

# WAXMAN HEARING ON WHITE HOUSE EMAILS

Available here.

We're having a fight already. Waxman moved to enter the report of Steven McDevitt into the record. This is the guy who reported that all the emails were missing. Apparently, from 2002-2006, he was responsible for managing White House system.

Waxman says we're going to vote to put McDevitt's testimony into the record.

Waxman: If it ain't broke, don't fix it. But that's what WH did. Dismantled a functioning system and replaced it with something inadequate. Initiated its own study of missing emails in 2005, but now dismisses its own work as incompetent.

Davis: Committee is entitled to getting the emails. It's the characterizations which we differ in opinion. 2002-2006 he was responsible for managing system. In his opinion 400 days of emails went missing. We learned that many of these were misfiled. McDevitt responded to interrogatories, he replied with 25 pages of answers. We spoke with McDevitt on Sunday afternoon. Reluctant to give testimony on the record. Our staff made it clear we want to examine him on the record. Personal investment in various technologies. We remain skeptical of the content of his interrogatories. White House says technical flaws in the 2005 search. 473 day gap reduced to 202. WH restoration effort continues and should continue.

Waxman: Jan 30, McDevitt, scheduled interview, WH contacted him, told him not to discuss with the committee. McDevitt emailed, based on WH, there's practically nothing I'm authorized to discuss. Given limitations placed by WH Counsel, he said it didn't make sense to come in for interview. Majority and Minority sent him questions. He responded in writing. WH had

chance to review those answers, cleared them without redactions. AFTER they got the answers, minority wanted to speak with him in person. Majority went to some length to accommodate them. Sunday night, Minority and Majority called to see whether he would come in for deposition. Answered 1.5 hours of questions from Minority. Minority now says it's unfair to use any information bc they didn't get oppty to question him. If Minority has a beef with anyone, it should be WH Counsel's office.

Davis: We believe he doesn't want to testify. We can reach accommodation.

Waxman: Others agreed to come, McDevitt refused to come in, but that's because WH Counsel told him he couldn't say anything. This is not just what McDevitt said, but also archives.

Davis: We join with you in goal of getting emails.

Waxman: I don't know what characterizations you object to, I'm trying not to make any characterizations unlike what happened in the 1990s.

Sworn in.

Weinstein, Archivist: No authority over how incumbent manages records keeping. Describes learning from the Fitzgerald letter, later alert from WH reporting on McDevitt's email. **May 6, 2007 sent letter to Office of Administration requesting report on unauthorized destruction of records. To this day I have not received a written response to this letter.** WH has responded regularly, but inconclusively, that its investigation is ongoing. We have insisted that WH must reconstruct those emails, presumably from backup tapes. Clinton Office of Administration took full responsibility for restoring their emails. NA advised Bush that it replace ARMS with new record keeping. Bush expressed interest. Proposed electronic communications system. NA staff reviewed the deliverables. In Fall 2006, NA learned Administration would not implement new system.

**Fall 2006, NA was not informed of missing emails at this time.**

Swendiman, Director, Office of Administration:  
Started Nov 27, 2006. Presidential transition planning. Missing emails pre-dated my service as Director.

[Note they've replaced everyone in authority since McDevitt's report.]

Theresa Payton, CIO, OA: Mid-May 2006 started. 3000 customers in 12 components of EOP. Late 2006 until today, explanation on leadership determination of people that I work for and those that work for me. 3 tracks, Late 2006 until today. 1) People, 2) technology, 3) longer view. Microsoft journals to PSTs, people reviewing them, give a weekly report if there are any "glitches." Transparency if there is a glitch. Gives us historical information if somebody's looking back they have a place they can go look. Learning tool for team, 6 Sigma, reduce defects, reduce future defects. Technology improvements on existing technology. Email goes into MS journal, automatically moved into PST with program put into place in 2005, re-baselining entire inventory of records. Different "technology glitches" in tools that have been wonderful workhorses for EOP, we felt it in best interest to upgrade and update some of those tools. Early phase, we have 3 phases we're implementing. Just started to get early results, have not had quality check on them. Have identified more emails for that time period, more emails than identified in 2005, have been able to locate emails within exchange. There are still some days that still show as red. In phase 2, our desire to eliminate all or most red and low volume days by reading information at more granular level. When we finish phase 3, that's when we'll have a conversation around restore, with disaster recovery tapes. Everyone on the team wants a successful NARA transition.

Waxman: Weinstein. This hearing's about compliance with PRA. Requires President to

ensure that his activities and policies are adequately documented. Records belong to American people, not Republican party. How important is PRA.

Weinstein: Incredibly important.

Waxman: Preserves records for history and for next administration. Over the last year serious questions raised about compliance. Two violations of act. 1) Use of RNC emails. 2) failure to archive emails sent through official system. RNC email accounts. Used for official purposes, RNC preserved almost none of these from first term, and only some from second term. Archive was concerned about RNC missing emails as well.

Weinstein: I wish I had all the facts. The fact is, our understanding, WH has been working with RNC to restore the emails that have been reported.

Waxman: How concerned are you?

Weinstein: I'm concerned with any missing records.

Waxman: Rove, extensive user of RNC account. 95% through RNC. Ralston confirmed Rove used it extensively. Asked RNC what records they had, no emails before November 2003. None for 2001, 2002, 2003, defining years for Bush Administration. Are you concerned about missing Rove emails.

Weinstein: I'm concerned no matter what the system. I should add that in listening to Payton's testimony, we're still awaiting the completion of this process. My counsel;

Stern: As we've discussed with WH, President Records, still responsibility of to WH to preserve them. WH creates non-WH records. It would be appropriate to use RNC email.

Waxman: Rove used primarily RNC. Status of restoration.

Weinstein: We haven't gotten that information. Process nearly complete.

Stern: We heard today that RNC has not been doing that.

Waxman: You were relying on WH telling you they'd get all the records from RNC. **We talked to RNC yesterday, they told us WH has taken NO steps to obtain backup tapes.** Payton, Swindeman, when we checked, we learned WH never obtained backup tapes. Why isn't WH following through?

Payton: Responsibility for EOP network. Not qualified to talk about RNC restore.

Waxman: maybe Swindeman is part of the process.

Swindeman: We're responsible for official and sensitive record.

Waxman: aren't you responsible to gather this information?

Swindeman: I'm advised that Counsel's office has taken steps. Letters have gone out to former WH employees. I've been advised about that step.

Waxman: RNC are the core types that PRA supposed to preserve. WH may not want these emails disclosed. WH may not want these records of how WH led nation to war disclosed. Important that we get those RNC emails. I assume Weinstein that you agree. RNC has box of backup tapes. Are those being searched.

Swindeman: I don't know. Among steps, I've mentioned letter. Second is contractual efforts wrt forensic and recovery.

Waxman: This is what this hearing is all about. We were told WH has not even asked for them. They've assured you, Weinstein, that they're going to take care of it.

Weinstein: You'll have my best information by end of week.

Waxman: Stern letter to Weinstein. Almost zero progress in moving ahead. Most significantly, our repeated request on PRA records that will be transferred has gone unheeded. We know nothing about status of missing emails. Weinstein: your reaction that WH had provided no information

about large loss of records. Do you have info you need?

Weinstein: Not happy about that. Moving forward. We have sensitized group, but not answers.

Waxman: Congress doesn't have info we need. We don't know if they're going to recover missing RNC emails. And we seem to get a different story about whether WH emails are complete. Without that this Administration not complying.

Davis: These people are not responsible for RNC emails. The other thing that troubles me, when you have a committee, we shouldn't have this come out of their coffers. We might look at an appropriation. Ms Payton: we have backup tapes for all the emails.

Payton: Disaster recovery tapes. From a disaster recovery standpoint.

Davis: It covers everything that happened. Are there backups for all the missing emails?

Payton: we believe we should have backups.

Davis: It's recoverable.

Payton: We believe we can use disaster recovery if we need to.

Davis: It is expensive, is it not.

Payton: Team put together algorithm, rough approximation, 1 component, 1 day, around \$50,000.

Davis: Ballpark number?

Payton: There's also servers that would have to be purchased. \$500,000 for servers. **If we restored every day, somewhere in ballpark of 15 million or more.** It should be recoverable. Caveat, don't know if there will be a flaw in a tape.

[Rosemary Woods might have something to say about flaws.]

Issa: Ask that back and forth comm with WH and McDevitt be included in record.

[All of a sudden Issa wants this in record]

Davis: Political operation in WH. To be able to use govt systems not consistent with Hatch Act.

Swindeman: Yes.

Davis: Going forward, outline guidelines for how you keep those records. The fact that you had different servers and computers is compliant.

Swindeman: You shouldn't be doing your official work on that computer.

Weinstein: Restoring Clinton emails cost \$12 million.

Issa: Call with McDevitt, question about McDevitt working with CREW, were the interrogatories result of working back and forth with employees. McDevitt, employee of FEMA, chose to use his gmail account to correspond as to whether he could give testimony.

Swindeman: Mere use of private account for govt business, is not a problem.

Issa; Are you keeping all the YouTube stuff from the President? That's part of total internet.

Weinstein: What specifically are you referring to?

Issa: If Chariman thinks he should have Rove's correspondence with a wife or an old girlfriend.

Weinstein: Congressman I think you know the answer to that question.

Issa; It's very clear that it's Rove's non-official correspondence which I suspect Rove did that at the RNC. If Karl Rove chose to decide that talking about fundraising or talking about strategizing, how to maintain a majority in the Senate. Would that be appropriate for you to gather.

Weinstein: PRA pretty clearly defines what is an official act. The issue was there official business on that system.

Issa: is there any evidence that there was

official business there? DO any of you know if any official business was done at the RNC? This committee doesn't.

Weinstein: It's hard to know anything.

Issa; I need to be as simplistic as possible. There might be some on YouTube. President might have had deliberative conversation at fundraiser. You have no mandate to go peeping tom. It's important, Ms. Payton has important info for us. Reimaging servers. You captured images. If you're lucky you get 30 days of emails. I appreciate that sometimes those images aren't perfect, you may have to restore a server. Legitimate reason is not the RNC. If all we call about is Weinstein's ability to get legitimate archives, you're going to be able to provide that all or virtually all. Do any of you know of something that was wrongly used outside of official channels by Karl Rove. Chariman, a little like Dan Burton, who I disagreed with in the 90s. Do you know of misconduct by Karl Rove? Yes or no?

Weinstein: I would say the question is above and below my pay grade.

Issa: I will take that as a No.

Waxman: WH has responsibility of getting emails that relate to govt work. If we know that of the 51 of 88 officials that have official RNC email accounts, only 14 had emails retained at all. Karl used 99% of his time on RNC emails, one would assume he was doing govt work.

Issa: Do you presume we have the right to look into private people's lives?

Waxman: Absolutely not.

Issa: I agree, I would hope that we would ask the WH. Are there any records covered under official acts?

Swindeman: Much of what you're talking about precede my time.

Davis: A report on possible PRA violations. I'm



not sure we have to speculate. We have the information that has been written in a report.

[Oops missed some]

Davis: Archiving system "hardly qualifies as a system." Do you agree that this journaling system was not an archiving system.

Weinstein: Great distillation of system.

Stern: the journaling system was supposed to be a stopgap. It's our view that the journaling function is not the ideal function.

Davis: And it's been used for 6 years.

Weinstein: do you have concerns this has been used for 6 years.

Weinstein: I'd like to hear what Swindeman and his colleagues have come up with.

Davis: Payton: Any concerns about that?

Payton: Is it an ideal solution?

Davis: WH has used it knowing it has not yielded what it needs.

Payton: It's not that easy to say. Best efforts have been made to do a more comprehensive solution. Once the programs were run through their requirements. It appears that each time the products were run through the paces, they were left wanting.

Mica: The CLENIS did it too. Did McDevitt say such mean things about the WH because he didn't agree with the technology?

Mica: Sandy Berger did it too.

Mica: Let's put Sandy Berger's emails in the record, too.

Waxman: No.

Watson: Ms. Payton. To comply with PRA an email has to ensure that it captures all pertinent email, but must prevent people from deleting emails. 2005 **WH warned that system at risk of data loss, but also vulnerable to tampering. No**

**way to guarantee that all emails retained in unmodified state. No mechanism or audit trail that tracks changes to data files.** Not to say someone tampered with email, but no way to say that it didn't happen.

Watson: Weinstein: Are you concerned about this?

Weinstein: I'd like to read about it.

Watson: **Critical security issue not fixed until 2005, File servers and directories, accessible by everyone on EOP network.** Anyone could delete or modify files.

Payton: Since that precedes me I'm going to go on conversations with staff. That has not been brought up.

Watson: This has not been brought up that these files could be deleted or tampered with.

Payton: That there was system-wide access for all 3000 employees. I have not been made aware that at some time these servers were open to anybody.

Duncan: You have no knowledge of this?

Payton: I have no knowledge. There is only one exception allowed, only if information from classified network is found on unclassified network. Swindeman or Payton. How many times have you briefed Oversight?

Duncan: Care to tell the committee how much time you have spent.

Swindeman: 1500 hours. Approx 15,000 pages of documents. Approx another 15,000 pages.

Payton: I've provided 4 briefings to committee staff.

Tierny: Some emails missing from VP office.

Chronology: Your office produced chart showing 473 days with no emails. When inventory done in 2005, nobody could locate emails in PST files. WH still hasn't located emails in PST servers. WH went to backup tapes, these were provided to special counsel. What happened to files that

were supposed to be on WH servers.

Payton; Not one with analysis. Lots of emails not attributed to component.

Tierny: So far, long period of time you haven't found them.

Payton: Backup file.

Tierny: we got doct showign that when WH restored, no journal files, not PST files, not only missing from servers, missing frmo backup tapes as well.

Payton: this predates me.

Tierny does this mean no journals for 50 files.

Payton: I don't know the details.

Tierny:: Just having indiv emails, if someone deletes the day it was sent, it's gone. A lot of unanswered questions.

Payton: We still have PST files we have not been able to associate with component. They contain 17 million emails.

Bilbray: CREW. Evil scary liberal organization. Can we get into the CLENIS files?

Weinstein/Stern: Special Access request for former President. We would respond to that.

Weinstein: Chair would have to request that.

Bilbray: Why Admin said they were going to pull mandate, now the concern is what kind of contacts the Republican Admin has made.

Mica: all the missing emails occurred before your tenure. This Steven McDevitt, did he leave on good terms or in a dispute.

Payton: initially reported directly to me, reported to D Director after that.

[Interrupts]

Payton: very passionate about ECRAMS pilot,

Mica: Disagreement about how records would be

preserved.

Payton: We did not make decision until after he left.

[Changes tack]

Mica: WH had to live under all the laws the rest of us did. Do we need to change the laws?

Waxman: Time has expired.

Swindeman: Defer to someone with legal background.

Payton: The fact that more comm now happens on email, it's also casual form of comm, as well as official. Do have some work to do on user side and tech side, to understand new protocols.

Weinstein: Too old to respond to that question.

Yarmuth: Based on conversation before I ever dreamed of getting into politics while I was a journalist. Reminded of it when the disappearing emails arose. Woman told me that she had a blood relative. Every six weeks his company took computers to remote location, and cleaned or scrubbed hard drives in computers. Swindeman and Payton: Any activity or procedure that resembles activity I've described.

Payton: Can't comment on that time period. Currently take files store on drive, if we want to use equipment we wipe the drive. That's a practice we're using.

Yarmuth: Any contract with non-governmental entity involves using WH computers.

Payton: 60 Contractors on staff, messaging and tech support.

Yarmuth: Deleting information that might be classified. Tight process. How can we be confident of what that process is. Are we relying on WH?

Payton: Oops, can't talk about classified in this setting.

Yarmuth: ECRAMS program. Made decision after

McDevitt a three-year process in which a lot of people made decision this was desirable to implement. You've given reasons in your testimony. In a meeting with Stern's staff, you gave different reasons. Stern: Did you the the reasons were legitimate and compelling.

Stern: WH responsibility to make records management decision. Disappointed that they didn't use ECRAM. Hope they still will get one in place.

Welch: Recovery. Stern, PRA requires that official business be available and stored in NA. Whether official action is done on WH email or RNC account or Gmail, if official, it belongs in archive.

Stern: Yes.

Welch: 88 WH officials used RNC to do some official business.

Stern: not familiar with details. Some belief even by WH that there could be official business on RNC.

Welch: You've made official inquiries, in May 07.

Stern: They said they were attempting to do that. We thought they were still continuing in that effort.

Welch: Since you've made the request, any concrete step WH has made? Do they have a legal duty?

Stern: No, have to provide at end of Admin.

Welch: Payton: Any official request?

Payton: Separate tech team.

Welch: Not your job, so you don't know.

Payton: That is correct.

Welch: Nobody can explain to Mr. Stern why they haven't done what they told Stern they would do.

Swindeman: Well, hold on.

Welch: Two backup boxes, any effort to make those tapes available to NA?

Stern: they'd make someone through WH.

Welch: Any steps with those two boxes? Payton, Swindeman?

Swindeman: I can't speak to those two boxes.

Welch: No dispute, any emails in those boxes, no question that official business is under PRA.

Swindeman: Can you repeat the question? Any official business.

Welch: What, Mr Stern, can you do to make sure NA has the records it needs? You've asked and got no replay [to Stern], you don't know, someone else does, but they're not here [to Swindeman].

Clay: Any concern about abandoning archive system and proceeding with journaling. McDevitt expressed risk on numerous occasions. Process by which email would be lost. Potential impact that it might not include data.

Payton: Challenge about his statement, it does predate me, in talking with staff on go-forward, we have improved people process. Process process process. 6 sigman, MBA automaton.

Clay: What did WH do when it learned its system was inadequate. In previous testimony, you've talked about how much this will cost. It's a cavalier attitude, where does the care come in for taxpayer analysis.

Payton: we want a targeted list for restore.

Clay: Yet no one heeded their own warning. What was that about? Maybe we need to listen to archive, or to our own staff.

Payton: I wasn't there.

Clay: Weinstein: WH process primitive and high risk of data loss.

Weinstein: If that is what my staff decided after looking at my process. On this issue, who

cares about taxpayer, crucially important for NA and LOC, to be very sensitive that we can lose support of taxpayers very quickly. Welch raised one question with Stern. One slight question: I signed that letter, if Congressman has interest in RNC. We have not asked that question lately. We have to be a bit stronger in our request to RNC.

Clay: It seems like everyone was warned about data loss. They continued with migration. They continued with ad hoc process from 2002 until today.

Norton: On January 2008, you filed declaration regarding loss of emails, criticized chart produced in 2005. Committee showed that your office created 15 person "message storage" team, documented in painstaking detail, reported to Director of OA and WH Counsel. Why didn't you mention this team in your sworn declaration.

Payton: Prior to my arrival.

Norton: Were you unaware of this team?

Payton: Based on what the team has told me, a group of people ... All I knew is that they put data together, they did not work on the chart.

Norton: Later you said OCIO has been able unable to replicate the chart. We got a quite different account. This is what he said. Extensive testing was performed to ensure tools and tabulation was performed.

Payton: I am not aware of that testing. I am aware that Steve has made those statements. They said, as far as they could tell it has not gone through an extensive ID&D process.

Norton: Stated there was a lack of supporting documentation. McDevitt told us the chart was a summary, complete analysis was 250 pages. Why didn't you mention 250 page supporting document.

Payton: Document had not been made aware to me. Must not have been on the radar of the team.

Norton: You seem to know nothing about it. You

said you had serious reservations about reliability of chart. Easiest ways would be to talk to chart. The archives recommended to you on November 6, 2007, it would be useful to contact original author to ask questions about the nature and meaning. You never contacted him once. Even though he worked directly for you in 2006 while you were there.

[wow Norton's snark-meter is off the charts]

Payton: At that point in time, we had already found flaws with the tool, talking with Steve at that point, he was probably not aware that those flaws existed.

Norton: In 2006.

Payton: He reported to me directly and then he reported to DDir.

Norton: I think the credibility problems are patent here. The archives told you that someone talking to you could tell you. Why didn't you ask him any of the questions I just asked you.

Sarbanes: I gotta believe that people watching would find it completely implausible that this number of emails would disappear by accident. Are you familiar, I know you weren't there, Have you become familiar with ARMs system.

Payton: Exists today, still houses Notes records. Had to be totally customized.

Sarbanes: did you ever find yourself saying I wish they hadn't abandoned things.

Payton: It would be nice, I try not to second-guess people I move in behind.

Sarbanes: If I were someone who wanted to delete records, the system the WH moved to would be an easier system to accomplish that.

Payton: A little more complicated. When an email comes in through Exchange. Automatically copied to a journal.

Sarbanes: If 10 is where you want to be, where would you say we are on transition.



Weinstein: We will be a ten, we will be a ten and a half. We're somewhere in between.

Sarbanes: Disaster recovery tapes. Who has possession of those

[missed some]

Davis: Sandy Berger. Sandy Berger. Payton: did you respond to all requests.

Payton: From tech, 3 phases, in the midst of first phase now. Read through personal storage on archive. From inventory can reconstruct from PST. If you took mail servers out of operation on weekend, you don't receive mail until Sunday. Old and new tool can only track receive date, network operations logs. When finish phase 1, share it with NARA to make sure comfortable with QA. We have identified 10 million emails that weren't identified in 2005. Not sure team knew that those tools had those limitations. Work through entire inventory. We're daying from Day 1 to transition.

Davis: If you can put it into writing, I want to get it in the record.

Waxman: After you're finished you phases, you'll be out of office. You decided to abort the archiving system in 2006. To date, WH still hasn't installed a new system. 2002-2008 WH hasn't had adequate functioning system. You've got 3 phases to correct the problem. Motion to include the interrogatories in the record.

Davis: I want to note that your witness that you're relying so much of your report. We did not have a chance to cross-examine.

Issa; You're going to put this in the record, you're going to put this in the record. We can't even ask the witness whether those were his statements or not. If gentleman were not a full-time govt employee, I really believe we're doing an injustice to long-term health of this committee.

Waxman: When McDevitt refused, we had a bipartisan discussion, we could have subpoenaed

him. He was sent interrogatories. WH reviewed them. When staff saw the answers, we didn't get a chance, on and on and one. We operated in good faith. We ought to include them, the reason McDevitt didn't want to come in is bc of WH.

Issa; we believe it was not bipartisan. We believe this was not with support of both.

Waxman I'll talk to both staffs. We had Republicans asking him any question on Sunday night. You're saying to me that your staff does not feel that's accurate. I'm not going to apologize bc I don't feel we have. I want these things not to be partisan.

Davis: We have some EPA witnesses we hope you'll give same accounting to.

Cummings: