

EXHIBIT A

THE WHITE HOUSE
WASHINGTON

May 5, 1993

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: JOHN D. PODESTA *JDP*
Assistant to the President and
Staff Secretary

STEPHEN R. NEUWIRTH *SN*
Associate Counsel to the President

RE: Presidential Records

The offices within the Executive Office of the President generate two categories of records: "Presidential Records" and Federal Records." A separate memo from David Watkins and Bruce Overton has been circulated today concerning "federal records."

This memorandum sets forth guidance on the creation, maintenance and disposition of "Presidential records" -- records "created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President."

It is important that all staff in the Executive Office of the President review this memorandum carefully. The failure to designate documents and other materials properly can have serious implications, including possibly subjecting those materials to public disclosure under the Freedom of Information Act during the President's term of office.

I. UNITS WITHIN THE EXECUTIVE OFFICE OF THE PRESIDENT
THAT GENERATE PRESIDENTIAL RECORDS

All records of the White House Office, the Office of Policy Development, the National Economic Council, the Council of Economic Advisors, the President's Intelligence Oversight Board

and the President's Foreign Intelligence Advisory Board are Presidential records.

As discussed below, records of the Office of the Vice President are Vice Presidential records and are treated under the Presidential Records Act in the same manner as Presidential records. The records of the Office of the Vice President are not federal records.

The records of the National Security Council staff are Presidential records if they were received or created by or for the President, the Assistant to the President for National Security Affairs, the Deputy Assistant to the President for National Security Affairs, the White House Office, or a unit or an individual within the NSC in advising or assisting the President, and are not official records of the NSC. All other NSC records are federal records.

Records produced or received by the Director of the Office of Science and Technology Policy in his role as Science Advisor to the President are Presidential records; all other OSTP records are federal records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential, records.

II. Types of Records Covered by the Act

The Presidential Records Act defines "documentary materials" as "all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audio-visual, or other electronic or mechanical recordings." 44 U.S.C. § 2201(1).

The Act defines "Presidential records," in turn, to mean:

documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term --

(A) includes any documentary materials relating to the political activities of the President or members

of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

44 U.S.C. § 2201(2).

Under this definition, Presidential records are documentary materials that meet two tests. First, the materials must have been created or received by the President, his immediate staff, or a unit or individuals (including volunteers) in the EOP whose function it is to advise and assist the President. Second, the records must relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Presidential records may be in any physical form, including paper, film and disk. The method used to record information may be manual, mechanical, photographic, electronic, or any combination of these or other technologies.

A document created by personnel in a White House office, or an EOP office that advises and assists the President, normally is a Presidential record once it is circulated to others in the course of conducting activities which relate to or have an effect upon the carrying out of Presidential duties. Moreover, even documents that are not circulated can be Presidential records if, in the judgment of the office at issue, those documents are needed to conduct business that relates to or has an effect upon the carrying out of Presidential duties.

Materials received by personnel in the White House office, or in EOP offices that advise and assist the President, similarly become Presidential records when they are received in the course of conducting activities which relate to or have an effect upon the carrying out of Presidential duties. Materials received may be Presidential records whether they have been transmitted in person, by messenger, by mail, by electronic communication, or by any other means.

At the same time, several types of documentary materials are not subject to the Presidential Records Act. The Act expressly excludes documentary materials that are (1) official records of an agency; (2) stocks of publications and stationery; and (3) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

The Act also excludes "personal records," defined to include all documentary materials, or any reasonably segregable portion thereof, "of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of

the constitutional, statutory, or other official or ceremonial duties of the President." Personal records may include:

- diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal, which are not prepared or utilized for, or circulated or communicated in the course of, transacting government business;
- materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President;
- papers and other materials accumulated by a staff member before joining government service and not used in the course of transacting government business;
- materials that relate to a staff member's private affairs, such as personal financial records, insurance forms, and materials relating to an individual's professional activities and outside business and political pursuits;
- personal photographs;
- materials relating exclusively to the President's own election to the office of the Presidency; and
- materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

Further examples of materials not covered by the Presidential Records Act may include items such as those listed below:

- preliminary drafts, that are not circulated to any other individual, of correspondence, reports, and studies;
- preliminary drafts, work sheets and informal notes that contain information reflected in final documents and that do not document policy development or execution;

- tickler, follow-up or suspense copies of correspondence, provided there are copies of such documents in the official files;
- newspaper clippings or news summaries, that have not been annotated, or organized or arranged for some official purpose;
- copies of printed or processed materials, such as operating and procedural manuals, directives, and notices, distributed for the information and use of office employees;
- shorthand and other notes that have been transcribed or converted to formal documents that have been verified for accuracy and completeness; and
- catalogs, trade journals, and other publications that are received from other government agencies, commercial firms, or private institutions and that are maintained for reference purposes.

It is important to remember, however, that certain documents in the categories listed above may be Presidential records -- particularly given that, in the White House, drafts, working papers and other similar materials often document policy development, significant decisions, or other matters related to the carrying out of Presidential duties, as discussed below.

III. Requirements for creation and maintenance of Presidential records

When advising or assisting the President in carrying out his duties, White House and EOP employees are responsible for complying with the Presidential Records Act and related regulations.

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Where appropriate, staff members should document -- through notes, minutes or memoranda -- meetings, conversations and other business in connection with, or related to, the carrying out of the President's duties.

Presidential records should be maintained in organized files. For offices creating both Presidential and federal records, it is critical that staff members carefully segregate Presidential and federal records. Federal records are subject to

the Federal Records Act and may be subject to public disclosure under the Freedom of Information Act during the President's term of office. Presidential records, by contrast, are not subject to the Federal Records Act and are not subject to the provisions of the Freedom of Information Act during the President's term of office. Those offices (such as the National Security Council) that create or receive both Presidential records and federal records should file them separately with a clear indication of which records are Presidential and which are federal.

In addition, staff members should, to the extent possible, ensure that any files containing particularly sensitive records are clearly marked to reflect that fact. Designations for files containing sensitive records may include:

- (1) "classified information";¹
- (2) "information the release of which may be prejudicial to the maintenance of good relations with foreign nations";
- (3) "sensitive personal information" (*i.e.*, information the release of which may be embarrassing to the individuals mentioned or to their families);
- (4) "sensitive law enforcement materials";
- (5) "trade secrets or sensitive commercial or financial information"; and
- (6) "information subject to attorney-client or attorney work product privileges."

Finally, personal records should be clearly labeled, kept apart from Presidential records (and federal records) and not made available to other staff in connection with any official purpose.

IV. Electronic Presidential records

Increasingly, Presidential records may be created electronically. Records may be generated on word processing or electronic mail ("e-mail") systems, or on electronic databases.

¹ Please note that nothing in this memorandum should be construed to override existing Executive Orders setting forth who may designate specific documents as classified and what terms must be used in connection with such designations.

Records generated electronically must be incorporated into an official recordkeeping system. Thus, no word processing or e-mail document that is a Presidential record should be deleted unless it has been (a) printed and placed in an appropriate file, or (b) preserved in an appropriate electronic system. Questions concerning the record status of electronically generated materials should be directed to the White House Records Management Office. That office will periodically monitor electronic systems to ensure that correct records status determinations have been made.

As is the case for all record matters, the White House Records Management Office will continue to work with the White House Counsel's Office to coordinate policy and practices with respect to electronic Presidential records.

V. Disposition and destruction of Presidential records

Presidential records are the property of the United States and may be disposed of only in accordance with procedures established by the Archivist of the United States. The Presidential Records Act prohibits the disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidentiary value. Moreover, before disposing of any Presidential records, the President must notify the Archivist who, under certain clearly defined circumstances, will notify appropriate Congressional committees.

The White House Records Management Office will provide guidance concerning disposal of certain recurring types of papers, including form letter public mail, unsolicited public mail that is not reviewed by any person in the White House with decision-making authority and not answered by any member of the White House staff, anonymous public mail, and enclosures received in public mail -- most of which may be destroyed after notification to the Archivist of the United States or the Archivist's representative.

Offices that have these recurring types of disposable material should coordinate all disposal procedures through the Office of Records Management. Under no circumstances should such material be disposed of without prior approval of the White House Records Management Office. (Prior approval is not necessary for the destruction of exact duplicates of documents which are being retained, or for unmarked copies of officially published documents, such as printed reports.)

The White House Office of Records Management serves as a central file for all Presidential records. Its primary role is to manage, process, maintain and store records for the daily use

of the President and all the policy units in the White House. Concurrently, it preserves these same records to ensure a comprehensive history of the Administration. All EOP staff members are encouraged to consult with this office for guidance on the creation and maintenance of files and on procedures for appropriate and systematic filing of documents.

VI. Legal control of Presidential records

Presidential records remain in the custody and control of the President during his term of office and are not subject to disclosure under the Freedom of Information Act during that term. As noted above, federal records are, by contrast, subject to the FOIA public disclosure provisions.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. Many of these records will become available to the public under the FOIA five years after the end of the President's term of office. The President, however, may assert control over public access to certain categories of information -- generally including classified materials, documents related to appointments to federal offices, items specifically exempted from disclosure by other statutes, trade secrets or commercial information, confidential communications requesting or submitting advice between the President and his advisers (or between such advisers), and information implicating personal privacy concerns -- for up to twelve years after the end of the President's term. After twelve years, public access to these categories of documents is governed by the FOIA, subject to any Constitutional privilege against disclosure.

VII. Records that may be retained by staff members upon departure from office

Staff members may not remove Presidential records, or copies of such records, from their offices at any time, except in connection with an official function. Classified Presidential records may not be removed from the office at any time without compliance with the rules applicable to such materials. Records used in an official capacity should be returned to proper files immediately after such use.

When a staff member leaves the White House or another office in the EOP, he or she must deliver all Presidential records to the White House Records Management Office (or leave records in his or her office for pick-up). Staff members are not entitled to retain copies of any Presidential records for

personal use, except copies of documents that have already been publicly released.

Federal records should be left at the appropriate agency, and disposed of in accordance with the advice set forth in the federal records guidance memorandum from David Watkins and Bruce Overton.

Purely personal, unclassified materials may be removed from the office by staff members at any time, subject to any agency procedures regulating such removal. If, during the course of service at the White House, a staff member wishes to store personal (including private political) materials at the White House Office of Records Management, the staff member must clearly designate those materials as "personal."

VIII. Records in the Office of the Vice President

The Presidential Records Act expressly provides that records of the Office of the Vice President are Vice-Presidential records and are to be treated under the Presidential Records Act in the same manner as Presidential records. Thus, materials created or received in the Office of the Vice President should be treated in accordance with the guidance set forth above. The Office of the Vice President has its own records management staff, and personnel in the Office of the Vice President should consult with that staff for additional guidance regarding the filing and disposition of Vice President's Office records.

The Presidential Records Act further provides that "[t]he authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository."

IX. Training

The White House Office of Records Management and other appropriate personnel will be providing records management training in the near future.

* * *

The foregoing is designed to provide general guidance with respect to the Presidential Records Act. Specific questions of coverage or interpretation should be addressed to the White House Counsel's office. Assistance in records maintenance and

disposition can be obtained from the White House Office of Records Management (or, in the case of the Office of the Vice President, from the Vice President's records management staff).

EXHIBIT B

DIRECTORY OF SERVICES

AGENCY & OFFICE DESCRIPTIONS

FORMS

LEGAL & ETHICAL REGULATIONS

ACRONYMS

**WHITE
HOUSE**



S T A F F M A N U A L
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Internet Policies

The following policies apply to use of the Internet and the external network (e-mail):

Electronic messages are prohibited using Netscape. You may not use Netscape applications to send or receive e-mail, or to send messages to bulletin boards or discussion groups. Federal law and EOP policy require the preservation of electronic communications sent or received by EOP staff. As a result, you must use the Lotus Notes or OASIS All-In-1 e-mail systems for all official communications. However, it is permissible to download files and materials that are publicly available on the Internet/Web for reference purposes.

Privacy. Remember that the Internet/Web is an open medium. Information sites and home pages can and do record the e-mail addresses of those who log on. Assume that wherever you go and whatever you look at are being recorded and can be retrieved by an interested person. Expect no privacy in your external network (e-mail) communications. All e-mail traffic is subject to monitoring and review for records management and systems management reasons, and most e-mail messages (both sent and received) are preserved for posterity as Federal or Presidential Records.

Personal Use. Government provided access to the Internet and the external network is intended for official and authorized purposes only. Infrequent personal e-mail messages may be authorized if they do not interfere with official business and if they relate to matters that cannot reasonably be addressed after hours or by other means, much the way that limited and infrequent personal use of government telephones is authorized. Other non-official uses of e-mail are prohibited. Employees are specifically prohibited from using EOP facilities to disseminate information in connection with any unauthorized non-governmental activities, including, but not limited to, charitable events, religious activities, fund-raisers and private businesses or for-profit activities. Finally, do not create or forward chain e-mails, as this is an improper use of government facilities.

Costs and Charges. There are many goods and services available for sale over the Internet. Be sure to obtain prior authorization from the White House Administrative Office before buying any of them, just as you would for any other official purchase.

Threats and Security Issues. If you receive an e-mail threat to any person or to the EOP complex, forward it to the USSS. If the threat is urgent, call the USSS Control Center (Room 058, OEOB, x54497). Report "system" threats (e.g., e-mail "storms" of multiple unwanted messages or "bombs" containing large attachments) to the Office of Administration's Information Systems and Technology HELP Desk at x57370. Beware of viruses. Scan all downloaded files with the Anti-Virus software found in the Network

Directory of Services

Utilities window. Finally, do not send classified material over the external network.

Network Etiquette. Be polite and be careful. Remember that you represent the President and the Administration. Your opinions may be regarded as official Administration policy even if you do not intend them that way. Be sure to include any disclaimers that may be necessary. Remember that any messages you send can be copied and forwarded throughout the system, even to people whom you did not expect to receive them.

Keys

It is the policy of the USSS that keys will be issued only to staff members who have received permanent passes.

USSS Locks: If a staff member requires a key to a USSS lock, the administrative contact must submit the USSS Key and Access Code Request Form (see Tab C) to the EOP Security Office (Room 4026, NEOB, x56206). Key requests submitted directly to the USSS will not be considered.

GSA Locks: If a staff member requires a key to a GSA lock, the administrative contact must submit a Facility Request Form (see Tab C) to the White House Administrative Office (Room 1, OEOB, x62500).

Leave

Assistants to the President, Deputy Assistants to the President, Special Assistants to the President, and Commissioned Officers on the White House Office payroll are entitled to three weeks of annual leave per year. Other leave is also available for family and medical needs. Several types of leave are applicable to the other White House staff: annual leave, sick leave, leave without pay, family leave, military leave and leave for court/jury duty.

Annual Leave

- Annual Leave is earned at the rate of 4, 6, or 8 hours per 2-week pay period, depending upon the length of government service (4 hours for government service of less than 3 years, 6 hours for more than 3 years and less than 15 years, and 8 hours for more than 15 years).
- Annual leave can be carried over from year to year up to a maximum annual leave balance at the end of the year of 240 hours (6 weeks); any excess amount is forfeited at the end of the leave year.

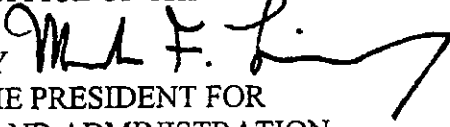
EXHIBIT C

THE WHITE HOUSE
WASHINGTON

September 27, 2000

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM:

MARK F. LINDSAY 
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

SUBJECT:

Executive Office of the President Policy on Limited Personal Use of
Government Office Equipment Including Information Technology

This memorandum serves to provide staff with guidelines on the personal use of Government office equipment. Please review this material and direct any related questions to your agency counsel's office.

GENERAL POLICY

Employees of the Executive Office of the President (EOP) are permitted limited use of Government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the Government. This limited personal use of Government office equipment should take place during employees' non-work time. Specific provisions regarding permissible use are set forth below. This privilege to use Government office equipment for non-Government purposes may be revoked or limited at any time by appropriate EOP officials.

EOP officials may apply this policy to contractor personnel, interns, and other non-Government employees through incorporation by reference in contracts or memoranda of agreement as conditions for using Government office equipment and space.

This statement of policy supersedes any prior guidance on this issue.

A. DEFINITIONS

1. **Privilege** means, in the context of this policy, that the EOP is extending the opportunity to its employees to use Government property for personal use in an effort to create a more supportive work environment. However, this policy does not create the right to use Government office equipment for non-Government purposes. Nor does the privilege extend to modifying such equipment, including loading personal software or making configuration changes without appropriate authorization.
2. **Government office equipment including information technology** includes but is not limited to: personal computers and related peripheral equipment and software; library resources; telephones; facsimile machines; photocopiers; Internet connectivity and access to Internet services; and E-mail.

3. **Minimal additional expense** means that an employee's personal use of Government office equipment is limited to those situations in which the Government is already providing equipment or services and the employee's use of such equipment or services will not result in any additional expense to the Government or the use will result in only normal wear and tear or the use of small amounts of electricity, ink, toner, or paper.
4. **Employee non-work time** means times when employees are not otherwise expected to be addressing official business. Employees may, for example, use Government office equipment during their own off-duty time, such as before or after a workday, lunch periods, breaks that do not interfere with a complete workday, and weekends and holidays.
5. **Personal use** means activity that is conducted for purposes other than accomplishing official or otherwise authorized activity. Employees are specifically prohibited from using Government office equipment to maintain or support a personal private business; this prohibition includes employees' use of Government office equipment to assist their own business or that of relatives, friends, or other persons in such activities. (For questions regarding the use of official resources for political activity, please refer to prior White House guidance or check with your agency counsel's office.)
6. **Information technology** means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement control, display, switching, interchange, transmission, or reception of data or information.
7. **Approved E-mail services** means the system designated for EOP mail (presently Lotus Notes) which is to be used exclusively for E-mail communications within the EOP Complex and with outside parties. Other applications (e.g., commercial E-mail services) may not be used to send or receive E-mail.

B. PERSONAL USE OF EQUIPMENT AND SERVICES

Employees are authorized to make limited personal use of Government office equipment and services. This personal use (1) must not result in the loss of employee productivity or interference with official duties, and (2) should incur only minimal additional expense to the Government in areas such as:

- communications infrastructure costs (e.g., telephone charges, telecommunications traffic, etc.);
- use of consumables (e.g., paper, ink, toner, etc.);
- data storage on storage devices;
- transmission impacts from E-mail messages (e.g., E-mail messages should not have large attachments such as greeting cards, video, or sound).

Minimal additional expenses include: making a few photocopies; using a computer printer to print a few pages of material; making a few brief local personal telephone calls (within agency policy and 41 CFR 101-35.201); sending or receiving brief documents by facsimile; infrequently sending personal E-mail messages; and limited use of the Internet for personal reasons. Limited personal use of cellular telephones is permitted, provided that such use is promptly reimbursed in full according to the billing statement for each cellular telephone.

C. INAPPROPRIATE PERSONAL USES

Employees are expected to conduct themselves professionally in the workplace and to refrain from using Government office equipment for activities that are inappropriate. Misuse or inappropriate use of Government office equipment includes but is not limited to:

- Using any system in a manner that could cause congestion, delay, or disruption of service to any Government system or a breach in system security. For example, greeting cards, video, sound, or executable file attachments can degrade the performance of the entire network. "Push" technology on the Internet and other continuous data streams could also degrade the performance of the entire network and constitute an inappropriate use. Using any E-mail service other than approved E-mail services (such as commercial E-mail servers) could jeopardize service and is an inappropriate use.
- Using the Government system as a staging ground or platform to gain unauthorized access to other systems.
- Creating, copying, transmitting, or retransmitting chain letters or other unauthorized mass mailings, regardless of the subject matter.
- Using Government office equipment for activities that are illegal, inappropriate, or offensive to fellow employees or the public. Such activities include, but are not limited to, hate speech or material that ridicules others on the basis of race, creed, religion, color, gender, disability, national origin, or sexual orientation.
- Creating, downloading, viewing, storing, copying, or transmitting sexually explicit or sexually oriented materials.
- Creating, downloading, viewing, storing, copying, or transmitting materials related to illegal gambling, illegal weapons, terrorist activities, or any other illegal or otherwise prohibited activities.
- Using equipment for commercial purposes or in support of "for-profit" activities or in support of other outside employment or business activity (e.g., consulting for pay, administration of business transactions, sales of goods or services, etc.).
- Engaging in any outside fundraising activity, endorsing any product or service, or participating in any lobbying activity.
- Using equipment for posting agency information to external newsgroups, bulletin boards, or other public forums without authority. This includes any use that could create the perception that the communication was made in one's official capacity as an EOP employee.
- Generating more than minimal additional expense to the Government.
- Acquiring, using, reproducing, transmitting, or distributing, without authorization, any controlled information, including computer software or data that includes privacy information, copyrighted or trademarked material or material with other intellectual property rights (beyond fair use), proprietary data, or export-controlled software or data.

D. PROPER REPRESENTATION

The Standards of Ethical Conduct for Employees state that "an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another." (5 CFR 2635.702(b).) Accordingly, it is the responsibility of employees to ensure that they are not giving the false impression that they are acting in an official capacity when they are using Government office equipment for non-Government purposes. If there is expectation that such a personal use could be interpreted to represent an agency, it is suggested that Government office equipment not be used. If the equipment is used in such a situation, an adequate disclaimer must be used. One acceptable disclaimer is: *"The contents of this message are mine personally and do not reflect any position of my agency or the Government."*

E. PRIVACY EXPECTATIONS

White House employees do not have a right, nor should they have an expectation, of privacy while using any Government office equipment at any time, including the use of the Internet and E-mail. Any use of Government communications resources is made with the understanding that such use is generally not secure, is not private, and is not anonymous.

To the extent that employees wish that their private activities remain private, they should avoid using Government office equipment such as their computers, the Internet, and E-mail for such activities. By using Government office equipment, including accessing the Internet and using E-mail, employees imply their consent to the monitoring, recording, and disclosure of the contents of any files or information maintained or passed through such equipment.

F. SANCTIONS FOR MISUSE

Unauthorized or improper use of Government office equipment could result in the loss of use or limitations on use of equipment, disciplinary or adverse actions, criminal penalties, and/or employees' being held financially liable for the cost of improper use.

Related Authorities:

5 CFR part 2635 – Standards of Ethical Conduct for Employees of the Executive Branch

Part I of Executive Order 12674 – Principles of Ethical Conduct for Government Officers and Employees

41 CFR part 101-35 – Telecommunications Management Policy

EXHIBIT D

GAO

Report to the Chairman, Committee on
Government Reform, House of
Representatives

April 2001

ELECTRONIC
RECORDS

Clinton
Administration's
Management of
Executive Office of
the President's E-Mail
System



GAO

Accountability * Integrity * Reliability

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Accountability * Integrity * Reliability

**United States General Accounting Office
Washington, DC 20548**

April 30, 2001

The Honorable Dan Burton
Chairman, Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

In response to your requests of May and August 2000, this report discusses our examination of the facts surrounding key events affecting the ability of the Clinton Administration's Executive Office of the President (EOP) to preserve certain e-mail messages deemed official government records. As you know, the Presidential Records Act (PRA) and the Federal Records Act (FRA) require the EOP to preserve official records, including e-mail. Adequate controls must be in place to ensure that these records, whether manual or electronic, are complete and maintained in accordance with applicable requirements. However, e-mail system malfunctions and management weaknesses prevented archiving of some e-mail records for EOP components, including the Office of the Vice President (OVP).

In our review of these events surrounding the EOP's e-mail systems, you asked us to:

- develop a chronology of the e-mail malfunctions that included a description of EOP actions taken in discovering and repairing the malfunctions and recovering missing e-mail messages;
- identify officials and contractors responsible for maintaining the e-mail system and correcting the malfunctions;
- determine whether the OVP implemented adequate practices in accordance with applicable laws, regulations, and generally accepted industry practices for management of e-mail records;
- identify elements contributing to the estimated cost to repair the system and restore lost messages; and
- determine whether EOP officials notified government officials—including the Congress, the Justice Department, and the Office of Independent Counsel—when the malfunctions were discovered.

To address these objectives, we reviewed documents submitted to your Committee by the EOP. In addition, we observed July through October 2000 U.S. District Court hearings pertaining to EOP e-mail. We also submitted written questions to the EOP, and reviewed the written

responses and additional documentation provided to us. We performed our work from July 2000 through January 2001, in accordance with generally accepted government auditing standards; however, our review was limited by the unavailability of complete information pertaining to the OVP's retention of hard copy e-mail records, the EOP's assessment of contractor performance, and the EOP's notification of government officials. A detailed discussion of the scope and methodology for conducting our work is presented in appendix I.

Results in Brief

Two malfunctions that occurred in the EOP e-mail system prevented official records from being properly recorded in the Automated Records Management System (ARMS), which is a searchable database of e-mail records that was implemented by the EOP in 1994. The first—an anomaly with incoming Internet e-mail to affected users of the “Mail2” e-mail server—was identified in late January 1998. In November 1998, in addressing the Mail2 repair, an EOP contractor introduced a second problem that prevented incoming e-mail to users with first names starting with the letter D from being captured by ARMS. Although these malfunctions prevented certain e-mail records from being archived in ARMS, copies of these records were retained in the system backup tapes that were saved between November 1998 and June 1999 to ensure that the system could be restored after an interruption in operation. To ensure that official government records were preserved in a searchable format, the EOP initiated a tape restoration project in March 2000 to retrieve e-mail records from available backup tapes and add these records to ARMS. A detailed chronology of these events is presented in appendix II. Appendix III contains a list of federal officials and contractors involved in key events surrounding maintenance of the e-mail systems and repair of the Mail2 and Letter D malfunctions.

The OVP did not implement adequate records management practices to ensure that all e-mail records generated or received were preserved in accordance with applicable law and best practices. The OVP initially followed a dual approach to managing its e-mail records pursuant to the EOP policy—maintaining paper copies of records as well as retaining backup e-mail tapes. The OVP discontinued this approach at some point after May 1993—in the mistaken belief that the e-mail records were being archived in ARMS and that EOP's Office of Administration was managing the backup tapes. The OVP could not demonstrate that all e-mail records had been preserved by acceptable methods until May 2000, when ARMS began capturing all OVP e-mail records. As a result, about 600 system

backup tapes needed restoration to determine if any non-archived e-mail records existed on the tapes.

Several factors contributed to the expected cost to restore omitted EOP e-mail records to ARMS, estimated by an EOP contractor to be \$11.7 million:

- An EOP support contractor's performance of tape management and systems maintenance and documentation activities contributed to the increased size and scope of the tape restoration project. Specifically, the EOP's assessments of contractor performance revealed that management of e-mail backup tapes was weak and that maintenance of e-mail systems and user accounts needed improvement. In addition, the automated link between the EOP's e-mail system and ARMS was not documented as required. As a result, the EOP could not identify the specific tapes within its entire tape population that needed restoration and could not readily understand and optimize records management controls.
- The EOP did not effectively monitor management of e-mail records. It did not include critical elements in its monitoring program, such as evaluations of the creation of records, maintenance and use of records, and records disposition. This increased the time needed to detect the Mail2 and Letter D malfunctions and added to the accumulation of backup tapes to be restored.
- Scrutiny of the e-mail malfunctions and the EOP's tape restoration practices by external authorities introduced additional project tasks, including contracts for independent verification and validation of the restoration process and for additional security over the project.

Although the EOP knew of the malfunctions that prevented e-mail from being captured by ARMS from October 1996 through mid-May 1999, officials stated that they did not understand the breadth and scope of the impact of these malfunctions on the EOP's response to subpoenas and production of other documents until February 2000. The EOP claims that it notified appropriate investigative bodies at that time. However, we were unable to obtain sufficient evidence to confirm that these notifications were made.

We requested comments on a draft of this report from the EOP and the personal representatives of former President Clinton and former Vice President Gore. The Deputy General Counsel, Office of Administration, EOP, orally provided a technical clarification, which was incorporated. The Counsel to former Vice President Gore provided written comments stating that (1) the report did not explicitly state that we found no

evidence of attempts by OVP staff to deliberately fail to preserve records, and (2) ARMS was a unique system for which best practices did not apply and additional information on the creation and use of this system was provided. In regard to the statements regarding the intent of OVP staff, our review—as requested—focused on the OVP's management of e-mail records. We did not assess the intent of individuals responsible for managing these records and, as such, made no conclusions on this subject. Regarding ARMS, we disagree with the Office of the former Vice President's characterization of the applicability of best practices to ARMS. The best practices cited in this report currently exist in the form of National Archives and Records Administration guidance and apply to records management programs, irrespective of the type of system used. However, we have revised the report to include the additional information on ARMS that was provided. The Office of the former Vice President also provided technical comments that we have incorporated as appropriate. The representative of former President Clinton provided a letter, which stated that he did not have access to the records necessary to properly review and comment on its accuracy.

Background

PRA, set forth in title 44 of United States Code, chapter 22, requires the President and Vice President to adequately record their official acts, maintain certain official records, and transfer custody of such records to the Archivist of the United States upon termination of their terms of office. Pursuant to the PRA, both the Office of the President and the Office of the Vice President are to implement records management controls and other necessary actions to ensure that presidential and vice presidential activities, deliberations, decisions, and policies are adequately documented and maintained. It also provides that presidential records shall be made available pursuant to subpoena or other judicial process and to either House of Congress, and prohibits destruction of records without prior concurrence of the Archivist and notification of Congress 60 days prior to disposal. The Archivist promulgates standards and guidance for implementation of PRA; these are contained in title 36 of the Code of Federal Regulations (CFR). This regulation defines criteria for access to and disposition of presidential records.

Federal records are subject to the provisions of FRA, set forth in title 44 U.S.C., chapters 29, 31, and 33. FRA requires the heads of federal agencies to make and preserve records documenting the official activities of the agency. FRA directs federal agencies to establish (1) a program for the management of agency records, (2) effective controls over the creation, maintenance, and use of records, and (3) safeguards against the removal

or loss of records. The Archivist promulgates standards and guidance for implementation of FRA, which are contained in title 36 CFR. Requirements for federal records are more extensive than are those for presidential records, and specify that federal agencies

- preserve records documenting the official activities of federal agencies to protect the legal rights of the government and of persons directly affected by the agency's activities;
- periodically monitor staff determinations of the record status of documentary materials;
- implement a records maintenance program so that complete records are filed or otherwise identified and preserved and that records can be found when needed;
- implement an agencywide program for the management of all federal records created, received, and stored on electronic media;
- ensure compliance with federal criteria and review electronic information systems periodically for conformance with established agency procedures, standards, and policies;
- develop and maintain up-to-date documentation about all electronic information systems adequate to specify technical characteristics, understand the purpose and function of the systems, and ensure timely, authorized disposition of records;
- consider specific criteria when developing procedures for maintenance of electronic mail records in recordkeeping systems, including copying records from the e-mail system to a separate recordkeeping system;¹ and
- retain records from e-mail systems in an off-line storage format. Agencies that use electronic formats (such as optical disk or magnetic tape) must maintain the ability to convert the records to the National Archives and Records Administration's required format and medium at the time of transfer. Agencies that maintain paper files as their recordkeeping systems are required to print their electronic mail records and the related transmission and receipt data.

To ensure the adequacy of management and control of federal information systems, the Office of Management and Budget (OMB) issued circulars A-123, *Management Accountability and Control*, and A-130, *Management of Federal Information Resources*. Circular A-123 requires that federal

¹A recordkeeping system is a manual or automated system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition. Because they do not have the features specified by the National Archives and Records Administration, system backup tapes are not to be used for recordkeeping purposes.

agencies implement adequate internal controls and management structures to ensure the effective operation of federal programs. Appendix III of circular A-130,² *Security of Federal Automated Information Resources*, requires that federal agencies periodically test system controls meant to ensure the integrity, confidentiality, and availability of information resources.

The EOP Policies Required Management of Records

The Administration issued guidance to clarify the responsibilities of each EOP component regarding presidential, federal, and personal records in order to implement the provisions of both PRA and FRA. A detailed policy and procedures document issued by the EOP in May 1993 required that no federal or presidential e-mail records could be deleted unless maintained in an electronic recordkeeping system or printed and placed in a file. In addition, it required that the White House Records Management Office monitor electronic systems to ensure that correct record status determinations had been made for presidential and federal e-mail records. This policy was applicable to all EOP components,³ including the OVP.

In May 1997, the White House replaced the PRA section of the 1993 policy with one that provided a summary of White House policies and guidance regarding PRA. It required preservation of all original presidential records and all materials covered by subpoena or other such requests. It also directed each staff member to determine the record status of outgoing e-mail messages and to maintain hard copy records in organized files. According to EOP officials, the policy issued in 1997 was substantively the same as the 1993 policy, and it served as a reminder to staff of the policy originally articulated in the 1993 policy regarding compliance with PRA.

History Surrounding the EOP E-mail Systems

A series of events occurred between July 1994, when ARMS was implemented, and March 2000, when the tape restoration project was initiated. These events are detailed in appendix II. Various EOP federal and contractor staff were involved in the maintenance and repair of the

²OMB circular A-130 applies to EOP's Office of Administration component, which had responsibility for electronic systems, including e-mail and ARMS.

³The EOP consists of the White House Office, the OVP, and other components, such as OMB and the Council on Environmental Quality. EOP components that create and receive presidential records included the White House Office, the OVP, the National Security Council, and the Office of Policy Development.

e-mail systems between October 1996 and June 1999; they are listed in appendix III.

According to the EOP, in order to comply with the Armstrong ruling,⁴ it contracted with Information Management Consultants, Incorporated, to develop the ARMS recordkeeping system. ARMS began archiving e-mail records in 1994.⁵

Since 1996, the EOP had used Lotus Notes® software as its e-mail application. During the former administration, the Office of Administration within the EOP maintained four Lotus Notes e-mail servers, one remote server, and one ARMS interface server, which transferred e-mail records from the e-mail system to ARMS.

E-mail messages designated as records subject to either PRA or FRA were passed to ARMS through the interface between the two systems. The Notes-to-ARMS interface program automatically identified unrecorded e-mail messages when it periodically scanned for new messages in groupings of user accounts called “views.” User accounts were distributed to a view depending on the first letter of the account name. Then, the ARMS interface copied these new messages for processing to ARMS and marked the messages as “recorded.” In its comments on a draft of this report, the Office of the former Vice President stated that the ARMS database maintained e-mail records in a searchable format, which came to facilitate the EOP’s responses to document requests and subpoenas sometime much later in the administration. A key feature included in ARMS was the ability to perform a computerized search of e-mail using keyword terms to search for responsive materials.

From October 1996 through May 1999, two malfunctions occurred in the EOP e-mail system that prevented incoming Internet e-mail from being properly archived in ARMS. In late January 1998, an EOP employee initially identified the first of these malfunctions—an anomaly with incoming Internet e-mail to affected users of the Mail2 e-mail system server—and documented this in an incident report. According to EOP

⁴Armstrong v. EOP, 810 F. Supp. 335 (1993). The court in the Armstrong case held that the then-current EOP records management practice did not save all information from an electronic record, and thus violated FRA.

⁵The EOP initially used ARMS with the e-mail system that preceded use of the Lotus Notes® e-mail system.

officials, efforts were undertaken then to analyze this anomaly, but it was thought to be an isolated event. According to these officials, the precise cause of the Mail2 malfunction was determined in June 1998 by Northrop Grumman, the EOP's information technology services support contractor since October 1997, when performing other work on the Lotus Notes e-mail system interface to the ARMS records management database. The malfunction was caused by improper user account configuration in which the server name "Mail2" was spelled "MAIL2." Because the ARMS interface program did not recognize the upper case spelling of the mail server name, it was unable to locate and capture new incoming e-mail messages for these user accounts. This malfunction was subsequently repaired in November 1998.

Also in November 1998, in addressing the Mail2 repair, a second problem was introduced by Northrop Grumman staff that prevented incoming Internet e-mail to users with first names starting with the letter D from being captured by ARMS. It involved omission of the letter D from the Lotus Notes view (described above), causing the ARMS scanner to skip those accounts beginning with the letter D and not capture incoming e-mail to the affected user accounts. This malfunction was discovered in April 1999 and repaired in May 1999. Appendix IV presents a time line of key events pertaining to the discovery and repair of the Mail2 and Letter D malfunctions.

The EOP e-mail systems were periodically backed up, or copied, to tape media for use in the event of system failure and subsequent need to restore the system to full operation. In addition, Northrop Grumman followed a standard industry practice of economical tape recycling. This involved retaining the tapes for 3 weeks and then recycling them—resulting in either overwriting the data on the tapes or destroying the used tape and replacing it with a new tape. Because the backup tapes contained copies of e-mail not processed to the ARMS records management database, the EOP stopped its normal practice of tape recycling from June 1998, when the cause of the Mail2 malfunction was documented, until June 1999, after the Letter D malfunction was repaired.

In March 2000, the EOP implemented the tape restoration project, for which it hired Enterprise Computing Solutions Technology, Incorporated (ECS) to recover the lost e-mail messages and restore the messages to the ARMS records management database. The EOP hired another contractor, Vistronix, to oversee the work of ECS. In July 2000, Vistronix estimated that the project would cost about \$11.7 million for restoration of about

6,000 tapes. Table 1 presents a breakdown of the \$11.7 million budgeted cost. Appendix V presents further details on this.

Table 1: Summary of Budgeted Tape Restoration Costs.

| Budgeted cost element | Description of cost element | Estimated cost |
|-------------------------|--|---------------------|
| ECS contract | Restoration of e-mail messages not recorded in ARMS | \$5,125,829 |
| Vistronix contract | Independent validation and verification of the tape restoration project | 1,993,819 |
| AAC Associates contract | Advice on recovery of OVP e-mail | 900,000 |
| Special services | Forensic analysis and recovery of broken or unreadable tapes | 2,092,400 |
| Direct costs | Additional hardware, software licenses, and 12,000 tapes for two sets of tape copies | 498,480 |
| Other | Project overrun contingency | 1,098,891 |
| Total | | \$11,709,419 |

Source: Tape restoration project cost estimate report prepared by Vistronix, Incorporated, for the EOP in July 2000.

The OVP Did Not Ensure Adequate Preservation of E-mail Records

According to the EOP, although the 1993 EOP records management policy applied to the OVP, the OVP did not implement adequate practices to ensure continual preservation of its e-mail records in accordance with PRA, which required implementation of records management controls. The OVP's internal policy from 1993 until some time in 1998 was twofold—to rely on its staff to retain its e-mail server backup tapes and to maintain files of hard copy e-mail records.⁶ According to the EOP, however, from May 1993 until May 2000, the OVP could not demonstrate that its practices for managing presidential e-mail records provided continual preservation of records during the former administration.

During a portion of the administration, the OVP was responsible for operation, maintenance, and records management of its own e-mail system separate from that used by the EOP. In March 1998, responsibility for operation and maintenance of the system transferred to the Office of

⁶ According to EOP, a December 21, 2000, letter from EOP to the National Archives and Records Administration documented agreement reached regarding OVP's records management approach. However, our review of this letter, obtained from the National Archives and Records Administration, found the letter to discuss disposition of e-mail records upon the presidential transition and it did not mention the OVP records management approach.

Administration. However, the OVP did not communicate its requirements for management of e-mail records and assumed that records management responsibility also transitioned to the Office of Administration. According to EOP, the Office of Administration assumed that the OVP had retained records management responsibilities and did not take steps to ensure that OVP e-mail records were appropriately preserved.

According to the EOP, "at some subsequent point" since May 1993, the OVP discontinued retention of paper copies of e-mail records because it believed its e-mail to be captured by ARMS. This mistaken belief was based on the precedent that ARMS managed e-mail records for all other EOP components since its implementation in 1994. In its comments on a draft of this report, the Office of the former Vice President stated that this belief was also based on the fact that searches of ARMS produced OVP e-mail records and on the observation that some outgoing OVP e-mails were in fact being managed by ARMS (as discussed below). The EOP estimated that "by 1998," the OVP discontinued retention of paper copies of e-mail records not captured by ARMS (but subject to PRA). Therefore, paper copies of e-mail records did not exist for a period of at least 2 years (1998 and 1999) and up to 7 years (1993 through 1999). In its comments on a draft of this report, the Office of the former Vice President stated that these records are being restored as part of the tape restoration project. We requested access to files of any hard copy e-mail records covering this period, but it was not provided.

Although the OVP did not continually retain paper copies of e-mail records in accordance with the EOP policy, it did retain the backup tapes created through late March 1998 (except for a backup malfunction from mid-February to mid-March 1994). According to the EOP, the OVP backup tapes were for system recovery and records archival, but they were not in a text-searchable format.⁷

After transition of the e-mail system in March 1998, the Office of Administration maintained the OVP e-mail system in accordance with its established operating practices for other EOP systems. One practice followed was to recycle system backup tapes every 3 weeks. Application of this practice to the OVP system resulted in irretrievable loss of the

⁷According to the EOP in June 2000, the OVP tapes were saved for compliance with PRA. In January 2001, the EOP stated that the OVP did not routinely search its backup tapes in response to subpoenas and that only through the tape restoration project has the OVP demonstrated that the tapes are recoverable.

electronic form of e-mail records while tapes were recycled between March 1998 and March 2000. Another practice was to use the standard EOP ARMS e-mail template⁸ to create new OVP e-mail user accounts between March 1998 and March 2000, which inadvertently caused ARMS to capture outgoing e-mail records sent by these users. The result of this practice was that ARMS captured outgoing e-mail for those OVP users that had the EOP e-mail template (133 of 157 OVP users). When it learned in March 2000 that ARMS did not fully preserve OVP e-mail records, the EOP ordered that tape recycling be stopped and initiated corrective action. According to the EOP, all OVP e-mail users, except Senate OVP staff,⁹ became fully recorded in ARMS as of May 8, 2000. However, because the OVP did not ensure the preservation of e-mail records, in either paper or electronic form, presidential records may have been irretrievably lost. In addition, about 600 backup tapes were added to the restoration project to recover as many e-mail records as possible.

Several Factors Have Driven Cost of E-mail Restoration

Several factors affected the size and scope of the tape restoration project and the related estimated cost of \$11.7 million to restore omitted e-mail records to ARMS. First, an EOP support contractor's performance led to increases in the number of tapes for restoration and adding to the passage of time necessary to diagnose system anomalies and repair malfunctions. Second, the EOP's monitoring of e-mail records did not provide reasonable assurance that ARMS captured all required records, which increased the time needed to detect the Mail2 and Letter D malfunctions and added to the accumulation of backup tapes for the restoration effort. Finally, tasks were added to the project due to legal scrutiny of the e-mail malfunctions and the EOP's tape restoration practices.

The EOP's Support Contractor Did Not Effectively Perform Tasks Related to E-mail Systems

In supporting its information technology functions, the EOP had a primary support services contract, which required the contractor to provide common services to all users of the EOP data center. The data center provides general computer operations, server and network support, and software support. Under its contract, Northrop Grumman was required to

⁸The ARMS e-mail template was configured to automatically pass to ARMS a blind copy of all e-mail records sent by an EOP e-mail user.

⁹Because the Vice President also serves as the President of the Senate, some OVP staff support the Vice President's Senate duties. Some Senate OVP staff used a separate e-mail system controlled by the Senate.

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- “manage cartridge tapes, monitor catalog assignments, maintain appropriate tape management systems (automated on IBMs and VAXs, manual on all other platforms),¹⁰ [and] maintain back up system tapes in accordance with Government standards/procedures” as part of its management of the data center tape library;
 - develop and support Notes e-mail, administer Notes systems including server hardware and software configuration, maintain mail backup systems, resolve hardware and software problems for the ARMS interface, provide technical support for operation and maintenance of the interface, and develop and implement quality assurance programs for this work; and
 - develop system documentation to capture the functions, interface, and internal control requirements, and document requirements of existing systems that need updating or were not previously documented.

The contract also included provisions for EOP oversight and monitoring of contractor performance. The EOP established contract performance measures and an associated performance evaluation plan, which provided a mechanism for formal measurement and documentation of contractor performance and allocating award fees and penalties based on performance. The EOP conducted formal award fee assessments of contractor performance twice per year, in accordance with the contract.

In monitoring the contractor, the EOP found weaknesses in the contractor's performance of data center tape management tasks. The EOP's award fee assessment report from October 1998 to mid-April 1999 noted that tape management, in general, had been a weak point in the contractor's performance. Specifically, the report stated that the contractor had not created an inventory of the e-mail system backup tapes, and that these tapes continued to mount in an uncontrolled manner. As a result, the EOP rated the contractor's performance as marginal and withheld about \$10,400 in award fees for this and other data center tasks.

The EOP's subsequent award fee assessment report for the period of mid-April to September 1999 stated that there continued to be a lack of effective tape management in the data center and rated the contractor's performance as unsatisfactory. We were not able to determine what, if

¹⁰ According to FRA, manual external labels or automated tape management systems for tapes storing electronic records must provide unique identification, including the name of the unit responsible for the data and system title. Other identifying information such as file title(s), dates of creation, volume serial number, and software dependency must be maintained but not necessarily attached to the tape.

any, award fee was withheld because the EOP did not provide us with complete award fee documentation. The problems with tape management were not subsequently resolved. In March 2000, the EOP tape restoration project manager stated in a memorandum that e-mail backup tapes needing restoration could not be identified and that all tapes that had been retained would need to be examined to determine their contents.

The EOP also documented deficiencies in the contractor's performance of e-mail system and user account maintenance. According to the EOP, the contractor had not implemented satisfactory quality controls to prevent or detect mistakes in user account and system configurations. As a result, the EOP did not detect the Letter D malfunction for 5 months and the Mail2 malfunction for almost 2 years. For example:

- The EOP's award fee assessment report for October 1998 through mid-April 1999 stated that the configuration error that caused the Letter D malfunction "should not have occurred and [it] could have been fixed on the spot had [the contractor implemented] proper testing procedures and quality assurance measures been in place." As a result, the EOP rated the contractor's performance in this area as unsatisfactory and withheld \$20,832 in award fees for this and other system life cycle tasks.
- The error in configuration of user accounts that caused the Mail2 malfunction—entering "MAIL2" instead of "Mail2"—continued even after it was discovered in June 1998. In April 1999, the EOP found that this configuration error had not only occurred continually on the Mail2 server since October 1996, but also on another EOP e-mail server. The EOP initiated a review of controls to detect such configuration errors in May 1999.

Finally, up-to-date system documentation for the e-mail system interface to ARMS was not maintained, as required by the contract and under FRA. Accurate system documentation and availability of source code facilitate an understanding of how a system functions, which enables the system owner and system administrator to diagnose system anomalies—such as those experienced with the Mail2 and Letter D malfunctions—and optimize system controls. However, although a subcontractor to a former EOP contractor documented the system when it developed the interface between the Lotus Notes and ARMS systems, the Office of Administration staff found that both the system documentation and the programming source code were missing in 1997. Until the source code was located in 1998 and the EOP contractor documented the system functions in 1999, the EOP was unable to implement changes to the code or develop automated programs to monitor the effective functioning of the interface.

These shortcomings in tape management, system and account maintenance, and system documentation contributed to the time necessary for the EOP to detect the malfunctions and ultimately hindered the EOP's identification of the e-mail backup tapes requiring restoration, increasing the quantity of tapes that would have to be examined in the project. From the time between identification and repair of the malfunctions—for Mail2, June to November 1998; for Letter D, April to May 1999—and restoration of the tapes that began in March 2000, the EOP continued to accumulate backup tapes. This resulted in raising the total number of tapes to be restored from 788 in December 1998 to about 4,500 in January 2001 (comprised of 3,900 Mail2 and Letter D tapes and 600 OVP tapes).

Monitoring Program Did Not Ensure Effective Management of E-mail Records

While the EOP's 1993 policy required that the White House Records Management Office monitor electronic systems containing presidential and federal e-mail records, the EOP's records management program did not provide reasonable assurance that adequate controls were in place and functioning to monitor the preservation of such records. Such a monitoring program should include evaluations of the creation of records, maintenance and use of records, and records disposition to determine compliance with established agency and federal recordkeeping requirements.

Pursuant to its policy, the EOP implemented a monitoring program in July 1994 to identify systemic problems with records determinations made by EOP e-mail users. The EOP's monitoring program applied, however, only to federal records and did not cover monitoring of presidential records as required by the EOP policy. In addition, the monitoring program did not include tests to ensure the completeness of federal and presidential e-mail records captured by ARMS that are created by incoming e-mail messages to the EOP e-mail users. Controls were specifically needed over these incoming messages because the e-mail system allowed the EOP users to delete incoming messages before they were automatically copied to ARMS. This ability, coupled with the EOP's normal practice of recycling backup tapes, may have resulted in the irretrievable loss of the electronic form of e-mail records. However, the EOP did not document or regularly test the adequacy of records management controls until May 1999 after repair of the Letter D malfunction, when the EOP implemented an automated e-mail monitoring program. Because controls were not in place until May 1999, the Letter D malfunction went undetected for 5 months, adding additional backup tapes to the size of the restoration project.

Legal Scrutiny Added Restoration Tasks

Scrutiny over the tape restoration project by the U.S. District Court,¹¹ Office of the Independent Counsel, and the Congress, began in March 2000, introducing additional tasks. Examples of such tasks include use of law enforcement imaging software (required by the Office of the Independent Counsel) and development of an interim searchable database and hiring of an independent validation and verification contractor and security guard support to enhance integrity of tape processing (required by the U.S. District Court and the Congress).

According to the EOP, the restoration project was initiated in March 2000—not in 1998 after repair of Mail2 or in 1999 after repair of Letter D—because the EOP's focus in 1999 was on remediation of its systems to ensure continued processing after the year 2000 and leap day (February 29, 2000) rollovers. As a result, the quantity of e-mail messages requiring restoration escalated, drawing the attention of authorities interested in ascertaining whether the EOP had implemented adequate controls. Table 2 lists restoration project activities estimated at about \$3.5 million that were introduced because of this scrutiny.

Table 2: Additional Project Activities and Related Costs.

| Project activity | Cost (estimated) |
|--|-------------------------|
| Independent verification and validation contractor | \$1,993,819 |
| Security (two contracts): | |
| General Services Administration | (actual) 97,920 |
| TW & Company | 54,894 |
| Development of interim searchable database | 963,400 |
| Tape inventory and catalogue (list) tape contents | 455,000 |
| Total | \$3,565,033 |

Source: Tape restoration project cost estimate report prepared by Vistrionix, Incorporated, for the EOP in July 2000, the EOP summary of actual costs through October 29, 2000, and discussions with EOP officials.

¹¹The tape restoration project was being monitored by Judge Lamberth of the U.S. District Court incident to the case of *Alexander v. FBI* (CA 96-2125, D.D.C.). The plaintiffs in that case had submitted document requests to the EOP in an attempt to discover relevant information in EOP's e-mail.

Limited Access to Information Prevented Confirmation of the EOP's Notification of Appropriate Officials

The EOP claimed to have notified investigative bodies as soon as it understood that document production might have been affected by the e-mail malfunctions. Although the cause of the Mail2 e-mail malfunction was known as early as June 1998 and Letter D in April 1999, the White House Counsel's Office stated that it did not discover until February 2000 that the e-mail malfunctions "had affected the integrity of White House document productions." Thus, "the Counsel's Office did not perceive a need to notify investigative bodies" prior to that time.

According to EOP officials, when the extent of the malfunctions became clear to the White House Counsel's Office in February 2000, that office "had both written and oral communications with various investigative bodies regarding the Mail2 issue." The EOP provided us with copies of its correspondence to the House Committee on Government Reform that range in time from March 17 to October 30, 2000. On March 17, 2000, the EOP provided the Committee with a description of the e-mail system, the malfunctions, and their effect on document production. A letter to the Committee in June 2000 updated the status of e-mail records management for the Office of the Vice President. Finally, an October 6, 2000, letter from the EOP to the Committee referred to 30 letters from the EOP to various investigative bodies, between March 15 and October 3, 2000, including the Offices of Independent Counsel, congressional committees, and the Department of Justice.

We requested copies of these 30 letters, but we were not given copies of any of them. Without complete documentation, we were unable to confirm the EOP's claims to have notified officials concerning the effect of the e-mail malfunctions on respective document productions to investigative bodies other than the Committee. In its comments on a draft of this report, the Office of the former Vice President stated that as a matter of policy, "the EOP did not cross-pollinate its communications with various investigative bodies as a means of maintaining the confidentiality of the legitimate interests and investigative priorities of those investigative bodies."

Conclusions

Computer malfunctions, ineffective systems and records management practices, and miscommunication between EOP components led to e-mail records not being preserved by ARMS. As a result, the EOP initiated a time-consuming and expensive effort to recover e-mail records that had not been effectively managed.

The management control weaknesses have implications for the current administration that inherited the core e-mail systems and records management structures discussed in this report. Accordingly, we met with the current Special Assistant to the President and Director of the Office of Administration and interested EOP staff, to provide suggestions for establishing effective controls in the records management and e-mail system support functions. These officials stated that actions are underway to improve the management of electronic records within EOP. These efforts included developing and updating policies for federal and presidential records, defining procedures for electronic records, and establishing a chief information officer position.

Agency Comments and Our Evaluation

In written comments on a draft of this report, which are reprinted in appendix VI, the Counsel to former Vice President Gore had two general points. First, he stated that the report did not explicitly state that we found no evidence of attempts by OVP staff to deliberately fail to preserve records. In our report, our objective was to examine the facts surrounding the e-mail systems. Specifically, we were requested to assess the adequacy of management controls over EOP's records management system, particularly as they related to the numerous e-mail system malfunctions experienced by EOP since 1996. That assessment entailed the examination of management policies, programs, and practices as they related to effective records management controls and to the requirements of the PRA and FRA. Our review was not directed at assessing the intent of individuals responsible for preserving records and providing responsive records to investigative bodies. As such, we can offer no conclusions on this matter.

Second, the Office of the former Vice President stated that ARMS was a unique system for which best practices did not apply and provided additional information on the creation and use of this system that was not reflected in the draft report. In response, we have revised the report to reflect this additional information. However, we disagree with the Office of the former Vice President's characterization of the applicability of best practices to ARMS. Best practices for management of records currently exist in the form of National Archives and Records Administration guidance contained in title 36 CFR and apply to records management programs irrespective of the type of system involved. The majority of this guidance is prescriptive only for federal records; however, this guidance applies to ARMS because ARMS archives federal records. Also, the guidance does not explicitly preclude application of these practices in the management of presidential/vice presidential records. Although the

evolution of ARMS may continue, the stability of generally accepted records management best practices establishes a control foundation for any system, whether manual or automated.

Comments from the Office of the former Vice President are reprinted in appendix VI. In addition, this appendix contains our detailed responses to numerous technical comments that were provided.

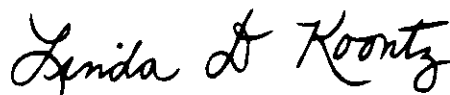
In his comments on the draft report, the representative of former President Clinton stated that he had reviewed the draft but did not have access to the records necessary to properly review and comment on its accuracy. He urged us to incorporate comments that we received from EOP during the course of our review, which we have done as appropriate.

The Deputy General Counsel, Office of Administration, EOP, orally provided a technical clarification, stating that the May 1997 policy that replaced the PRA section of the 1993 policy was issued by the White House and not EOP, which we incorporated as appropriate.

We are sending copies of this report to the Honorable Henry Waxman, Ranking Minority Member; the Honorable Hector Irastorza, the Deputy Assistant to the President for Management and Administration, the White House; Bruce R. Lindsey, the personal representative of former President Clinton; Andrew M. Wright, Counsel to former Vice President Gore; and interested congressional committees. Copies will then be available on our Web site at www.gao.gov.

If you or your office have any questions about this report, please contact me at (202) 512-6240 or by e-mail at KoontzL@gao.gov. Nancy DeFrancesco, Michael Fruitman, Linda Lambert, and Charles Roney were major contributors to this report.

Sincerely yours,



Linda D. Koontz
Director, Information Management Issues

Enclosures

Appendix I: Scope and Methodology

To obtain information regarding events and to identify individuals key to the Executive Office of the President's (EOP) e-mail systems and the malfunctions experienced, we

- reviewed about 10,000 pages of documentation submitted to the House Committee on Government Reform by the EOP and its contractor Northrop Grumman;
- reviewed 159 hearing exhibits prepared by the Committee from the above documentation, and pertinent pieces of correspondence and other related documentation provided by the Committee;
- obtained copies of the EOP's task order OA8004 dated September 30, 1997, with Northrop Grumman, and letter contract OA20C002 dated March 29, 2000, with Enterprise Computing Solutions Technologies, Incorporated (ECS);
- obtained transcripts of a hearing pertaining to the timing of the restoration and production of EOP e-mail, held by the U.S. District Court beginning July 13, 2000, and observed the hearing sessions between July 31 and October 3, 2000; and
- obtained transcripts of hearings pertaining the EOP e-mail systems, held by the House Committee on Government Reform on March 23, March 30, May 3, and May 4, 2000.

To obtain additional information on the e-mail malfunctions and Office of the Vice President's e-mail records procedures that were not addressed by the Committee documents or hearing transcripts, the EOP stipulated that we submit written questions. We submitted seven sets of questions and reviewed the written responses and additional documentation provided, including two additional tape restoration project contracts: Vistronix, Incorporated, letter contract CI20C03 dated May 8, 2000; and TW and Company contract DC21C01 dated November 9, 2000. We also met with EOP officials to discuss specific issues pertaining to the restoration of the e-mail.

To determine costs for the project, we obtained copies of paid ECS invoices covering the period May 5 through September 5, 2000. We also obtained a copy of the July 28, 2000, Vistronix report that estimates project costs and compared this estimate to updated information regarding project status and actual costs incurred for the project through October 29, 2000, that we obtained from the EOP.

Our review of cost issues was limited by the unavailability of complete and reliable information. Specifically, we were not given access to OVP files of hard copy e-mail records, which impaired a full assessment of the OVP's

practices to preserve e-mail records. In addition, we were not provided complete documentation of contract performance assessments and related consequences for fiscal years 1998, 1999, and 2000; thus, we were unable to determine the extent to which the EOP documented contractor performance weaknesses and withheld award fees. Finally, we were not provided with copies of letters from the EOP to investigative bodies necessary for us to confirm that the EOP notified these entities of the e-mail malfunctions.

We performed our work from July 2000 through January 2001, in accordance with generally accepted government auditing standards.

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event | Cross-reference to other documents listed in this table | Comments |
|--|-----------------------|---|--|--|
| E5346 through E5347, E5353 through E5354 | 07/94 and 10/94 | E-mail from Neil Doering to various staff including Daniel Barry, James Wright, and others establishing an e-mail monitoring program that was implemented 07/25/94. The <i>Presidential and Office of the Vice President (OVP) Records Monitoring Plan dated 10/28/94</i> that was attached provided a quarterly monitoring schedule through fiscal year (FY) 1995. | | This monitoring program required that EOP agencies review a sample of record and nonrecord e-mail messages to ensure that proper record designation was applied by e-mail users. |
| E0595 through E0608 | 03/07/95 | A document entitled <i>Automated Records Management System (ARMS) for Lotus Notes Mail</i> provided a technical description of the Notes/ARMS interface functionality. The document stated that the interface copies all internal and external e-mail and receipts to the ARMS records management database. White House Executive Office of the President (EOP) e-mail users may elect to remove the record designation of an outgoing mail message, which they created, by selecting a nonrecord command button. This option causes the message to not be captured as an official federal or presidential record to be archived in the ARMS records management database. | E5346 through E5347 and E5353 through E5354 | Nonrecords were also captured temporarily by ARMS for sampling under EOP's records monitoring program to detect and correct improper designation of e-mail records. |
| E1115 | 08/29/96 | The Mail2 server was created with the server name of Mail2 and User ID of Mail2/EOP. | E0564 | |
| E0564 through E0566 | 10/29/96 | E-mail stating that a Planning Research Corporation (PRC) contract employee installed the Mail2 server, as well as performed initial configuration of the Notes server. The Notes/ARMS interface Name and Address Book (NAB) was configured with five views. | Exhibit 125 and document E1115 | PRC was the predecessor contractor to Northrop Grumman (NG) at the White House. |
| E2309 through E2310 | 02/25/97 and 02/26/97 | Series of e-mail between Daniel Barry and Laura Crabtree regarding "... 'problem attachment' problem" whereby messages were deleted manually if they caused a problem with the Notes/ARMS interface. | | Based on available documentation, this problem was not related to the Mail2 or Letter D malfunctions. |
| Exhibit 17 | 03/04/97 | E-mail from Daniel Barry to John W. McGinnis asking him to write a paragraph regarding efforts performed to restore 10,000+ lost E-mail records. Mr. McGinnis' contribution would finish up Mr. Barry's "memo to the record." | The 3/23/00 hearing witness list lists Mr. Barry as Daniel "Tony" Barry. He was referred to as Tony in many e-mails and other documents. | Based on available documentation, this problem was not related to the Mail2 or Letter D malfunctions. |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event | Cross-reference to other documents listed in this table | Comments |
|----------------------------|-------------|---|--|---|
| E2316 through E2323 | 03/06/97 | Series of e-mails from Daniel Barry to James Wright and others regarding "missing Notes records." The problem occurred in September 1996 and caused some e-mail to be sent to the ARMS records management database without the message header. Other e-mails would be sent to the ARMS records management database without the message text. Mr. Barry stated he had received no training on Notes. He reported that to his knowledge, efforts to recover these missing e-mail messages in the beginning of 1997 were unsuccessful. According to this e-mail, between September 11 and 16, 1996 23,436 e-mail messages were missing headers (that is, "To," "Subject," etc.) and 10,138 messages were missing text. | Exhibit 17 | Based on available documentation, this problem was not related to the Mail2 or Letter D malfunctions. |
| E6001 through E6004 | 03/17/97 | Minutes of a staff meeting involving Jim Wright, Laura Crabtree, Karl Heissner, and others. Backup of EOP Information Systems and Technology Division (IS&T) servers was discussed. The minutes stated that "[r]equirements haven't been documented but approaches are being developed. An inventory does exist of what does need to be backed up." The minutes also question what the retention period should be, and stated that all types of server platforms "are being reviewed: VAX, client server, and mainframe." | | |
| E6547 through E6558 | 03/21/97 | E-mail to Ada Posey and others regarding restricted 1997 appropriation funding and that funds were needed for additional e-mail servers to relieve network strain. E-mail records management traffic was projected to increase 90 percent in FY 1998 from FY 1995's traffic rates. The e-mail noted that EOP's migration from Novell Netware-based network to Microsoft Windows NT began in May 1996. It also stated that the "...client/server backup system used to preserve data integrity and facilitate the archival of Presidential and Federal records has exceeded its life cycle [and can only] backup 50% of our file servers. However, due to hardware and software failures, less than 30% of our file servers have current backups. Currently, the only copy of data that is not backed up resides on each file server's physical hard drives. If any of those hard drives fail, data will be lost." | E1022, E1394, Exhibit 9 | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event | Cross-reference to other documents listed in this table | Comments |
|----------------------------|-------------|--|--|---|
| E6005 through E6009 | 03/24/97 | Minutes of a staff meeting involving Laura Crabtree, Nell Doering, Karl Heissner, Jim Wright, and others. The minutes discussed external e-mail, stating "Laura will have a report on the problems we've been having for Ada [Posey] tomorrow." | | Based on available documentation, these problems were not related to the Mail2 or Letter D malfunctions. |
| E2379 through E2380 | 07/17/97 | E-mail from Bruce Overton to Laura Crabtree and others with attached e-mail notice to all EOP mail users regarding implementation of Notes janitor agent. The janitor agent was set to move up to 300 e-mail messages that were greater than 45 days old from the "inbox" folder to the "trash" folder in the user's mail file. The messages were then automatically deleted 1 week later. The process was scheduled to run weekly beginning July 18, 1997. Mr. Overton asked whether the records management team had reviewed the janitor policy. | | A 9/29/00 response to our question on this matter stated that "... EOP does not believe that this 'janitor agent' was ever implemented." In its comments on a draft of this report, EOP stated that "... legal and records management staff never approved use of the agent." |
| E7209 through E7211 | 08/11/97 | E-mail to Daniel Barry, Nellie Doering, Karl Heissner, Laura Crabtree, Ada Posey, and others containing minutes of a staff meeting. The minutes state that "Lotus Notes staff will be [coming] in to address the lost mail problem (we need a ruling from [counsel] as to issues with mail and as to what may be purchased)." | | Based on available documentation, this problem was not related to the Mail2 or Letter D malfunctions. |
| Exhibit 49 | 01/30/98 | A document created by Daniel Barry said that he noticed a potential problem with the capture of e-mail traffic coming into the EOP Lotus Notes system from the Internet. John Spriggs, the NG e-mail administrator, was asked to print out the firewall log to determine whether incoming Internet e-mail messages were received. The document stated "We are not sure where the problem lies at this point." | Exhibit 57 | A computer directory location and date indicating 1/30/98 were handwritten on the document. |
| Exhibit 10 | No date | A document containing May 16 meeting minutes discusses a problem with the Notes/ARMS interface scan process randomly skipping e-mail boxes on the Mail2 server. A random sample of e-mail boxes was analyzed and it was discovered that e-mails dating back to 1996 were not subject to records management, or captured by the ARMS records management database. The course of action was to further assess the problem. | Exhibit 12 | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event | Cross-reference to other documents listed in this table | Comments |
|---|-------------|--|--|--|
| Exhibit 16 | 06/01/98 | E-mail from Virginia Apuzzo to all EOP staff requesting that users delete unneeded e-mail on e-mail servers or save e-mail to individual workstations to prevent system failure. This message was repeated and re-sent to all EOP staff on 03/24/99 (Exhibit 16, page E0545). | E7202 through E7203 | |
| Exhibit 12 | 06/12/98 | E-mail from Robert Haas, NG contract employee, to Betty Lambuth, NG subcontractor, mentioning "a design flow in the Record Management design in Notes that would allow for certain types of mail document[s] to bypass record management." | Exhibit 10 | The term "design flow" may be a typo of "design flaw". |
| Exhibit 50 | 06/18/98 | A draft document entitled Lotus Notes to ARMS Interface Anomaly that was sent from the fax machine shared by the Office of Administration (OA) General Counsel and the OA Director to an unknown recipient. The draft described the Mail2 server malfunction and stated that the root of the problem stems from a discrepancy between the capitalization of the letters in the name of the affected Lotus Notes server. The problem was introduced by human error in capitalization of the server name letters in the affected users' e-mail accounts as "MAIL2" instead of "Mail2." The scope of the problem was that 526 users of Mail2 were affected. | | |
| Exhibits 1 through 5 | 06/19/98 | Memo from Virginia M. Apuzzo to John D. Podesta, former Deputy Chief of Staff, entitled Technical Anomaly in Automated E-Mail Records Management System, which describes the capitalization of the server name letters in the affected users' e-mail accounts as "MAIL2" instead of "Mail2" as the cause of the Mail2 malfunction. Exhibits 1 and 3 contained a handwritten note saying, "Chuck—I sent this memo to John this afternoon. Ginny" dated 6/19. Exhibits 4 and 5 contained a handwritten note saying, "Ginny Please ask Mark to brief me on this. Thanks, John." | | Exhibits 1 through 5 were variations of the same memo. U.S. District Court testimony by Charles Ruff on 08/28/00 confirmed "Chuck" to be Charles Ruff, "Ginny" to be Virginia Apuzzo, and "John" to be John Podesta. |
| E0567 through E0569, E0573 through E0578, E0589 through E0594 | 07/09/98 | Draft plan dated July 1998 and the undated finalized versions of the same plan to first process data records from Notes e-mail files to the VAX subsystem and then to restore Notes/ARMS interface processing on Mail2. The plan was to first turn the Notes/ARMS interface monitor task off, copy each affected user's existing mail file (containing the unrecorded mail) to the Notes/ARMS interface server, and then turn the Notes/ARMS interface | Exhibit 19 | |

**Appendix II: Chronology of E-mail
Malfunctions**

| Reference ^a documents | Date | Description of event ^a | Cross-reference to other documents listed in this table ^a | Comments ^a |
|-------------------------------------|----------|--|--|-----------------------|
| | | monitor back on for processing of unrecorded messages into the ARMS records management database. Once transferred, all documents would be marked as recorded and the syntax [capitalization of the server name letters in the affected users' e-mail accounts as "MAIL2" instead of "Mail2"] of the server name for the user's account would be corrected. Day-forward processing would resume on Mail2. The plan also noted that a "critical issue" existed for the processing of affected records from Notes to the ARMS records management database, which resides on the VAX subsystem. It stated that "preliminary investigation has shown that the date used to create the ARMS header files is the date that the messages are written to the Records Management mail-in database. This date doesn't reflect the true sent mail date in the original message." | | |
| Exhibit 19 | 07/24/98 | E-mail from Daniel Barry to James Wright noting under Additional activities that he continues to be involved in discussions regarding the Mail2 problem but there has been no movement thus far in correcting the problem or getting the data over to the ARMS records management database. The plan for fixing the problem had been submitted to EOP by NG. | | |
| Exhibit 22 | 07/30/98 | E-mail from Daniel Barry to James Wright with language similar to Exhibit 19. | | |
| Exhibit 23 | 08/13/98 | E-mail from Daniel Barry to James Wright expressing "concerns" about "the mail2 problem" or project X. He stated that there was no movement underway to fix the problem and recover the lost records from the backup tapes. | Exhibit 24 | |
| Exhibit 24 | 08/13/98 | E-mail from James Wright to Daniel Barry responding to his "concerns" e-mail saying that there has been some movement to get back on track and NG can develop a plan to get this effort going. "Certainly the Data Center and the Records Team has been left out of this matter and the result could be a great deal of work put upon us later." This exhibit stated that Kathleen Gallant informed Mr. Wright that a Paulette [Cichon] briefed Jim Welsh of NG to proceed with developing the plan. | Exhibit 23 | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|----------------------------|-----------------------|--|---|---|
| Exhibit 40 | 08/13/98 | E-mail from Kathleen Gallant to James Wright with a copy to Daniel Barry. It stated that Jim Webster was taking Betty Lambuth's place and a meeting was held authorizing that it was okay to discuss the Mail2 project in detail with Mr. Webster. The e-mail stated that "I also agree with Tony [Daniel Barry] about the new searches that will have to be done. We need direction from OA counsel on that front." | | |
| Exhibit 25 | 09/01/98 | E-mail from Daniel Barry to James Webster, with a copy to James Wright, asking for a meeting to discuss the plan/approach on the Mail2 problem. An attached e-mail "Weekly" report dated 9/4/98 (E2016) says that Mr. Barry had a discussion with Jim Webster, NG, "regarding OVP E-mail and records management." Mr. Barry referred Mr. Webster to Kathleen Gallant for a decision to have all OVP users subject to records management through the ARMS records management database. The e-mail noted that a goods and services authorization request memo was prepared for 64GB disks for the Notes Mail2 recovery project. This will go to Financial Management Division (FMD) for signature and then make its way to the OA counsel. | | |
| Exhibit 120 | 09/01/98, 09/15/98 | E-mail from Daniel Barry to James Webster, NG, requesting meeting with him, Sandra Golas, Robert Haas, and John Spriggs to discuss the Mail2 problem and the plan/approach for proceeding. Webster forwarded Barry's e-mail to Spriggs, Golas, Robert Haas, and Yiman Salim, saying Barry wants "to set up a meeting to discuss our favorite issue.... I will tell Tony [Daniel Barry] that I will have to delay any meeting until we resolve some internal issues." On page E4015 of this exhibit, an e-mail dated 9/15/98 from Daniel Barry to James Webster about the Mail2 project meeting asks about Webster's plan for "righting the wrong" phase of this project. Barry wants to know when the meeting will occur. | | |
| E5874 | 09/10/98 | E-mail from Mark Bartholomew to Adam Greenstone [copy to Daniel Barry, Karl Heissner, Kathleen Gallant] regarding processing of incoming Internet e-mail to the President, Vice President, and the First Lady, referred to as White House "principals." Incoming e-mail to these principals was | E6020 through E6022 | The bulk e-mail "package" was captured in the ARMS records management database. |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event | Cross-reference to other documents listed in this table | Comments |
|---------------------|----------|--|---|---|
| | | "packaged" into another e-mail to the correspondence office for each respective principal. These "packaged" e-mails, referred to as "bulk mail," were not subject to records management in the ARMS records management database message by message or as e-mail to the principal, but rather as bulk e-mail to the appropriate representative of the principal. | | |
| Exhibit 26 | 09/10/98 | E-mail from Daniel Barry to Kathleen Gallant and James Wright expressing concern about the lack of movement on the Mail2 problem. "We have known about this problem for 4 months now and not a single record [of the affected users] has been passed to ARMS...even worse, the root problem has not been fixed." | | |
| Exhibit 64 | 09/14/98 | Letter from Joseph Lucente noting "that in late May of this year, a dysfunction in the EOP e-mail system was detected by an employee..." of NG. | | |
| Exhibit 27 | 09/25/98 | E-mail from Daniel Barry to James Wright stating there was still no movement in the Mail2 problem and asking what his role was supposed to be in the project. Wright responds the same day saying that IS&T needs to start by providing NG with direction. | | |
| Exhibit 47 | 09/25/98 | E-mail from Kathleen Gallant to Daniel Barry stating that the Notes Anomaly Team has met and come up with a strategy. The team will back up Mail2 using a DLT [digital linear tape] drive that can verify as it writes and execute "the Notes agent changes to change all the [IDs] looking for Mail2 to MAIL2...." A second phase deals with reconstruction of the nonrecords-managed files from the Mail2 server. She said, "Contracts is aware of the whole mess, and supports the creation of the IWO [Internal Work Order]...." | E1235 and E1236 | Agents are filtering instructions that automate operations on documents in a Notes database. |
| E1363 through E1375 | 09/30/98 | A NG document entitled <i>Final Y2K Status Report for OA/IS&T</i> stated that the software for the ARMS records management database was not fully documented and controlled, and that it was "born very quickly in 1994 to meet an immediate need for the recording of message traffic." The C-language programs in the interface were not Year 2000-compliant. | E0766 and E1015 through E1021 | Year 2000 readiness of information systems was a concurrent effort to repair e-mail malfunctions. |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event^a | Cross-reference to other documents listed in this table^a | Comments^a |
|----------------------------|--------------------|--|--|--|
| Exhibit 28 | 10/13/98 | E-mail from Daniel Barry to Christina VanFossan and Joseph Kouba stating, "Per our meeting last week... here are 4 projects that I can see happening in the near term that are not currently budgeted for." The third project was listed as <i>Project X (Mail2) Reconstruction</i> , with an estimated cost of \$250,000. | | |
| E0766 through E0768 | 11/06/98, 11/12/98 | E-mail created by Marvin Miller on 11/06/98 and revised 11/12/98 by Yiman Salim regarding an ARMS IWO feasibility and requirements study. The document stated that Notes and Notes Application Programming Interface (API) version 4.6 software was used in the Notes/ARMS interface. To perform maintenance on the ARMS software, the skill set required a C++ software engineer, a Notes developer with C++ and VAX knowledge, and a system administrator with Windows NT and Lotus Notes skills. The tasks listed in the e-mails included Year 2000 code modification and implementation of calendaring and scheduling modifications. However, in the 11/12/00 revision, Salim removed two tasks from Miller's list, including "Mail server name case sensitivity." | E1363 through E1375 | "Name case sensitivity" refers to the capitalization of the server name letters in the affected users' e-mail accounts as "MAIL2" instead of "Mail2." In its comments on a draft of this report, EOP stated that the Mail2 case sensitivity was not related to Year 2000 efforts addressed by the "ARMS IWO." |
| Exhibit 30 | 11/12/98 | E-mail from Daniel Barry to DeVere Patton saying that NG needs technical guidance on several items, including a response to the Mail2 IWO, which had not yet been finalized. | Exhibits 31 and 46 | |
| Exhibit 31 | 11/13/98 | E-mail from Daniel Barry to James Wright mentioning the response on the Mail2 IWO. | Exhibits 30 and 46 | |
| Exhibit 121 | 11/16/98 | E-mail from Daniel Barry to Sheryl Hall, John Spriggs, and Joseph Vasta requesting a meeting to discuss a course of action on moving the Mail2 reconstruction project forward. | | |
| Exhibit 103 | 11/20/98 | E-mail from Daniel Barry stating that Karl Heissner was the project manager for phases two and three of the Mail2 reconstruction work. The e-mail mentioned that phase one was the "... fix (Stop the bleeding) on the mail 2 server." Phases two and three were not described in this e-mail. | | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event | Cross-reference to other documents listed in this table | Comments |
|----------------------------|-------------|--|--|---|
| Exhibit 70 | 12/02/98 | Weekly Contracting Officer's Technical Representative (COTR) meeting minutes for 11/20/98. NG commented that the Rough Order of Magnitude (ROM) "...could be plus or minus 20 percent" | Exhibits 63, 67, 72, 73, 75, and 122 | |
| Exhibit 72 | 12/02/98 | NG ROM for cost of IWO was \$602,492. | Exhibits 63, 67, 70, 73, 75, 122, E1016 | |
| Exhibit 122 | 12/02/98 | E-mail from Daniel Barry to Karl Heissner stating that NG's ROM did not include the cost to do the restoration. | Exhibits 63, 67, 70, 72, 73, and 75 | |
| E5783 | 12/04/98 | E-mail from Moe Vela to "All Staff" requesting staff to delete unnecessary e-mail because "Lotus Notes is within 5 [percent] of maximum capacity and it will shut down at that time." | | |
| Exhibit 63 | 12/11/98 | Memo from Joseph Vasta to DeVere Patton, mentioning, in part, the Mail2 E-mail Reconstruction. Said NG would evaluate at least one tape. | Exhibits 67, 70, 72, 73, 75, and 122 | |
| Exhibit 73 | 12/18/98 | Weekly COTR meeting minutes for 12/16/98. "Government emphasized that before any work be undertaken, it is imperative that a tape inventory be done." NG insisted that an inventory in the absence of an automated tape management system would be very labor-intensive (over 1 hour per tape) and "would far exceed the services in the Base Services IWO." | Exhibits 63, 67, 70, 72, 75, and 122 | |
| Exhibit 67 | 12/23/98 | Weekly COTR meeting minutes for 12/23/98. NG reported that a recent tape was restored, and the universe of tapes was identified as 788. | Exhibits 63, 70, 72, 73, and 122 | |
| Exhibit 32 | 12/24/98 | E-mail from Daniel Barry to Joseph Kouba. It lists three tiers of projects related to the <u>Armstrong</u> court case. The third tier includes projects that, in his opinion, could be done but were not vital. The Mail2 reconstruction (Project X) was listed in the third tier, showing an FY 1999 cost of \$650,000 and an FY 2000 cost of \$1 million. | | The <u>Armstrong</u> court held that EOP components must capture electronic records subject to the Federal Records Act. |
| Exhibit 129 | 01/06/99 | Weekly report from Daniel Barry in which he stressed that OA Counsel needed to be in the decision-making process regarding projects that should move forward, such as Project X. | | |
| E6020 through E6022 | 01/07/99 | Meeting agenda and handwritten meeting notes regarding "records disposition for internet e-mail." It stated that for e-mail to "... 'President @whitehouse.gov,' all emails [were] combined into one and sent to [the President's bulk e-mail | E5874 | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|----------------------------|-------------|---|---|------------------|
| | | representative].” It was packaged and sent on to the ARMS records management database where it was retained as e-mail to the President’s bulk e-mail representative. | | |
| E5784 | 01/13/99 | E-mail from Moe Vela to “All Staff” requesting staff to delete unnecessary e-mail and databases in Lotus Notes because the IS&T anticipated running out of disk space in about 1 hour. | | |
| E0772 | 02/01/99 | E-mail from Daniel Barry about “the effort underway to locate and document the [Notes/ARMS] interface code so that changes can be made.” | | |
| E0964 | 02/01/99 | E-mail from Daniel Barry to Raul Cavazos stating that “.... the ARMS processing requested a tape from March 1997 and Ops [Operations] was unable to find the tape.” Concludes, “there needs to be an inventory of the ARMS tapes that are stored in the boxes in the back of the DC [data center], to make it possible to retrieve any one of the tapes.” | | |
| Exhibit 75 | 02/02/99 | Weekly COTR meeting minutes for 01/27/99. The EOP asked about NG’s tape inventory and tape tracking methodology. The EOP requested a tape inventory (that included tape ID, volume, dataset ID, etc.) from October 1997, the point when NG was awarded contract. | Exhibits 63, 67, 70, 72, 73, and 122 | |
| Exhibit 81 | 02/05/99 | Memo from Karl Heissner explaining the Mail2 server problem. He stated that “the problem, that some e-mail messages were not records managed properly, was discovered in February 1998, and Mr. Barry immediately notified the Lotus Notes Group (NG-Spriggs/Golas) as well as IS&T Management of the problem.” | Exhibits 82 and 83 | |
| Exhibit 43 | 03/12/99 | E-mail from Nellie Doering to Dorothy Cleal, copy to Daniel Barry, suggesting changes to Mr. Barry’s proposal. Ms. Doering stated that Mr. Barry agreed to ensure the “Server 2” tapes were properly inventoried and documented by NG. | | |
| Exhibit 37 | 03/18/99 | E-mail from Daniel Barry to DeVere Patton, Karl Heissner, and Nellie Doering about the Mail2 records management problem. Barry stated that: “It has come to my attention that when the ‘bleeding’ was stopped on MAIL2 in November 1998, ALL the bleeding may NOT have been stopped. I have spoken with John Spriggs and it appears as though at least one account, | | |

Appendix II: Chronology of E-mail Malfunctions

| Reference ^a documents | Date | Description of event ^a | Cross-reference to other documents listed in this table ^a | Comments ^a |
|----------------------------------|----------|---|--|-----------------------|
| | | MILLENNIUM, may still have the problem. I believe NG should be instructed to investigate and report back on exactly what the situation is with regard to the MAIL2 problem." | | |
| Exhibit 41 | 03/18/99 | A series of e-mails noting that the Mail2 problem was not allowing EOP staff to recycle backup tapes. Nellie Doering stated that the tapes need to be inventoried by NG and "... 'secured' so that they are easily identified as the Server 2 Backup Tapes that were not [subject to records management.]" DeVere Patton stated that "...it is something that NG should be doing under the base contract [in response to Dorothy Cleal's inquiry regarding contract scope]." | | |
| Exhibit 42 | 03/18/99 | E-mail from Joseph Kouba to Daniel Barry and others stating, "looks like MAIL 2 reconstruction is back on hold until some additional confirmation is received." | | |
| Exhibit 124 | 03/19/99 | E-mail from Karl Heissner to Nellie Doering, Daniel Barry, and Mark Bartholomew. Meeting minutes to discuss the Mail2 reconstruction. It stated that the project was on hold awaiting approval of the OA counsel. | | |
| E0812 | 03/24/99 | E-mail from Michael Ritter to Joseph Vasta regarding tape inventory. It stated that "there are between 700 and 800 tapes [in] mostly 8-mm [millimeter] format and do not have a 'header' catalogue (meaning that the entire tape must be read to develop a directory list)." Also, "there is a short period of a few months where we do not have backup tapes due to changes in the governments requirements." Mr. Ritter estimates that under "perfect conditions" it would take 1.5 to 3 hours per tape to read the tape and print the catalogue information; however, he stated, the tapes were old and were produced under various hardware and software configurations. He stated that "it is expected that there will be tapes that cannot even be read with the current hardware on site." | | |
| E1255 through E1256 | 03/25/99 | NG memo from Joe Vasta to DeVere Patton regarding Mail2 backup tapes. It stated that NG will secure Mail2 backups for October 1996 through November 1998 and provide minimal inventory information. The memo identified that during this period, NG was instructed by "the government" to reuse backup tapes causing | | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event^a | Cross-reference to other documents listed in this table^a | Comments^a |
|----------------------------|-------------|--|--|-----------------------------|
| | | some to be overwritten. The memo stated that a report detailing a description of the system failure was beyond the scope of the base contract. | | |
| Exhibit 117 | 04/01/99 | E-mail from Michael Ritter to Yiman Salim, Robert Haas, John Spriggs, and Sandra Golas asking them a series of questions about when the Mail2 server problem started and when it was resolved. He requested responses from each by 4/2/99. | E0833 and E0834 | |
| E1194 | 04/01/99 | E-mail from Benjamin Kirby to Adam Greenstone, Daniel Barry, others, stating the millennium account was not subject to records management. | | |
| Exhibit 66 | 04/02/99 | E-mail from Yiman Salim to Michael Ritter about the Mail2 issue. She stated that NG personnel became aware of the Mail2 problem on June 12, 1998, and that the cause of the problem, writing Mail2 as MAIL2, was identified a couple of days later by John Spriggs. She also noted that the problem was inherent in the ARMS process because it "is currently enforcing server name case sensitivity." The message also stated that in December 1998 NG initiated a task to baseline the Notes/ARMS interface program. Completion was scheduled for April/May 1999, after which programming changes could be made as needed. | Exhibit 117 | |
| Exhibit 71 | 04/02/99 | E-mail from Michael Ritter to Joseph Vasta. This e-mail explains the Mail2 server problem in detail. It also mentions that NG staff have identified a similar problem on MAIL1 that was also caused by human error. The message stated that an employee of the contractor PRC designed a program to migrate user accounts to the Notes server, and this program entered the users with the improper server name syntax. | | |
| Exhibit 44 | 04/09/99 | Meeting notice from Karl Heissner about records management of all Mail2 and MAIL1 server accounts. This notice stated that Mail2 and MAIL1 servers still contain "unrecordsmanaged" accounts, preventing the recycling of backup tapes. The objective was to make necessary corrections by April 18. | | |

Appendix II: Chronology of E-mail Malfunctions

| Reference* documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|-----------------------------|-------------|---|---|------------------|
| Exhibit 125 | 04/09/99 | Series of e-mails describing Letter D malfunction. Marvin Miller e-mails to Robert Whiteman and Yiman Salim that the Letter D malfunction was caused in 11/98 when NG was correcting a Lotus Notes buffer overflow system failure. The user accounts (sorted by first initial/last name) were distributed among five Notes/ARMS interface e-mail server views, so that all 26 letters of the alphabet were assigned to one of the 5 views. "The letter 'D' was inadvertently omitted and the letter 'J' was added twice." This caused all users on all e-mail servers whose first names began with D to not be subject to records management. | Exhibits 13, 79, documents E3218, E3219 through E3221, and E3222 through E3229 | |
| E3219 through E3221 | 04/15/99 | Memo from Robert Whiteman (NG) to Dorothy Cleal describing events regarding the Letter D malfunction. It stated that a Notes/ARMS interface e-mail server system failure occurred in November 1998, which was caused by a configuration error. In correcting the failure, NG reconfigured the Notes/ARMS interface views on Lotus Notes e-mail servers and "inadvertently omitted" the letter D from the views, causing incoming non-Notes e-mail for users with first names beginning with D not to be subject to records management. According to the memo, the Lotus Notes team reported this to NG management on 04/09/99. Mr. Whiteman recommends not recycling tapes until the problem was resolved and to include the saved tapes in the ongoing e-mail recovery effort. | Exhibit 79, documents E3218, and E3222 through E3229 | |
| E3218 | 04/15/99 | Memo from Dorothy Cleal, through Michael Lyle, to Mark Lindsay regarding the Letter D. The memo stated that 191 users were affected and who have not had e-mail records-managed since November 1998. Cautions that "...records management problem may not be limited to this particular error." | Exhibits 13 and 79; documents E3218, E3219 through E3221, and E3222 through E3229 | |
| Exhibit 79, E3222 | 04/15/99 | Cover memo from Eric Ritter to Dorothy Cleal with attached listing that shows the 191 users impacted by the Letter D malfunction—54 on MAIL1, 77 on Mail2, 29 on MAIL3, 30 on MAIL5, and 1 on RDS1. | Exhibits 13, 125; documents E3218, E3219 through 3221, and E3222 through E3229 | |
| Exhibit 99 | 04/20/99 | This e-mail from Joseph Kouba stated that a "legal determination [was needed] that reconstruction is required by the court case and that this is a legitimate use of Armstrong funds." | | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|----------------------------|-------------|--|---|------------------|
| E7265 through E7268 | 04/28/99 | E-mail from Robert Whiteman to Marvin Miller, Robert Haas, Yiman Salim and others requesting review of Lotus Notes self evaluation for 10/98 to 04/99. It stated that Notes staff began analysis phase of the Notes/ARMS interface task. During this analysis, staff identified a records management problem (Letter D malfunction) and were researching viable solutions. | | |
| E1235 and E1236 | 05/17/99 | Report explaining e-mail audit agents that run on Notes servers and search for unrecorded mail and incorrect mail templates. It recommends running audit agents weekly and providing logs to Mr. Barry. It also recommends resuming tape recycling. It stated that "it would not be possible to recycle any back-up tapes that were created prior to the (managed date) completion of the correction and verification of the system...". | Exhibit 47 | |
| Exhibit 38 | 05/21/99 | E-mail from Michael Ritter to Albert Leister regarding the Mail2 Statement of Work (SOW). "This is actually from September '98. Still no action on...or response from...the gov't." | | |
| Exhibit 118 | 05/21/99 | E-mail from Albert Leister Jr. to Dorothy Cleal stating that the "...backup tapes are in the DC [data center]." | | |
| E0793 | 05/21/99 | E-mail from Marvin Miller showing a schedule to run various Notes agents. One scheduled for 05/25/99 was to "fix letter 'D' and letter case problem. Records will be managed from this point on." | | |
| E4483 | 06/04/99 | E-mail from Albert Leister to Dorothy Cleal reporting that the Notes audit agents indicate all documents requiring records management were managed properly and the agents run weekly ".... to insure no new errors surface." The e-mail noted that audit logs were given to Karl Heissner and requests personal direction to resume tape recycling. | | |
| E0798 | 06/09/99 | E-mail from Yiman Salim stating that "...the [Notes/ARMS interface] views, in the Name and Address Book, need to be modified to make the selection criteria non-case sensitive." The Notes/ARMS interface scanning process had skipped a user account (that was not in use) because the name started with lower case. "A CMC [configuration management change] has been submitted to implement this modification." | | |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|----------------------------|-------------|--|---|------------------|
| Exhibit 6 | 01/13/00 | Briefing materials for 1/19/00 meeting with the National Archives and Records Administration regarding e-mail issues. It mentions Mail2 and Letter D configuration issues. It stated that Mail2 affected 526 users and Letter D affected about 200 users. | | |
| Exhibit 130 | 01/21/00 | Chronology of Mail2 server events and impact, labeled "Tony" in upper right-hand corner. It discusses the problem and plan of action. It also identified the magnitude of e-mails being researched as encompassing 850 tapes, and that some tapes contain classified data. The plan of action says that Enterprise Computing Solutions Technology, Incorporated (ECS), an 8a firm, has prior experience and was currently on-site for the Armstrong effort. | | |
| E4337 through E4338 | 02/01/00 | E-mail from Daniel Barry to Michael Sullivan with comments on an attached draft request for proposals (RFP) for NG to bid on recovery of lost e-mails. Barry comments that a subcontractor to Information Management Consultants, Incorporated (IMC), had developed the original Notes/ARMS interface code in 1996. The e-mail stated that the Notes/ARMS interface transitioned to NG in 1997/1998. The system broke in late 1998 because it could not handle increased user population when migrating from All-in-1 [the previous e-mail system] to Notes, causing the Letter D problem. The RFP requests a proposal from NG by 02/15/00, and stated that NG caused the problem and that "...corrective action should be at no-cost to the Government." Barry asks if it was "fair and equitable" to hold NG accountable for fixing bugs in the software developed by the IMC subcontractor. | E5978 through E5979 | |
| E1393 | 02/25/00 | Handwritten notes stating that some tapes included in the tape recovery effort were classified as confidential or secret. | | |
| E1394 | 02/25/00 | Handwritten notes of an interview about "Bob's -- Mail issue," which state that backup problems were experienced due to going from a File Allocation Table (FAT) system to a Windows NT File System (NTFS). An accompanying timeline shows the backup problem existed from the beginning of the Mail2 problem (10/96) until about 11/97. | Exhibit 9, E1022, and E6552 | |

**Appendix II: Chronology of E-mail
Malfunctions**

| Reference documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|----------------------------|-------------|---|---|------------------|
| E3237 | No date | Document entitled <i>Tape Reconstruction Procedure Outline</i> stated that 850 tapes were involved in the recovery effort. | | |
| E4349 through E4354 | 02/29/00 | <i>Ontrack Computer Evidence Services' Statement of Work and Proposal for Services</i> proposes a cost of \$436,000 plus expenses and 55 days to copy and catalog 800 tapes at the EOP, which would require acquisition of 11 computers. It would cost \$348,000 and 55 days to perform the work at Ontrack's facility, which was fully equipped. Pricing for data recovery varied depending on four categories of optional services. | | |
| E3247 through E3248 | 03/01/00 | E-mails between John Spriggs, Albert Leister, Terrence Misich, and William Burkey regarding backup tapes. Magnitude of tapes revised by Burkey to 3,391, including 283 "miscellaneous tapes." Spriggs stated that "we really do not have any good evidence of what backup [device] was actually backing up Mail2 on any given date." Leister identified three boxes of tapes containing 1,006 8-mm tapes and 51 DLTapes as definite to search and identified another three boxes containing 503 8-mm tapes as "possible," for a total of 1,560 tapes. The tapes consist of 4-mm, 8-mm, and DLTape media spanning intermittent periods from 1/96 to 6/99. The tapes reportedly contained backup of Office of Management and Budget (OMB), White House Office, and other EOP agency servers, including Mail2. | | |
| Exhibit 46 | No date | Timeline for ARMS-related activities (Development Tasks, Problem Discovery and Problem Fixing). It lists the Mail2 problem as discovered on 6/12/98 and fixed on 11/22/98. The Letter "D" was problem discovered on 4/9/99 and fixed on 6/1/99. | | |
| Exhibit 9 | No date | Draft <i>Talking Points on the Mail2 Server Anomaly</i> stated that incoming e-mails exist on backup tapes, "...except for a small window of time from 8/96—11/97 when, due to a glitch in the backup software, the mail files may not have been backed up on a consistent basis." | E1022, E1394, and E6552 | |
| E1040 through E1041 | 03/10/00 | Memo from Terrence Misich to Jack Young, General Counsel/OA. It stated that he "visually | E1015 through E1021 | |

Appendix II: Chronology of E-mail Malfunctions

| Reference ^a documents | Date | Description of event ^a | Cross-reference to other documents listed in this table ^a | Comments ^a |
|-------------------------------------|----------|---|--|---|
| Exhibit 13 | 03/14/00 | <p>scanned 14 boxes of magnetic media, containing 3,391 magnetic tapes of various types" and that a number of tapes do not have external labels and some may have erroneous external labels. Mr. Misich recommends the performance of the first phase of the Tape Restoration Plan.</p> <p>Cover note from Yiman Salim with attached audit log files from May 8 and 9, 1999, for EOP mail servers Mail2 and MAIL1 showing unrecorded documents. According to the logs, in May 1999, both Mail2 and MAIL1 had four user accounts each with server name syntax errors causing unrecorded mail dating back to 1997. The logs also show 126 users affected by the "Letter D" malfunction (70 on Mail2 and 56 on MAIL1).</p> | Exhibits 37, 44, 71, 79 and 125. | Logs show that about 5 months after the Mail2 fix was implemented, Mail2 still had four user accounts with syntax errors and unrecorded mail dating back to 1997-1998. Also, MAIL1 had four user accounts with syntax errors in this same time frame. |
| E1015 through E1021 | 03/15/00 | <p>A document entitled <i>Draft Tape Restoration Plan</i> revised to include new data from ECS. It stated that 3,391 tapes were involved in the recovery effort and attributes the Letter D malfunction to a "...software failure." It also attributes the Mail2 malfunction to case sensitivity. It stated that "work associated with this data recovery began almost as soon as the problem was discovered." The draft plan mentioned that the work was not begun in October 1998 when the SOW was developed for NG because of Year 2000 efforts, so the recovery was postponed to March 2000. In February 2000, OA "...began exploring alternatives," and received an estimate from one company of \$436,000 and 55 days to extract mail from 850 tapes. The draft plan extended these estimates to \$1,744,000 and 220 days for 3,391 tapes. The draft plan also stated that another vendor, familiar with ARMS, estimated \$3,286,596 and 1.7 years.</p> | Exhibit 72, E1363 through E1375, and E0776 | |
| E1022 | No date | <p>Hand-drawn timeline of e-mail malfunctions. Shows October 1996 to October 1997 "backup tapes missing, FAT to NSF file...Fixed." August 1998 "ARMS research to fix Mail2 - discover they cannot." November 20, 1998, Mail2 stop bleed, tape recycling starts November 21. April 9, 1999, D problem identified, stopped tape recycle. May 21, 1999, "stopped D-bleed".</p> | E1394, E6552, and Exhibit 9 | In its comments on a draft of this report, EOP stated that "... tapes were not recycled from June of 1998 until June of 1999." |

Appendix II: Chronology of E-mail Malfunctions

| Reference documents | Date | Description of event* | Cross-reference to other documents listed in this table* | Comments* |
|---------------------|----------|---|--|-----------|
| Exhibit 57 | 03/17/00 | <p>Fax from Beth Nolan, White House Counsel, to The Honorable Dan Burton, stated, "In January 1998, Daniel Barry....noticed a possible anomaly within ARMS...that some incoming e-mails might be missing....Mr. Barry notified his superiors and documented his finding...The full extent of the error causing the anomaly Mr. Barry noted was not discovered until June 1998, when NG employees discovered....certain incoming e-mail messages that were coded as "unrecorded"....The contractor notified IS&T personnel....By the fall of 1998, NG technical personnel working with IS&T staff discovered that the problem was due to miscoding 'Mail2' as 'MAIL2.' They further determined that the miscoding affected 526 ARMS-managed accounts.... By November 1998, the NG and IS&T personnel had corrected the problem...." prospectively</p> <p>"...incoming e-mail to ARMS-managed accounts with the first names beginning with the letter 'D' had not been recorded by ARMS since November 1998. It appears that this error remained undetected until April 1999...."</p> <p>Approximately 200 accounts within EOP were affected.</p> <p>"In the course of gathering these preliminary facts concerning these configuration errors, we were informed this week that e-mails on the server of the Office of the Vice President (OVP) have not been fully managed by ARMS."</p> | Exhibit 50 | |

*References are to the House Committee on Government Reform exhibits used at the March 2000 hearings; additional documents provided to the Committee are identified by an "Exxxx" scheme. Bracketed items within the "Description of Event" column and the "Comments" column have been added by us for readability and clarification.

Appendix III: Key Officials Involved in Primary Mail2 and Letter D Events

Executive Office of the President Federal Staff, October 1996 Through June 1999:

Virginia Apuzzo, former Assistant to the President for Management and Administration

Daniel A. "Tony" Barry, Computer Specialist, Office of Administration (OA)/Information Systems and Technology Division (IS&T)

Mark Bartholomew, Web Development, OA/IS&T

Paulette Cichon, former Deputy Director, Information Management, OA

Dorothy Cleal, former Associate Director, OA/IS&T

Laura Crabtree, former Desktop Systems Branch Chief, OA/IS&T

Nellie Doering, Records Management, OA/IS&T

Kathleen Gallant, former Associate Director, OA/IS&T

Sheryl Hall, former Computer Specialist, OA/IS&T

Karl Heissner, Systems Integration and Development Branch Chief, OA/IS&T

Joseph Kouba, Budget Analyst, Financial Management Division

Mark Lindsay, Assistant to the President for Management and Administration, former General Counsel, OA, and former Director, OA

Michael Lyle, Director, OA, and former General Counsel, OA

Cheryl Mills, former Deputy Counsel to the President

Terrence Misich, Chief Warrant Officer 5, U.S. Army, on detail from White House Communications Agency to OA/IS&T, Tape Restoration Project Manager

Beth Nolan, Counsel to the President

Bruce Overton, Deputy General Counsel, OA

DeVere Patton, Contracting Officer's Technical Representative (COTR) for the Northrop Grumman Contract

**Appendix III: Key Officials Involved in
Primary Mail2 and Letter D Events**

John Podesta, Chief of Staff

Ada Posey, former Director, OA

Charles Ruff, former Counsel to the President

Michael Sullivan, Deputy Associate Director for General Services Division,
OA

Christina VanFossan, Director, Financial Management Division

James Wright, former COTR for the Northrop Grumman contract, and
Data Center Branch Chief, OA/IS&T

**Northrop Grumman
Contract Staff From
Contract Award in
October 1997 Through
June 1999:**

Sandra Golas, VAX System Administrator

Robert Haas, Lotus Notes E-mail System Administrator, Lotus Notes team

Steve Hawkins, former Project Manager

Betty Lambuth, CEEXEC (a subcontractor to Northrop Grumman), former
Lotus Notes team manager

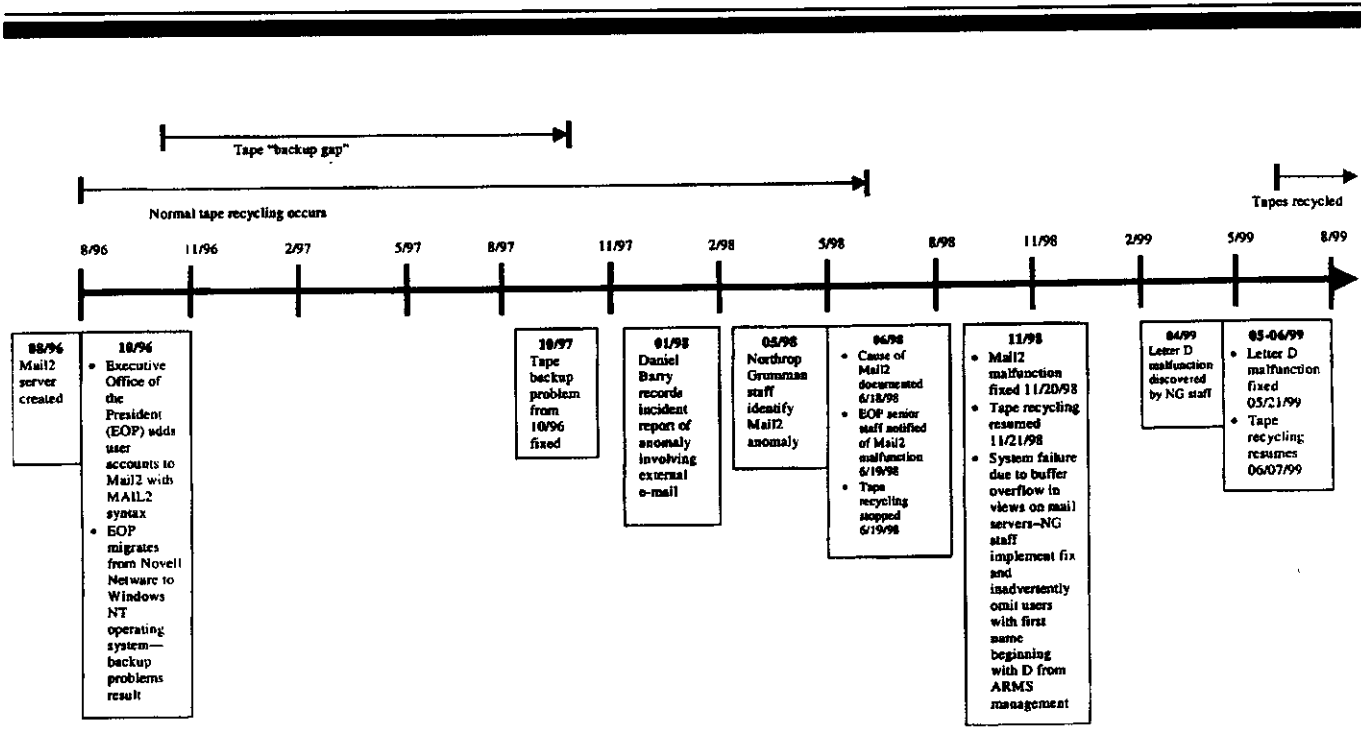
Joseph Lucente, Director of Contracts and Subcontracts

Yiman Salim, Lotus Notes Developer, Lotus Notes team

John Spriggs, Senior Engineer

Joseph Vasta, former Program Manager

Appendix IV: Time Line of Key Events in the Mail2 and Letter D Malfunctions



Source: GAO compilation of documents provided by EOP to the House Committee on Government Reform.

Appendix V: Itemization of Budgeted Cost for the Tape Restoration Project

| Cost element | Description | Estimated cost |
|-----------------------------|--|---------------------|
| ECS contract: | Restoration of e-mail messages not recorded in ARMS | |
| Phase I | Task 1: Develop a detailed project plan | \$ 836,600 |
| | Task 2: Define, configure, acquire, and install required equipment | 862,300 |
| | Task 3: Develop a quality assurance and quality control program for the project | 217,600 |
| | Task 4: Develop, test, and refine tape recovery software | 742,600 |
| | Task 5: Test and validate recovery plan and software | 128,400 |
| Phase II | Task 6: Receive and inventory all tapes | 118,000 |
| | Task 7: Make two copies of each tape | 364,000 |
| | Task 8: Place original tapes in secure custody | 31,000 |
| | Task 9: Scan duplicated tapes into message recovery system | 337,000 |
| Phase III | Task 10: Process e-mail into searchable database | 92,400 |
| | Task 11: Remove duplicate e-mail messages and prepare for transfer to ARMS | 93,000 |
| | Task 12: Place duplicate e-mail messages into a searchable database | 105,400 |
| | Task 13: Process classified tapes as above | 208,000 |
| | Task 14: Deliver final products | 80,000 |
| | General and administrative expenses and other direct costs | 909,529 |
| ECS total: | | \$5,125,829 |
| Vistrionix contract: | Independent validation and verification of tape restoration | |
| Phase I | Tasks 1 through 5 (see above) | \$ 465,483 |
| Phase II | Tasks 6 through 9 (see above) | 1,078,233 |
| Phase III | Tasks 10 through 14 (see above) | 450,103 |
| Vistrionix total: | | \$1,993,819 |
| Other costs: | Other restoration costs | |
| AAC Associates contract | Advice on recovery of OVP e-mails | \$900,000 |
| Vendor not determined | Forensic analysis and recovery of broken or unreadable tapes | 2,092,400 |
| Vendor not specified | Additional hardware, software licenses, and 12,000 tapes for two sets of tape copies | 498,480 |
| Not applicable | Project overrun contingency | 1,098,891 |
| Other costs totals | | \$4,589,771 |
| Total | | \$11,709,419 |

Source: Tape restoration project cost estimate report prepared by Vistrionix, Incorporated, for the EOP in July 2000.

Appendix VI: Comments From the Office of the Former Vice President

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

OFFICE OF THE FORMER VICE PRESIDENT
THE HONORABLE AL GORE

April 11, 2001

Mr. Joel C. Willemsen
Managing Director
Information Technology Issues
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Willemsen:

Enclosed please find the comments of the Office of Former Vice President Al Gore on the General Accounting Office (GAO) draft report entitled *Electronic Records: Clinton Administration's Management of Executive Office of the President E-mail System* (hereinafter "the Report").

I was not principally responsible for the information flow related to GAO's inquiry into EOP e-mail management during the former administration. Therefore, I have compiled the following comments in consultation with members of the former administration who were responsible for preparation of responses to the GAO inquiry. The comments below are divided into two sections: "General Commentary" and "Line by Line Commentary."

General Commentary

While the Report chronicles several miscommunications among EOP components related to e-mail system support and records management, it fails to state explicitly that there is absolutely no evidence of any attempt by OVP or EOP personnel to deliberately fail to preserve any documentary material or inappropriately withhold information from any investigative body. Considering the nature of some of the allegations that have been made in relation to this matter, the interests of fairness dictate that this fact should be made explicit.

Another point that does not come through in the current draft of the Report relates to the ARMS system. ARMS did not exist before the EOP contracted to have it created early in the former administration. While EOP and OVP personnel may have come to know that ARMS was searchable, ARMS was not created for this purpose. ARMS was created to capture and preserve e-mail as a method of compliance with the Federal Records Act (FRA) for EOP components governed by it. ARMS was not used as a subpoena and document request compliance tool until sometime much later in the administration. The ARMS system was *sui generis* and, therefore, it would be difficult to

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Appendix VI: Comments From the Office of
the Former Vice President

measure technical problems integrating new EOP components and software systems into ARMS against "best practices." Best practices, as they relate to the unique ARMS system, continue to evolve. In fact, the former administration's experiences with ARMS, some of which are chronicled in this Report, should serve to help develop the best practices as they relate to ARMS technology and its intersection with the Presidential Records Act (PRA) and the FRA.

Line by Line Commentary

The following is a list of specific textual changes urged by the Office of the Former Vice President to be incorporated into the final Report. Each comment in this section begins with a location of the text in question in a parenthetical. Bold typeface denotes recommended textual insertions and ~~strikethrough~~ typeface denotes recommended textual deletions.

Now on p. 1.
See comment 1.

(First p. 2, ¶ 1, 2nd sentence) To be accurate, the sentence should read: "...require the EOP to preserve certain official records, including e-mail **qualifying as presidential or vice presidential records.**"

Now on p. 1.
See comment 2.

(First p. 2, ¶ 1, 3rd sentence) The PRA does not require that presidential records are "available for use in the course of official duties." Rather, the PRA requires that presidential records be preserved and transferred to the custody of the Archivist of the United States upon the termination of the President and Vice President's term in office. See 44 U.S.C. Chapter 22.

Now on p. 2.
See comment 3.

(Second p. 2, carryover ¶) GAO requested to physically inspect randomly sampled paper files within the OVP on the week of December 11, 2000. This request either misunderstood that the OVP did not have a central filing system for printed out e-mails or it was an overly broad request to review OVP files without regard to any specific subject matter. These OVP objections were raised with GAO through then-OA personnel at the time yet GAO made no effort to refine its request or explain why its original request served a properly circumscribed purpose.

Now on p. 2.
See comment 4.

(Second p. 2, 1st full ¶) As discussed in the "General Commentary" section, while ARMS is searchable, it was not created for that purpose.

Now on p. 2.
See comment 5.

(Second p. 2, 2nd full ¶) As discussed in the "General Commentary" section, "best practices," as they relate to the unique ARMS system, continue to evolve.

Now on p. 2.
See comment 6.

(Second p. 2, 2nd full ¶, 3rd Sentence) To be accurate, the sentence should read: "The OVP discontinued this approach at some point after May 1993—in the mistaken belief that the e-mail records were being archived in ARMS and that ~~another IS&T, the division of the Office of Administration that performed that function for other EOP components, was managing the backup tapes.~~"

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Appendix VI: Comments From the Office of
the Former Vice President

Now on p. 2.
See comment 7.

(Second p. 2, 2nd full ¶, 4th sentence) To be accurate, the sentence should read: "The OVP could not demonstrate that all e-mail records..."

Now on pp. 2 to 3.
See comment 8.

(Second p. 2, 2nd full ¶, 5th sentence) To be accurate, the sentence should read: "As a result, about 600 system backup tapes needed restoration to determine if any non-archived e-mail records existed on the tapes."

See comment 9.

(p. 3, 2nd full bullet point) To be accurate, the sentence should read: "Legal and Congressional scrutiny of the e-mail malfunctions..."

Now on p. 4.
See comment 10.

(p. 3, 1st full ¶ in "Background" section, 1st sentence) To be accurate, the sentence should read: "...adequately record their official acts, maintain ~~all such~~ certain official records, and transfer custody of such records..."

Now on p. 5.
See comment 11.

(p. 4, footnote 1, second sentence) We do not agree with the assertion that "system backup tapes are not to be used for recordkeeping purposes." Upon what authority does GAO base this assertion?

Now on pp. 5 to 6.
See comment 12.

(p. 4, 1st full ¶ following bullet points) This paragraph does not make it clear that the FRA does not apply to the Office of the Vice President. Certain official records generated by the Office of the Vice President are subject to the PRA. See 44 U.S.C. § 2207. Therefore, as it relates to the assertion in footnote 2, OVP vice presidential records were transferred to the custody of IS&T for the limited purposes of e-mail system administration and records management and those records did not become federal records at any time. For example, vice presidential e-mail records in the custody of IS&T for these limited purposes were not subject to the Freedom of Information Act requests, whereas OA federal records were so subject.

Now on p. 7.
See comment 13.

(p. 5, 4th full ¶ in "History Surrounding..." section, 5th sentence) This sentence fails to recognize that ARMS was not created for the purpose of subpoena compliance. Therefore, to be accurate, the sentence should read: "The ARMS database maintained e-mail records in a searchable format which came to ~~support~~ facilitate EOP's responses to document requests and subpoenas ~~sometime much later in the administration.~~"

Now on p. 9.
See comment 14.

(p. 7, 2nd full ¶ in "The OVP Did Not..." section, 1st sentence) To be accurate, the sentence should read: "During a ~~portion~~ of the administration, the OVP was responsible..."

Now on p. 10.
See comment 15.

(p. 7, 2nd full ¶ in "The OVP Did Not..." section, 3rd sentence) To be accurate, the sentence should read: "However, the OVP and IS&T did not effectively communicate ~~its requirements~~ which office was responsible for management of its OVP e-mail records and the OVP then assumed that records management responsibility also transitioned to the Office of Administration as was true for other EOP components."

Now on p. 10.
See comment 16.

(p. 7, 2nd full ¶ in "The OVP Did Not..." section, 4th sentence) To be accurate, the sentence should read: "~~According to the EOP Likewise,~~ the Office of Administration..."

Comments on the GAO E-mail Report
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Appendix VI: Comments From the Office of
the Former Vice President

Now on p. 10.
See comment 17.

(pp. 7-8, carryover sentence) To be accurate, the sentence should read: "This mistaken belief was based on the precedent that ARMS managed e-mail records for all other EOP components since its implementation in 1994, on the fact that searches of ARMS produced OVP e-mail records, and on the observation that some outgoing OVP e-mails were in fact being ARMS managed."

Now on p. 10.
See comment 18.

(p. 8, in between the 2nd and 3rd full sentences) This paragraph would be more accurate if the following sentence were added: "These records, however, are being restored as part of the Tape Restoration Project."

Now on p. 10.
See comment 19.

(p. 8, 3rd full sentence) GAO requested to physically inspect randomly sampled paper files within the OVP on the week of December 11, 2000. This request either misunderstood that the OVP did not have a central filing system for printed out e-mails or it was an overly broad request to review OVP files without regard to any specific subject matter. These OVP objections were raised with GAO through then-OA personnel at the time yet GAO made no effort to refine its request or explain why its original request served a properly circumscribed purpose.

Now on p. 10.
See comment 20.

(p. 8, 1st full ¶, 1st sentence) To be accurate, the sentence should read: "Although the OVP did not continually retain paper copies of some e-mail records not captured by ARMS in accordance with EOP policy..."

Now on p. 10.
See comment 21.

(p. 8, 1st full ¶, 2nd sentence) To be accurate, the sentence should read: "According to the EOP, however, because these OVP backup tapes were retained for system recovery and not records archival only, they were not in a text-searchable format."

Now on p. 11.
See comment 22.

(p. 8, 2nd full ¶, last sentence) To be accurate, the sentence should read: "However, because the OVP and OA IS&T miscommunicated during the transfer of operation and maintenance of the OVP e-mail system did not ensure the preservation of e-mail records, in paper electronic form, presidential records may have been irretrievably lost."

Now on p. 11.
See comment 28.

(p. 8, footnote 9, 2nd to last sentence) To be accurate, the sentence should read: "Some Senate OVP staff used..." The OVP correspondence office, located in the Senate, used a different system, however the OVP legislative affairs office, also located in the Senate, used the same system as the rest of the OVP.

Now on p. 14.
See comment 24.

(p. 11, 1st full ¶, 2nd sentence) To be accurate, the sentence should read: "Such a monitoring program should include evaluations of the creation identification of presidential and vice presidential records, maintenance and use..."

Now on p. 16.
See comment 25.

(p. 12, last full ¶) This paragraph does not adequately reflect the rationale EOP gave for not releasing copies of those 30 letters. As a matter of policy, where possible the EOP did not cross-pollinate its communications with various investigative bodies as a means of maintaining the confidentiality of the legitimate interests and investigative priorities of

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**Appendix VI: Comments From the Office of
the Former Vice President**

Now on p. 16.
See comment 26.

those respective investigative bodies. This policy was communicated to GAO at the time by then-EOP staff.


(p. 13, Conclusion) As discussed in the "General Commentary" section above, the Report makes no mention of the fact that there is no evidence whatsoever of any intent not to preserve presidential records or to inappropriately withhold responsive documents from investigative bodies. Considering the Report's criticism of EOP management practices, such an explicit statement is required in the interests of fairness.

* * *

Please do not hesitate to contact me with additional draft versions or if you would like to discuss the contents of these comments further. I can be reached at the transition office directly at 703.235.0409.

Thank you very much.

Sincerely,



Andrew M. Wright, Esq.
Counsel to the Former Vice President

Comments on the GAO E-mail Report
Page 5 of 5

The following are GAO's comments on the office of the former Vice President's letter, dated April 11, 2001.

GAO Comments

1. We revised the report to include the word "certain," but did not incorporate the remaining text as suggested by the Office of the former Vice President. The "certain" records that the report states are "deemed official government records" are those incoming e-mail messages not captured by the Automated Records Management System (ARMS) due to the malfunctions. These records consisted of both presidential/vice presidential and federal records.
2. We revised the report to reflect the technical clarification provided.
3. We submitted written questions to the Office of the Vice President (OVP), through the Executive Office of the President (EOP), on September 14, 2000, in which we asked if, and how, the OVP implemented the portion of the 1997 EOP policy which stated that staff "[m]aintain Presidential Records in organized files." In its November 14 response, the OVP stated that OVP staff implemented the requirements of the statute by maintaining presidential records "in organized files." In follow-up, we submitted another set of written questions to the OVP, through the EOP, on November 30. At this time, our request was to "[p]lease provide a list of all OVP staff who maintain the organized files of hard copy OVP records as mentioned in the EOP response. We would like to physically observe the files of randomly selected OVP staff and would like to arrange for this observation during the week of December 11, 2000." Our purpose in reviewing the files of selected staff was to respond to the House Committee on Government Reform's request that we determine whether OVP implemented adequate practices in accordance with applicable criteria for management of e-mail records. The intent of our request was to confirm the existence of e-mail records in such files and not to examine the text of the records contained therein, as explained verbally to the EOP Office of Administration General Counsel on numerous occasions during December 2000 and January 2001. We were not provided a contact within OVP with whom to discuss the request. The OVP did not respond to our request in writing until 6:49 p.m. on January 19, 2001, at which time OVP's response was that the OVP did not maintain a centralized filing system. In its response, OVP may have confused the word "organized" in our request with "centralized." Several hours after we were provided OVP's response, the administration had transitioned

and the records were in the process of transfer to the National Archives and Records Administration.

4. A key feature of an electronic recordkeeping system is that records be retrievable. To facilitate retrieval of records, the recordkeeping system must index records and contain fields that can be searched.
5. Best practices for management of records currently exist in the form of National Archives and Records Administration guidance contained in title 36 of the Code of Federal Regulations (CFR). Even though the majority of this guidance is prescriptive only for federal records, it does not explicitly preclude application of these practices in the management of presidential/vice presidential records. Although the evolution of ARMS continues, the stability of generally accepted records management best practices establishes a control foundation for any system, whether manual or automated.
6. We revised the report to identify “another EOP component” as EOP’s Office of Administration.
7. We revised the report to reflect the technical clarification provided.
8. We revised the report to reflect the technical clarification provided.
9. The report was revised to reflect that external authorities other than those of law enforcement scrutinized the e-mail malfunctions.
10. We revised the report to incorporate the technical clarification provided.
11. Title 36 CFR, subpart 1234.24, Standards for managing electronic mail records, promulgates this standard (36 CFR 1234.24(c)).
12. The report provides a description of common federal standards for management and control of federal programs and systems. We did not imply that the application of such controls alters in any way the determination of whether a record is presidential/vice presidential or federal. The inclusion of this discussion was to emphasize that federal programs, such as records management programs, and systems, such as ARMS and the e-mail system, are subject to application of certain management controls. These controls ensure the effectiveness of programs as well as ensure that adequate integrity, confidentiality, and availability of electronic information resources are maintained. Both

the Presidential Records Act (PRA) and the Federal Records Act (FRA) require the implementation of management controls.

13. The new information provided in the Office of the former Vice President's comments on the draft has been incorporated into the report.
14. We revised the report to reflect the technical clarification provided.
15. Under the PRA, the Vice President (and thus OVP), was responsible for management of the Vice President's records. From the beginning of the administration, it retained the primary duty to implement records management controls, and thus, to either modify its records management practice to accommodate the system transition or to ensure that this responsibility was assigned to another entity.
16. We attribute this statement to EOP because it was taken from the White House memo to us on January 19, 2001, which stated that it provided EOP's responses to our questions submitted on November 30, 2000.
17. The new information provided by the Office of the former Vice President has been incorporated into the report.
18. The new information provided by the Office of the former Vice President has been incorporated into the report.
19. See our response to comment 3 above.
20. In its January 19, 2001, response to our written questions, the EOP stated that at some point between issuance of the May 1993 EOP policy and 1998, OVP ceased requiring the retention of paper copies of e-mail records. We were provided no evidence, or allowed to physically confirm, that some printed e-mail records were retained. Also, the EOP policy did not explicitly require that records be captured by ARMS, as indicated by the comment.
21. We revised the report to reflect the technical clarification provided.
22. As discussed in our response to comment 15 above, the OVP had a duty to ensure continual preservation of its vice presidential records, including ensuring that this responsibility effectively transferred to the Office of Administration.

23. We revised the report to reflect the technical clarification provided.
24. The characteristics described in the report are based on National Archives and Records Administration standards as presented in title 36 CFR. Creation of records is the manual or automated process during which a document is produced and is determined to qualify as a record. Identification is a part of this process in which there is recognition that a document is a record and a determination is made as to the type of record. The characteristics described pertain to the monitoring of both presidential/vice presidential and federal records.
25. We agree with the Office of the former Vice President's assessment; however, the only rationale that was provided to us, either orally or in writing, was that the letters were "deserving of respect and deference." We revised the report to incorporate the additional rationale provided in its comments to the draft report.
26. The Committee requested that we assess the adequacy of management controls over EOP's records management system, particularly as they relate to the numerous e-mail system malfunctions experienced by EOP since 1996. That assessment entailed the examination of management policies, programs, and practices as they related to effective records management controls and to the requirements of the PRA and FRA. Our review was not directed at assessing the intent of individuals responsible for preserving records and providing responsive records to investigative bodies. As such, we can offer no conclusions on this matter.

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White House officials say e-mail problem was not a high priority at end of 1999

Y2K computer fixes dominated White House's technical agenda

By Ian Christopher McCaleb/CNN

May 3, 2000

Web posted at: 5:08 p.m. EDT (2108 GMT)

WASHINGTON (CNN) -- The House Government Reform Committee restarted its series of hearings into the missing White House e-mails on Wednesday, with panel members grilling administration technical aides on just how much they knew about an estimated 246,000 lost electronic messages, and whether anyone had taken any action to suppress information about the problem.



Rep. Dan Burton

Committee Chairman Dan Burton (R-Indiana) and a handful of committee Republicans pressed Michael Lyle, director of the White House Office of Administration, and

Karl Heissner, a career civil servant who is an expert in computer databases, about when they learned there was a problem with the White House's e-mail archiving system, and why Congress wasn't notified.

"For almost two years, the White House knew subpoenas weren't being complied with," Burton said as the day's hearing opened. "Nothing was done about it until the Washington Times reported (the e-mail system problems) and this committee started interviewing people."

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Burton is exploring whether the White House deliberately withheld e-mails that had been subpoenaed or otherwise requested by his committee, as well as former Independent Counsel Kenneth Starr and Justice Department investigators.

The White House says the e-mails fell though the cracks when an its "automatic records management system," an electronic mail archiving system, failed.

White House officials blame a "disconnect" between their technicians, who diagnosed the e-mail problem, and their lawyers, who apparently did not understand that the problem might affect pending subpoena requests.



Michael Lyle, director of the White House Office of Administration

Burton and his fellow Government Reform Committee Republicans say they are trying to determine if more sinister forces were working to hide behind the computer foul-up, saying that many of those 246,000 e-mails are relevant to the investigations of the Monica Lewinsky matter, alleged campaign finance improprieties, the firing of a number of White House travel office employees, and other matters between 1996 and late 1998.

"The White House is behaving exactly the way they do when they know they've done something wrong," Burton said.

White House line upheld

In his testimony Wednesday, Lyle stood by previous arguments made by the White House that technicians, administrators and administration lawyers may have miscommunicated once the problem was diagnosed, and insisted that in his capacity as director of the Office of Administration, he was not necessarily concerned with the contents of subpoenas.

"I didn't know what was on the backup tapes, and I didn't know what was in the subpoenas," Lyle said in response to a

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Rep. Christopher Shays

challenge leveled by Rep. Christopher Shays (R-Connecticut), who said he was "blown away" that White House employees might not take such matters into account.

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The backup tapes Lyle referred to may contain the full compliment of e-mail messages that were not archived by the retrieval system. The White House, with the aid of contractors, will have to go back through those tapes -- perhaps six months worth -- to extract the missing e-mail messages.

Rather, Lyle said that the White House Office of Administration was knee-deep through most of 1999 - - after the e-mail problem has come to light -- in feverish efforts to make all White House computer systems "Y2K" compliant.

"We were in the midst of dealing with the Y2K crisis," Lyle said. "(That) was an extraordinary undertaking. Our main purpose was to ensure Y2K compliance."

Lyle's comments echoed those made to the committee more than a month ago by Mark Lindsay, an assistant to the president and director of White House management and administration.

Had his office not done that work, Lyle said, computer systems throughout the White House may have faced catastrophic failures on Jan. 1, 2000.

The Office of Administration was not able to turn its attention to correcting the e-mail problem, Lyle said, until the first quarter of 2000.

But Shays and other Republicans weren't satisfied.

"These e-mails are from some very interesting people," Shays said, indicating that many of the messages could be appropriate to several committee investigations.

"They include [secretary to President Bill Clinton] Betty

Currie, [Clinton advisor] Ira Magaziner" and others, he said.



Karl Heissner, center, with his attorney, left, and Michael Lyle, right (partially obscured)

Heissner was quizzed by panel Republicans on the contents of a document he wrote to Mark Lindsay, assistant to the president and director of White House Management and Administration, that urged Lindsay to "let sleeping dogs lie" when it came to discussions about the malfunctioning e-mail system.

While Burton and Rep. Bob Barr (R-Georgia) said that sentence could illustrate efforts within the White House to cover up the problem, Heissner insisted that the letter was being misinterpreted.

The phrase "let sleeping dogs lie," Heissner said, referred to funding granted by Congress to the Executive Branch during the yearly appropriations process. Heissner said he was telling Lindsay to not ask for extra funding to fix the problem, and the letter was intended to prep Lindsay prior to his appearance before either the House or Senate Appropriations Committee last year.

"I meant," Heissner said, "that we did not have to go before Congress to ask for funding to pay for the cost of information requests."

"That could be considered an obstruction of justice," Barr said in reference to the memo.

Panel Democrats take up the defense

Henry Waxman, the California Democrat who serves as the committee's ranking member, accused the Republicans of "impugning the integrity" of the witnesses in the faint hope of stirring up some evidence.

The committee, Waxman continued, has traced White House activity in the campaign finance, FBI files and Travel Office



Rep. Henry Waxman

matters, and has turned up next to nothing. Still, he said, it continues to rain requests for information down upon the White House, distracting employees from their regular daily tasks.

"You have spent [months] of your time working to honor requests put forth by this committee, Waxman said to Lyle and Heissner.

Rep. Harold Ford Jr. (D-Tennessee) apologized to the two witnesses because the panel was "pestering" them.

"We have become obsessed and intoxicated with the notion of investigating," Ford said.

Later in the afternoon, the Assistant Attorney General for Legislative Affairs, Robert Raben, told the committee that Attorney General Janet Reno was still considering whether to appoint an independent counsel in the e-mail matter.

"My official response is that we are continuing to work on it," Raben said. "No decisions have been made."

The hearings will continue Thursday, with an appearance by White House Counsel Charles Ruff.

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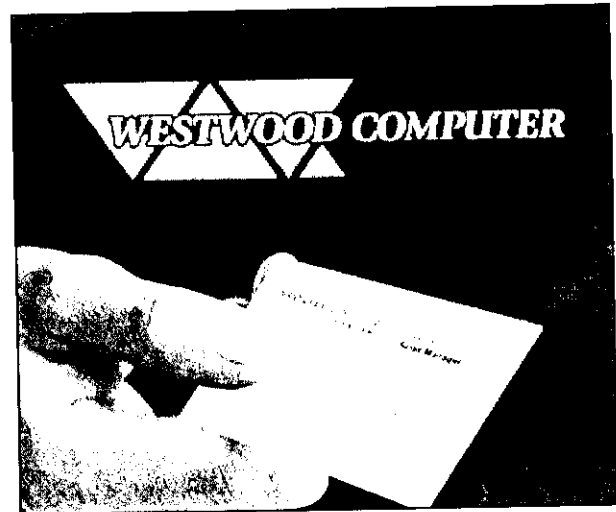
White House CIO will monitor, manage e-mail

June 4, 2001

BY TONY LEE ORR | GCN STAFF

President Bush intends to create a White House chief information officer position to oversee the executive office's systems, the General Accounting Office has reported.

A special assistant to the president, the director of the Office of Administration and other staff members met with GAO officials to discuss ways to avoid the e-mail problems that beset the previous administration. During the meetings, the White House officials revealed plans for improving electronic records management.



The new administration is developing and updating the executive office's policies for maintaining federal and presidential records, GAO said in a recent report.

Poor contractor oversight by the office staffs of President Clinton and Vice President Gore led to problems with archiving e-mail and left officials scrambling to recover years' worth of electronic documents.

The problems surfaced after congressional committees investigating potential campaign finance irregularities subpoenaed White House e-mail records.

Ineffective records management procedures compounded the problem by increasing the cost of the search, GAO said.

Some of the former administration's e-mail messages could be lost because of programming errors and miscommunications, GAO officials noted in *Electronic Records: Clinton Administration's Management of Executive Office of the President E-Mail System*.

"The office of vice president did not implement adequate records management practices to ensure that all e-mail records generated or received were preserved in accordance with applicable law and best practices," the report said.

The office staff never intentionally withheld information or purposely lost the e-mail records, said Gore's attorney, Andrew M. Wright. "Considering the nature of some of the allegations that have been made ... the interests of fairness dictate that this fact should be made explicit," he said.

Gore's staff stopped making copies and saving e-mail messages on tape backup some time after May 1993 because it assumed the White House's Automated Record Management System, which was not

actually installed until 1994, was archiving the messages, GAO said.

ARMS, a keyword-searchable database, worked with a legacy e-mail system until 1996, when it began archiving e-mail generated using Lotus Notes. The Office of Administration maintained four Lotus Notes e-mail servers, one remote server and one ARMS interface server, which transferred e-mail records from the e-mail servers to ARMS.

Clinton's office did not effectively monitor the management of e-mail records, GAO said. Although the former president's staff was aware of ARMS malfunctions that prevented e-mail capture from October 1996 to mid-May 1999, White House officials said they did not understand the scope of the problem until February 2000.

GAO concluded that White House staff members had failed in their legal responsibility to comply with federal records law by not properly maintaining and archiving e-mail.

Between October 1996 and May 1999, configuration errors prevented Internet e-mail from being properly archived [GCN, April 3, 2000, Page 1]. "Because the ARMS interface program did not recognize the uppercase spelling of the mail server name, it was unable to locate and capture new incoming e-mail messages for [some] user accounts," GAO said.

Too little, too late

Even though the malfunctions were discovered in June 1998 and fixed in November 1998, the White House said it did not realize until February 2000 that the glitch "had affected the integrity of White House document productions," GAO reported.

A configuration error made by the White House's contractor, Northrop Grumman Corp., during the MAIL2 repair caused another malfunction that prevented the capture of incoming Internet e-mail to users with first names starting with the letter "D."

Documentation was created for the capture process when the White House began using Notes. But both the system documentation and the source code were missing by 1997, GAO found. Until the source code was located in 1998 and another contractor recreated the system documentation in 1999, officials couldn't change the code or develop automated programs to monitor the interface, GAO said.

Free-lance writer Dennis Blank contributed to this report.

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EXHIBIT G

GOVEXEC.COMOUTLOOK
April 9, 2007

The E-mail Trail

By Alexis Simendinger, *National Journal*

On his second day as White House counsel in January, Fred Fielding said little when representatives of the National Archives and Records Administration suggested during a courtesy meeting that he might want to reissue guidance to President Bush's aides about how they should preserve e-mail messages as presidential records.

Such reviews are supposed to come frequently, to keep pace with staff turnover in the Executive Office of the President; especially during an administration's second term, comings and goings prompt refreshers on everything from ethics requirements to security practices.

In terms of fresh faces and added muscle, the counsel's office is itself a good example: Fielding is a newcomer, and Bush now has 17 in-house attorneys, up from 14.

Fielding is Bush's third White House lawyer, following in the footsteps of Texas loyalists Harriet Miers and Alberto Gonzales. Gonzales issued Bush's first e-mail policies as a records advisory in 2001, taking cues from guidelines used during the Clinton administration and set out in a 17-page pamphlet that the Archives compiled in 2000 for use by the incoming administration.

Deputy White House press secretary Scott Stanzel explained recently, "Employees are informed of the policy when they start work at the White House." And how is the policy described? "As you probably know, we don't share internal White House memos."

But sharing memos is exactly what House Oversight and Government Reform Committee Chairman Henry Waxman, D-Calif., has asked the White House to do. In a March 29 letter, Waxman told the president's counsel that the committee wants to see "all policies, guidance, and other communications provided to White House officials regarding the obligation to preserve e-mail records."

On April 4, Waxman asked the Republican National Committee to turn over e-mails sent to or received by White House Deputy Chief of Staff Karl Rove or other White House officials relating to the use of federal agencies or resources to help GOP candidates.

House Judiciary Committee Chairman John Conyers, D-Mich., has requested that the White House and the RNC produce materials, including e-mails, relevant to Congress's examination of the dismissal of eight U.S. attorneys.

National Journal previously reported that Rove and other officials frequently use RNC e-mail accounts instead of the White House system.

Asked on April 3 when he expected Fielding to respond to Congress, Joshua Bolten, Bush's chief of staff, told *NJ* that he did not know.

Waxman, Conyers, and Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., want to

learn more about White House and RNC e-mail records in connection with a host of ongoing and potential investigations.

RNC spokeswoman Tracey Schmitt said on April 4, "We are in contact with the committee and are in the process of responding." A meeting between RNC representatives and congressional investigators is expected next week.

The RNC's policy, Stanzel said, is to delete e-mails every 30 days, except for the e-mails of White House aides "who use the political e-mail accounts the RNC has provided them." David Almay, White House Internet and e-communications director, told *Computerworld* in March that the RNC's archive exception for White House e-mails began in 2004.

Almay said that White House computers block access to personal or other e-mail accounts to provide security and to preserve records deemed by law to be presidential. That policy does not address the use of BlackBerrys or other portable electronic devices, whether they are personally owned or provided to White House officials by the RNC or others.

One former White House political aide said he vaguely recalled receiving guidance about sending e-mail on an RNC-provided BlackBerry and using a gwb43.com e-mail account, but he had clearer memories of getting "a billion and one" White House ethics briefings.

The e-mail instructions, from Sara Taylor, director of White House political affairs, were meant to help aides juggle dual sets of communications devices to comply with the Hatch Act and the Presidential Records Act, and to use the RNC equipment and accounts "only for political activity."

The aide said that much of the work in his office was by definition more political than official, including coordination with White House advance teams about presidential travel; use of White House equipment for events; and communication with Republican campaign committees and candidates.

This document is located at <http://www.govexec.com/dailyfed/0407/040907ol.htm>

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EXHIBIT H

1 of 14 DOCUMENTS

THE NATIONAL JOURNAL

March 24, 2007

Whose E-Mail Is It?

BYLINE: Alexis Simendinger

SECTION: ADMINISTRATION

LENGTH: 815 words

HIGHLIGHT: Can the White House claim executive privilege to protect Karl Rove's e-mails sent on a Republican National Committee account?

White House Deputy Chief of Staff Karl Rove may have forfeited potential claims of executive privilege over the dismissals of eight U.S. attorneys -- if he communicated about the matter outside the White House e-mail system, using his Republican National Committee e-mail account or RNC equipment. Or at least that's a legal possibility posed by rapidly advancing electronic technology and the evolving work habits of busy White House officials.

The precise question has not been tested in court, said Chris Lehane, a former White House lawyer who helped defend President Clinton and Vice President Gore against subpoena-wielding Republican lawmakers.

"Do you really have a privilege argument if you use the RNC's e-mail system? This is not government-to-government conversation," said Lehane, now a Democratic consultant in San Francisco. "No one has ever raised the question as far as I know."

According to one former White House official familiar with Rove's work habits, the president's top political adviser does "about 95 percent" of his e-mailing using his RNC-based account. Many White House officials, including aides in the Political Affairs Office, use the RNC account as an alternative to their official government e-mail addresses to help keep their official and political duties separate. Although some White House officials use dual sets of electronic devices for that purpose, Rove prefers to use his RNC-provided BlackBerry for convenience, the former official said.

No original e-mails or documents created by Rove have emerged among the more than 3,000 pages of communications offered to Congress in its probe of the attorney firings, although several e-mails from other White House and Justice Department officials containing references to him were among the

documents provided.

Some White House officials, including Rove, use the RNC's gwb43.com e-mail domain (an abbreviation for George W. Bush 43). Communications originating from that RNC domain written by White House political affairs aide Scott Jennings to officials in the Justice Department appeared in the first batch of e-mails given to the House and Senate Judiciary committees last week. The Jennings e-mails stamped with the RNC domain, as well as e-mails from then-White House Counsel Harriet Miers and her deputy sent through the official White House system, were captured on Justice Department servers. Presidential privilege extends throughout the government, according to one expert with the National Archives and Records Administration who asked to remain anonymous, but the administration did not claim privilege for e-mails released to date between White House aides and Justice Department officials.

President Bush pledged this week to "release all White House documents and e-mails involving direct communications with the Justice Department or any other outside person, including members of Congress and their staff, related to this issue." The president, echoed by White House Counsel Fred Fielding in a March 20 letter to lawmakers, said that any congressional interviews with White House officials or voluntary surrender of e-mails and materials by the president will not disclose communications between or among White House officials. That would eliminate voluntary disclosure of possible e-mail discussions between Rove and Miers, and between Rove and Jennings or other White House aides who frequently use BlackBerry devices and may have conducted official White House business using their RNC e-mail accounts. Bush said on Tuesday that he would go to court, if necessary, to "oppose any attempts to subpoena White House officials."

If Rove or other White House officials used RNC e-mail to discuss the prosecutor firings or the subsequent controversy -- and if their discussions went to e-mail recipients who use the White House servers -- their communications are captured and would be considered presidential records owned by the American people for purposes of eventual public disclosure under the Presidential Records Act, by virtue of both subject matter and official position, according to the archives expert.

White House and RNC spokespeople did not respond to National Journal questions about Rove's use of the RNC e-mail system and the preservation of communications he created on its equipment. The former White House official, speaking on background, said that although the RNC had a policy to purge e-mails after a short period of time, Rove's e-mails on its system and those of a few other White House aides in sensitive positions were preserved by the RNC "to protect Karl." Even with a policy of deleting e-mails from servers, information-technology experts say, organizations rarely erase data entirely.

Congressional investigators, who authorized subpoenas this week, could demand that the RNC turn over all documents and materials that reference the prosecutors, including electronic records.

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LANGUAGE: ENGLISH

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EXHIBIT I

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Monday, July 09, 2001 8:42 PM
To: [redacted]ralston@aol.com
Subject: RE: Stayman

Great. Thanks.

-----Original Message-----

From: [redacted]ralston@aol.com [mailto:[redacted]ralston@aol.com]
Sent: Monday, July 09, 2001 9:25 PM
To: abramoffj@gtlaw.com
Subject: Re: Stayman

I heard today that OPP resolved the situation w/ State and worked out a deal that agreed to. 4 months is what they were shooting but it was finalized while I was away for the 4th of July.

GTG-R000207

5/8/2004

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Monday, July 09, 2001 7:49 PM
To: [REDACTED] raiston@aol.com
Subject: RE: Stayman

Great. Is this a new pronouncement since last week?

-----Original Message-----

From: [REDACTED] raiston@aol.com [mailto:[REDACTED] raiston@aol.com]
Sent: Monday, July 09, 2001 6:43 PM
To: [REDACTED]
Subject: Stayman

He'll be out in 4 months.

From: Ring, Kevin (Shld-DC-Gov)
Sent: Thursday, August 23, 2001 9:03 AM
To: Wilson, Padgett (AstDir-DC-Gov)
Subject: RE: FW: OIA

Anything we can find out about the guy. Jack is in turbo request mode.

-----Original Message-----

From: Wilson, Padgett (AstDir-DC-Gov)
Sent: Thursday, August 23, 2001 10:02 AM
To: 'ring' [REDACTED]
Subject: Re: FW: OIA

I'm outside picking up some breakfast. I'll be in in less than 10 mins. What kind of stuff do you need?

Padgett Wilson

-----Original Message-----

From: Ring, Kevin (Shld-DC-Gov) [REDACTED]
To: Wilson, Padgett (AstDir-DC-Gov) <[REDACTED]>
Sent: Thu Aug 23 09:30:39 2001
Subject: FW: OIA

Are you in? I need as much info on this guy ASAP!!!!

-----Original Message-----

From: Abramoff, Jack (Dir-DC-Gov)
Sent: Thursday, August 23, 2001 9:26 AM
To: 'ring' [REDACTED]
Subject: FW: OIA

Here's the guy. Let's get drilling.
Jack Abramoff

-----Original Message-----

From: Susan Ralston - @GWB [REDACTED] <Ralston@rncdq.org>
To: 'abramoff' [REDACTED]
CC: 'lane' [REDACTED]
Sent: Thu Aug 23 09:18:23 2001
Subject: OIA

Clark-Dean Horvath
Counterpart International inc
Worked for Ford, Carter, and Reagan at AID, SEA and Cost of Living Council

Susan Ralston

Please send all replies to [REDACTED]ralston@georgewbush.com

GTG-R001233

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Friday, October 05, 2001 7:49 AM
To: 'Susan Ralston - @GWB'
Subject: RE: FW: Resume of Lynn A. Drake M.D.

Thanks.

-----Original Message-----
From: Susan Ralston - @GWB [mailto:SRalston@rnchq.org]
Sent: Friday, October 05, 2001 6:56 AM
To: 'abramoff'
Subject: Re: FW: Resume of Lynn A. Drake M.D.

Not under serious consideration. [REDACTED] has a hold on her because she's too tied to industry.

Susan Ralston

Please send all replies to [REDACTED] ralston@georgewbush.com

-----Original Message-----
From: 'abramoff'
To: SRalston@rnchq.org <SRalston@rnchq.org>
Sent: Thu Oct 04 17:03:58 2001
Subject: FW: Resume of Lynn A. Drake M.D.

Hi there. Sorry about our meeting getting moved from tomorrow. I was wondering if you could help me track something? This is someone who is a possible FDA commissioner nominee. Can you find out any intel on her status? Please don't go too far out of the way, but anything you can find would be great. Thank Susan. See you next week. PS: I also copied this to your aol so you have the attachments if you need them.

-----Original Message-----
From: Lynn Drake [mailto:[REDACTED]]
Sent: Thursday, October 04, 2001 4:12 PM
To: abramoff
Subject: Resume of Lynn A. Drake M.D.

Dear Mr. Abramoff,

Thank you so much for talking with me today. Your advice and council was very much appreciated. For your convenience please find attached my resume and biosketch.

Sincerely,

Lynn A. Drake, M.D

Office [REDACTED]
Hospital [REDACTED]
Fax: [REDACTED]
Dermatology [REDACTED]
Mobile [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

GTG-R000305

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoffj] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Wednesday, November 28, 2001 6:25 AM
To: 'Susan Ralston - @GWB'
Subject: RE: Zack

Thanks Susan. I spoke with Lynn Scarlett at Interior who seems to be the person making the decision. She said that ideally they could find someone with experience and the right philosophy (which is Zack), but did not have political baggage (meaning that the island huns did not oppose him - but they do I guess). Her solution is to go slowly, which is prudent, but will almost certainly lead to a bad outcome, since Mark can only hold on so long (it's been 11 months that this has been going on). Thanks for helping me on this Susan.

-----Original Message-----

From: Susan Ralston - @GWB [mailto:ralston@rnchq.org]
Sent: Wednesday, November 28, 2001 7:05 AM
To: 'abramoffj@gtlaw.com'
Subject: Re: Zack

I don't think it is necessary. PFO knows Zack is a push already for KR. Let me chk something and get back to you.

Susan Ralston

Please send all replies to [redacted]ralston@georgewbush.com

-----Original Message-----

From: abramoff [redacted] abramoff [redacted]
To: [redacted]ralston@rnchq.org [redacted]ralston@rnchq.org
Sent: Wed Nov 28 06:58:42 2001
Subject: Zack

Hi there. Any use to my trying to get a meeting or quick phone call with Karl to ask his intervention in getting Zachares hired? They want to hire him, but are afraid since some of the bad guys in the islands won't like it. They just need to move forward and would do so if Karl would push them. Not having him in this position is starting to really kill us. What do you think?

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To reply to our email administrator directly, please send an email to [redacted]

GTG-R000540

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Wednesday, December 19, 2001 9:43 AM
To: 'Susan Ralston - @GWB'
Subject: RE: Zachares

Thanks. Try the cell first.

-----Original Message-----
From: Susan Ralston - @GWB [mailto:Ralston@rnchq.org]
Sent: Wednesday, December 19, 2001 10:28 AM
To: abramoff
Subject: RE: Zachares

I'll call you later.

Susan Ralston

Please send all replies to Ralston@georgewbush.com

-----Original Message-----
From: abramoffj@gtlaw.com <abramoffj@gtlaw.com>
To: Susan Ralston - @GWB [mailto:Ralston@rnchq.org]
Sent: Wed Dec 19 10:13:44 2001
Subject: RE: Zachares

It's only an idea in my head right now. My candidate would be Peter Ferrara. He feels very badly that he did not get anything in the administration, and this would enable Karl to throw him a bone. He'd be good for us, since he knows and has written about the area. I am not sure how they would react at Interior, but I am told he is friendly with Norton. The islands don't really know him, but he knows them. Before I got him going on this, though, I would like to know if it is even possible. He can, as you know, be a bit of a pain when pursuing something. My thought was that this could be a great compromise for OIA, and we would find something else for Mark, which I would really like to do before we let this one out publicly, since Mark would be humiliated. I think they really liked Mark at Interior, so perhaps this could be suggested to them as an approach. There must be something else open at Interior. The next steps would be to have you guys hit OPP with this idea, and have them chat with Interior. If all are amenable, we could go to Ferrara. What do you think?

-----Original Message-----
From: Susan Ralston - @GWB [mailto:Ralston@rnchq.org]
Sent: Wednesday, December 19, 2001 9:48 AM
To: abramoffj@gtlaw.com
Subject: RE: Zachares

Send the person's info asap. Not sure how far along the process is and if still ok to throw another hat in the ring

Susan Ralston

Please send all replies to Ralston@georgewbush.com

-----Original Message-----
From: abramoffj@gtlaw.com <abramoffj@gtlaw.com>
To: Susan Ralston - @GWB [mailto:Ralston@rnchq.org]
Sent: Wed Dec 19 09:07:23 2001
Subject: RE: Zachares

Would it solve things if we were to come up with another candidate for OIA and try to get

GTG-R000550

Mark another job? He is very competent, but it's clear that the idiots on the island are nervous about him getting the position. I have an idea for another person who knows the area, but is not a political football. We really need to get this position filled and it looks like we have a stand off about Zack. Thanks Susan.

-----Original Message-----

From: Susan Ralston - @GWB [mailto:Ralston@rnchq.org]
Sent: Wednesday, December 19, 2001 6:37 AM
To: abramoff@
Subject: Re: Zachares

He is still in the mix. A memo is being prepared on the situation but it is being monitored closely by OPP. Red flags still there.

Susan Ralston

Please send all replies to Ralston@georgewbush.com

-----Original Message-----

From: abramoff@ <abramoff@>
To: Susan Ralston - @GWB <Ralston@rnchq.org>
Sent: Tue Dec 18 18:23:40 2001
Subject: Zachares

Hi Susan. Have you heard anything lately about this? Can't imagine why this is taking so long. Thanks! See you Saturday night. *

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From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoffj] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Friday, February 07, 2003 10:25 AM
To: Ring, Kevin (Shld-DC-Gov)
Subject: RE: email on jena

Dammit. It was sent to Susan on her mc pager and was not supposed to go into the WH system.

-----Original Message-----

From: Ring, Kevin (Shld-DC-Gov)
Sent: Friday, February 07, 2003 10:26 AM
To: Abramoff, Jack (Dir-DC-Gov)
Subject: email on jena

Your email to Susan was forwarded to Ruben Barrales and on to Jen Farley, who read it to me last night. I don't know what to think about this, but she said it is better to not put this stuff in writing in their email system because it might actually limit what they can do to help us, especially since there could be lawsuits, etc. Who knows? Just letting you know what she said. Anyway, I had called her to talk about Jena. She has not heard from anyone on the other side of this issue.

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Wednesday, January 30, 2002 8:07 PM
To: Ring, Kevin (Shld-DC-Gov); Rudy, Tony (Shld-DC-Gov)
Subject: FW: FW: Matt Schlapp just called

I am really pissed at this point. They are positioning this to get it to Radewagen. A-holes.

-----Original Message-----

From: Susan Ralston - @GWB [mailto: [REDACTED]]
Sent: Wednesday, January 30, 2002 8:30 PM
To: abramoff [REDACTED]
Subject: Re: FW: Matt Schlapp just called

From what I heard, crane didn't look good. Also, radewagen knows KR but KR is not pushing him Susan Ralston

Please send all replies to sralston@georgewbush.com -----Original Message-----

From: abramoff [REDACTED] <abramoff [REDACTED]>
To: Susan Ralston - @GWB [REDACTED]
Sent: Wed Jan 30 19:57:03 2002
Subject: FW: Matt Schlapp just called

Please don't say anything to Matt about this just yet (so we don't look like we are running behind his back to you), but this whole OIA thing with their new candidate is very fishy. The guy they were pushing now [REDACTED] is not suited for this at all. Plus, they claim that Barbara Ladeen and Grover are pushing for him. I spoke to both of them: they have never heard of him. This is so darned frustrating.

-----Original Message-----

From: Rudy, Tony (Shld-DC-Gov)
Sent: Wednesday, January 30, 2002 2:43 PM
To: Abramoff, Jack (Dir-DC-Gov)
Cc: Ring, Kevin (Shld-DC-Gov); Williams, Michael E. (Dir-DC-Gov)
Subject: Matt Schlapp just called

Long call. Had ton of questions regarding OIA. Crane had a poor interview. Knew nothing of the issue. [REDACTED] was on the interview pushing him. Schlapp says Ladeen did mention him at some point. I told him that both Barbara and Grover do not know him. Bad news! He said good things about Radawagon: "Rove is close to him." There was a meeting at Spn at Interior that may have just been cancelled. Promised to keep me informed. Also asked me a bunch of policy questions about CNMI and Guam

Tony Rudy
Greenberg Traurig
900 Connecticut Avenue, NW
Suite 500
Washington, DC 20515
[REDACTED]

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GTG-R000045

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Friday, January 25, 2002 3:04 PM
To: [redacted]ralston@aol.com
Subject: FW: res

Per my email to your pager.

-----Original Message-----

From: Keena, Brad [mailto:[redacted]]
Sent: Friday, January 25, 2002 2:02 PM
To: Jack Abramoff
Subject: res

Jack,
As we discussed, attached is the resume. I've also faxed the same to you, along with a couple of letters that were sent on my behalf related to the Compact Negotiator position.

All the best,
Brad

GTG-R000065

5/8/2004

From: Abramoff, Jack (Dir-DC-Gov) [/o=GTLAW/ou=WDC/cn=Recipients/cn=abramoff] on behalf of Abramoff, Jack (Dir-DC-Gov)
Sent: Thursday, February 06, 2003 5:02 PM
To: 'Susan Raiston'
Subject: RE: Louisiana

Thanks.

-----Original Message-----

From: Susan Raiston [mailto:sraiston@georgewbush.com]
Sent: Thursday, February 06, 2003 5:59 PM
To: Abramoff, Jack (Dir-DC-Gov)
Subject: RE: Louisiana

Will tell him

-----Original Message-----

From: abramoffj@gllaw.com [mailto:abramoffj@redacted]
Sent: Thursday, February 06, 2003 4:24 PM
To: Susan Raiston
Subject: Louisiana

I don't want to bother you guys with a meeting request, so I was hoping you could pass on to Karl that Interior is about to approve a gaming compact and land in trust for a tribe which is an anathema to all our supporters down there. It's called the Jena tribe, and the politicians (I) at Interior (low - mid level) are agreeing to this. It will cause a major backlash from our coalition and is something which they should not do on the merits. I believe that Steve Griles over there would be opposed, but it's important, if possible, to get some quiet message from WH that this is absurd. Thanks Susan.

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GTG-R002246

5/8/2004

From: Barry Jackson [bjackson@georgewbush.com]
Sent: Wednesday, March 12, 2003 9:37 AM
To: Volz, Neil G. (Dir-DC-Gov/Adm)
Subject: indian

what was the name of the chief you recommended for medal of freedom

Sampson, Kyle

From: Sampson, Kyle
Sent: Friday, August 18, 2006 5:13 PM
To: Goodling, Monica
Subject: RE: Conf Call, re: Tim Griffin

I agree, but don't think it really should matter where we park him here, as AG will appoint him forthwith to be USA. (Is Cummins gone?)

-----Original Message-----

From: Goodling, Monica
Sent: Friday, August 18, 2006 12:09 PM
To: Sampson, Kyle
Subject: Re: Conf Call, re: Tim Griffin

Fyi - to catch you up on the latest here (unless something else has happened this week), scott and I spoke last thurs or fri and this is what's going on...

We have a senator prob, so while wh is intent on nominating, scott thinks we may have a confirmation issue. Also, WH has a personnel issue as tim returns to the states this week and is still on WH payroll. The possible solution I suggested to scott was that we (DOJ) pick him up as a political, examine the BI completed in May pursuant to his WH post, and then install him as an interim. That resolves both the WH personnel issue and gets him into the office he and the WH want him in. I asked Elston to feel out the DAG on bringing Tim into one of the vacant ADAG spots there, just for a short time until we install him in Arkansas. The DAG wanted to look at his resume, and I sent it him before I left. Was going to run this plan by you once I knew the DAG was onboard. If not, I suppose we can look at CRIM, but knowing Tim, my guess is he'd prefer something else given that he was in CRIM in 2001. (Tim knows nothing about my idea for a solution at this point - wanted your signoff, and a home for him, before I called him.)

-----Original Message-----

From: Sampson, Kyle
To: 'SJennings@gwb43.com' <SJennings@gwb43.com>; Goodling, Monica
Sent: Fri Aug 18 11:52:05 2006
Subject: RE: Conf Call, re: Tim Griffin

Tell us when, Scott, and we'll be on it.

-----Original Message-----

From: SJennings@gwb43.com [mailto:SJennings@gwb43.com]
Sent: Friday, August 18, 2006 11:41 AM
To: Sampson, Kyle; Goodling, Monica
Subject: Conf Call, re: Tim Griffin

Can we get a call together on this Monday or Tuesday ... after you are back, Monica?

J. Scott Jennings

Special Assistant to the President and

Deputy Political Director

The White House

Washington D.C. 20502

sjennings@gwb43.com

Office: 202-456-5275

Tracking:

Recipient

Goodling, Monica

Read

Read: 8/18/2006 5:27 PM

Sampson, Kyle

From: Sampson, Kyle
Sent: Thursday, August 24, 2006 2:49 PM
To: 'SJennings@gwb43.com'
Subject: RE: Arkansas Article on Cummins

Yes, but we'll bring him on and then detail him down to AR.

-----Original Message-----

From: SJennings@gwb43.com [mailto: SJennings@gwb43.com]
Sent: Thursday, August 24, 2006 2:43 PM
To: Sampson, Kyle
Subject: RE: Arkansas Article on Cummins

Do you have to already be a DOJ employee to become a Special AUSA?

J. Scott Jennings
Special Assistant to the President and
Deputy Political Director
The White House
Washington D.C. 20502
sjennings@gwb43.com
Office: 202-456-5275

-----Original Message-----

From: Kyle.Sampson@usdoj.gov [mailto: Kyle.Sampson@usdoj.gov]
Sent: Thursday, August 24, 2006 2:29 PM
To: Scott Jennings
Subject: RE: Arkansas Article on Cummins

I think it's a great idea and endorse it wholeheartedly.

-----Original Message-----

From: SJennings@gwb43.com [mailto: SJennings@gwb43.com]
Sent: Thursday, August 24, 2006 1:51 PM
To: Sampson, Kyle
Subject: FW: Arkansas Article on Cummins

Tim said he got a call from Bud offering this idea: that Tim come on board as a special AUSA while Bud finalizes his private sector plans. That would alleviate pressure/implication that Tim forced Bud out.

Any thoughts on that? Tim seemed relatively excited about that option this morning on the phone.

J. Scott Jennings
Special Assistant to the President and
Deputy Political Director
The White House
Washington D.C. 20502
sjennings@gwb43.com
Office: 202-456-5275

-----Original Message-----

From: Monica.Goodling@usdoj.gov [mailto: Monica.Goodling@usdoj.gov]
Sent: Thursday, August 24, 2006 11:46 AM
To: Kyle.Sampson@usdoj.gov; Scott Jennings

Subject: FW: Arkansas Article on Cummins

FYI

The final days
Arkansas Times Staff
Updated: 8/24/2006

U.S. Attorney Bud Cummins of Little Rock says he'll likely be leaving his job in the next few "weeks or months," but almost certainly by the end of the year. He'd earlier told us he didn't intend to serve out the entirety of the Bush administration's second term and that he'd be looking for private sector work.

More newsy, perhaps, is who Cummins' successor might be. Informed sources say one possibility for a White House nomination is Tim Griffin, an Arkansas native who has worked in top jobs at both the Republican National Committee and the White House on hard-charging political opposition research.

Though Griffin, currently finishing a military obligation, spent one year in Little Rock as an assistant U.S. attorney, his political work would likely get more attention - and Democratic opposition - in the Senate confirmation process. He'd likely have to endure some questioning about his role in massive Republican projects in Florida and elsewhere by which Republicans challenged tens of thousands of absentee votes. Coincidentally, many of those challenged votes were concentrated in black precincts.

If not Griffin, state Rep. Marvin Childers is another Arkansas lawyer whose name has been mentioned by prominent Republicans to serve out Cummins' term.

EXHIBIT J

CREW

**citizens for responsibility
and ethics in washington**

March 15, 2007

Chairman Henry A. Waxman
Committee on Oversight and
Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

BY FAX: 202-225-4784

Dear Chairman Waxman:

Among the many disturbing facts to emerge from the recent revelations about the role of the White House in the firing of eight U.S. Attorneys was the use by J. Scott Jennings, White House Deputy Political Director, of an email account on a server owned by the Republican National Committee to communicate with Justice Department Chief of Staff D. Kyle Sampson. As the emails released Tuesday by the House Judiciary Committee document, Mr. Jennings communicated with Mr. Sampson from an email address identified as "SJennings@gwb43.com" regarding creating and filling vacancies in certain U.S. Attorney slots. According to WHOIS,¹ that email address is owned by the Republican National Committee. *See* <http://www.networksolutions.com/whois>.

Similarly, emails released by your Committee that were exchanged between Susan Ralston, while a top aide to Karl Rove, and convicted lobbyist Jack Abramoff document Ms. Ralston's use of three outside domains: rnchq.com (used for the headquarters of the Republican National Committee), georgebush.com and aol.com. In many of these emails Ms. Ralston is communicating inside White House information to Mr. Abramoff in response to Mr. Abramoff's efforts to broker deals for his clients and place specified individuals in positions within the administration.

The failure of Mr. Jennings and Ms. Ralston to use their email accounts on the White House system (who.eop.gov) raises a very serious question about whether the White House has been deliberately evading its responsibilities under the Presidential Records Act, 44 U.S.C. §§ 2201 *et seq.* ("PRA"). The PRA directs the president to "take all such steps as may be necessary

¹ WHOIS is a public database directory of domain name information generated when an individual or entity registers a domain name.

to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records . . .” 44 U.S.C. § 2203. It is our understanding that to fulfill its statutory obligations under the PRA, the White House email system, who.eop.gov, automatically copies all messages created by staff and sends them to the White House Office of Records Management for archiving. Here, however, White House staff did not use the White House email system to send what are clearly communications that must be preserved under the PRA, as they reflect such things as the deliberations and decisions of the White House on replacing U.S. Attorneys and placing specified individuals within the administration. It appears that the White House deliberately bypassed the automatic archiving function of its own email system that was designed to ensure compliance with the PRA.

Just as troubling, we do not know if these are isolated incidents or whether the White House has a pattern and practice of using external email systems for making more sensitive and controversial communications. These incidents also call into question whether the White House has complied fully with document requests in the past given that the White House may have limited its search to records within its own internal email system.

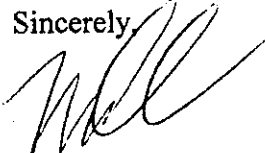
CREW currently is involved in several lawsuits challenging other improper and illegal record keeping practices of this administration. We are foreclosed from bringing suit against the White House on this matter, however, based on precedent from the U.S. Court of Appeals for the D.C. Circuit. In Armstrong v. Bush, a suit challenging the practices of the first Bush administration to erase records stored on computers of the National Security Council, the D.C. Circuit held that the PRA precludes judicial review of the president’s compliance with its mandates. The court reasoned, “permitting judicial review of the President’s compliance with the PRA would upset the intricate statutory scheme Congress carefully drafted . . .” 924 F.2d 282, 290 (D.C. Cir. 1991). Of particularly persuasive weight was Congress’ failure to give the Archivist, the individual with control over presidential records once a president leaves office, any statutory authority to interfere with the president’s records management practices. Id. And with respect to the right of outsiders to challenge White House record keeping practices, the Court stated, “Congress presumably relied on the fact that subsequent Presidents would honor their statutory obligations to keep a complete record of their administrations.” Id.

The conduct of this administration calls that presumption into question. The practices exposed by your Committee and the House Judiciary Committee suggest that far from honoring its statutory obligations to keep a complete record of its administration, the Bush administration is exercising its unfettered ability to subvert those obligations.

In light of the White House’s use of outside email accounts, including the Republican National Committee’s email account, for sensitive and controversial communications, we request that you initiate an investigation into whether the White House is purposefully flouting its

responsibilities under the PRA. In addition, Congress should consider enacting legislation to provide for judicial review of violations of the act.

Thank you for your attention to this serious matter.

Sincerely,

MELANIE SLOAN
Executive Director

cc: Ranking Member Tom Davis

EXHIBIT K



April 10, 2007

Congress Follows Email Trail

White House Faces Queries Over Use Of Private Accounts

By JOHN D. MCKINNON
April 10, 2007; Page A4

WASHINGTON -- The widespread use of private email accounts by some top White House officials is sparking a congressional probe into the practice and whether it violates a post-Nixon law requiring that White House deliberations be documented.

A top Democratic lawmaker says outside email accounts were used in an attempt to avoid scrutiny; the White House says their purpose was to avoid using government resources for political activities, although they were used to discuss the firing of U.S. attorneys.

Last year, Scott Jennings, an aide in the White House political affairs office, used an account he had set up at the Republican National Committee instead of his official White House account to help plan the firings of eight U.S. attorneys who had run afoul of the administration. A copy of that email¹, among others, has surfaced in the subsequent flap over those firings.

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Wrong Notes?

White House aides have been using email accounts run by the Republican National Committee to transact official-sounding business, such as discussions about the firing of eight U.S. attorneys. Democrats are investigating whether they violated presidential records rules.

From: Goodling, Monica
 Sent: Tuesday, June 20, 2006 11:45 AM
 To: 'SJennings@gwb43.com'
 Subject: RE: USATTY meeting

"Jocelyn Webster"
 <jwebster@gwb43.com>
 01/19/2007 02:39 PM

Dammit. It was sent to Susan on her rnc pager and was not supposed to go into the WH system.

E-mail from Jack Abramoff

Some emails that have surfaced so far suggest conscious efforts to keep information out of the official White House email system.

In January, White House officials used another RNC email account to send Bush appointees a PowerPoint presentation on Democrats they were targeting for defeat in the 2008 elections. The presentation "is a close hold and we're not supposed to be emailing it around," an official wrote in the email.

Susan Ralston, until recently presidential adviser Karl Rove's assistant at the White House, appears to have used at least four outside email accounts: a "gwb" domain account, a "georgewbush.com" account, and an "rncq.org" account -- all run by the RNC -- plus an AOL account. She once emailed two associates of lobbyist Jack Abramoff, "I now have an RNC blackberry which you can use to e-mail me at any time. No security issues like my WH email."

Now Democratic lawmakers and other critics of the administration want to know more about the Bush White House's policy on using outside accounts. Some officials relied on laptop computers and portable email devices provided

by the RNC to keep political, nongovernment activities separate from official government activities.

Rep. Henry Waxman (D., Calif.), chairman of the House Committee on Oversight and Government Reform, has requested documents and other data from the White House and the RNC as part of a congressional investigation into the use of outside accounts. In at least some cases, it appears that "White House officials were using the nongovernmental accounts specifically to avoid creating a record of the communications," Mr. Waxman said in a letter to the RNC.

The proliferation of outside email accounts for White House officials in some ways reflects a problem that many other

employers also face: how to keep track of employees' electronic messages as strict, new record-retention policies become commonplace.

Organizations can install software to track employees' use of personal email accounts on a work device like a company laptop or BlackBerry -- but such software isn't widely deployed. Employers also can easily search for and find private emails stored on company-owned devices. But outside email accounts can foster a false sense of security among users, even when rules governing how work-related documents are tracked still apply.

Under the 1978 Presidential Records Act, the White House must ensure that decisions and deliberations are "adequately documented" and that the resulting records are preserved for posterity. Critics of the administration are questioning whether administration officials' use of outside email accounts violates this law.

Officials used outside accounts because "they don't want anyone ever to be able to come back and see what was going on behind the scenes," said Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington, a watchdog group.

White House officials dispute the criticisms, saying the purpose of the RNC accounts has been to avoid running afoul of another federal law, the Hatch Act. It prohibits many federal officials from engaging in political activity on government time or with government resources.

INSIDE THE CASE

²

OUTSIDE ADDRESS: Emails released by the Department of Justice include one sent by Scott Jennings, a White House aide, using a "gwb43.com" email account. Read the PDF³.

• See the full set of documents⁴.

MORE

⁵ • **Graphic:** Read more about Scott Jennings and other key players⁶

• **Email Highlights:** Plans for replacing U.S. attorneys⁷

"These accounts are for political purposes, and they're for staff who might regularly interface with political organizations" such as the RNC, said White House spokesman Scott Stanzel. "It's entirely appropriate for them to have these." The Presidential Records Act has a specific exception for purely political matters that don't relate to official duties.

The scrutiny follows several recent investigations that have disclosed use of alternative email accounts, including the current uproar over the fired U.S. attorneys, a House probe into the PowerPoint presentation on the targeted Democratic lawmakers, and the Abramoff investigation. Mr. Abramoff, who is now in prison, was at the center of a congressional corruption scandal that contributed to Republicans' defeat in the 2006 elections. The White House provided the emails to Congress, which made them public.

The official White House email system uses the domain "who.eop.gov" (for White House, Executive Office of the President), with some variations. Many of the unofficial domains at the center of the controversy trace back to different political campaigns. The 2000 presidential campaign left a legacy of "georgewbush.com" accounts, for example. The "rnchq.org" accounts were created for White House officials who spend a lot of time talking to RNC headquarters.

The Clinton administration generally barred the use of outside email accounts by White House officials, according to its internal policy manuals. It did allow the Democratic National Committee to install computer equipment inside the White House for political emails and related work, but not government work, said Ms. Sloan and others.

The outside accounts used by Bush administration officials tend to be maintained on computers based off White House premises, such as at RNC headquarters.

Critics also allege that Bush White House officials have been using outside accounts to conduct what amounts to government business. "Replacement of U.S. attorneys would be a traditional function of the White House," said Ms. Sloan. "It's pretty clear that's a presidential function, so it's not a Hatch Act function -- it's not political."

"At the end of the day, it looks like they were trying to avoid the records act ... by operating official business off the official systems," said John Podesta, who worked in the White House for the entire Clinton presidency, including a stint as chief of staff.

In his letter to the RNC, Mr. Waxman cited an email in which an Abramoff associate said a White House official had warned him not to send requests for help through the official system because "to put this stuff in writing in their e-mail system ... might actually limit what they can do to help us."

Democrats said such emails should be going through the official White House system, so they can be archived in compliance with the law. The White House and RNC said the RNC is preserving the emails generated by White House officials on the RNC's computers, and that they are exempt from the RNC's normal policy of erasing emails after 30 days.

Enforcing the law might be difficult. When Congress adopted the Presidential Records Act, it didn't give any agency much authority to police the White House's handling of official records. A federal appeals court in 1991 held that the courts don't have the ability to enforce the law, either.

Congress also has had trouble obtaining many internal records from the political parties in the past. That means that the White House and its Republican allies likely have wide latitude when it comes to protecting records kept outside the White House computer system.

--Vauhini Vara contributed to this article

Write to John D. McKinnon at john.mckinnon@wsj.com⁸

URL for this article:

<http://online.wsj.com/article/SB117615846511864432.html>

Hyperlinks in this Article:

(1) http://online.wsj.com/public/resources/documents/WSJ_3DOJ20070313_p26-27.pdf

(2) http://online.wsj.com/public/resources/documents/WSJ_3DOJ20070313_p26-27.pdf

(3) http://online.wsj.com/public/resources/documents/WSJ_3DOJ20070313_p26-27.pdf

(4) <http://online.wsj.com/article/SB117441617325343055.html>

(5) http://online.wsj.com/public/resources/documents/info-retro_DOJemails_070319.html

(6)

OpenWin('http://online.wsj.com/public/resources/documents/info-keyplayers0703-26.html?openAt=JScottJennings','keyplayers0703','800','640','off','true',30.30);return false;

(7) http://online.wsj.com/public/resources/documents/info-retro_DOJemails_070319.html

(8) <mailto:john.mckinnon@wsj.com>

(9) <http://wsj.com/washwire>

(10) <http://wsj.com/washwire>

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EXHIBIT L



"Jacelyn Webster"
 <jwebster@gwb43.com>
 01/19/2007 02:39 PM

To: 'tesca.truesdel' [REDACTED]
 cc:
 ben
 Subject: FW:

Hi Ben, The message has been forwarded.

Please do not email to anyone else please see it. It is a close hold and we're not supposed to be emailing it around. Thanks! The Fusion Presentation.pdf



"Jacelyn Webster"
 <jwebster@gwb43.com>
 01/19/2007 02:39 PM

"... Please do not email
 this out or let people
 see it. It is a close hold
 and we're not supposed to
 be emailing it around."

W-02-0310

John B.
Horton/A/CO/GSA/GOV
01/26/2007 01:27 PM

To: "Scott Jennings" <S.Jennings@gwb43.com>
cc:
bcc:
Subject: Re: today's meeting at GSA

Do you know where the room is? We can come and get you if needed....

----- Original Message -----
From: "Scott Jennings" [S.Jennings@gwb43.com]

----- Original Message -----
From: "Scott Jennings" [S.Jennings@gwb43.com]
Sent: 01/26/2007 01:23 PM
To: John Horton
Subject: Re: today's meeting at GSA

From: John Horton
To: Scott Jennings
Sent: Fri Jan 26 12:59:26 2007
Subject: today's meeting at GSA

Scott:

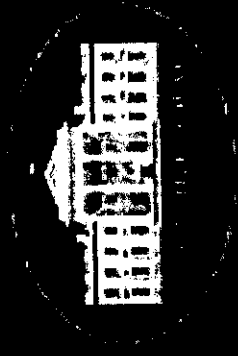
we are excited about you coming to GSA at 1:30 today - as Jocelyn may have told you, we are meeting in room E141.

Just a little note for you to think about for your talk with the team here - I think you could really help us out with morale issues by taking a second to give encouragement to our political team, especially the Administrator - Lurita Doan. She has been beat up pretty badly in the press because of internal leaks and the DC nasty games that are being played on the Hill and inside GSA career ranks, and some words of support and/or encouragement to her leadership from you would really go a long way.... it looks to be a tough two years with the stakeholders on the hill, and would be good to hear some positive words from the NH -

See you in a few!

JB

W-02-0432



The White House Office of Political Affairs

January 26, 2007

2008 House Targets: Top 20

| | | | | BC '04 % | '06 DEM % |
|----|----|------------|--|----------|-----------|
| TX | 22 | Lampson | | | 52% |
| FL | 16 | Mahoney | | | 49% |
| CA | 11 | McNerney | | | 53% |
| OH | 18 | Space | | | 62% |
| IN | 9 | Hill | | | 50% |
| PA | 10 | Carney | | | 53% |
| PA | 08 | Murphy | | | 50% |
| KS | 2 | Boyd | | | 51% |
| PA | 7 | Sestak | | | 56% |
| IN | 8 | Ellsworth | | | 61% |
| NC | 11 | Shuler | | | 54% |
| TX | 23 | Rodriguez | | | 54% |
| WI | 8 | Kagen | | | 51% |
| GA | 8 | Marshall | | | 51% |
| IN | 2 | Donnelly | | | 54% |
| GA | 12 | Barrow | | | 50% |
| PA | 1 | Altmire | | | 52% |
| NY | 19 | Hall | | | 51% |
| NY | 20 | Gillibrand | | | 53% |
| SD | AL | Heise | | | 59% |

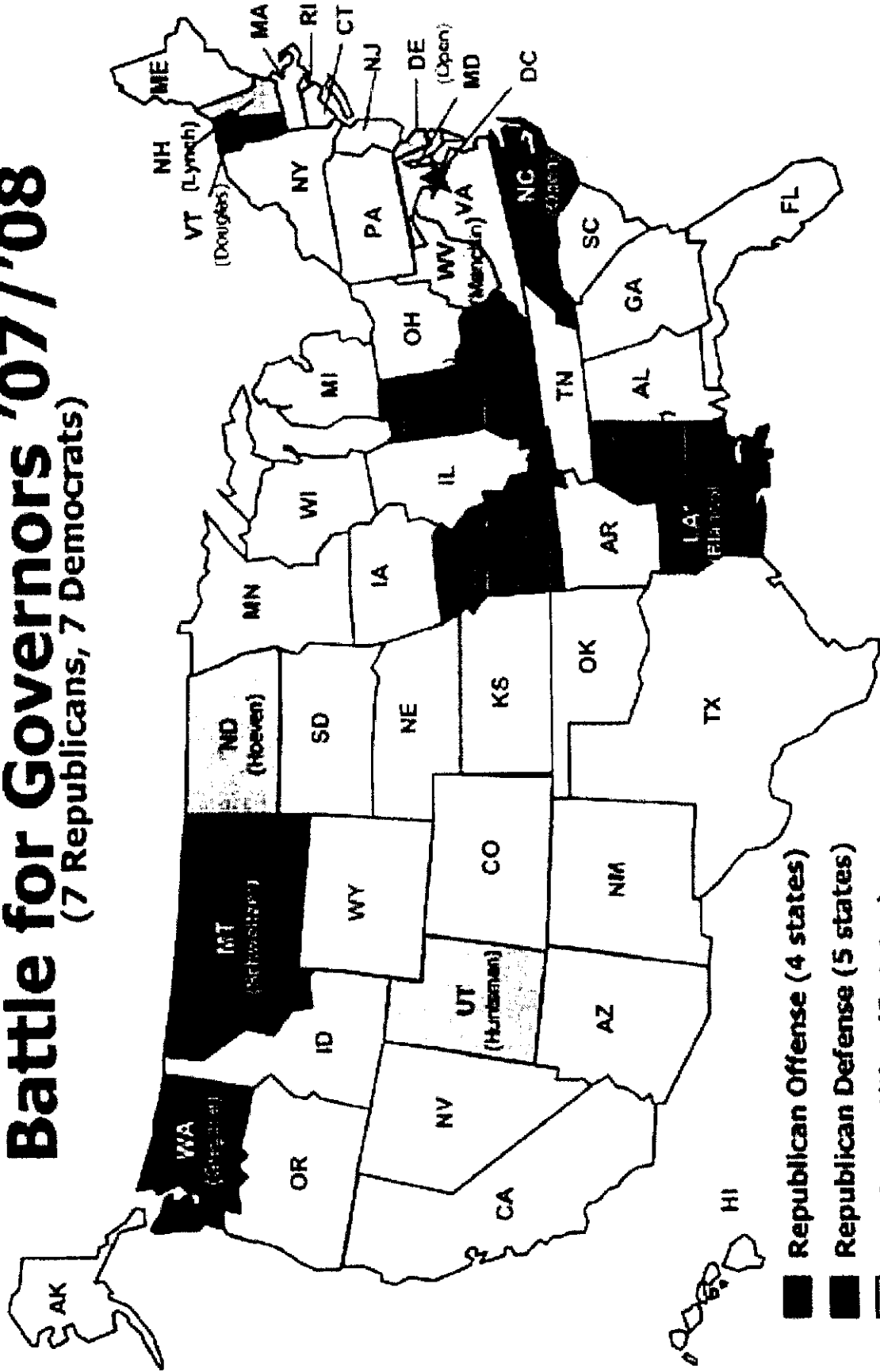
2008 House GOP Defense

| PRIORITY DEFENSE | | SECONDARY DEFENSE | |
|---------------------|----------|-------------------|------------|
| | BC '04 % | BC '04 % | '06 GOP % |
| PA 06 Gerlach | 51% | AL | Young * |
| FL 13 Buchanan | 50% | CA 24 | Galleghy * |
| NC 08 Haynes | 50% | CA 25 | McKeon * |
| NM 01 Wilson | 50% | CA 41 | Lewis * |
| CO 04 Musgrave | 46% | CA 42 | Miller |
| IL 06 Roskam | 51% | CA 52 | Hunter * |
| CT 04 Shays | 51% | DE AL | Castle * |
| OH 02 Schmidt | 51% | FL 10 | Young * |
| VA 02 Drake | 51% | IL 10 | Kirk |
| WY AL Cubin * | 48% | IL 14 | Hastert * |
| CA 04 Doolittle | 49% | KY 02 | Lewis |
| NV 03 Porter | 48% | LA 01 | Jindal * |
| NY 25 Walsh | 51% | MD 06 | Bartlett * |
| OH 15 Pryor | 51% | MI 03 | Ehlers * |
| NY 29 Kahl | 52% | MI 07 | Walberg |
| NJ 07 Ferguson | 49% | NC 09 | Myrick * |
| MI 09 Knoblenberg * | 57% | OH 16 | Regula * |
| | | PA 15 | Dent |
| | | VA 11 | Davis * |

* Member may not seek re-election

Battle for Governors '07/'08

(7 Republicans, 7 Democrats)



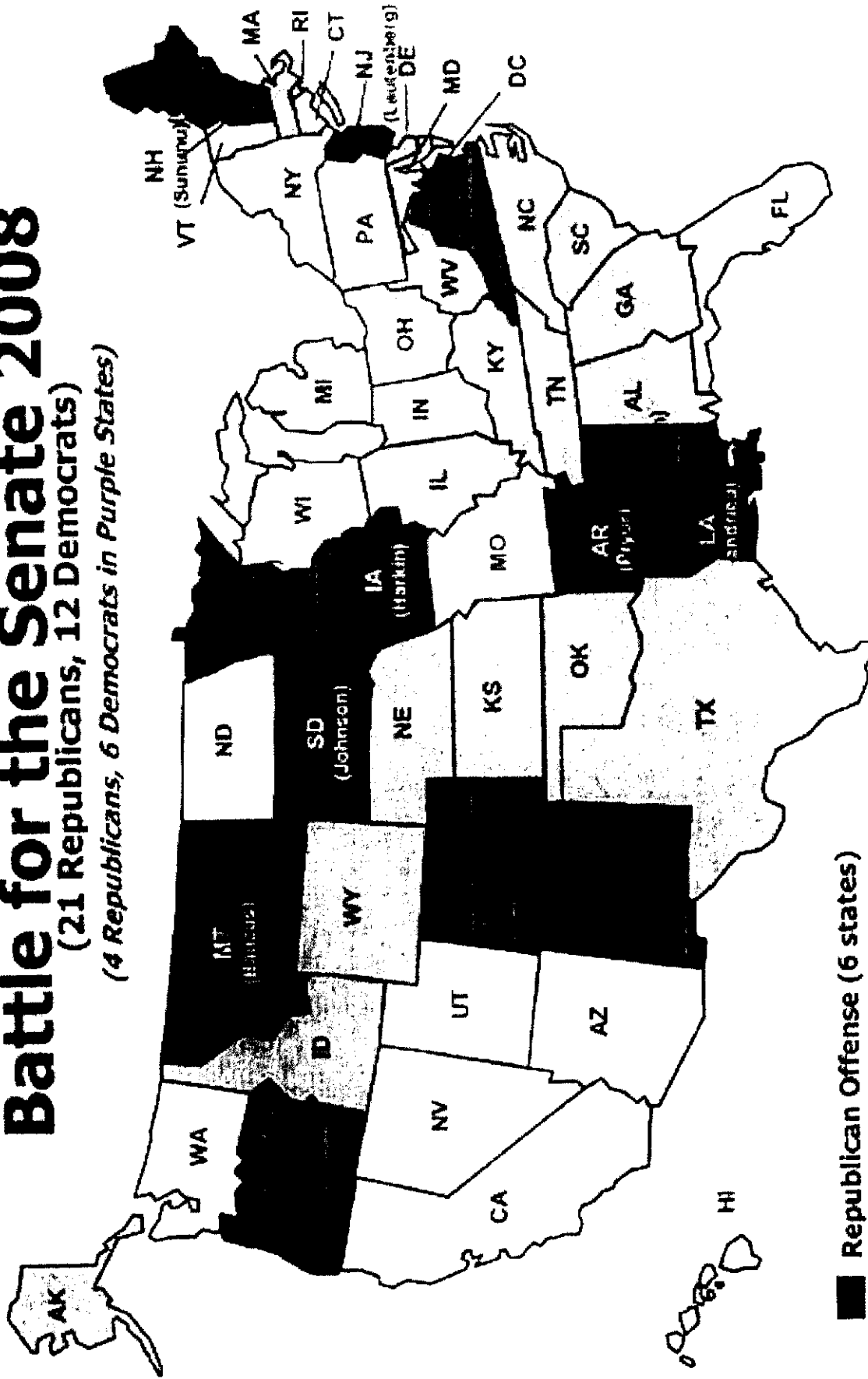
- Republican Offense (4 states)
- Republican Defense (5 states)
- Not Competitive (5 states)
- No Race (36 states)

* 2007 gubernatorial race

Battle for the Senate 2008

(21 Republicans, 12 Democrats)

(4 Republicans, 6 Democrats in Purple States)



- Republican Offense (6 states)
- Republican Defense (8 states)
- Not Competitive (21 states)

EXHIBIT M

9 of 82 DOCUMENTS

U.S. News & World Report

April 9, 2007 Monday

In Congress, Spring Break Is Tagged as 'Spring Broke';
Sorry, You're Not Reading My E-mail;
What Happened to the Immigration Prez?;
Sounds as if Everyone Distrusts Iran;
PHOTO OP: 9:22 p.m., March 28, the Washington Hilton Hotel

BYLINE: Edited by Peter Cary

SECTION: WHITE HOUSE WEEK

LENGTH: 628 words

In Congress, Spring Break Is Tagged as 'Spring Broke'

Republicans plan to use Congress's spring break to hammer Democrats for jeopardizing war funding and pushing a fiscal 2008 budget that, they claim, would end the Bush tax cuts. The dual approach opened last week when the Republican National Committee started a time clock on its Web page counting the days until funding cuts hit the troops in Iraq. It says spending could start to dry up as early as April 15 if emergency funding isn't approved fast. Hill Republicans and the RNC are also planning to slam the Democratic budget, claiming that by not extending the Bush tax cuts, it will give the average family a tax increase of \$1,100. Those talking points are titled: "Spring Broke: Dems Go on Vacation After Voting for \$400 Billion Tax Hike." Democrats, meanwhile, dispute the April 15 drop-dead date, noting that the formerly Republican Congress passed war supplementals later than that last year.

Sorry, You're Not Reading My E-mail

More fallout from the U.S. attorneys case: Several White House aides say they have stopped using the White House E-mail system except for purely professional correspondence. "We knew E-mails could be subpoenaed," said one aide, "... but I don't think anybody saw that we were doing anything wrong." But the release to the Democrats of White House E-mails and the request for more have iced the practice. At least two aides said they have bought their own private E-mail system through a cellular phone or BlackBerry server; one said he is now cellphone "texting." However, Citizens for Responsibility and Ethics in Washington says the work-around practice could be illegal. It has asked the White House to explain how it is complying with the Presidential Records Act.

What Happened to the Immigration Prez?

After heavily promoting immigration reform that is friendly to families, a path to citizenship for illegal immigrants, and a guest-worker program to fill jobs "no American will do," President Bush appeared to shift dramatically to the right last week. A working proposal for an immigration bill that White House officials drafted behind closed doors with Senate Republicans leaked: It included a proposal to charge the nation's 12 million illegal aliens \$10,000 each to obtain a green card, as well as another that would have guest workers come to the United States for two years without families, then go home for six months without gaining any visa advantage. "It's just a clear departure," said Kevin Appleby of the U.S. Conference of Catholic Bishops, "from what the president said in his Oval Office speech last year."

Sounds as if Everyone Distrusts Iran

A senior State Department official says that Iran figured prominently in discussions last weekend in Aswan, Egypt, between Secretary of State Condoleezza Rice and four Arab foreign ministers and their Arab intelligence chiefs. Iranian influence, including suspected training and funding of militia forces from the radical Islamist movement Hamas, was covered in the confidential talks with officials from Egypt, Jordan, Saudi Arabia, and the United Arab Emirates. "There's a very high level of concern with Iranian intelligence activities in Iraq, Lebanon, and the Palestinian territories," said the State official. As for the intelligence chiefs, "They call Iran at or near the top of their list," the official said.

PHOTO OP: 9:22 p.m., March 28, the Washington Hilton Hotel

"Speaking of subpoenas, it's good to see Speaker [Nancy] Pelosi tonight," quipped President Bush at the Radio and Television Correspondents' Association dinner. "Well, some have wondered how the two of us would get along. Some say she's bossy; she's opinionated; she's not to be crossed." He paused, then: "Hey, I get along with my mother."

LOAD-DATE: April 2, 2007

LANGUAGE: ENGLISH

GRAPHIC: Picture, PHOTO OP: 9:22 p.m., March 28, the Washington Hilton Hotel, BRENDAN SMIALOWSKI-AFP/GETTY IMAGES

PUBLICATION-TYPE: Magazine

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EXHIBIT N



Separate White House E-mail Accounts Draw New Criticism

March 29, 2007 | 5:29 PM ET | [Permanent Link](#)

News that administration officials are buying separate private E-mail accounts to avoid using the internal system, coupled with reports that aides have often used GOP E-mail accounts, is drawing heat from public interest groups. One, the Citizens for Responsibility and Ethics in Washington, or CREW, claims the practice could be illegal.

According to CREW, the Presidential Records Act appears to require that internal documentation be kept and that it should be handled in official channels. The separate accounts are outside those channels.

"It appears that White House staff members routinely violated the law by using RNC E-mail accounts for official business," said CREW's Melanie Sloan.

One popular series of Republican National Committee-sponsored E-mail addresses are hosted at "gwb43.com." And as the News Desk [reported this week](#), some administration members are using private phone and BlackBerry accounts now so that their E-mails, especially private E-mails to friends and staffers, aren't subpoenaed.

The issue arose when the administration turned over 3,000 documents, many including internal E-mails, to Hill probers looking into the firing of federal prosecutors. CREW has sent a letter to the White House office of administration asking them to explain how the administration is complying with the Public Records Act.

EXHIBIT O



White House Admits Misuse of Republican Party-Sponsored E-Mail Accounts

Thursday, April 12, 2007

Associated Press

WASHINGTON —

White House said Wednesday it had mishandled Republican Party-sponsored e-mail accounts used by nearly two dozen presidential aides, resulting in the loss of an undetermined number of e-mails concerning official White House business.

Congressional investigators looking into the administration's firing of eight federal prosecutors already had the nongovernmental e-mail accounts in their sights because some White House aides used them to help plan the U.S. attorneys' ouster. Democrats were questioning whether the use of the GOP-provided e-mail accounts was proof that the firings were political.

Democrats also have been asking if White House officials are purposely conducting sensitive official presidential business via nongovernmental accounts to get around a law requiring preservation — and eventual disclosure — of presidential records. The announcement of the lost e-mails — a rare admission of error from the Bush White House at a delicate time for the administration's relations with Democratically controlled Capitol Hill — gave new fodder for inquiry on this front.

"This sounds like the administration's version of the dog ate my homework," said Senate Judiciary Committee Chairman Patrick Leahy, D-Vt. "I am deeply disturbed that just when this administration is finally subjected to meaningful oversight, it cannot produce the necessary information."

The Republican National Committee set up the accounts for about 20 Bush aides, such as Karl Rove and his deputies, who get involved in politics, spokesman Scott Stanzel said. Having the GOP create non-White House addresses and provide separate BlackBerries, laptops and other communications gear was designed to avoid running afoul of Hatch Act rules barring federal employees from engaging in political activities with government resources or on government time, he said.

Under President Clinton, White House aides used separate equipment for political spadework but did not have separate accounts.

"This is entirely appropriate," Stanzel said of the Bush White House practice.

He said staffers used their RNC accounts instead of White House accounts to discuss the prosecutor issue or conduct other official business for several reasons, including extra caution about complying with the Hatch Act as well as the convenience of using one account instead of several. Stanzel said he could not speak to whether anyone was intentionally trying to avoid White House archiving because he had not spoken to all those involved.

Stanzel said some e-mails have been lost because the White House lacked clear policies on complying with Presidential Records Act requirements.

Before 2004, for instance, e-mails to and from the accounts were typically automatically deleted every 30 days along with all other RNC e-mails. Even though that was changed in 2004, so that the White House staffers with those accounts were

excluded from the RNC's automatic deletion policy, some of their e-mails were lost anyway when individual aides deleted their own files, Stanzel said.

He could not say what had been lost, and said the White House is working to recover as many as they can. The White House has now shut off employees' ability to delete e-mails on the separate accounts, and is briefing staffers on how to better make determinations about when — and when not — to use them, Stanzel said.

The disclosure could complicate a standoff between the White House and congressional Democrats over the fired prosecutors.

The White House had promised to look through its staffers' e-mails for anything relevant to the prosecutors' dismissal. No matter the domain name, it said it would provide documents to the Senate and House Judiciary committees as long as they are not internal communications, but exchanges with people outside the White House.

But the White House also had insisted that this offer of documents be accepted, all-or-nothing, along with its insistence that aides would talk to Congress about the firings, but not under oath. So far, Democrats have refused.

Democrats have begun highlighting the separate accounts because they say their use appears to go beyond the strictly political.

"We have become increasingly sensitized over the last several days to the White House staff wearing several 'hats' and using Republican National Committee and campaign e-mail addresses," said a letter from the Senate and House Judiciary chairmen to White House counsel Fred Fielding on March 28. "We hope you agree that such sleight of hand should not be used to circumvent and compromise the comprehensiveness of our investigation."

The nongovernmental accounts were accidentally discovered by Democrats when the Justice Department released hundreds of documents related to the prosecutor firings.

One exchange showed deputy White House political director J. Scott Jennings sending an e-mail titled "USATTY" to Attorney General Alberto Gonzales' then-chief of staff, Kyle Sampson, from an address with a gwb43.com domain name.

"Does a list of all vacant, or about to be vacant, US Attorney slots exist anywhere?" Jennings wrote on Dec. 3 from his political account. Replied Sampson, a few minutes later: "My office. Want me to send to you tomorrow?"

Jennings had also communicated with Sampson and other Justice Department officials in August from his RNC-supplied address about how to install the administration's preferred replacement, onetime Rove aide Tim Griffin, for Arkansas U.S. Attorney Bud Cummins.

In one, Jennings passed on a strategy he said was suggested by Cummins, to have Griffin come on as an attorney in the Little Rock office until Cummins finalized his post-government plans. Jennings said the plan would "alleviate pressure/implication that Tim forced Bud out."

Sampson's e-mails all appeared to be from his official usdoj.gov account.

The separate e-mail accounts also have become an issue in the case of disgraced lobbyist Jack Abramoff, who was convicted on bribery charges and is in prison for fraud.

Abramoff had several exchanges with Susan Ralston, then a Rove assistant, via nongovernment e-mail addresses with domain names like mchq.org and georgewbush.com, to discuss issues in the Interior Department affecting the lobbyist's Indian clients.

EXHIBIT P

washingtonpost.com

White House E-Mail Lost in Private Accounts

Messages May Have Included Discussions About Firing of Eight Prosecutors

By Michael Abramowitz and Dan Eggen
Washington Post Staff Writers
Thursday, April 12, 2007; A04

The White House acknowledged yesterday that e-mails dealing with official government business may have been lost because they were improperly sent through private accounts intended to be used for political activities. Democrats have been seeking such missives as part of an investigation into the firing of eight U.S. attorneys.

Administration officials said they could offer no estimate of how many e-mails were lost but indicated that some may involve messages from White House senior adviser Karl Rove, whose role in the firings has been under scrutiny by congressional Democrats.

Democrats have charged that Rove and other officials may have used the private accounts, set up through the Republican National Committee, in an effort to avoid normal review. Under federal law, the White House is required to maintain records, including e-mails, involving presidential decision-making and deliberations. White House aides' use of their political e-mail accounts to discuss the prosecutor firings has also fanned Democratic accusations that the actions were politically motivated.

Briefing reporters yesterday about an initial review of the private e-mail system, White House spokesman Scott Stanzel declined to discuss whether the political aides were driven by a desire to conduct business outside of potential review. "I can't speak to people's individual e-mail practices," he said.

Stanzel conceded that the White House had done a poor job of instructing staff members how to save politically oriented e-mail and said that it has developed new guidance for the more than 20 staffers who have official as well as political e-mail addresses. He also said that the White House is trying to recover the lost e-mails.

"The White House has not at this point done a good enough job at overseeing the practices of staff with political e-mail accounts," Stanzel said. "Some officials' e-mails have potentially been lost and that is a mistake that the White House is aggressively working to fix."

Rep. Henry A. Waxman (D-Calif.), chairman of the House Committee on Oversight and Government Reform, which is investigating the use of outside accounts, issued a statement saying that the White House disclosure is "a remarkable admission that raises serious legal and security issues," adding: "The White House has an obligation to disclose all the information it has."

The controversy over the outside e-mail accounts is a byproduct of the ongoing showdown over the prosecutor firings, emerging after the administration recently provided to Congress e-mails from some White House officials that had been sent from their RNC accounts. Scott Jennings, the White House deputy director of political affairs, used a "gwb43.com" e-mail account last August to discuss the replacement of Bud Cummins, who was dismissed as the U.S. attorney for Arkansas, according to one e-mail.

In another e-mail exchange revealed during the investigation of disgraced lobbyist Jack Abramoff, a White House official was described as warning that "it is better to not put this stuff in writing in [the White House] . . .

White House E-Mail Lost in Private Accounts - washingtonpost.com

email system because it might actually limit what they can do to help us, especially since there could be lawsuits, etc." Abramoff responded in an e-mail that the message in question "was not supposed to go into the WH system."

The heads of the House and Senate judiciary committees, which are investigating the prosecutor firings, wrote White House counsel Fred F. Fielding on March 28 asking that he preserve any e-mails written by White House employees from non-government e-mail addresses.

Stanzel said in the telephone briefing yesterday that there was a good reason for providing officials such as Rove and his deputies with political e-mail accounts: to help them avoid violations of the Hatch Act, which bars government officials from carrying out political business by using government resources.

The problem, White House officials said, is that the staffers did not receive proper guidance about what to do about e-mails that fall into a gray area between official and political business.

One White House lawyer, who spoke on the condition of anonymity under the ground rules of the briefing, said staffers are now being advised that if they have any questions about whether an e-mail is political or official, they should use their private accounts but preserve a copy for review by White House lawyers to see whether it needs to be saved under the Presidential Records Act.

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EXHIBIT Q



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January 23, 2006

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Re: United States v. I. Lewis Libby

Dear Counsel:

This letter is in response to your letter of January 5, 2006. We incorporate the prior responses in our letters of December 3, 2005, and January 9, 2006. This follows our telephone conference of January 18, 2006.

As a preliminary matter, your letter indicates a belief that it is "very common" in the District of Columbia to engage in "open file" discovery, but my understanding is to the contrary. To my understanding, "open file" discovery is not common in that district, nor in the Department of Justice more broadly. That is particularly the case where the matter involves extensive classified and national security materials. Moreover, it is not the ordinary practice for federal prosecutors to provide discovery in a perjury/obstruction of justice prosecution as to all matters that were considered but not charged in the overarching grand jury investigation, particularly one that is ongoing. As you are aware, your client has not been charged with a substantive violation of Title 18, United States Code, Section 793. Accordingly, your client is not entitled to discovery of sensitive national security materials pertinent only to a prosecution of a substantive violation of that statute.

In any event, the fact that we have not elected to provide you with everything the defense has requested should not obscure the fact that the defense is being given far more discovery than is required by the language of Rule 16 of the Federal Rules of Criminal Procedure. To cite but one example, we are making available to you all material obtained from the Office of Vice President: in essence, "open file" discovery regarding the office where your client was employed. We have endeavored to draw a line that expedites resolution of this matter while at the same time safeguarding other governmental interests and the ongoing investigation. In making discovery

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determinations, we have endeavored to provide no preferential treatment of Mr. Libby solely on account of his former official position.

I note that our January 18, 2006, telephone conference was productive in achieving a clearer understanding of the areas where we disagree which will lend itself to presentation to the court for resolution. We also agreed during the telephone conference that if we decided to produce any items to you despite our belief that we were not required to do so that you would not view such production as a waiver of our position that such discovery was not required or argue that such a production was a concession that we were obligated to produce any additional documents that may be in the possession of other government agencies.

In your requests, you greatly expand the sweep of subsection 16(a)(1)(E) which governs "documents and objects" by making requests for "information," rather than "documents and objects," and by defining documents "material to preparing the defense" to include memos, recordings and transcripts in a manner which would sweep in grand jury minutes and reports of interview (most commonly reports of interview in the form of FBI form 302's). That is flatly inconsistent with the narrower category of "documents and objects" set forth in subsection 16(a)(1)(E) and is contrary to both subsection 16(a)(2) which says that reports and government memoranda (prepared by an attorney or agent) are not discoverable, and to subsection 16(a)(3) which limits grand jury transcript discovery to the defendant's grand jury testimony. To define "documents" to include grand jury transcripts and debriefing reports would contravene the Jencks Act and the enumerated provisions of Rule 16. Thus, in reviewing our response, you should understand that, unless specified otherwise below, we are not producing such grand jury transcripts or FBI 302's or other reports, as they are not required to be produced pursuant to Rule 16.

We respond in greater detail to your enumerated requests as follows:

(1): You demand access to all documents referencing Mr. Wilson's 2002 trip to Iraq. The relevance of Mr. Wilson's 2002 trip is the fact that it occurred and that it became a subject of discussion in spring 2003. What took place during that trip is not relevant to the issue of whether Mr. Libby lied about his spring 2003 conversations with various reporters and government officials about Mr. Wilson's wife's employment at the Central Intelligence Agency ("CIA"). Thus, a request for every document which in any way relates to Mr. Wilson's trip and any communications Mr. Wilson had with anybody at any time about the trip is over broad and any attempt to comply with such a request would significantly delay, not expedite, resolution of this matter. Nonetheless, all documents in our possession reflecting conversations involving defendant Libby about Wilson's trip, or meetings Mr. Libby attended during which Mr. Wilson's trip was discussed, have been produced or will be produced prior to February 3. Moreover, when you review the materials in our possession which we have produced or will be producing to you, specifically including the copies of all documents obtained from the Office of Vice President and the materials from our set of

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documents obtained from the Central Intelligence Agency ("CIA"), you will note that they include substantial materials which concern or reflect Mr. Wilson's trip.

(2): We do not have any responsive materials other than material that would be produced pursuant to the Jencks Act if the Government were to call Mr. Wilson to testify at trial, which we do not expect to do. You are obviously aware that Mr. Wilson has made public speeches, written an Op Ed in the *New York Times*, published a book and has been interviewed by media.

(3): As set forth in our prior correspondence, we will not produce every document related in any way to Ms. Wilson's employment, nor is Mr. Libby entitled to every document that might reflect on the damage to national security from disclosure of her employment. However, as we discussed during our telephone conference call on January 18, we intend to address the matter of the use, relevance and admissibility of information concerning Ms. Wilson's employment at the CIA in the context of the Classified Information Procedures Act ("CIPA").

(4): While we do not believe we are required to do so, we will advise you of certain information responsive to your request by letter on or before February 3.

(5): As we previously advised you, we have no formal damage assessment in our possession but, as we discussed during our telephone conference call on January 18, we intend to address the matter of the relevance and admissibility of Ms. Wilson's employment at the CIA in the context of CIPA.

(6) (7) and (8): Aside from any Jencks Act material which will not be produced as discovery, all responsive documents have been produced to you or will be produced to you on or before February 3. As we noted during our conference call, we do not agree that you are entitled to all such materials or that the scope of your request is proper but you are receiving all responsive documents in our possession. We also advised you that when gathering materials during the investigation we did not focus our searches on a topic as broad as that set forth in the request in 7(e).

(9): This request in effect seeks discovery concerning any other subjects of the ongoing investigation. We have not produced, and do not intend to produce, all documents regarding contacts between government officials other than Mr. Libby and reporters prior to July 14, 2003, but have produced (or will produce before February 3) all documents reflecting contact between Mr. Libby and reporters responsive to this request. Lest there be any doubt, we do have some documents responsive to your request which we are electing not to produce because we do not agree that we are obligated to provide them.

(10) and (11): Aside from any Jencks Act material which will not be produced as discovery, all responsive documents have been produced to you or will be produced to you on or before February 3.

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In your section entitled "Information Relating to the Government's Investigation of the Media," you assert that the government takes the position that the defense is not entitled to receive in discovery the contemporaneous notes made by the reporters who spoke to Libby, but do not note that you have been provided with all notes in the government's possession that were made by reporters when speaking to Mr. Libby. (As discussed above, the Government has declined to provide notes of conversations between reporters and other government officials.) You elsewhere stated that we declined to provide "any" information about reporters when in fact we have produced documents obtained from media entities as you elsewhere acknowledge.

(12) - (16): While we do not intend to provide discovery in this regard, and while not required to do so, in order to expedite litigation of this matter we advised you during the January 18 conference call that we were not aware of any reporters who knew prior to July 14, 2003, that Valerie Plame, Ambassador Wilson's wife, worked at the CIA, other than: Bob Woodward, Judith Miller, Bob Novak, Walter Pincus and Matthew Cooper.¹ There are published accounts of when Ms. Miller and Mr. Cooper first learned about Mr. Wilson's wife and from whom. Mr. Woodward has publicly described his conversation with Mr. Libby on June 27, 2003, as well as the general timing ("mid-June") of his conversation with another unnamed government official with whom he then spoke about Mr. Wilson's wife. Mr. Woodward has also described his conversations in 2003 and later with Mr. Pincus on the subject. Mr. Pincus has published his account of when he first learned information about Wilson's wife from a source he does not name. Mr. Novak has published his account of when he learned about Wilson's wife (some time after July 6) without naming his sources in the account.

We also advise you that we understand that reporter John Dickerson of *Time* magazine discussed the trip by Mr. Wilson with government officials at some time on July 11 or after, subsequent to Mr. Cooper learning about Mr. Wilson's wife. Any conversations involving Mr. Dickerson likely took place in Africa and occurred after July 11.

We note that we understand from our January 18 telephone conference that the requests numbered 13 and 14 were intended to be requests limited to the time frame prior to July 14, 2003.

We otherwise are not producing documents responsive to your request concerning other officials who were in contact with other reporters, as outlined above.

In addition, you seek miscellaneous items for discovery in an effort to prepare motions. While we do not agree that there is a separate entitlement to discovery in order to facilitate motions which may or may not be well grounded, we advise you of the following in response to your enumerated requests:

¹ This statement is not meant to imply that each and every reporter named knew her name prior to July 14, 2003.

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(17): We are reviewing the CIA referral document and will either produce the same to you or advise you otherwise shortly. We do not intend to produce "all documents relating to" that referral document as that could potentially implicate all documents in this investigation.

(18): We are seeking to obtain a copy of the order empaneling the grand jury public which we did not have in our possession and will either produce the same to you or advise you otherwise shortly.

(19)-(22): We will be providing to you prior to February 3 copies of subpoenas and pertinent correspondence relating to reporters referenced in the Indictment and/or whom we expect to call at trial.² We are specifically withholding subpoenas (and correspondence) which were addressed to reporters whose testimony was directed towards government officials other than Mr. Libby.

The Requests for Asserted "Brady" Material

We recognize that your requests for discovery seek the categories of items requested both pursuant to Rule 16 as well as pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). We do not agree, however, that each of your requests is appropriate under the governing standards nor, as discussed in prior correspondence, do we agree with your implicit view that we are aligned with all government agencies for purposes of discovery.

(A): We are aware of our *Brady* and *Giglio* obligations regarding witnesses and will comply with those obligations.

(B) and (C): We do not agree that if there were any documents indicating that Ms. Wilson's employment was not classified during the relevant times that any such documents would constitute *Brady* material in a case where Mr. Libby is not charged with a violation of statutes prohibiting the disclosure of classified information.³

(C): We do not agree that if there were any documents indicating that Ms. Wilson did not act in an undercover capacity or did not act covertly in the five years prior to July 2003 (which we neither confirm nor deny) that any such documents would constitute *Brady* material in a case where

² We are not providing correspondence such as transmittal letters, legal briefs filed, appellate briefs filed and various correspondence concerning scheduling, filing, sealing, redacting and unsealing of briefs and other court documents regarding litigation.

³ I note that Ms. Wilson's employment status was classified but has since been declassified so that we may now confirm such status. In any event, we are not aware of any documents in our possession stating that Ms. Wilson's affiliation with the CIA was not classified at the relevant times.

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Mr. Libby is not charged with a violation of statutes prohibiting the disclosure of classified information.

(D) and (E): We do not agree that any documents indicating that any reporter heard or suspected prior to July 14, 2003, that Ms. Wilson worked at the CIA constitutes *Brady* material but in any event incorporate our earlier response on this issue.

(F): We do not agree that any time witnesses disagree on facts that you are entitled to all documents so indicating in advance. We are aware of our *Brady* and *Giglio* obligations regarding witnesses and will comply with those obligations.

(G): We do not agree that all documents reflecting favorably on Mr. Libby's character or reputation for truthfulness or reflecting his propensity to comply with laws, regulations and nondisclosure agreements or of assuring that others complied with those regulations constitute *Brady* material (nor that such documents could be easily defined) as prior instances of non-criminal conduct are not considered exculpatory.

(H): Your request for *Giglio* impeachment material is premature and over broad. You will receive such material for Government witnesses, not for "potential" Government witnesses (however that term is defined). Moreover, the scope of records you seek is far beyond the scope of what is required. By way of illustrative (but not exhaustive) example, you seek all documents relating to any juvenile arrest of any potential government witness in a case where there will be no witnesses where any such arrest would be remotely recent or relevant to the trial.

Other requests:

There have been no search warrants executed and no communications intercepted pursuant to Title III at the direction of the prosecution team during the course of this investigation.

At this time we do not intend to offer any evidence of "other crimes" pursuant to Rule 404(b). As we discussed during our telephone conversation, Mr. Libby testified in the grand jury that he had contact with reporters in which he disclosed the content of the National Intelligence Estimate ("NIE") to such reporters in the course of his interaction with reporters in June and July 2003 (and caused at least one other government official to discuss the NIE with the media in July 2003). We also note that it is our understanding that Mr. Libby testified that he was authorized to disclose information about the NIE to the press by his superiors. We expect that such conduct will be the subject of proof at trial in that we intend to introduce Libby's grand jury transcript in evidence and Mr. Libby has testified that the purpose of his July 8 meeting with Ms. Miller was to transmit information concerning the NIE. Our anticipated basis for offering such evidence is that such facts are inextricably intertwined with the narrative of the events of spring 2003, as Libby's testimony itself makes plain. At this time, we do not intend to offer the evidence pursuant to Rule 404(b).

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We are not obligated at this time to disclose impeachment material of Mr. Libby should he testify in his defense.

We are aware of no evidence pertinent to the charges against defendant Libby which has been destroyed. In an abundance of caution, we advise you that we have learned that not all email of the Office of Vice President and the Executive Office of President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system. *

Should you have any questions or comments regarding any of the foregoing, or should you wish to discuss this matter generally, please do not hesitate to call me at the number listed above.

Very truly yours,

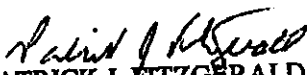

PATRICK J. FITZGERALD
Special Counsel

EXHIBIT R

LEXSEE 6 O.L.C. 214

OPINION OF THE OFFICE OF LEGAL COUNSEL

PAYMENT OF EXPENSES ASSOCIATED WITH TRAVEL BY THE PRESIDENT
AND VICE PRESIDENT

1982 OLC LEXIS 54; 6 Op. O.L.C. 214

March 24, 1982

SYLLABUS:

[*1]

Funds appropriated for the official functioning of the offices of the President and the Vice President may be used for travel expenses only if the travel is reasonably related to an official purpose; and, official activities may be funded only from funds appropriated for such purposes. Thus appropriated funds should not be used to pay for political travel and political funds should not be used to pay for official travel.

Whether an event is official or political for purposes of paying its expenses must be determined on a case-by-case basis, and both the nature of the event and the nature of the individual involved should be considered.

Where both official and political activities occur on the same trip, the expenses of individuals on the trip for both political and official reasons can be apportioned between the government and a political committee on a basis which reflects the time spent on the respective activities. During the period of a presidential election campaign, Federal Election Commission regulations may require a different rule of allocation.

ADDRESSEE:

Memorandum Opinion for the Counsel to the President

OPINIONBY: OLSON**OPINION:**

[**214] This memorandum responds to your request for our advice [*2] about the payment of expenses associated with travel by the President or Vice President. We are to assume that travel by the President or Vice President may often include both official events, undertaken as part of the President's or Vice President's official roles as governmental leaders, and purely political events, undertaken for partisan purposes in order to advance the interests of the President's and Vice President's political party. This mixed character of much presidential and vice presidential travel follows naturally from their dual roles as governmental officials and leaders of their party. You have asked us to articulate the legal principles governing the allocation and payment of costs associated with such travel.

Several caveats must be noted at the outset. First, our opinion should not be read as a declaration that the generally applicable principles will necessarily lead to an inflexible result in a particular case. In fact, the principles are of such generality that they often will generate few determinate results. They thus must be viewed as general guides to decisionmaking. Second, the principles should be applied to a particular trip by the officials most [*3] familiar with the facts of the trip. Each case may present unique circumstances that will need to be taken into [**215] account in determining, for instance, whether an event is "official" or "political" in character. As we will indicate, there is considerable room in this context for the careful use of informed discretion. Third, this opinion focuses on broadly applicable legal principles, not on the specific rules adopted by the Federal Election Commission for election activity. See 11 C.F.R. Chapter 1 (1981). If, in light of this opinion, particular questions arise, we will, of course, be glad to address them.

Furthermore, the principles discussed in this opinion may be fully understood only with an appreciation of the unique context presented by the peculiar functions and responsibilities of the President and Vice President in our system of government. They are the senior officials of the Executive Branch of government. Their official roles are necessarily political in the broad sense that they must formulate, explain, advocate, and defend policies. To the extent that the

President and Vice President generate support for their policies and programs, they are also [*4] executing and fulfilling their official responsibilities. Even the most clearly partisan activity is not without some impact on the official activities of the President and Vice President.

By the same token, official success or failure by the President and Vice President has an inevitable and unavoidable impact on the standing of their political party, members of their party, and their party's candidates for public office. Thus, it is simply not possible to divide many of the actions of the President and Vice President into utterly official or purely political categories. To attempt to do so in most cases would ignore the nature of our political system and the structure of our government. Accordingly, efforts to establish such divisions must be approached with common sense and a good faith effort to apply the spirit of the principles we discuss in this memorandum, and they must be judged with considerable deference to the decisions of the persons directly involved in making the determinations.

With this background, our discussion will focus on three major questions. First, what are the basic legal principles to be applied, putting aside specialized restrictions formulated by [*5] the Federal Election Commission with regard to election activities? Second, how does one determine whether an event giving rise to an expense is "official" or "non-official" in character? Third, assuming that a trip involves events that are both official and non-official (or political) in character, may certain of the expenses for such a mixed trip be apportioned between the government, on the one hand, and a political committee, on the other hand? In the fourth section, we will discuss other considerations that bear on the issues discussed herein.

I. Two Basic Norms

When considering payment of expenses associated with presidential and vice presidential travel, two major principles governing the use of appropriated funds must be borne in mind. First, appropriated funds may be spent only for the purposes for which they have been appropriated. 31 U.S.C. § 628; 52 Comp. Gen. 504 (1973); 50 Comp. Gen. 534 (1971). Thus, funds appropriated for the official functioning of the offices of the President and the Vice President may be used for travel expenses only if the travel is reasonably related to an official purpose. If, however, there is no reasonable connection between [*6] the expense incurred and the official purposes to be served by an appropriation -- as, generally speaking, there would not be when an expense is incurred purely for partisan political purposes -- official funds may not be used to pay the expense.

The second basic principle is that, in general, official activities should be paid for only from funds appropriated for such purposes, unless Congress has authorized the support of such activities by other means. Stated another way, although appropriated funds should not be used for non-official purposes, it is equally true that outside sources of funds may not be used to pay for official activities. This latter principle, which prevents the unauthorized augmentation of appropriations, has been recognized by the Comptroller General on numerous occasions. n1 A problem concerning an unauthorized augmentation of an appropriation does not arise when a trip is purely non-official in character and non-official funds are used to pay for it. Rather, the issue arises only where an official activity is supported by non-appropriated funds and where there is no authority for that to occur.

n1 See, e.g., 23 Comp. Gen. 694 (1944); 46 Comp. Gen. 689 (1967). See also 9 Comp. Dec. 174 (1902); 17 Comp. Dec. 712 (1911).

[*7]

In short, appropriated funds should not be used to pay for political events, and absent authority to the contrary, political funds should not be used to pay for official events. The difficulties of applying these principles arise because both types of activities may occur on the same trip and because it is exceedingly difficult in many instances to determine what is official and what is political.

II. What Tests Should Be Used for Determining Whether an Expense Should Be Considered "Political" or "Official?"

Because officials will wish to ensure that appropriated funds are used only to pay for expenses associated with official events and are not used to pay for political expenses, it will be necessary to determine on a case-by-case basis whether an expense is official or political in character. As discussed generally above, there is unfortunately no single litmus test for making such judgments. Indeed, many events could be characterized properly as either political or official or both. Therefore, in making this determination the persons most familiar with the facts of a particular trip will have to assess all of the circumstances involved and apply a large measure of common [*8] sense. There are, however, two major variables concerning the source of the expense to be borne in mind: the nature of the event involved, and the

nature of the individual involved. Either, or both, of these indicia may be useful in a particular case in determining whether a particular expense should be considered official or political.

With respect to the nature of the event giving rise to an expense, an earlier opinion of this Office, entitled "Political Trips" and transmitted to the Counsel to the President on March 15, 1977, stated the following guidelines:

[**217] As a general rule, Presidential and Vice Presidential travel should be considered 'political' if its primary purpose involves their positions as leaders of their political party. Appearing at party functions, fundraising, and campaigning for specific candidates are the principal examples of travel which should be considered political. On the other hand, travel for inspections, meetings, non-partisan addresses, and the like ordinarily should not be considered 'political' travel even though they [sic] may have partisan consequences or concern questions on which opinion is politically divided. The President [*9] cannot perform his official duties effectively without the understanding, confidence, and support of the public. Travel and appearances by the President and Vice President to present, explain, and secure public support for the Administration's measures are therefore an inherent part of the President's and Vice President's official duties (pages 11-12).

We concur with the foregoing rules of thumb, which are based largely on a common sense understanding of the nature of political and official activities. n2

n2 Although we generally agree with this earlier opinion of this Office, we would note that much of its advice is of a prudential, not strictly legal, character. In the present memorandum, we do not undertake to specify rules that are not legally mandated. Moreover, the earlier opinion itself takes pains to stress the flexibility that exists in determining whether, in a particular case, travel by the President is official or political (*see* page 7).

While we would hope that the foregoing generalities may be useful guides for the future, they should not be viewed as inflexible. There clearly is much room for discretion in determining whether an event giving rise to an [*10] expense is political or official. At bottom, the question is a factual one that can only be answered by those most familiar with the particular facts of a given situation. Nonetheless, in general, if the purpose of an event on a trip is to promote the partisan aims of the President's or Vice President's party or candidates of that party, then expenses incurred in performing the event would generally be political in character. Should particular questions arise about specific events, we would be glad to provide more concrete advice concerning them.

The second variable that may, in some circumstances, determine the character of a particular expense incurred on a trip is the nature of the individual whose activity generates the expense. There are some individuals who, in particular situations, are on a trip for inherently official or political purposes. Expenses incurred by them should generally be viewed as either official or political depending on their particular role. For instance, there are some persons whose official duties require them to be with the President, whether or not the President himself is on official business. n3 This group includes the President's doctor, his [*11] military aide, and the Secret Service agents responsible for his protection. n4 A similar group would exist for the Vice President. Expenses incurred during travel with the President or Vice President by this group of individuals should be [**218] considered official regardless of the character of the event that may be involved in a given trip.

n3 This point is the same as stated in the March 15, 1977, opinion of this Office, entitled "Political Trips" (pages 9, 15-16).

n4 This list is not intended to be exhaustive. The President may, in his discretion, determine that others are necessary members of his official party whenever he travels.

Similarly, on an otherwise entirely official trip, an individual may accompany the group for purely political reasons. As a rule, any expenses specifically incurred by such individuals should be considered political expenses, regardless of the events involved in the trip.

In short, as we noted at the outset of this section, there is no single test for determining whether an expense is political or official in character. Viewed generally, expenses of individuals whose official duties require them to travel with the President or Vice [*12] President should normally be considered official. Expenses of individuals who are on a trip for purely political reasons should normally be considered political. Expenses associated with individuals who are not necessarily serving in either a wholly official or wholly political capacity -- such as the President or Vice President

or other individuals in the White House who may, consistent with their official duties, perform political functions -- should normally be judged to be official or political depending on the character of the event giving rise to the expense.

III. On a Mixed Trip Including Both Official and Political Activities, Can Certain Expenses Be Apportioned Between the Government and a Political Committee?

Based on what we have said thus far, the following conclusions may be stated. First, if all events during a trip are political in character, the only official expenses on the trip would be those associated specifically with the group of individuals whose official duties require them to accompany the President and Vice President. Second, if all events on a trip are official in character, the only political expenses would be those associated specifically with individuals [*13] who accompany the President and Vice President on the trip for purely political reasons. This means that on a trip that is entirely official, any expenses associated with the President or Vice President or others who are not necessarily on the trip for purely official or purely political reasons should be considered official. Conversely, on a trip that is entirely political, expenses associated with persons who are not necessarily on the trip for wholly official or wholly political reasons should be considered political.

A question remains, however, concerning expenses associated with individuals whose purpose for being on a trip is not necessarily only political or only official, when the trip itself is for both official and political purposes. Specifically, on a mixed trip involving a substantial official element and a substantial political element, can the expenses associated with the President or Vice President or others who are on the trip for both reasons be apportioned between the government and a political committee? There are several possible views on this question.

It might be argued, for example, that the performance of an official event during a trip could not have [*14] been accomplished without incurring certain expenditures [*219] and that, therefore, the entire cost of the trip should be treated as official and should be paid out of appropriated funds, with the sole exception being incremental expenses associated specifically with a political activity (*e.g.*, a hotel bill for an extra night's lodging necessitated entirely by a political event on the following day). This approach is grounded on the assumption that to permit any other apportionment of the cost of a trip to a political committee would allow the official budget to benefit from an unauthorized augmentation of appropriations. Since the expenses incurred were necessary to accomplish an official purpose, on this view they must be paid for in full with appropriated funds.

The opposite theory could also be advanced. That is, if there is any political activity on a trip, a political committee could theoretically be required to pay for the trip's entire cost (except for incremental expenses specifically attributable to an official event). This theory proceeds on the assumption that any other approach would allow the President's or Vice President's political activities to be subsidized [*15] by their official appropriations.

A third approach, which in effect combines the first two, is suggested by a prior opinion of this Office, transmitted to the Counsel to the President on September 17, 1980, and entitled "Reimbursement of Travel Expenses Incurred by Government Officials on Mixed Official and Campaign Trips." That opinion responded to a question about the operation of a Federal Election Commission (FEC) rule under which a campaign committee's share of the costs of a mixed official-political trip is the full cost of the trip from the point of origin through each campaign-related stop and back to the point of origin. 11 C.F.R. § 9004.F. n5 After the FEC adopted this rule, the White House Counsel's Office assumed that the expense to the government for such a trip would be the difference between the trip's actual cost and the amount reimbursed by the campaign committee. However, the Counsel's Office was concerned that such diminishment of the actual expense to the government could constitute an unauthorized augmentation of appropriations. For that reason, it sought an opinion of this Office.

n5 For instance, if a trip from Washington, D.C., to Chicago were taken for official purposes, and then a trip from Chicago to Denver were taken for campaign purposes (with a return from Denver to Washington, D.C.), under the FEC rule the campaign committee would have to make reimbursement for the cost of travel from Washington, D.C., to Denver and back to Washington, D.C.

[*16]

The September 17, 1980, opinion concluded that, if the government were to pay only the difference between the actual cost of a trip and the amount reimbursed by the campaign committee under the FEC rule, there would be an unauthorized augmentation of appropriations (assuming no authority to accept contributions) so long as the government were allowed to "reap the benefit" of the enhanced payment of expenses by the campaign committee under the FEC rule. To cure this problem, the opinion stated that an accounting system should be devised to charge "the full allocated travel

costs to *both* the Campaign Committee and the government agency," with a deposit of any excess funds in the Treasury (page 4, emphasis added).

While we express no view regarding the correctness of this third approach during the period of a presidential election campaign when the Federal Election Commission's regulations would be applicable, we do not believe that the approach correctly reflects the requirements that apply outside the campaign period. We believe that the first two approaches are unreasonable solutions to the problem because each tilts the scales completely toward one of the two conflicting guiding principles and results either in an inappropriate augmentation of appropriated funds or the subsidization of political activity with appropriated funds. The approach of the September 17, 1980, Office of Legal Counsel opinion attempts to address these problems in, we believe, an unrealistic and unnecessary way by requiring one trip to be paid for twice -- both with official funds *and* with political funds.

In our view, a fourth approach which attempts in good faith to apportion the costs of such a trip on the basis of a reasonable division between the time spent on political activities and the time spent on official activities is a more reasonable and a legal resolution of the underlying problems. For example, if 50 percent of a single day's events are political and 50 percent are official, approximately 50 percent of the costs associated with participants whose roles are not necessarily either official or political should be reimbursed by the political committee and 50 percent should be paid from appropriated funds, unless such an apportionment, under the particular circumstances, would on some basis be unreasonable or inequitable. We believe that such an approach faithfully accommodates both of the basic norms discussed in part I.

Thus, when there is a mixed trip involving the President or Vice President, the purpose of which is both substantially political and substantially official, expenses should be paid in the following manner: first, expenses for individuals who are necessarily official (Secret Service, etc.) should be paid for with appropriated funds; second, expenses for individuals who are necessarily political (campaign officials) should be reimbursed by a political committee; third, incremental expenses specifically attributable to an official event should be paid from appropriated funds, and incremental expenses specifically attributable to a political event should be paid from political funds; and finally, expenses for individuals whose official roles permit them to perform political activity should be reasonably and equitably apportioned so that a share reflecting the amount of a trip that is political in character should be paid by a political committee. If these general guidelines are followed, then the purposes of using appropriated funds for official purposes but not using such funds for political purposes will be achieved.

We must reaffirm the limited nature of our conclusion about apportionment. As we have indicated, some categories of expenses may have to be treated as entirely official or entirely political, and thus they would not be subject to apportionment. Apportionment would be appropriate only with respect to expenses associated with individuals whose official roles permit them to perform political functions, and only when those individuals are on a trip that itself is not entirely political or wholly official in nature. In such circumstances, to accommodate both of the guiding norms noted in part I, we believe that an apportionment of expenses between appropriated funds and the funds of a political committee which reflects the relationship between official and political activities may be made. We urge caution in applying such an approach, particularly in retaining records to substantiate any characterization of an event or trip as political or official that could be used in the future if, for instance, there should be an audit by the General Accounting Office.

We are not suggesting any specific formula for apportionment, for several formulae may be equally reasonable and some may be particularly well suited to particular trips. For example, a formula may be predicated on the number of hours spent on each event, the number of hours on the entire trip (including travel time) devoted to official or political affairs, the number of events devoted to each, or if a trip is devoted to one type of event in a distant city and another type in a nearby city on the return flight, on the relative distances travelled to each. While some general guidelines within these limits should be established for consistency in application, the overriding factor is the reasonableness of the apportionment in a specific situation. We would not exclude the possibility of creating an exception for de minimis involvement in official activity during a trip that would be treated as entirely political, and vice versa. We note that previous Administrations have made use of such a de minimis exception, as indicated in the background materials supplied to us by your office.

In two opinions to several Senators, dated October 6, 1980, and March 6, 1981, the Comptroller General discussed the apportionment of travel expenses for purposes of their payment by official and political funds under the Carter Administration (B-196862). Apportionment was not objected to by the Comptroller General. The

Comptroller General expressly noted, as we have observed here, that there are "no guidelines of a legally binding nature [which] have been established by legislation, judicial decision, or otherwise" (page 2 of March 6, 1981, opinion). These opinions, coupled with prior practice by the White House, buttress our conclusion that a reasonable apportionment may be made in the circumstances we have described.

[*20]

IV. Other Considerations

We would add one qualification to the preceding discussion. As noted in part I, official expenses, including expenses incurred during the President's and the Vice President's travel for official purposes, may not be paid for by funds other than those appropriated for official purposes unless there is authority to the contrary. An acceptable source of such authority would be a congressional authorization, in the form of a statute, for the President and the Vice President (or their respective offices) to accept gifts to defray their official expenses. This Office has concluded in the past that the White House Office and the Office of the Vice President do not have statutory authority to accept contributions or gifts. This legal premise provides the basis for the conclusion that the payment by a political committee of official travel expenses incurred by the President or Vice President would be an impermissible augmentation of the appropriations for these offices.

However, in the course of our research for this opinion, we reviewed a provision of law, 2 U.S.C. § 439a (1982), not considered in any of the prior opinions on this subject by this Office or [*21] by the Comptroller General, which appears to grant the President and Vice President gift authority, at least to the extent of authorizing them to accept contributions to defray their ordinary and necessary official expenses. Section 439a states in full:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and *any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to [**222] defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office*, may be contributed to any organization described in section 170(c) of . . . [the Internal Revenue Code of 1954], or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980, no such amounts may be converted by any person to any [*22] personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. (Emphasis added.)

The foregoing provision authorizes "amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office" to be used by such individual "to defray any ordinary and necessary expenses incurred in connection with his or her duties. . . ." The term "Federal office" is defined separately as including the Offices of the President, the Vice President, and Members of Congress. 2 U.S.C. § 431(c). Accordingly, on its face, this provision would appear to authorize use by the President and Vice President of amounts contributed to such individuals for the purpose of supporting their activities as President or Vice President. This would include expenses incurred in the course of official travel. n8

n8 Of course, any applicable conflict of interest provisions would have to be borne in mind if § 439a were to be used as authority for the receipt of contributions for the President's or Vice President's travel expenses.

We have consulted the legislative history of 2 U.S.C. § [*23] 439a, first adopted as part of the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1289, and have found nothing that would be inconsistent with such an interpretation. However, in the limited time available, we similarly have found nothing to indicate that Congress specifically considered the provision's application to the Office of the President or Vice President. The brief floor discussion of this provision n9 and of a similar provision in a predecessor bill n10 merely focused on its application to Members of Congress, who traditionally have been permitted to accept gifts to defray the expenses of their offices. n11 A regulation promulgated by the Federal Election Commission under this provision repeats the language of the statute. See 11 C.F.R. §§ 113.1 & 113.2. Thus, we are aware of no indication that Congress intended it to mean anything other than what it clearly says: that elected officials including the President and the Vice President may accept gifts to defray expenses incurred in connection with the performance of their duties.

n9 See 120 Cong. Rec. 35139 (1974).

n10 *See* 119 Cong. Rec. 26606-07 (1973).

n11 Congress amended the provision in 1980, Pub. L. No. 96-187, §§ 105(4), 113, 93 Stat. 1354, 1366 (1980), generally to prohibit a federal official from converting contributed funds for his or her personal use. A specific exemption to this provision also was added for individuals who were Senators and Representatives on January 8, 1980.

[*24]

[**223] Nevertheless, we would caution against complete reliance on § 439a until further consideration has been given to the authority under that statute for political committees to make contributions, and until the matter has been coordinated with the Federal Election Commission. In this connection, the Federal Election Commission has authority to render advisory opinions to federal officeholders about "the application of a general rule of law stated in" the Federal Election Commission Act, of which § 439a is a part. *See* 2 U.S.C. § 437(b). To our knowledge, the Commission has not been called upon to and thus has not formally addressed the application of § 439a to gifts made to the President or the Vice President to defray the expenses of their offices.

Moreover, even if § 439a ultimately is to be relied upon to grant gift authority for the President and Vice President, we would advise that guidelines be established for the receipt of contributions under the provision. This will be necessary since the Standards of Conduct regulations applicable to agencies in the Executive Office of the President, 3 C.F.R. §§ 100.735-(1)-(32), were not drafted with the intent of regulating [*25] contributions to meet the official expenses of the President and Vice President. Those regulations as currently drafted might not be consistent with full implementation of § 439a if that were desired.

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