classified, that was marked classified." After all, they have dodged everything so far (including the military draft for Bill); why should whatever recent scandal is afoot be any different? After all, "It depends on what the meaning of the word 'is' is." Words are just tools to be used — and misused — to fit their purposes.

## **Almost an Apology**

As criticism for her decision began to mount in March 2015, Hillary seemed to think she could simply brush it off with a non-apology. At a press conference, she said, "I opted for convenience to use my personal email account, which was allowed by the State Department, because I thought it would be easier to carry just one device for my work and for my personal emails instead of two. Looking back, it would have been better if I'd simply used a second email account and carried a second phone, but at the time, this didn't seem like an issue."

It only "didn't seem like an issue" because she seems to have forgotten those NDAs she signed. She and her campaign have made much of the fact that her private server "was allowed by the State Department." Par for the course, though, the fact is conveniently left out that her server was not authorized to contain, store, transmit, or receive classified information. Instead, she simply denies that she ever "sent or received any e-mail that was deemed classified, that was marked classified."

To Hillary material was only classified if it was marked classified and if it was marked so when she sent or received it. The NDAs she signed do not accept that elastic definition. If the only information she had to worry about was that which was marked, there would be no need for Secretary Clinton to "consult with appropriate management authorities in the Department ... in order to ensure that [she knew] whether information or material within [her] knowledge or control ... might be SCI."

Furthermore, inherent to her job was the understanding that certain intelligence is "born classified." In other words, certain information is considered classified by its very nature and the nature of its inception. If she then communicated that information to someone who lacked the appropriate clearance, she would be guilty of violating federal law. Likewise, if she broke the chain of custody for that classified information — by, for instance, allowing it to be stored on and transmitted over a non-authorized server — she would be guilty of violating federal law.

J. William Leonard was the director of the U.S. Information Security Oversight Office from 2002 to 2008. In August he told Reuters, "If a foreign minister just told the secretary of state something in confidence, by U.S. rules that is classified at the moment it's in U.S. channels and U.S. possession." So whether or not it was "marked classified," any such information that Hillary sent or received over her unsecured, unauthorized, private e-mail server would have been a violation of federal law.

And — considering her knowledge of the law and her signature on the NDAs — she knew it.

Adding to her culpability, Executive Order 13526, signed by President Obama in 2009, clearly says that only the president and the director of the agency that classifies a piece of intelligence can downgrade or remove its classification. It looks like Hillary is in deep water.

Even once it became apparent to nearly everyone else — including leaders in her own party — that the server scandal was the type of thing that could put her in jail and would at least hurt her attempts to



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reoccupy the White House, candidate Hil-lary Clinton continued to play coy about the whole thing. In early March, Senator Dianne Feinstein (D-Calif.), who had urged Hillary to run for president, told NBC's *Meet the Press*, "What I would like is for her to come forward and say just what the situation is. Because she is the preeminent political figure right now. She is the leading candidate, whether it be Republican or Democrat, for the next president, to be the next president."

Whether Hillary is still "the preeminent political figure" and "leading candidate, whether it be Republican or Democrat," remains to be seen. Her numbers in the polls were down for a while, due at least in part to the e-mail scandal and the way she has handled it. Party leaders have expressed concern, the media has continued to report, and donors have lost confidence. Hillary, however, seems not to have noticed. While she seems to have regained some of her losses, her political future is far from certain.

Her attempts to "say just what the situation is" have done her campaign more harm than good. Speaking during a campaign stop in Iowa in August, Clinton — while claiming to "take responsibility" — maintained her characteristic distance from any real admission of guilt. "I know people have raised questions about my e-mail use as secretary of state, and I understand why," she said, adding, "I get it. So here's what I want the American people to know: My use of personal e-mail was allowed by the State Department. It clearly wasn't the best choice. I should've used two e-mails: one personal, one for work. I take responsibility for that decision."

Had she stopped there, she might have seemed to "take responsibility." Instead, though, she broke the first rule of contrition: Never ruin a perfectly good apology by following it with an excuse or a denial. "I want to be as transparent as possible, which is why I turned over 55,000 pages, why I've turned over my server, why I've agreed to — in fact, been asking to — and have finally gotten a date to testify before a congressional committee in October," she said. Then, just to clarify that she has done nothing really "wrong," she added, "I'm confident that this process will prove that I never sent, nor received, any e-mail that was marked classified."

## **The Probe's Direction**

Instead of proving her claims, though, the process has opened a whole new can of worms for Hillary, her aides, her attorneys, and her campaign. In mid November Fox News reported that the FBI is expanding its probe of Hillary's e-mails and is looking at U.S. Code 18, Section 1001 to determine whether anyone on team Hillary is guilty of violating the code, which "pertains to 'materially false' statements given either in writing, orally or through a third party." It is also a violation of the code to pressure "a third party to conspire in a cover-up." It is a felony to violate the code and each violation could result in up to five years in a federal prison. This is the same code that was used to jail Martha Stewart.

Hillary has continued to pooh-pooh the idea that this is anything serious. But then, she never really seemed to think Benghazi was serious either. And the two could be linked, considering what communications regarding Benghazi could have been on her server. When she has been asked about the server and whether she violated federal laws regarding the chain of custody for classified information, she has repeated her claim that she never "sent or received any e-mail that was deemed classified, that was marked classified." As if saying it will make it true. Or make voters believe it.



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In the past, Bill and Hillary had powerful friends in high places running interference for them. They had loyal followers ready to fall on their swords for them. It looks like the times may have changed. There is no love lost between the Clintons and President Obama. In the book *Game Change*, journalists and authors Mark Halperin and John Heilemann recount the phone conversation between Bill Clinton and Senator Ted Kennedy in 2008, in which the former president was attempting to get the senator to endorse Hillary over Obama. Bill reportedly said, "A few years ago, this guy [Obama] would have been getting us coffee." The remark offended Kennedy, who later endorsed Obama.

Obama later told Hillary during a debate that he thought she was "likable enough."

And he likely appointed Hillary as secretary of state in spite of their differences because he needed the political clout and party unification the appointment would bring. Now, like him or not, he is his own political force to be reckoned with, and he does not need her. For his part, it does not look likely that he will do anything to help her out of the mess she has gotten herself into.

If Hillary Clinton is able to avoid criminal charges and somehow keep her candidacy afloat in the midst of the tumult of her own making, she may well emerge as the Democrat nominee. But those are some pretty big ifs.



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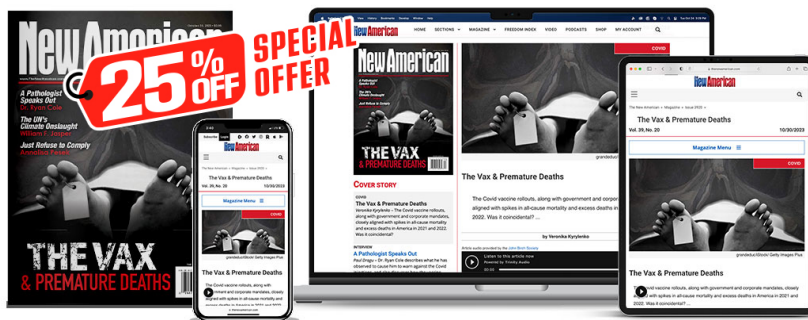
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