

DEMANDS FOR CLINTON'S SERVER TO BE TURNED OVER CONTRADICT STANDARD USED IN BUSH-RNC EMAIL INVESTIGATION

House Speaker John Boehner, Benghazi Select Committee Chairman Trey Gowdy, and other Republicans have called on former Secretary of State Hillary Clinton to turn over to an “independent” third party the server she used for both personal and official emails.

The rationale for their demand appears to be that they simply do not believe that she produced to the State Department all of her official emails last fall after a detailed review process conducted by her attorneys.

Republicans essentially claim they cannot trust Secretary Clinton and her attorneys despite the fact that they have fully cooperated with all requests from the State Department and the Benghazi Select Committee.

However, working with witnesses and their attorneys to ensure compliance with document requests is the standard approach utilized in congressional investigations.

For example, in 2007 and 2008, Rep. Henry A. Waxman, then Chairman of the Committee on Oversight and Government Reform, conducted an investigation of dozens of White House officials who routinely sent official emails from accounts at the Republican National Committee (RNC)—which also housed its own servers. That investigation [found](#):

- [“\[A\]t least 88](#) White House officials had RNC e-mail accounts. The officials with RNC e-mail accounts include Karl Rove, the President’s senior advisor; Andrew Card, the former White House Chief of Staff; Ken Mehlman, the former White House Director of Political Affairs; and many other officials.”
- [“White House officials](#) made extensive use of their RNC e-mail accounts ... These e-mail accounts were used by White House officials for official purposes, such as communicating with federal agencies about federal appointments and policies.”
- [“The RNC deleted](#) most of these e-mails pursuant to a ‘document retention’ policy under which e-mails more than 30 days old were deleted. One indication of the scale of the loss of White House e-mail is the fact that the RNC has retained no e-mail messages whatsoever for 51 of the 88 White House officials with RNC e-mail accounts. Moreover, even for White House officials for whom the RNC has e-mail records, these records appear to be incomplete.”

Chairman Waxman never demanded the production of RNC servers that contained non-official emails relating to RNC business.

- Instead, the Oversight Committee worked with RNC attorneys at the law firm of Covington & Burling, LLP, who conducted searches using “search terms” that were agreed on by the RNC and the Committee.
- The Oversight Committee allowed RNC attorneys to conduct reviews of the emails to determine which were official—and to produce only those to the Committee.
- The Oversight Committee accepted the statements of RNC lawyers who asserted that their productions were complete.
- Specifically, on March 6, 2008, Robert K. Kelner, an attorney representing the RNC, wrote a letter to the Oversight Committee stating:

“With this production, the RNC has now produced to the Committee the responsive documents identified through agreed-upon electronic search terms in the e-mail database that the RNC compiled in April 2007, subject to three qualifications.”

- The three qualifications included: White House review and redactions for executive branch interests, withholding communications with RNC counsel, and withholding communications with personal counsel.
- In addition, on May 30, 2007, Mr. Kelner wrote to the Oversight Committee to report that the RNC’s computer contractor “analyzed the RNC’s decommissioned server and concluded that it does not contain any active e-mails to or from the accounts of White House employees.”
- Under Section 1001 of Title 18 of the United States Code, providing a materially false statement to Congress is a crime.

During the Bush-RNC email investigation, Chairman Waxman did not demand that a third party double-check the process RNC attorneys used to identify and produce officials emails to Congress, and he did not insist on access to RNC servers, backup tapes, or non-official emails sent to or from White House officials.