

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	[Protocol] [5 PAGES RELEASED IN PART FOR (b)(6) ON PRA RE-REVIEW 09/17/2025 JLS] - To: Cindy Lesser, et al. - From: Brett Kavanaugh	5	06/02/2002	b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

[Enron] Protocol

FRC ID:

9805

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawn/Redacted Material

The George W. Bush Library

SUPERSEDED

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001	Email	[Protocol] - To: Cindy Lesser, et al. - From: Brett Kavanaugh	5	06/02/2002	P5; P6/b6;

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Counsel's Office, White House

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PROTOCOL
For Document Production By The Executive Office Of The President And
Office Of The Vice President
In Response To The May 22, 2002 Subpoenas
From The Senate Committee on Governmental Affairs

June 4, 2002

1. DEFINITIONS

- (a) "Document" or "Documents" refers to any and all documents produced by the Executive Office of the President or the Office of the Vice President (and all copies thereof) in response to the subpoenas dated May 22, 2002 from the Senate Committee on Governmental Affairs.
- (b) "Committee" refers to the Senate Committee on Governmental Affairs.
- (c) "Producing Party" refers to the Executive Office of the President or the Office of the Vice President.
- (d) "Investigation" refers to the investigation by the Senate Committee on Governmental Affairs regarding Enron Corp.
- (e) "Designated staff" are staff designated by the Governmental Affairs Committee Chairman or Ranking Member as having access to the Documents. Designated staff may include only Committee staff or staff for Committee Members and will be limited to staff the Chairman or Ranking Member determines are necessary to serve the purposes of the Investigation and to staff Committee Members.

2. CLASSIFIED DOCUMENTS

Documents that are classified will be handled in accordance with existing Senate procedures.

3. ACCESS TO DOCUMENTS

- (a) The Committee will maintain the Documents, and all copies thereof, in secure rooms (in which alarms will be installed as quickly as possible) in the Majority and Minority Committee offices at all times (except for depositions, witness interviews, other investigative purposes in furtherance of the Committee's work, or for review by Members). Any removal of the Documents for "other investigative purposes in furtherance of the Committee's work" shall be approved in advance by either the Chairman or the Ranking Member. The specially designated secure document rooms will be subject to the following security

protocols:

- (i) Only Members and designated staff will have access to the Documents, and, with respect to staff, only after such staff have signed the certification pursuant to subsection 3(b) below.
 - (ii) The document rooms will be secured immediately and have alarms installed as quickly as possible. Only the Chief Clerk and up to 7 designated Majority staff and 7 designated Minority staff will have keys to the respective rooms.
 - (iii) Designated staff may copy Documents but must maintain those copies within the specially-designated secure rooms, except as provided in subsection 3(a)(v) below, and except that a copy machine that is contiguous to but outside of the specially-designated secure rooms may be used so long as the designated staff making the copies remains with the Documents being copied at all times, and all Documents and copies are returned promptly to the specially-designated document rooms.
 - (iv) The specially-designated secure rooms may contain computers, printers, and copiers, but will not contain fax machines.
 - (v) Only designated staff may transport Documents to depositions and witness interviews, or to the offices of Members for their personal review. When a designated staff member removes Documents, the staff member will sign a log book and specify the date and time the Documents are being removed. Upon completion of the use for which the document was removed from the specially-designated document room, the document must be promptly returned to the specially-designated secured document room.
 - (vi) No copies of the Documents will be made while they are removed from the specially-designated secure rooms (except as provided in subsection 3(a)(iii) above), no faxes of the Documents will be sent except as otherwise permitted by this Protocol, and no copies of Documents will be attached to deposition transcripts.
 - (vii) Only designated staff may remove staff work product, including computer disks, from the specially designated secure rooms. The confidentiality of any such work product must be maintained.
- (b) Before being given access to the Documents, designated staff must sign a certification as set forth in the attachment hereto. Any staff member who violates the certification or any other procedures and protocols set forth herein shall be immediately subject to sanctions, including removal from employment. Such certification will be maintained by the Chief Clerk.

4. DOCUMENTS WITHHELD

In the event the Producing Party withholds responsive Documents from production, the Producing Party shall maintain a bates stamped copy set of all such Documents and shall comply with Instruction number 9 attached to the subpoenas. The Committee maintains that only Documents on which privilege is appropriately asserted may be withheld and does not hereby concede the validity of any such privilege claim.

5. PUBLIC DISCLOSURES OF DOCUMENTS

- (a) Documents received by the Committee will be made public only in the following circumstances:
 - (i) as a part of a Committee hearing;
 - (ii) as a part of a Committee report; or
 - (iii) based on a determination by the Chairman or Ranking Member that disclosure is appropriate to further the purposes of the Investigation, provided that whichever of the Chairman or Ranking Member makes such determination shall, prior to disclosing Documents, give notice of that determination to the other and (for Executive Office of the President Documents) to the Counsel to the President or (for Office of the Vice President Documents) to the Counsel to the Vice President in writing twenty-four hours in advance (excluding Saturdays, Sundays and legal holidays) and that the other and the relevant Counsel is afforded reasonable opportunity to consult with the Chairman or the Ranking Member (whichever has made the determination) prior to any release.
- (b) The Producing Party may identify for the Committee any Document or portion thereof that, in the view of the Producing Party, would inappropriately compromise any individual's personal privacy if released to the public ("personal privacy information"). The Chairman or Ranking Member shall not release any Document containing personal privacy information unless he has evaluated the assertion of personal privacy and either redacted the personal privacy information or provided notice and an opportunity to consult of the type referenced in Subsection 5(a)(iii).
- (c) If any Document produced pursuant to this Protocol is at any time, in whole or in part, released by the Producing Party, or if the Committee obtains the Document through alternative means, the terms of this Protocol shall no longer apply to such Document and such Document may be treated by the Committee as a public document.

6. PROCEDURES DURING HEARINGS

Starting 10 days prior to the beginning of public hearings and thereafter so long as the hearings continue, the following procedures will be in effect:

- a. Committee staff work-product may be removed by anyone who has signed the certification referenced in 3(b) above;
- b. Committee staff and staff for Committee Members may be provided Documents relevant to a hearing no earlier than forty-eight (48) hours prior to the scheduled hearing. The Chairman and Ranking Member may agree to make exceptions to this procedure; and
- c. All Documents may be copied and transported by designated staff to the hearing room on the days that the Committee holds public hearings.

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CERTIFICATION AGREEMENT

I have read and understand the Protocol For Document Production By The Executive Office Of The President And Office Of The Vice President In Response To The May 22, 2002, Subpoenas From The Senate Committee on Governmental Affairs, dated June 4, 2002. I will abide by the terms of the Protocol at all times. I understand that I will be subject to sanctions, including removal from employment, if I make any disclosures of information or documents covered by the Protocol except as authorized in accordance with the Protocol.

Signature

Name (Printed)

Office or Committee

Date

312

I a small quantity of documents relating directly e, J. Rindy and others) and requested that they submit Nionakls to review these documents and uld be produced voluntarily. We have had no

re concerning witnesses from whom we would ve quickly with respect to these witnesses, and We can schedule more than one White House witness availability.

liest convenience. Please call me (or I will try

4313

Exhibit
30-6

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

SECURITY PROCEDURES AND OTHER PROTOCOLS
APRIL 1, 1997

1. Categories of Documents

- A. Confidential Documents (i.e., all documents produced to the Committee pursuant to document requests or subpoenas that are not otherwise marked as "Highly Confidential" and all deposition transcripts, materials produced by witnesses in connection with their depositions, written summaries of depositions and written summaries of witness interviews conducted or prepared by the Committee's staff).
- B. Highly Confidential Documents (i.e., documents marked as "Highly Confidential" that are produced to the Committee for which a compelling need exists for limited access).

2. Classified Documents

Documents produced to the Committee that are classified will be handled in accordance with existing Senate procedures. The procedures and protocols set forth herein shall also apply to classified documents, unless otherwise inconsistent with the Office of Senate Security procedures for classified materials.

3. Access to Documents

A. Original Production Sets.

The Chief Clerk or her designee, as agreed to by the Chairman and Ranking Member, will maintain the original production sets of all documents produced to the Committee in a secure locked room that will be used only for that purpose and that will be accessible only to the Chief Clerk or her designee.

B. Confidential Documents.

All copies of Confidential Documents will be maintained within specially-designated secure document rooms in the Majority and Minority Committee offices at all times (except for depositions, witness interviews, other investigative purposes in furtherance of the Committee's work, or for review by the members of the Committee). The secure document rooms for Confidential Documents will be subject to the following security protocols:

- i. Only the Majority Committee staff designated by the Chairman and

Minority Committee staff designated by the Ranking Member will have access to the Confidential Documents and only after such staff members have signed confidentiality agreements (as provided for in Paragraph 5). Such staff may copy Confidential Documents, but must maintain those copies within the specially-designated secure document rooms, except as provided for in Paragraph 3.B.iii.

- ii. The specially-designated secure document rooms for Confidential Documents may contain computers, printers, and copiers, but will not contain telecopy machines.
- iii. Only the staff designated in Paragraph 3.B.i. can transport Confidential Documents to depositions and witness interviews, or to the offices of the members of the Committee for their personal review. After the removal of any such Confidential Documents from the specially-designated document rooms, the documents must be returned promptly to those areas. No copies of the Confidential Documents will be made while they are removed from the specially-designated secure document rooms, and no copies of Confidential Documents will be attached to deposition transcripts.
- iv. Only the staff designated in Paragraph 3.B.i. may remove committee staff work product, including computer disks, from the specially-designated secure document rooms. The confidentiality of any such work product must be maintained.

C. Highly Confidential documents.

The Chief Clerk or her designee, as agreed to by the Chairman and the Ranking Member, will initially make only six (6) copy sets of Highly Confidential Documents (or such fewer number as the Majority and Minority may agree upon). Three (3) copy sets will be maintained in a specially-designated secure document room for the Majority staff and three (3) copy sets will be maintained in a specially-designated secure document room for the Minority staff. The secure document rooms for Highly Confidential Documents will be subject to the following security protocols:

- i. During the preliminary phase of the Committee's investigation (i.e., prior to public hearings), the Committee will not permit: (a) any further copying of Highly Confidential Documents without the approval of the Chairman and the Ranking Member; or (b) the removal of Highly Confidential Documents from the specially-designated secure document rooms for Highly Confidential Documents (except for depositions, witness

interviews, other investigative purposes in furtherance of the Committee's work or for review by the members of the Committee).

- ii. Only designated staff will have access to the secure document rooms containing the Highly Confidential Documents and only after such staff members have signed confidentiality agreements (as provided in Paragraph 5). The designated staff will be limited to the Majority and Minority Counsels to the Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than five (5) additional persons employed by the Committee to have access to the Highly Confidential Documents. The Chairman and Ranking Member may agree to increase the number of designated persons who may review Highly Confidential Documents during the period prior to public hearings.
- iii. The specially-designated secure document rooms for Highly Confidential Documents may contain computers and printers, but will not contain copiers or telecopy machines.
- iv. Only designated staff can transport Highly Confidential Documents to depositions and witness interviews, or to the offices of the members of the Committee for their personal review. The designated staff will be limited to the Majority and Minority Counsels to the Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than five (5) additional persons employed by the Committee to transport Highly Confidential Documents. After the removal of any such Highly Confidential Documents from the specially-designated document rooms, the documents must be returned promptly to those areas. No copies of Highly Confidential Documents will be made while they are removed from the specially-designated secure document rooms, and no copies of Highly Confidential Documents will be attached to deposition transcripts.
- v. The persons designated in Paragraph 3.C.ii. may remove committee staff work product, including computer disks, from the specially-designated secure document rooms. The confidentiality of any such work product must be maintained.

4. Classification of Documents

The producing party shall designate documents as Confidential or Highly Confidential. The Chairman and Ranking Member also may designate documents as Highly Confidential.

5. Confidentiality Protocols and Agreements

All documents produced to or made available for review by the Committee or its staff shall be considered to be within the confidential business of the Committee for purposes of Paragraph 5 of rule XXIX of the Standing Rules of the Senate. In addition, any staff member designated under paragraph J.B.i., J.C.ii. or J.C.iv. herein, shall sign a confidentiality agreement, as set forth in the attachment hereto, agreeing to the procedures and protocols set forth herein. Any staff member who violates the confidentiality agreement or any other procedures and protocols set forth herein, shall be immediately subject to sanctions, including removal from employment.

6. Documents Withheld by a Producing Party

In the event that the producing party initially withholds documents from production, the producing party shall maintain a Bates stamped copy set of all such documents and promptly notify specially designated Majority and Minority Committee staff (consisting of four individuals designated by the Majority and four individuals designated by the Minority) to discuss and review the documents in an attempt to resolve any questions regarding the production of any such documents. Any notes taken as a result of the discussions and review of the withheld documents shall be limited to the privilege asserted, the type of document, the general subject matter of the document, and the date, author(s) and recipient(s) of the document. Any information obtained by designated Majority and Minority Committee staff as a result of the discussions or review of the documents shall be disclosed only by the Chairman and Ranking Member, acting jointly, provided that the Counsel to the President has consented to the disclosure.

The terms of the preceding paragraph do not apply to documents, or portions of documents, in which the producing party asserts a claim of attorney-client privilege or attorney work product. The producing party shall maintain a Bates stamped copy set of all such documents and promptly arrange to meet with the designated Majority and Minority Committee Staff to describe all such documents and permit such staff to take notes regarding the privilege asserted, the type of document, the general subject matter of the document, and the date, author(s) and recipient(s) of the document. Disclosures of any information obtained by the designated Majority and Minority Committee staff as a result of the producing party's disclosures shall be made only by the Chairman and Ranking Member, acting jointly, provided that the Counsel to the President has consented to the disclosure.

Notwithstanding the above, by their agreement to the procedures set forth in the preceding two paragraphs, the Committee does not acknowledge the existence of, or accept as proper in the circumstances, the producing party's claim of privilege, and reserves the right to seek all available legal remedies to obtain any documents withheld.

7. Capitol Police Security

Capitol Police Officers will be posted at the specially-designated secure document rooms for the documents on a twenty-four (24) hour basis. The Police Officers will control access to the specially-designated secure document rooms containing the documents and will restrict access to those document areas to designated staff. The Police Officers will permit only designated staff to remove documents from the secure document rooms as provided for herein. When a designated staff member removes documents, the staff member will sign a log book maintained by the Police Officer and indicate the time and purpose of the removal of documents, but will not be required to identify the specific documents that are being removed. All staff will be required to permit the Police Officers to search handbags, briefcases, other similar items and file folders taken from the specially-designated secure document rooms.

8. Public Disclosure of Documents

All Confidential and Highly Confidential Documents received by the Committee may be made public only if the documents are pertinent to the Committee's investigation and disclosures, in whole or in part, or by way of summary, are made as part of a Committee hearing or Committee report. Alternatively, disclosure of Confidential and Highly Confidential documents, in whole or in part, or by way of summary, to the public may be made by the Chairman and the Ranking Member, acting jointly, provided that the Counsel to the President is notified in writing twenty-four (24) hours in advance (excluding Saturdays, Sundays, and legal holidays) and Counsel to the President is afforded reasonable opportunity to consult with the Chairman and the Ranking Member prior to any release. No member or staff of the Committee shall otherwise disclose, in whole or in part, or by way of summary, the Confidential and Highly Confidential documents unless authorized by the Chairman and the Ranking Member, acting jointly, and in consultation with the Counsel to the President. If any document produced pursuant to this agreement also is released to the public by a producing party, the terms of this agreement shall not apply to the released document and the released document shall be treated by the Committee as a public document.

9. Procedures During Hearings

After the prefatory phase of the hearings (i.e., until ten (10) days prior to the beginning of public hearings and thereafter so long as the hearings continue), the following procedures will be in effect:

- i. Committee staff work-product can be removed by anyone who has signed the Confidentiality Agreement.
- ii. Committee staff can be provided copies of deposition testimony transcripts

and documents relevant to testimony no earlier than forty-eight (48) hours prior to the scheduled hearing appearance of a witness. The Chairman and Ranking Member may agree to make exceptions to this procedure.

- iii. All documents produced may be copied and transported by designated staff to the hearing room on the days that the Committee holds public hearings.

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CONFIDENTIALITY AGREEMENT

I have read and understand Paragraph 5 of the Senate Rule XXIX and the Security Procedures and Other Protocols of the Senate Governmental Affairs Committee, dated April 1, 1997. I will abide by those confidentiality requirements and other protocols, and maintain the confidentiality of all documents, and information obtained therefrom, of which I become aware, unless I am authorized to disclose such materials pursuant to the Security Procedures and Other Protocols, dated April 1, 1997. I understand that I will be subject to sanctions, including removal from employment, if I disclose confidential information or documents of the Committee without such authorization.

Signature

Name (Printed)

Office or Committee

Social Security Number

Date



Brett M. Kavanaugh
06/02/2002 06:07:38 PM

Record Type: Record

To: cindy lesser [REDACTED] (b)(6), joyce_rechtschaffen@govt-aff.senate.gov,
laurie_rubenstein@govt-aff.senate.gov, cynthia_lesser@govt-aff.senate.gov
cc: richard_hertling@govt-aff.senate.gov
bcc: Records Management@EOP
Subject: Re: protocol

Thank you for your e-mail of Saturday afternoon and your proposed document protocol. I have informed Judge Gonzales of the substance of your e-mail (which you indicated you sent without consultation with Chairman Lieberman or other members of the Committee). Judge Gonzales said that he looks forward to receiving the Chairman's response to his letter of May 31.

In the interim, you asked that I identify any concerns I might have with your proposed protocol.

At the outset, Judge Gonzales' letter suggested that the Committee adhere to the protocol that it adopted and used in 1997 during the Clinton Administration when Senator Thompson was the Committee Chairman. You have suggested that the same protocol need not be used because the Committee's 1997 investigation involved "a broader range of sensitive" documents and was larger in "scope and size."

With respect to sensitivity of documents, the document productions the EOP and OVP will make to the Committee necessarily will include sensitive materials -- including classified documents; national security-sensitive documents; documents containing business confidential and business proprietary information; documents containing privacy information, such as social security numbers and birthdates; documents containing the e-mail addresses of White House and other federal officials; and other sensitive communications to and within the Executive Branch. The ultimate number of documents produced is not relevant, moreover, to the question whether and how to secure and protect sensitive documents. The only relevant question, therefore, is whether the Committee will agree to secure and protect sensitive documents in the same sensible manner that it did in 1997 with respect to sensitive Clinton Administration documents.

My specific concerns with your proposed protocol further demonstrate why the 1997 protocol is necessary and appropriate for this investigation as well. Those concerns include the following:

-- Your proposed protocol states simply that documents will be maintained in "secure areas not accessible to the public." But you have not spelled out how the physical security of the documents actually would be maintained. The 1997 protocol, by contrast, imposed specific

safeguards to protect the security of documents.

-- Your proposed protocol, unlike the 1997 protocol, does not require designated staff with access to documents to sign a Confidentiality Agreement. There is no legitimate reason to dispense with such a requirement.

-- Your proposed protocol permits disclosure of documents "to individuals outside designated staff when for investigative purposes." But the protocol does not define what an "investigative purpose" is.

-- Your proposed protocol states that documents provided to the Committee can "be made public" in three ways. The third -- disclosure when the Chairman alone determines -- is inconsistent with the 1997 protocol, which stated that documents could be made public in this manner only by the Chairman and Ranking Member "acting jointly" and further provided that the Counsel to the President would be notified in writing 24 hours in advance and afforded a reasonable opportunity to consult with the Chairman and Ranking Member before release.

-- Your proposed protocol does not indicate how classified materials would be controlled. In contrast, the 1997 protocol had a specific provision for the handling of classified materials.

Thank you again for your e-mail.

cindy lesser (b)(6)



cindy lesser (b)(6)
06/01/2002 12:43:54 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: joyce_rechtschaffen@govt-aff.senate.gov, laurie_rubenstein@govt-aff.senate.gov,
cynthia_lesser@govt-aff.senate.gov

Subject: protocol

Brett:

Thank you for sending over Judge Gonzales May 31, 2002 letter to Chairman Lieberman. We are not able to reach Senator Lieberman this weekend, but staff wanted to respond to you on a more informal basis in an effort to resolve outstanding issues prior to the subpoena's return date of Monday. We appreciate your intention to produce documents on Monday, June 3, consistent with the subpoena, and we intend to do all we can to facilitate

that timely production. However, as Laurie and I explained to you during our several phone calls yesterday, we do not believe the Committee can agree to your proposal to adopt the 1997 protocol, which was put in place for an entirely different type of investigation involving an extraordinarily broad range of sensitive issues (some with national security implications), hundreds of thousands of documents, and scores of specially designated staff.

After your conversations with Laurie and with me, in which you had indicated that the 1997 protocol from the campaign finance investigation was just a starting point, we tried to come up with something that would meet your concerns about security while taking into account the radically smaller size and scope of this investigation. We therefore were surprised by the letter's suggestion that your office is insisting on the 1997 protocol. Although, as you know, the Committee is not required to enter into any protocol in order to receive documents from the White House pursuant to the Committee's subpoena, we want to work with you in a cooperative manner. In an effort to move the process along swiftly, I am attaching a draft protocol that reflects the basic terms we discussed with you yesterday afternoon. If you have concerns about this protocol, please feel free to provide specific suggestions you think appropriate and we will consider them. As mentioned, there are some issues on which we have flexibility, and others on which we do not.

I would also like to address the objections Judge Gonzales raised in his letter about our proposed protocol. First, as Laurie and I explained to you yesterday, the scope and the size of the investigation here is much, much smaller. In the 1997 investigation, the White House and numerous other government agencies produced hundreds of thousands of documents. That combined with the large number of Committee investigative staff—our recollection is somewhere between 60 and 80 people—necessitated establishing a number of separate rooms to house the documents and Committee staff. Based on what you have told us thus far, we do not expect even a fraction of that volume to be produced by the White House. In addition, we have only a small fraction of that number of staff working on this investigation. Consequently, we see no reason to establish separate rooms to house these materials. Moreover, we do not think it necessary, or, in a post-September 11 world, appropriate, to keep the documents in a room guarded on a 24-hour basis by Capitol Police. However, we have every intention of ensuring the security of the documents produced by the White House; we have offered to keep the documents in secure areas not accessible to the public and limit copying only to the extent necessary. We are open to additional, specific suggestions your office may have regarding security of the documents. However, we cannot agree to unnecessarily cumbersome and complex procedures that would hamper the efforts of staff to move this investigation forward efficiently and expeditiously.

As for Judge Gonzales' concern about the security of private or identifying information, we believe the protocol we have proposed will be more than sufficient to guard against unintentional disclosure of any such sensitive information. More important, please be assured that the Committee understands the sensitivity of personal, identifying information such as Social Security numbers and e-mail addresses, and even in authorized public disclosures will make efforts to protect such information from the public.

domain. In fact, the Committee has already received from other sources similar types of information, and has been successful in protecting it from disclosure without the need for any protocol.

Judge Gonzales also expressed a concern about a large number of Committee and non-Committee staff having access to the documents. We are not sure we understand this concern given that a much smaller universe of staff will have access to the documents the White House produces in this investigation as compared to the scores of staffers in the 1997 investigation who had full access to the documents from the White House. Included in those who had access to the documents in the 1997 investigation were staff for Members of the Committee, even if those staff were not on the Committee payroll. This was necessary then, as it is now, to ensure that each Member of the Committee may participate in the Committee's activities. (As we explained to you over the phone, only a portion of the Committee Members have staff on the Committee payroll.) In any event, those with access would be limited to designated staff, and all staffers who are granted access to the documents would be bound by the protocol.

Finally, Judge Gonzales indicated his belief that the disclosure provisions from the 1997 protocol should apply here. We respectfully disagree. That investigation involved a much broader range of sensitive information and saw three months of hearings in which the Chairman could exercise his prerogative to make public any document he believed appropriate without consulting the Ranking Member. We do not anticipate the same situation here, and therefore do not believe the Chairman should be required to surrender his prerogative to make determinations about what would further the purposes of the Committee's investigation. In fact, far from seeing 1997 as the appropriate analog to the current investigation, we see as more comparable the many Committee investigations in which no protocol was entered into. Throughout the years, the Committee has conducted a number of investigations that involved the Committee receiving sensitive information from a number of government agencies, including at least one we can recall that focused the Clinton White House. In those investigations, the Committee acted responsibly, without being bound by any protocol governing either the security of the documents during the investigation or the disclosure of those documents. Although we therefore see no need to enter into a protocol here, we are happy to accommodate your office's desire for the Committee to do so. We believe what we have proposed provides effective protections against unnecessary or inappropriate disclosure. As noted above and indicated in our conversations yesterday, there are some issues on which we have flexibility. Please provide comments at your earliest convenience.

The subpoena's return date is Monday, June 3, at noon. It is the Committee's belief that this return date must be honored whether or not a protocol is in place. Nevertheless, absent further, agreed-upon refinements to the attached protocol, this is the protocol we intend to follow upon receipt of the documents on Monday. Please note that we will forward this protocol to Senator Thompson's staff as well. We do not feel that we can bind Minority staff to this protocol without their consent.

Cindy Lesser

Chat with friends online, try MSN Messenger: <http://messenger.msn.com>



- PROTOCOL.doc

PROTOCOL
For Document Production By The Executive Office of The President
In Response To The May 22, 2002 Subpoena
From The Senate Committee on Governmental Affairs

May 31, 2002

1. DEFINITIONS

- (a) "Document" or "Documents" refers to any and all documents produced by the Executive Office of the President in response to the subpoena dated May 22, 2002 from the Senate Committee on Governmental Affairs.
- (b) "Committee" refers to the Senate Committee on Governmental Affairs.
- (c) "Producing Party" refers to the Executive Office of the President.
- (d) "Investigation" refers to the investigation by the Senate Committee on Governmental Affairs regarding Enron Corp.

2. SECURITY OF AND ACCESS TO DOCUMENTS

- (a) The Committee will maintain the Documents in secure areas not accessible to the public, and will limit copying only to that necessary to fulfill the Committee's investigative needs.
- (b) In addition to Members, and except as provided below, the Documents will be made available only to designated Committee staff, and staff designated by any Member of the Committee, for use in connection with the Investigation. Such use in connection with the Investigation includes disclosure to individuals outside designated staff when for investigative purposes.
- (c) Persons with access to the Documents will not disclose any Documents, except as authorized by this Protocol.

3. DOCUMENTS WITHHELD

- (a) In the event that the Producing Party initially withholds Documents from production, the Producing Party shall maintain a bates stamped set of all such Documents and promptly notify specially designated Majority and Minority Committee staff (consisting of three individuals designated by the Majority and three individuals designated by the Minority) to discuss and review the Documents in an attempt to resolve any questions regarding the production of any such Documents. Any notes taken as a

result of the discussions and review of the withheld Documents shall be limited to the privilege asserted, the type of Document, the general subject matter of the Document, and the date, author(s) and recipient(s) of the Document. Any information obtained by designated Majority and Minority Committee staff as a result of the discussions or review of the Documents shall be disclosed only by the Chairman and Ranking Member, acting jointly, provided that Counsel to the President has consented to the disclosure.

- (b) The terms of the preceding paragraph do not apply to Documents, or portions of the Documents, in which the Producing Party asserts a claim of attorney-client privilege or attorney work product. The Producing Party shall maintain a bates stamped copy set of all such Documents and promptly arrange to meet with the designated Majority and Minority Committee staff to describe all such Documents and permit such staff to take notes regarding the privilege asserted, the type of Document, the general subject matter of the Document, and the date, author(s) and recipient(s) of the Document. Disclosures of any information obtained by the designated Majority and Minority staff as a result of the Producing Party's disclosures shall be made only by the Chairman and the Ranking Member, acting jointly, provided that Counsel to the President has consented to the disclosure.
- (c) Notwithstanding the above, by their agreement to the procedures set forth in the preceding two paragraphs, the Committee does not acknowledge the existence of, or accept as proper in the circumstances the Producing Party's claim of privilege, and reserves the right to seek all available legal remedies to obtain any Documents withheld.

4. PUBLIC DISCLOSURES

- (a) Documents received by the Committee will be made public only in the following circumstances:
 - (i) as a part of a Committee hearing;
 - (ii) as a part of a Committee report; or
 - (iii) based on a determination by the Chairman or Ranking Member that disclosure is appropriate to further the purposes of the Investigation.
- (b) If any Document produced pursuant to this Protocol is at any time, in whole or in part, released by the Producing Party, or if the Committee obtains the Document through alternative means, the terms of this Protocol shall no longer apply to such Document and such Document may be treated by the Committee as a public document.

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Exhibit
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UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

SECURITY PROCEDURES AND OTHER PROTOCOLS
APRIL 1, 1997

1. Categories of Documents

- A. Confidential Documents (i.e., all documents produced to the Committee pursuant to document requests or subpoenas that are not otherwise marked as "Highly Confidential" and all deposition transcripts, materials produced by witnesses in connection with their depositions, written summaries of depositions and written summaries of witness interviews conducted or prepared by the Committee's staff).
- B. Highly Confidential Documents (i.e., documents marked as "Highly Confidential" that are produced to the Committee for which a compelling need exists for limited access).

2. Classified Documents

Documents produced to the Committee that are classified will be handled in accordance with existing Senate procedures. The procedures and protocols set forth herein shall also apply to classified documents, unless otherwise inconsistent with the Office of Senate Security procedures for classified materials.

3. Access to Documents

A. Original Production Sets

The Chief Clerk or her designee, as agreed to by the Chairman and Ranking Member, will maintain the original production sets of all documents produced to the Committee in a secure locked room that will be used only for that purpose and that will be accessible only to the Chief Clerk or her designee.

B. Confidential Documents

All copies of Confidential Documents will be maintained within specially-designated secure document rooms in the Majority and Minority Committee offices at all times (except for depositions, witness interviews, other investigative purposes in furtherance of the Committee's work, or for review by the members of the Committee). The secure document rooms for Confidential Documents will be subject to the following security protocols:

- i. Only the Majority Committee staff designated by the Chairman and

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Minority Committee staff designated by the Ranking Member will have access to the Confidential Documents and only after such staff members have signed confidentiality agreements (as provided for in Paragraph 5). Such staff may copy Confidential Documents, but must maintain those copies within the specially-designated secure document rooms, except as provided for in Paragraph 3.B.iii.

- ii. The specially-designated secure document rooms for Confidential Documents may contain computers, printers, and copiers, but will not contain telecopy machines.
- iii. Only the staff designated in Paragraph 3.B.i. can transport Confidential Documents to depositions and witness interviews, or to the offices of the members of the Committee for their personal review. After the removal of any such Confidential Documents from the specially-designated document rooms, the documents must be returned promptly to those areas. No copies of the Confidential Documents will be made while they are removed from the specially-designated secure document rooms, and no copies of Confidential Documents will be attached to deposition transcripts.
- iv. Only the staff designated in Paragraph 3.B.i. may remove committee staff work product, including computer disks, from the specially-designated secure document rooms. The confidentiality of any such work product must be maintained.

C. Highly Confidential documents.

The Chief Clerk or her designee, as agreed to by the Chairman and the Ranking Member, will initially make only six (6) copy sets of Highly Confidential Documents (or such fewer number as the Majority and Minority may agree upon). Three (3) copy sets will be maintained in a specially-designated secure document room for the Majority staff and three (3) copy sets will be maintained in a specially-designated secure document room for the Minority staff. The secure document rooms for Highly Confidential Documents will be subject to the following security protocols:

- i. During the preliminary phase of the Committee's investigation (i.e., prior to public hearings), the Committee will not permit: (a) any further copying of Highly Confidential Documents without the approval of the Chairman and the Ranking Member; or (b) the removal of Highly Confidential Documents from the specially-designated secure document rooms for Highly Confidential Documents (except for depositions, witness

interviews, other investigative purposes in furtherance of the Committee's work or for review by the members of the Committee).

- ii. Only designated staff will have access to the secure document rooms containing the Highly Confidential Documents and only after such staff members have signed confidentiality agreements (as provided in Paragraph 5). The designated staff will be limited to the Majority and Minority Counsels to the Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than five (5) additional persons employed by the Committee to have access to the Highly Confidential Documents. The Chairman and Ranking Member may agree to increase the number of designated persons who may review Highly Confidential Documents during the period prior to public hearings.
- iii. The specially-designated secure document rooms for Highly Confidential Documents may contain computers and printers, but will not contain copiers or telecopy machines.
- iv. Only designated staff can transport Highly Confidential Documents to depositions and witness interviews, or to the offices of the members of the Committee for their personal review. The designated staff will be limited to the Majority and Minority Counsels to the Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than five (5) additional persons employed by the Committee to transport Highly Confidential Documents. After the removal of any such Highly Confidential Documents from the specially-designated document rooms, the documents must be returned promptly to those areas. No copies of Highly Confidential Documents will be made while they are removed from the specially-designated secure document rooms, and no copies of Highly Confidential Documents will be attached to deposition transcripts.
- v. The persons designated in Paragraph 3.C.ii. may remove committee staff work product, including computer disks, from the specially-designated secure document rooms. The confidentiality of any such work product must be maintained.

4. Classification of Documents

The producing party shall designate documents as Confidential or Highly Confidential. The Chairman and Ranking Member also may designate documents as Highly Confidential.

5. Confidentiality Protocols and Agreements

All documents produced to or made available for review by the Committee or its staff shall be considered to be within the confidential business of the Committee for purposes of Paragraph 5 of rule XXIX of the Standing Rules of the Senate. In addition, any staff member designated under paragraph J.B.i., J.C.ii. or J.C.iv. herein, shall sign a confidentiality agreement, as set forth in the attachment hereto, agreeing to the procedures and protocols set forth herein. Any staff member who violates the confidentiality agreement or any other procedures and protocols set forth herein, shall be immediately subject to sanctions, including removal from employment.

6. Documents Withheld by a Producing Party

In the event that the producing party initially withholds documents from production, the producing party shall maintain a bates stamped copy set of all such documents and promptly notify specially designated Majority and Minority Committee staff (consisting of four individuals designated by the Majority and four individuals designated by the Minority) to discuss and review the documents in an attempt to resolve any questions regarding the production of any such documents. Any notes taken as a result of the discussions and review of the withheld documents shall be limited to the privilege asserted, the type of document, the general subject matter of the document, and the date, author(s) and recipient(s) of the document. Any information obtained by designated Majority and Minority Committee staff as a result of the discussions or review of the documents shall be disclosed only by the Chairman and Ranking Member, acting jointly, provided that the Counsel to the President has consented to the disclosure.

The terms of the preceding paragraph do not apply to documents, or portions of documents, in which the producing party asserts a claim of attorney-client privilege or attorney work product. The producing party shall maintain a bates stamped copy set of all such documents and promptly arrange to meet with the designated Majority and Minority Committee Staff to describe all such documents and permit such staff to take notes regarding the privilege asserted, the type of document, the general subject matter of the document, and the date, author(s) and recipient(s) of the document. Disclosures of any information obtained by the designated Majority and Minority Committee staff as a result of the producing party's disclosures shall be made only by the Chairman and Ranking Member, acting jointly, provided that the Counsel to the President has consented to the disclosure.

Notwithstanding the above, by their agreement to the procedures set forth in the preceding two paragraphs, the Committee does not acknowledge the existence of, or accept as proper in the circumstances, the producing party's claim of privilege, and reserves the right to seek all available legal remedies to obtain any documents withheld.

7. Capitol Police Security

Capitol Police Officers will be posted at the specially-designated secure document rooms for the documents on a twenty-four (24) hour basis. The Police Officers will control access to the specially-designated secure document rooms containing the documents and will restrict access to those document areas to designated staff. The Police Officers will permit only designated staff to remove documents from the secure document rooms as provided for herein. When a designated staff member removes documents, the staff member will sign a log book maintained by the Police Officer and indicate the time and purpose of the removal of documents, but will not be required to identify the specific documents that are being removed. All staff will be required to permit the Police Officers to search handbags, briefcases, other similar items and file folders taken from the specially-designated secure document rooms.

8. Public Disclosure of Documents

All Confidential and Highly Confidential Documents received by the Committee may be made public only if the documents are pertinent to the Committee's investigation and disclosures, in whole or in part, or by way of summary, are made as part of a Committee hearing or Committee report. Alternatively, disclosure of Confidential and Highly Confidential documents, in whole or in part, or by way of summary, to the public may be made by the Chairman and the Ranking Member, acting jointly, provided that the Counsel to the President is notified in writing twenty-four (24) hours in advance (excluding Saturdays, Sundays, and legal holidays) and Counsel to the President is afforded reasonable opportunity to consult with the Chairman and the Ranking Member prior to any release. No member or staff of the Committee shall otherwise disclose, in whole or in part, or by way of summary, the Confidential and Highly Confidential documents unless authorized by the Chairman and the Ranking Member, acting jointly, and in consultation with the Counsel to the President. If any document produced pursuant to this agreement also is released to the public by a producing party, the terms of this agreement shall not apply to the released document and the released document shall be treated by the Committee as a public document.

9. Procedures During Hearings

After the prefatory phase of the hearings (i.e., until ten (10) days prior to the beginning of public hearings and thereafter so long as the hearings continue), the following procedures will be in effect:

- i. Committee staff work-product can be removed by anyone who has signed the Confidentiality Agreement.
- ii. Committee staff can be provided copies of deposition testimony transcripts

and documents relevant to testimony no earlier than forty-eight (48) hours prior to the scheduled hearing appearance of a witness. The Chairman and Ranking Member may agree to make exceptions to this procedure.

- iii. All documents produced may be copied and transported by designated staff to the hearing room on the days that the Committee holds public hearings.

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CONFIDENTIALITY AGREEMENT

I have read and understand Paragraph 5 of the Senate Rule XXIX and the Security Procedures and Other Protocols of the Senate Governmental Affairs Committee, dated April 1, 1997. I will abide by those confidentiality requirements and other protocols, and maintain the confidentiality of all documents, and information obtained therefrom, of which I become aware, unless I am authorized to disclose such materials pursuant to the Security Procedures and Other Protocols, dated April 1, 1997. I understand that I will be subject to sanctions, including removal from employment, if I disclose confidential information or documents of the Committee without such authorization.

Signature

Name (Printed)

Office or Committee

Social Security Number

Date