

Hillary Clinton's Destruction of Emails Was a Federal Crime

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However, our laws have been written so as to protect government officials, and corporate executives, if and when they are prosecuted for it. This leaves considerable discretion for prosecutors and judges to let them off the hook; and, as a consequence of this rampant discretion, there are numerous similar cases that receive starkly different procedural and judicial outcomes (a classic definition of ["injustice"](#)); so that, in this, as in so many other aspects of government in the United States, our country is far more a government by persons, than it is a government by laws.

This means that the legal outcome of former Secretary of State Hillary Clinton's attempt to destroy the evidence on the email server that she had had installed in her basement, will depend not so much on what the laws are (which are [intentionally vague](#)), but on who is investigating, reporting, and making decisions about that case.

For an elementary example showing how arbitrary our system is about such matters, consider that [this case](#) ended with no prosecution of the police officers. A former Secretary of State who is also the leading candidate for President of the United States, may be presumed to be at least as likely, as they, to avoid even weak penalties for her evidence-tampering, regardless of how heavy the legal penalties might be for what she did if the perpetrator were only a regular powerless citizen doing essentially the same thing (and this is true regardless of whether or not there were top-secret documents on that unsecure server — the feature of the case which is the almost exclusive focus of media-coverage and federal investigation about the event).

For example: if the only reason why she destroyed that evidence was in order to prevent voters from knowing [her private connections to persons and organizations that her Department was doing business with](#), and the 'top-secret' matter weren't involved at all in the case, then what she was doing by deleting the records [might not have been technically "criminal" at all](#), yet its outcome if she becomes President might be far more harmful to the nation than any lapse of state-security from unsecured private possession of top-secret information would be, or might have been.

So: on the face of it, what Secretary Clinton did was evidence-tampering and thus a federal crime, but to expect it to be prosecuted to the full extent of the law, or even at all, would seem to be unlikely. It might be, in the American system, permissible crime.

See:

https://en.wikipedia.org/wiki/Spoliation_of_evidence

https://en.wikipedia.org/wiki/Tampering_with_evidence

<https://www.law.cornell.edu/uscode/text/18/1519>:

18 U.S. Code § 1519 – Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code

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Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

(Added Pub. L. 107-204, title VIII, § 802(a), July 30, 2002, 116 Stat. 800.)

<http://www.insidecounsel.com/2013/07/18/litigation-sanctions-for-spoliation-of-evidence>

<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1218&context=dlj>:

[p. 1254, or p. 40 of the 122-page pdf discussing in this passage the Sarbanes-Oxley law's changes to the criminal laws that had existed before Arthur Anderson & Co. accountants had evidence-tampered Enron's audit-reports:] *What if the documents are destroyed to guard against whatever suit might arise, without having specific litigation in mind? For example, how would the provision apply to the ongoing destruction of safety test records by a manufacturer when there is no specific plaintiff — perhaps not even a specific buyer for the product? Arguably, such upstream behavior would still fall outside the bounds of new section 1512(c).¹⁵² At the very least, Sarbanes-Oxley does little to resolve the issue. ... If Andersen had been destroying audit-related documents as it went along, rather than after it learned of the SEC inquiry in October 2001, would it have been criminally liable under new section 1512(c)? Arguably not.*

Regarding her likely Republican opponent (if she wins the nomination), Donald Trump, the [three class-action lawsuits](#) against him regarding Trump 'University', are presently civil fraud cases instead of federal criminal ones; but that could change. Trump, an aristocrat himself, has lots of enemies within the aristocracy. Unlike most of the other aristocrats, his fortune is in real estate instead of stocks; so, the Wall Street banks and the private equity and hedge fund people who finance most of American politics don't like his plans on taxes and on shipping jobs overseas to lower-wage countries (so as to boost corporate profits). Already, Republican billionaires, such as Marlene and Joe Ricketts, founders of TD Ameritrade, [are running Super-PAC ads against him on the Trump 'University' matter](#).

The Ricketts are dyed-in-the wool Republicans but they might support Clinton this time around — [lots of Republican](#) as well as Democratic billionaires might do that.

In 2012, the Ricketts had hired a firm to draw up a plan to stir hatred against President

Obama. The plan as presented to them was titled [“The Defeat of Barack Hussein Obama: The Ricketts Plan to End His Spending for Good.”](#) It opened by saying, “Our plan is to do exactly what John McCain would not let us do. Show the world... the elephant in the room. ... The metrosexual black Abe Lincoln has emerged as a hyper-partisan, hyper-liberal, elitist politician with more than a bit of the trimmer in him.” The plan became described on 17 May 2012 in *The New York Times*, in a news story, by Jeff Zeleny and Jim Rutenberg, headlined “G.O.P. ‘Super PAC’ Weighs Hard-Line Attack on Obama.” They reported that the 54-page document was being considered by Joe Ricketts, who was aiming to spend \$10 million in 2012 to get Republicans elected. “Lamenting that voters ‘still aren’t ready to hate this president,’ the document concluded that the campaign should ‘explain how forces out of Obama’s control, that shaped the man, have made him’ the wrong person to lead the nation ‘in these days and times.’ It recommended ‘full-page newspaper advertisements featuring a comment Mr. [Rev. Jeremiah] Wright made the Sunday after the attacks of Sept. 11, 2001. ‘America’s chickens are coming home to roost,’ he said.” The Ricketts servant who had prepared this plan was evidently desperate, because voters, as his plan said, “still aren’t ready to hate this president.” The Jeremiah Wright attacks fell flat against Obama in 2008 and would be even less successful now four years later; so, Ricketts spent his campaign money elsewhere. And now, he’s spending his money in an attempt to prevent Trump from winning his Party’s nomination.

With both Republican and Democratic billionaires determined to block Trump from the White House, maybe it will be Trump instead of Clinton who ends up being indicted. Unlike Clinton, he doesn’t have friends in the right places. But anyway, the relative merits and demerits of candidates have little to do with the matter. Nor do the laws.

Investigative historian Eric Zuesse is the author, most recently, of [They’re Not Even Close: The Democratic vs. Republican Economic Records, 1910-2010](#), and of [CHRIST’S VENTRILOQUISTS: The Event that Created Christianity](#).

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