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Folder Title:

FBI Files Matter - Correspondence with Independent Counsel [5]

Staff Office-Individual:

Counsel's Office-Nemetz, Miriam

Original OA/ID Number:

CF 446

Row:	Section:	Shelf:	Position:	Stack:
20	2	9	2	V

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

Washington, D. C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: _____

TO: Miriam Nemetz, Esq., Associate Counsel to the President

Company Name: The White House

Fax Number: 202-456-5055

Telephone Number: 202-456-5092

FROM: Rod J. Rosenstein, Associate Independent Counsel

Number of Pages: 2 (including this cover sheet)

Message: _____

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SUBADDRESS		
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OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

Washington, D. C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: _____

TO: Miriam Nemetz, Esq., Associate Counsel to the PresidentCompany Name: The White HouseFax Number: 202-456-5055Telephone Number: 202-456-5092FROM: Rod J. Rosenstein, Associate Independent CounselNumber of Pages: 2 (including this cover sheet)

Message: _____

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

Washington, D. C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: _____

TO: Miriam Nemetz, Esq., Associate Counsel to the PresidentCompany Name: The White HouseFax Number: 202-456-5055Telephone Number: 202-456-5092FROM: Rod J. Rosenstein, Associate Independent CounselNumber of Pages: 2 (including this cover sheet)

Message: _____

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**Office of the Independent Counsel**

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

August 6, 1996

Miriam Nemetz, Esq.
Associate Counsel to the President
The White House
Washington, DC 20530

Dear Ms. Nemetz:

During our review of information on computer diskettes found in the Personnel Security Office, we came across a document that asserts, on its face, that it is protected by attorney-client privilege. The document, titled "CLLAW.YER" is on a diskette labeled "CRAIG MEMOS" that was found in a diskette storage case on a desk in Room 84. The computer indicates that the document was last revised on July 5, 1994, at 4:12 pm. The diskette contains numerous documents relating to the operations of the Personnel Security Office.

The document appears to be a memorandum addressed from D. Craig Livingstone to Randy Turk, Esq., dated May 19, 1994, concerning a meeting between Mr. Livingstone and Special Agent Ray McElhaney. We did not read the substance of the memorandum.

We believe that it is appropriate for us to bring this document to the attention of Mr. Livingstone's counsel before reviewing it. Accordingly, we will not review the document until Mr. Livingstone's counsel has had a reasonable opportunity to express his views on whether there is a legitimate claim of privilege that would preclude us from reviewing it. Until the matter is resolved, we request that you retain the original diskette along with all of the other materials from Room 84.

Thank you for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rod J. Rosenstein", is written over a horizontal line.

Rod J. Rosenstein
Associate Independent Counsel

cc: David Cohen, Esq.

THE WHITE HOUSE
WASHINGTON

August 5, 1996

BY HAND DELIVERY

John D. Bates
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

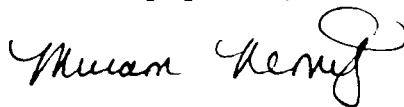
Dear John:

Enclosed are documents responsive to Paragraph C of subpoena No. D705. The documents have been labeled with Bates numbers OPS 011003 through OPS 011239. It is my understanding that these documents, which are indices of files sent to the Office of Records Management by the White House Office of Personnel Security, have already been provided to your Office informally.

We understand that your Office will treat these documents as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury.

Please feel free call me if you have any questions.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Miriam Nemetz".

Miriam R. Nemetz
Associate Counsel to the President

Enclosures

THE WHITE HOUSE
WASHINGTON

August 1, 1996

BY HAND DELIVERY

John D. Bates
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

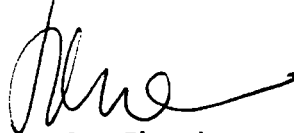
Dear John:

Enclosed are additional documents responsive to Paragraph H of subpoena No. D705, seeking copies of documents provided to Congress. The documents have been labeled with Bates numbers CGE 46577 through CGE 48342.

We understand that your Office will treat these documents as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury.

Please feel free call me if you have any questions.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

Enclosures

THE WHITE HOUSE
WASHINGTON

August 1, 1996

BY HAND DELIVERY

John D. Bates
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

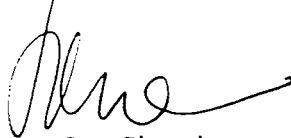
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We understand that your Office will treat these documents as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury.

Please feel free call me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Jane C. Sherburne', with a stylized flourish at the end.

Jane C. Sherburne
Special Counsel to the President

Enclosures

THE WHITE HOUSE
WASHINGTON

July 29, 1996

Steven Colloton
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

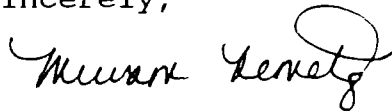
Dear Steve:

Pursuant to subpoena # D705, your Office today took custody of the originals and one copy of documents identified during your review of the contents of Room 84 and Room 98 of the Old Executive Office Building. The documents have been labeled with the following Bates numbers: OPS 009392-009497, OPS 009695-009792, OPS 009698-010812, and OPS 11001-11002.

As with documents previously produced, we understand that your Office will treat these documents and the information conveyed in this letter as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Miriam R. Nemetz".

Miriam R. Nemetz
Associate Counsel to the President

THE WHITE HOUSE
WASHINGTON

July 29, 1996

Steven Colloton
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

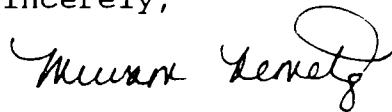
Dear Steve:

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As with documents previously produced, we understand that your Office will treat these documents and the information conveyed in this letter as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Miriam R. Nemetz".

Miriam R. Nemetz
Associate Counsel to the President

THE WHITE HOUSE

WASHINGTON

July 28, 1996

BY FACSIMILE

John D. Bates
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

Dear John:

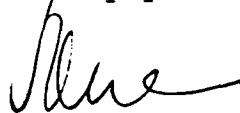
I received your letter of July 12, 1996 regarding the process for compliance with Paragraphs A and B of the Rider to your July 1, 1996 subpoena (D705) relating the the FBI files matter.

Although my characterization of the events as set forth in your letter would differ somewhat -- for example, I am not aware of any delay due to the order of review of the documents -- I agree with your description of our agreement. As we have discussed, both the Independent Counsel and the White House have legitimate interests to protect. I believe that the resolution we have reached protects those interests by allowing your Office the access it needs to review documents while preserving the White House's right to consider and, if necessary, assert privilege.

I am pleased that we were able to resolve the review and production of documents in the Office of Personnel Security and understand it has been proceeding smoothly.

Please call me if you have any questions.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

THE WHITE HOUSE
WASHINGTON

July 26, 1996

Steven Colloton
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

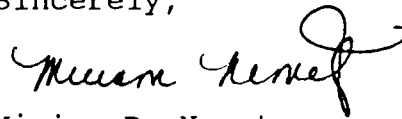
Dear Steve:

Pursuant to subpoena # D705, your Office today took custody of the originals and one copy of documents identified during your review of the contents of Room 84 and Room 98 of the Old Executive Office Building. The documents have been labeled with the following Bates numbers: OPS 000001-001036, OPS 001182-002287, OPS 002380-009391, OPS 009498-009694, OPS 009793-009897, and OPS 010813-011000.

As with documents previously produced, we understand that your Office will treat these documents and the information conveyed in this letter as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Miriam Nemetz", written in dark ink.

Miriam R. Nemetz
Associate Counsel to the President

THE WHITE HOUSE
WASHINGTON

July 19, 1996

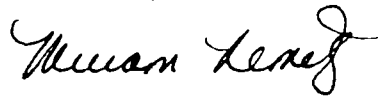
Steven Colloton
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

Dear Steve:

As we discussed today, we have agreed to the following process for your review of electronic data from the hard drives and network directories of present and former employees of the Office of Personnel Security. To accommodate your review of the data, we have agreed that you may take the Bernoulli disks containing the data to your offices for review. You will copy onto diskettes any material that you wish at this time to retain permanently. You will return both the Bernoulli disks and any copied material to the White House following your review. Consistent with our earlier agreements, we will then review for executive privilege and copy the material you wish to retain before you take permanent custody of it.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Miriam R. Nemetz".

Miriam R. Nemetz
Associate Counsel to the President

THE WHITE HOUSE
WASHINGTON

July 19, 1996

Steven Colloton
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

Dear Steve:

As we discussed today, we have agreed to the following process for your review of electronic data from the hard drives and network directories of present and former employees of the Office of Personnel Security. To accommodate your review of the data, we have agreed that you may take the Bernoulli disks containing the data to your offices for review. You will copy onto diskettes any material that you wish at this time to retain permanently. You will return both the Bernoulli disks and any copied material to the White House following your review. Consistent with our earlier agreements, we will then review for executive privilege and copy the material you wish to retain before you take permanent custody of it.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Miriam R. Nemetz".

Miriam R. Nemetz
Associate Counsel to the President



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

July 17, 1996

Jane Sherburne, Esq.
Special Counsel to the President
The White House
Washington, DC 20530

Dear Ms. Sherburne:

During our initial review of materials in the Personnel Security Office, we came across a document that asserts, on its face, that it is protected by attorney-client privilege. The document is in a file labeled "Craig Memos" that was found in an unlocked wooden cabinet in Room 84. The file contained numerous non-privileged documents relating to the operation of the Personnel Security Office and other matters. The file was located in a stack of materials, including archives lists, that concern the administration of the office. One employee of the office advised us during the review that these materials were moved from a safe to the cabinet so that employees could have day-to-day access to the materials.

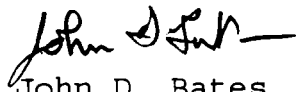
The document appears to be a five-page memorandum addressed from D. Craig Livingstone to Randy Turk, Esq., dated May 10, 1994, concerning a meeting between Mr. Livingstone and Special Agent Ray McElhaney. We did not read the substance of the memorandum.

Although the document was not kept in Mr. Livingstone's private office and was located with official records in a file to which other employees of the Personnel Security Office evidently had regular access, we believe that it is appropriate for us to bring this document to the attention of Mr. Livingstone's counsel before reviewing it.

Accordingly, we propose to place the document in a sealed envelope and leave it in your custody until Mr. Livingstone's counsel has had an opportunity to express his views on whether there is a legitimate claim of privilege that would preclude us from reviewing the document. Until the matter is resolved, we request that you not release the document to anyone without our agreement.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Bates", with a horizontal line extending to the right.

John D. Bates
Deputy Independent Counsel

cc: David Cohen, Esq.

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

Washington, D. C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: July 12, 1996TO: Jane Sherburne, Special Counsel to the PresidentCompany Name: The White HouseFax Number: 202-456-1213 Telephone Number: 202-456-5116FROM: John D. Bates, Deputy Independent CounselNumber of Pages: 3 (including this cover sheet)

Message: _____

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Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

July 12, 1996

Jane C. Sherburne, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Dear Ms. Sherburne:

Over the past few days, we have had several conversations regarding the process that will be used in our ongoing review of the Office of Personnel Security (OPS) to obtain materials responsive to our July 1, 1996 subpoena to the Executive Office of the President. This will confirm our understanding of the agreement we reached yesterday.

As you will recall, we began our review of the rooms that contain OPS materials, and thus constitute the OPS, based on your agreement to isolate and secure all documents, computer files and other records in the OPS and based on the July 1, 1996 grand jury subpoena. We requested that representatives of the OIC be permitted to review, in the presence of White House attorneys, all materials in the OPS. The White House agreed to that process, which began on July 2, 1996. Initially, representatives of the OIC reviewed files and documents within the OPS, and White House attorneys reviewed those materials either after or simultaneous with our review. There was no agreement, or indeed any discussion, as to whether our review of documents would constitute a waiver of any potential privilege claims by the White House for documents we reviewed.

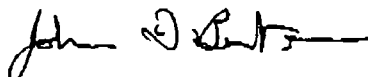
However, on Monday, July 8, 1996, we were informed upon our arrival at the White House that henceforth you would not permit OIC representatives to review materials before or at the same time that White House attorneys reviewed the materials. Instead, you insisted that review by White House attorneys precede our review of any documents or other materials. When I learned of this change in procedure on Monday, I promptly voiced my objection, and our discussions ensued.

JANE C. SHERBURNE FAX 12:28 FAX
Jane C. Sherburne, Esq.
July 12, 1996
Page 2

Needless to say, we are disturbed at this change of events. Reluctantly, however, we have now agreed to modify the process of review that had been proceeding smoothly prior to Monday. The OIC and the White House have agreed (1) that review of the materials in the OPS and on computers will proceed with OIC representatives reviewing the materials first, followed by a review by White House attorneys, but (2) that the fact that OIC representatives review a document or other record during this process at the OPS will not constitute a waiver of any executive privilege claim the White House may choose to assert during the follow-up review as to a particular document or other record.

We hope that our agreement to this change in the review process will permit a prompt resumption and speedy completion of our review of all materials in the OPS. Indeed, it is in order to do so that we have reluctantly acquiesced in this change. Of course, we have agreed to the new process without any prejudice to our legal position as to the circumstances and consequences of any review conducted under the original process employed through July 5, 1996.

Sincerely,



John D. Bates
Deputy Independent Counsel



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

June 24, 1996

Jane C. Sherburne
Special Counsel to the President
The White House
Washington, DC 20500

Dear Ms. Sherburne:

As you know, the Special Division of the United States Court of Appeals last Friday ordered the jurisdiction of this Office expanded to investigate, inter alia, whether certain violations of federal criminal law were committed by Anthony Marceca, an investigator detailed to the White House Office of Personnel Security, relating to requests made by the White House between December 1993 and February 1994 to the Federal Bureau of Investigation for background investigation reports and materials. The expansion includes jurisdiction and authority to investigate certain related allegations or evidence of violations by other persons or entities, including unlawful conspirators or aiders and abettors.

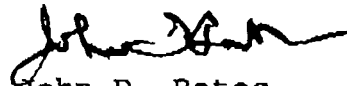
Our investigation will require an examination of activities of the Office of Personnel Security at the White House. We understand that the Office of Personnel Security was formerly headed by Craig Livingstone, and that Mr. Livingstone is now on paid administrative leave from his position.

Accordingly, pending further communication from us regarding specific investigative steps, we request that you isolate and secure all documents, computer files (including computer hard drives and disks), or other records of The White House Office of Personnel Security, Anthony Marceca, or Craig Livingstone. Please take this action with respect to those documents, computer files, or other records in the office space of the Office of Personnel Security or Craig Livingstone, and those that have been sent to the archives during the Clinton Administration that evidence activity of the Office of Personnel Security, Anthony Marceca, or Craig Livingstone.

Based on your telephone call to me earlier today, I understand that The White House is agreeable to this request. We anticipate making arrangements with you to review these materials in the very near future.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Bates", with a stylized, flowing script.

John D. Bates
Deputy Independent Counsel



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

March 11, 1997

Miriam R. Nemetz, Esq.
Associate Counsel to the President
The White House
Washington, DC 20500

Dear Ms. Nemetz:

Our investigation relating to the activities of the Office of Personnel Security is ongoing, and it is important that the materials in that office be safeguarded until we notify you in writing that our investigation, including any resulting litigation, is complete.

In light of your need to use the Room 84 vault, however, we agree that you may move the contents of the vault to the EOP Security Office vault, under these conditions:

A. Personnel Security Files

1. All personnel security files removed from the vault will be inventoried, including those of volunteers, and a copy of the inventory lists will be provided to us.
2. All personnel security files will be preserved intact, except that files of persons with active passes that are needed by the EOP Security Officer may be removed if they are logged out, with the date and name of the person who removes the file.

B. Other Documents and Materials

As you know, agents of this office placed documents and other significant items into certain bins on the right-hand side of the vault, and catalogued the origin of those items. We will make agents of this office available to place those materials in boxes for transport to a secure location, where they will be preserved until such time as we notify you that our investigation is concluded or that we have no further investigative interest in the items.

Miriam R. Nemetz
March 11, 1997
Page 2

We agree that if the EOP Security Officer has a legitimate need to access the personnel security file of an active passholder, the contents of that file need not be handled with protective gloves. With regard to all other personnel security files, there will be no need to access the contents of the files. We do not object to your handling the outside of the files insofar as is necessary to transport them or to locate needed files.

Please advise us in writing if you agree to these conditions, and we will make arrangements to have our agents assist in boxing the contents of the vault.

Sincerely,

KENNETH W. STARR
INDEPENDENT COUNSEL

By:

A handwritten signature in dark ink, appearing to read "Jackie M. Bennett, Jr.", written over a horizontal line.

Jackie M. Bennett, Jr.
Deputy Independent Counsel

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

Washington, D. C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: March 11, 1997

TO: Miriam Nemetz, Esq., Associate Counsel to the President

Company Name: The White House

Fax Number: 202-456-5055

Telephone Number: 202-456-5092

FROM: Rod J. Rosenstein, Associate Independent Counsel/

Jackie M. Bennett, Jr., Deputy Independent Counsel

Number of Pages: 3 (including this cover sheet)

Message: _____

CONFIDENTIALITY NOTE

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*** TX REPORT ***

TRANSMISSION OK

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CONNECTION TEL		94565055
SUBADDRESS		
CONNECTION ID		
ST. TIME	03/11 18:27	
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PGS.	3	
RESULT	OK	

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

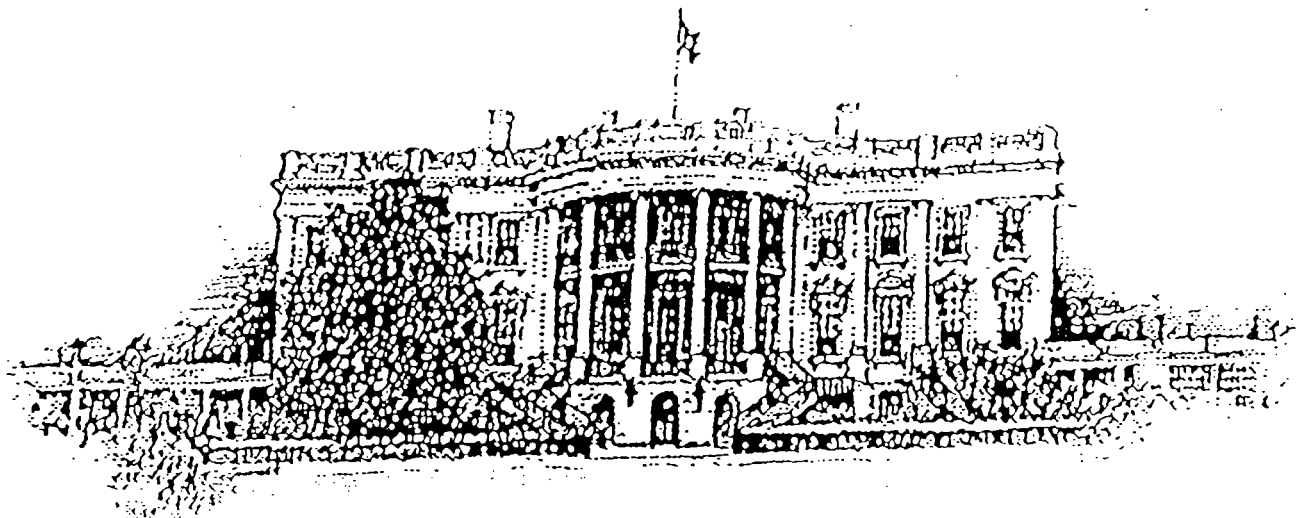
Washington, D. C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: March 11, 1997TO: Miriam Nemetz, Esq., Associate Counsel to the PresidentCompany Name: The White HouseFax Number: 202-456-5055Telephone Number: 202-456-5092FROM: Rod J. Rosenstein, Associate Independent Counsel/Jackie M. Bennett, Jr., Deputy Independent CounselNumber of Pages: 3 (including this cover sheet)Message: _____

THE WHITE HOUSE
WASHINGTON



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: March 14, 1997

TO: Jackie Bennett

FACSIMILE NUMBER: 514-8802

TELEPHONE NUMBER: _____

FROM: Miriam Nemeth

TELEPHONE NUMBER: 456-5092

PAGES (WITH COVER): 2

COMMENTS: _____

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

THE WHITE HOUSE
WASHINGTON

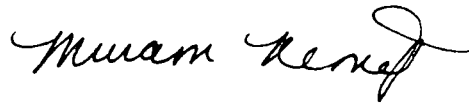
March 14, 1997

Jackie M. Bennett, Jr.
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

Dear Mr. Bennett:

I am writing in response to your letter of March 11, 1997, regarding the documents in OEOP Room 84. We appreciate your willingness to accommodate our need to use the Room 84 vault. The terms set forth in your letter for handling the documents now in Room 84 are acceptable. Since this is my last day of work here at the White House, someone else from the Counsel's Office will be contacting your office to arrange a time for agents to assist in boxing the contents of the vault.

Sincerely,

A handwritten signature in cursive script, reading "Miriam Nemetz".

Miriam R. Nemetz
Associate Counsel to the President

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