



Media obsession with a bullshit email scandal helped Trump to the White House

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The media's coverage of the 2016 race didn't win the election for Donald Trump, but it didn't help.

Back in September, [Gallup presented the findings](#) of an important research project that, in retrospect, ought to have prompted a lot more soul searching among members of the press. What they did was, over an extended period of time, survey people and ask them what they were hearing about the two candidates.

The answer is that with regard to Hillary Clinton, they heard a lot about email. With regard to Trump, they heard about nothing in particular.

What Americans Have Heard or Read About Donald Trump

What specifically do you recall reading, hearing or seeing about Donald Trump in the last day or two?



GALLUP DAILY TRACKING
JULY 17-SEPT 18, 2016

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Gallup

The way Frank Newport, Lisa Singh, Stuart Soroka, Michael Traugott, and Andrew Dugan put it for Gallup is that compared with the email-centric view of Clinton, “Americans’ reports of what they have read, seen or heard about Donald Trump over this same period have been more varied and related to his campaign activities and statements.”

Journalism’s inputs have been pretty good

Journalists are accustomed to thinking of the media primarily in terms of the *inputs* we deliver to public understanding of major events. To thinking, in other words, of what stories we publish.

And by that standard, the overwhelming conventional wisdom among journalists has been that we, as a profession, held Donald Trump's feet to the fire. Major media outlets have, after all, done reports on all of the following:

- Donald Trump's bigoted remarks about Judge Gonzalo Curiel
- The extensive litigation in which various contractors accuse Trump of not paying his bills
- The dubious operations of Trump's charity
- The fact that Trump's campaign appearances involve routine lying about a baffling range of topics
- Ties between several of Trump's associates and the government of Russia
- The ongoing fraud litigation over Trump University
- Trump's statement that he likes to grab women without their consent and the existence of dozen women who accuse Trump of sexual assault

One could further emphasize the point by adding to the list. But any reasonable person would judge that there has been no shortage of negative coverage of Trump. A strikingly wide range of character weaknesses have been probed and exposed in the mainstream press.

Clinton has, by contrast, mainly been subjected to two negative storylines. One concerns the question of whether she gave favorable access to donors to the Clinton Foundation, and the other concerns the propriety of her decision to use a private email server to conduct business while serving as secretary of state.

Campaign journalism's outputs have been terrible

The problem is that if you think of campaign journalism as not just a series of stories but a collective effort to produce public *understanding* as an output, then we have failed.

You see it right there in the Gallup graphic. People heard loud and clear that Clinton was in some kind of trouble related to email whereas the stories about Trump — with the exception of the sexual assault allegations, which came after this study — do not seem to have broken through. Indeed, there's the alarming possibility that Trump actually *benefited* from the sheer range of negative stories about him. To cover any one Trump story — his refusal to disclose his income taxes or to commit to putting his business holdings in a blind trust — as extensively as the Clinton email story was covered would have necessarily required that less attention be paid to *other* important lines of inquiry into Trump.

But by trying to cover all the different negative storylines about Trump, the press created a muddle in which nothing in particular stood out.

Conversely, the fact that there actually weren't very many negative angles to pursue against Clinton ended up blowing the email story out of proportion. If you have journalists assigned to cover Clinton, they need to do some kind of stories. And they're going to want to do some tough stories. So if the only topic to do tough stories about is emails, you're going to get a lot of stories

about emails. And a natural implication that people are going to draw is that Clinton's email server is a crucially important story.

The truth, however, is that the email saga was profoundly unimportant. Federal IT at the time would have required her to carry two separate BlackBerrys, one for her personal email and one for her work email. That's what an ordinary State Department employee would have had to do, but Clinton was the boss, so she chose to exempt herself from the rule and just use one email account. It was a little selfish (a perfect boss would have played by the rules while insisting on finding a department-wide solution to the problem) but not especially important. Most of all, it wasn't criminal, and it didn't endanger national security.

Indeed, the use of a private email system has nothing to do with the inquiry into the emailing of classified material that it spawned. Government personnel aren't supposed to discuss classified matters on non-secure channels like email *at all*. And as a rule, they don't. But it happens from time to time accidentally and it's not a crime.

The email story is fundamentally bullshit

The truth, however, is that the email server scandal is and always was overhyped bullshit.

Clinton broke no laws, as the FBI concluded twice. But beyond that, basic familiarity with the relevant law would have made it clear to anyone that no FBI investigation of the matter was even vaguely likely to conclude that she had. For starters, the bulk of statutes related to classification require some form of *intent* to establish criminality. The exception is 18 USC § 793, an 18th-century statute whose text sets a lower "gross negligence" standard.

If that was all you knew, then the inclusion of classified information in email exchanges that Clinton conducted on a non-secure system might sound like it fits the bill.

But experts uniformly say otherwise. As Jack Goldsmith, one of the top lawyers in George W. Bush's administration, explains, such a prosecution "would be entirely novel, and would turn in part on very tricky questions about how email exchanges fit into language written with physical removal of classified information in mind."

Ben Wittes, a veteran legal journalist and Brookings fellow who has spent the past several years specializing in national security law, wrote that James Comey's characterization was clearly correct:

For the last several months, people have been asking me what I thought the chances of an indictment were. I have said each time that there is no chance without evidence of bad faith action of some kind. People simply don't get indicted for accidental, non-malicious mishandling of classified material. I have followed leak cases for a very long time, both at the Washington Post and since starting Lawfare. I have never seen a criminal matter proceed without even an allegation of something more than mere mishandling of sensitive information. Hillary Clinton is not above the law, but to indict her on these facts, she'd have to be significantly below the law.

It's true that to a layman the Espionage Act's reference to "gross negligence" sounds similar to Comey's characterization of Clinton's actions as "extremely careless." But as Philip Zelickow, a counselor to Condoleezza Rice during the Bush administration and currently the director of the

Miller Center at the University of Virginia, explains, they only sound alike “unless you do a tiny bit of homework” on the history and case law of the statute.

Did Hillary Clinton do something criminal with her emails? Philip Zelikow walks you through. [#election2016 @AnnCompton@pastpunditrypic.twitter.com/ks8Z4dq9Qf](#)

— Miller Center (@Miller_Center) [November 3, 2016](#)

As the Cato Institute’s Julian Sanchez writes, attempting a prosecution for non-malicious mishandling would likely result in the statute being held unconstitutional: “the Supreme Court’s opinion in *Gorin v. United States (1941)*, which suggests that the Espionage Act’s intent requirements are an important feature that save it from unconstitutional vagueness.”

This legal analysis is important because people who understood it would have understood that the “bombshell” revelation that more emails had been discovered on Anthony Weiner’s laptop was going to be a non-story. Even if for some reason the emails turned out to be new (and it now looks like they weren’t), there was absolutely zero reason to believe they would show the *malign intent* that you would need to demonstrate that Clinton broke the law.

But by that point, email mania had become a locked-in story.

The press had covered emails so much, and public perceptions of Clinton were so dominated by emails, that the mere hint of new email news itself became a meta-story. Neither the headlines nor the accompanying articles had much in the way of actual content — there was no information, after all — but they simply asserted the self-fulfilling prophecy that people talking about emails would jolt the race. Which, according to all the evidence, it did.

At a historic moment, journalism failed

The massive overweighting of emails in Americans’ news diet was not the only failing of journalism this cycle.

As Jonathan Bernstein writes, press coverage did not really convey one of the most remarkable things about Trump — his profound lack of support from inside the Republican Party. Neither of the GOP’s former presidents supported him. A number of sitting United States senators declined to endorse him. So did a smattering of Republican governors from Tennessee and Ohio to Maryland. Only 5 percent of Republican state legislators explicitly endorsed Trump.

This should have been presented to voters as what it was — a huge, anomalous situation; the political equivalent of flashing red warnings lights on the highway. But it was not. That was in part due to a lack of backbone on the part of many of the Trump-skeptical Republicans. But it was also in part a result of deliberate editorial strategies. CNN chose to sideline much of its regular stable of conservative pundits and replace them with professional Trump apologists. That let them stage their normal fair and balanced pundit roundtables rather than exposing the audience to the reality that the underlying situation was abnormal.

That abnormality should have been the dominant theme of the election.

As Ezra Klein wrote after the national conventions, “This campaign is not merely a choice between the Democratic and Republican parties, but between a normal political party and an abnormal one.”

That Trump was not really normal was, I think, properly conveyed by the bulk of the coverage. But the impact of wall-to-wall email stories was to excessively abnormalize Clinton. Clinton is, fundamentally, a regular, center-left Democratic Party politician who’d be largely interchangeable with Amy Klobuchar or Chris Murphy or Kirsten Gillibrand or whoever else as president. One can reasonably criticize this whole group of politicians for being too liberal or for being too moderate or many other things. But they’re banal, just like Clinton.

The impact of the email story was to exoticize and abnormalize Clinton in an entirely unwarranted way. To create the impression that the election pitted *two* abnormal characters against each other, when in truth nothing of the sort was going on.

Analysis of Trump’s victory will naturally tend to focus on the broad structural forces that drove his rise. But elections are close-run things. The difference between a narrow win in Florida and a narrow loss in Florida is just a few thousand votes. The *typical* Trump supporter was drawn to him out of either baseline partisanship or attraction to the peculiarities of his message. But the *marginal* Trump supporter is the reason he won. And that supporter was very likely influenced by the overwhelming media focus on the email matter.

Future historians will look back on this dangerous period in American politics and find themselves astonished that American journalism, as an institution, did so much to distort the stakes by elevating a fundamentally trivial issue.