

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:

FBI Binder - FBI Files [2]

Staff Office-Individual:

Counsel's Office-Paxton, Sally

Original OA/ID Number:

CF 959

Row:	Section:	Shelf:	Position:	Stack:
20	5	2	3	V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Personally Identifiable Information [partial] (1 page)	06/21/1996	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Sally Paxton
OA/Box Number: CF 959

FOLDER TITLE:

FBI Binder - FBI Files [2]

2006-1066-F

vz3585

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]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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]

THE WHITE HOUSE
WASHINGTON

July 22, 1996

BY HAND DELIVERY

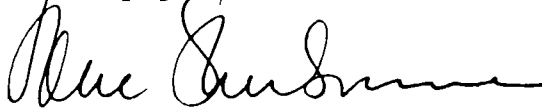
The Honorable Charles E. Grassley
Chairman
Subcommittee on Administrative
Oversight and the Courts
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Pursuant to your June 24, 1996 request to FBI Director Louis J. Freeh, we are providing the following documents numbered CGE 48229-48284, and the Internal Revenue Service (IRS) documents referenced in your letter.

Please call me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jane C. Sherburne". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

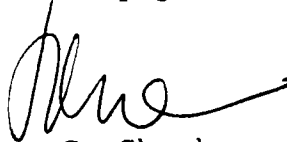
Dear John:

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

June 4, 1996

BY HAND DELIVERY

Eric A. Dubelier
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490 North
Washington, D.C. 20004

Dear Eric:

By cover of this letter I am providing the original documents and container responsive to the subpoena to the White House dated May 29, 1996 (T 2373-5190). The entirety of the documents no longer fits in the box due to the application of the bates numbers to the originals. Accordingly, the last redweld and its contents (T 4662-5186), originally located at the back of the box after T 4461, is being produced to you outside of the original box.

As with documents previously produced, 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 call me if you have any questions.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

Enclosures

THE WHITE HOUSE
WASHINGTON

June 6, 1996

BY HAND

Eric A. Dubelier
Associate Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490 North
Washington, D.C. 20004

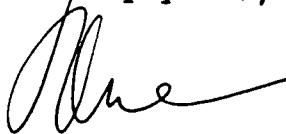
Dear Eric:

In accordance with your request, and pursuant to your subpoena of March 25, 1996, I am enclosing the original of the Billy Ray Dale Security File (T 5191-238).

A copy of the file was produced previously as CGE 43641-86.

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.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

Enclosures

WILLIAM F. CLINGER, JR., PENNSYLVANIA
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MARK HALL, THOMAS, SOUTH CAROLINA
ROBERT L. EHLICH, JR., MARYLAND

ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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BARBARA ROSE COLLINS, MICHIGAN
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GENE GREEN, TEXAS
DARRIN P. MARK, FLORIDA
CHAKA FATTAH, PENNSYLVANIA
BILL K. SPENSTER, OKLAHOMA
TIM HOLDEN, PENNSYLVANIA

BERNARD SANDERS, VERMONT
PRESIDENT

MAJORITY—(202) 225-6244
MINORITY—(202) 225-6251

June 21, 1996

John M. Quinn, Esquire
White House Counsel
The White House
Washington, D.C. 20500

Dear Mr. Quinn:

In light of recent revelations concerning the White House's obtaining of FBI files of 407 former Reagan and Bush Administration officials and the roles of various individuals at the White House in this affair, I would appreciate the following information.

First, please provide all information on who hired Mr. Livingstone, who vetted his file and reviewed his background and who made any recommendations on Mr. Livingstone's behalf. Was Presidential Personnel Chief Bruce Lindsey involved in Mr. Livingstone's hiring? Was Chief of Staff Mack McLarty involved in Mr. Livingstone's hiring? Was White House Counsel Bernard Nussbaum involved in Mr. Livingstone's hiring? Was Senior Advisor George Stephanopoulos involved in Mr. Livingstone's hiring? Please identify all individuals who played any role in Mr. Livingstone's hiring.

In addition, I request the following information:

1. The date of when Mr. Livingstone obtained his security clearance, the level of clearance and the name of the individual(s) who vetted Mr. Livingstone.
2. The date of when Mr. Anthony Marceca obtained his security clearance, the level of clearance and the name of the individual(s) who vetted Mr. Marceca.
3. The salaries of all employees of the Office of Personnel Security from January 20, 1993 to the present including the salaries of all detailees to that office. For those individuals who were serving as interns in the office prior

to being put on salary, please indicate the date on which the individual started as an intern as well as the date of employment.

4. The names of all individuals who have worked in the Office of Personnel Security as interns, employees, or detailees since January 20, 1993 to the present and when each individual received his or her security clearance.
5. The names of all interns who worked in the Office of Personnel Security from January 20, 1993 to the present.
6. All memos to and/or from Craig Livingstone, Anthony Marceca, William Kennedy, Bernard Nussbaum, Vincent Foster, Joel Klein, Lloyd Cutler, Abner Mikva, John M. Quinn, Jane Sherburne, Beth Nolan, Cliff Mauton, Christopher Cerf, Tray Schraeder, Ed Hughes, Jonathan Denbow, Mari Anderson or Ms. Lisa Wetzel regarding anything having to do with the updating of White House passes, security clearances, FBI background files or any operations of the Office of Personnel Security. Note: This would include all memos such as the "Personal Data Statement & Questionnaire" which was apparently sent to all holdover White House staff. (Please exclude confidential privacy act information and responses to the Personal Data Statement & Questionnaire.)
7. Records of Craig Livingstone's entrances and exits to the White House complex from May 1, 1996 to June 20, 1996. Tim
8. Any Usher's Records or Secret Service records of every occasion on which Craig Livingstone has been in the White House residence from January 1, 1996 to the present. Tim 0.
9. All records of visitor logs of visitors to the White House who were waved in to see Mr. Marceca for the entire time he was at the White House from August 1993 through March 1994 and any visits he has made to the White House from January 1, 1996 to the present.
10. All records of visitor logs of visitors to the White House who were waved in to see Craig Livingstone from January 20, 1993 to present.
11. All records of phone logs or messages for Craig Livingstone from April 1, 1993 - March 1, 1994 and from May 1, 1996 - June 18, 1996.
12. The salary history of William Kennedy from January 20, 1993 to the time he left the White House.

13. Records reflecting any reprimands regarding issues related to White House passes or security clearances or the obtaining of FBI background files of William Kennedy, Craig Livingstone, Anthony Marceca, or any staff (paid or unpaid) of the Office of Personnel Security or White House Counsel's Office.

Please provide all available records by close of business (6p.m.) Monday, June 24, 1996.

Sincerely,

William F. Clinger, Jr.
William F. Clinger, Jr.
Chairman

WILLIAM F. CLINGER, JR., PENNSYLVANIA
CHAIRMAN

BENJAMIN A. GILMAN, NEW YORK
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ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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CAROL P. MCKIN, FLORIDA
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BILL K. BREWSTER, OKLAHOMA
TIM HOLDEN, PENNSYLVANIA

BERNARD SANDERS, VT
INDEPENDENT

MAJORITY—(202) 225-2074
MINORITY—(202) 225-2061

June 21, 1996

John M. Quinn, Esquire
White House Counsel
The White House
Washington, D.C. 20500

Dear Mr. Quinn:

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- White House
Search
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Please provide all available records by close of business (6p.m.) Monday, June 24, 1996.

Sincerely,

William F. Clinger Jr.
William F. Clinger, Jr.
Chairman



OFFICE OF
THE INSPECTOR GENERAL

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415-0001

June 28, 1996

MEMORANDUM FOR RICHARD A. FERRIS
ACTING ASSOCIATE DIRECTOR
FOR INVESTIGATIONS SERVICE

FROM:

PATRICK E. MCFARLAND
INSPECTOR GENERAL

A handwritten signature in dark ink, reading "Patrick E. McFarland".

SUBJECT:

Request for Information on Release of Background Investigations Files

In the attached letter dated June 18, 1996, Senator Ted Stevens, Chairman of the Senate Committee on Governmental Affairs has requested information about OPM policies for release of background investigations material. Senator Stevens has asked that my office investigate eight questions with regard to the way OPM handles background information files and under what circumstances they may be released.

Because your program is responsible for OPM's background investigations files, including policies and procedures for release of those files, your response to Senator Stevens' eight questions is needed to allow my office to properly assess all related implications and prepare an appropriate response.

Please forward your response to me no later than close of business on July 3, 1996. If you need further information, please call me or Kenneth Huffman, Assistant Inspector General for Evaluation and Inspections, at 606-1200.

Attachment

TO STEPHEN MACKA CHAIRMAN

FROM: JAMES M. MACKA
 TO: SENATE
 SUBJECT: MACKA
 DATE: 07/03/96
 BY: JAMES M. MACKA
 FOR: SENATE
 BY: JAMES M. MACKA

JOHN MACKA, JR.
 SENATE CLERK
 SENATE CLERK
 SENATE CLERK
 SENATE CLERK
 SENATE CLERK
 SENATE CLERK
 SENATE CLERK
 SENATE CLERK

ALBERT L. MCKENNEY STAFF DIRECTOR
 EDWARD W. MCKENNEY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

June 18, 1996

06 JUN 1996 11:01

Patrick E. McFarland
 Inspector General
 Office of Personnel Management
 1900 E Street, N.W., Room 5H30
 Washington, D.C. 20415

Dear Mr. McFarland:

As Chairman of the Senate Governmental Affairs Committee, I am concerned by recent allegations that individuals in the Clinton White House may have inappropriately handled FBI background investigation reports on personnel from prior Presidential administrations.

These allegations appear to describe not only possible violations of the Privacy Act, but also government policies as I understand them on handling sensitive materials. There have been statements made, at times conflicting, about what the administration's policies are with respect to these files, and under what circumstances they are to be released.

In my oversight capacity as Chairman, I hereby request that you investigate the following questions:

- (1) For the period January 1993 through the present, what were the Office of Personnel Management (OPM) policies with respect to handling background investigation files on administration personnel, particularly on personnel from prior administrations who no longer worked for, or had access to, the White House?
- (2) At any time during the Clinton Administration have OPM policies and practices with respect to requests for administration FBI background files changed? If so, when and how?
- (3) Under what circumstances would OPM background investigation files be turned over to the White House, and to whose office at the White House would the files be released?
- (4) How many requests for background investigation reports has OPM received from the Clinton White House, what were the names of the personnel who were the subjects of the requests, what was the stated purpose for the requests, and how were the requests handled?

Patrick E. McFarland

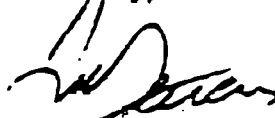
Page Two

- (5) What were the names of any individuals in the Clinton White House known to have been involved in seeking, receiving, storing, transporting, or reviewing background--information reports, and in what context?
- (6) What were the names of any OPM personnel involved in authorizing, transmitting, or processing such requests from the Clinton White House?
- (7) Did any OPM personnel involved in authorizing, transmitting, or processing such requests from the Clinton White House at any time have concerns about the appropriateness of the requests? If so, did they raise these concern with anyone, and how were they addressed?
- (8) In your opinion, has the administration's handling of background investigation files violated the privacy rights of the persons whose files were involved? If so, are there criminal violations of the Act?

Because the privacy rights of individuals and the security of sensitive government documents are involved, I would appreciate a response to this request as quickly as possible. Please keep Committee Counsel Doug Fuller, at (202) 224-8866, informed as to your progress. Thank you.

With best wishes,

Cordially,


TED STEVENS
Chairman



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

INVESTIGATIONS GROUP

JUL 2 1996

MEMORANDUM FOR PATRICK E. MCFARLAND
INSPECTOR GENERAL

FROM:

RICHARD A. FERRIS *Richard A. Ferris*
ACTING ASSOCIATE DIRECTOR

SUBJECT:

REQUEST FOR INFORMATION ON RELEASE OF
BACKGROUND INVESTIGATIONS FILES

This is in response to your memo of June 28, 1996, on the same subject, in which you request input on the way OPM handles background information files and under what circumstances they may be released, for use in your response to Senator Ted Stevens. The responses below are numbered to correspond to Mr. Stevens' questions, except that I did not provide information for number (8), which asks for your opinion.

1. OPM's policies with respect to handling background investigation files, with "administration personnel". handled no differently, are consistent with the provisions of the Privacy Act, which states no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure of the record would be in accordance with section 552a(b)(1) through (12) of Title 5 of the United States Code.

Among the types of disclosure authorized by the Privacy Act are routine uses which, with respect to the disclosure of a record, is the use of such a record for a purpose which is compatible with the purpose for which it is collected (5 U.S.C. section 552a(a)(7)). OPM's systems notice for the Personnel Investigations Records (OPM/Central-9, Personnel Investigations Records, 58 Fed. Reg. 19184, April 12, 1993), outlines the routine uses of records maintained in the system, including the categories of users and the purposes of such uses.

2. OPM policies and practices have not changed during the Clinton administration.

3. Pursuant to this routine use, OPM releases information to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or make a security clearance or access

(2)

determination. To safeguard and protect the privacy of an individual's record, OPM has assigned each Federal agency Security Office, including the White House, an authorized identifier, called a Security Office Identifier (SOI), for use in receiving results, data, or information from OPM.

4. During the period January 20, 1993, through June 21, 1996, OPM made disclosures to the White House Security Office of 34 records. All of the disclosures involved investigations related to employment or security clearance/access determinations made subsequent to January 20, 1993.

Each Security Office has provided OPM with an approved list of their employees authorized to provide and request information on agency cases in process. Before releasing any information, OPM obtains from the caller the agency SOI, the agency name, the caller's name and Social Security number. That information is confirmed with OPM's approved list of SOI users before any information is provided telephonically. Further, the SOI system permits OPM to provide written information only to agency approved addresses.

Enclosed is a list of the disclosures made to the White House Security Office during the period 1/20/93 thru 6/21/96. The list identifies the names of the personnel who were the subjects of the requests and the purpose of the disclosure.

5. At the request of the Security Officer, Executive Office of the President, the White House Security Office ceased to be an authorized SOI on June 20, 1996. The following individuals in the White House Security Office have, at one time or another, been designated as authorized to receive information from OPM.

CERF, Christopher
DENBO, Jonathan
HUGHES, Edward
LIVINGSTONE, D. Craig
NOLAN, Beth
QUINN, John M.
WETZEL, Lisa

We note that the disclosure of these names is, itself, covered by the Privacy Act. Pursuant to that Act, release is authorized to Senator Stevens under 5 U.S.C. §552a(b)(9). We suggest that your response to the Senator note the Privacy Act implications of releasing this information and request that the information be treated as sensitive and confidential.

(3)

6. OPM personnel who, since January of 1993, have been assigned to the Freedom of Information/Privacy unit, responsible for making the disclosures to authorized requestors are:

BAKER, Kathy
DENNIS, Carol
HELLER, Bill
MAXWELL, Pamela A.
NORTON, Michelle E.
OWENS, Joseph
SCOTT, James C.
SEYBERT, Cynthia L.
SPAULDING, Cynthia M.
STEPHENS, Kay E.
STIEHLER, Carol
TERLINDEN, Margaret L.

We note that the disclosure of these names is, itself, covered by the Privacy Act. Pursuant to that Act, release is authorized to Senator Stevens under 5 U.S.C. §552a(b)(9). We suggest that your response to the Senator note the Privacy Act implications of releasing this information and request that the information be treated as sensitive and confidential.

7. No FOI/P concerns about file release surfaced within the program.

I hope this information will assist you in preparing your response to the Senator.

Enclosure

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Personally Identifiable Information [partial] (1 page)	06/21/1996	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Sally Paxton
OA/Box Number: CF 959

FOLDER TITLE:

FBI Binder - FBI Files [2]

2006-1066-F

vz3585

RESTRICTION CODES

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

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- 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]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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

RR. Document will be reviewed upon request.

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]

THIS REPORT MAY CONTAIN INFORMATION SUBJECT TO THE PROVISIONS OF FOI/PA

*** PERSONNEL INVESTIGATIONS PROCESSING SYSTEM ***

E: 06/21/96
E: 15:42LIST OF DISCLOSURES MADE TO SOI: WHOO
DURING THE PERIOD 01/20/1993 THRU 06/21/1996PAGE: 1
FROM: ADHOC255

JECTS NAME (LAST, FIRST MIDDLE)	SSN	PURPOSE OF DISCLOSURE	DISCLOSURE DATE	DATE MAILED
*****	*****	*****	*****	*****
BA, CHRISTOPHER FRANK		INVESTIGATION	07/28/93	07/28/93
BYD, JAMI		INVESTIGATION	07/28/93	07/28/93
DES, DAVID MITCHELL		INVESTIGATION	07/28/93	07/28/93
DRIDGE, MARY KATHERINE		INVESTIGATION	03/27/95	03/30/95
WISTER, HEYWARD (NMN)		INVESTIGATION	03/27/95	03/30/95
ROY, MARY R		STATUS CHECK	03/27/95	00/00/00
AMDOOS, ELIZABETH ANN		INVESTIGATION	03/27/95	03/30/95
DS, ERIC MATHEW		INVESTIGATION	03/27/95	03/30/95
LE, MARK JOSEPH		INVESTIGATION	03/27/95	03/30/95
ARDS, THOMAS JOSEPH		STATUS CHECK	03/27/95	00/00/00
GUSON, ANITA PEREZ		INVESTIGATION	03/27/95	03/30/95
NT, MICHAEL ALAN		INVESTIGATION	03/27/95	03/30/95
EN, JANET VALERIE		STATUS CHECK	03/27/95	00/00/00
DIH, LESLIE JEANNE		STATUS CHECK	03/27/95	00/00/00
LER, DENISE LORRAINE		INVESTIGATION	03/27/95	03/30/95
DEL, JORGE GARCIA JR		INVESTIGATION	03/27/95	03/30/95
ST, DIANE DEATON		INVESTIGATION	03/27/95	03/30/95
FEIGH MICHAEL		INVESTIGATION	03/27/95	03/30/95
RIANNE		INVESTIGATION	03/27/95	03/30/95
ARL S, RICHARD CHARLES		INVESTIGATION	03/27/95	03/30/95
MPSON, BRIAN CHANDLER		INVESTIGATION	03/27/95	03/30/95
RENCE, DANA DURST		INVESTIGATION	04/10/95	04/11/95
AY, SUSAN GAIL		INVESTIGATION	04/10/95	04/11/95
IES, ROBERT LEE JR		INVESTIGATION	05/04/95	05/04/95
IN, CHRISTOPHER JOSEPH			05/08/95	05/08/95
INGSTONE, STEVEN EDWARD		INVESTIGATION	05/11/95	05/12/95
HING, MICHAEL CROWLEY		INVESTIGATION	05/15/95	05/15/95
ENBERG, FRANCES TINT		PRE-PLACEMENT	11/01/95	11/01/95
SEN, FREDERIC JAMES		PRE-PLACEMENT	03/06/96	00/00/00
ROW, JEFFREY LLOYD		STATUS CHECK	03/12/96	03/13/96
IK, JIWON NMN		STATUS CHECK	03/12/96	00/00/00
AY, SUSAN GAIL		STATUS CHECK	04/03/96	00/00/00
RNBERY, BETTY JANE		STATUS CHECK	04/30/96	05/01/96
LIND, JONATHAN HARALD		PRE-PLACEMENT	06/17/96	06/18/96

[001]

FAX TRANSMITTAL

FROM

THE OFFICE OF THE DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

TO:

Rhonda JACKSON
of CABINET AFFAIRS
phone _____ fax 456-6704

FROM:

JANICE LACHNICE
of OPM
phone 606-000 fax (202) 606-4489

DATE:

7-3-96

TOTAL NUMBER OF PAGES (including cover sheet):

8

COMMENTS:

- 1.) Who sponsored Mr. Livingstone during the Presidential transition for White House employment?
- 2.) What role did Eli Segal play in support of Mr. Livingstone's application?
- 3.) Who provided letters of recommendation on Mr. Livingstone's behalf?
- 4.) Is it correct that although Mr. Livingstone was appointed on March 11, 1993, his security clearance was not approved until December of 1995?
- 5.) If Mr. Livingstone did not receive a security clearance until December of 1995, why did four White House Counsels permit him to review sensitive FBI background files?
- 6.) What role did Mr. Stephanopoulos play in hiring Mr. Livingstone and, considering their relationship, is it appropriate to have Mr. Stephanopoulos serve as your spokesman on this matter?
- 7.) What role did Mr. Stephanopoulos play in supervising Mr. Livingstone in the [Clinton/Gore '92 campaign] Counter-Event Operations office? If Mr. Stephanopoulos did not supervise this office, then who did?
- 8.) Has the White House conducted its own inquiry into the matter?
- 9.) Have any White House staff participated in interviewing participants in the FBI story during the last several weeks?

July 2, 1996, Request to White House Counsel Jack Quinn (due July 5):

- 10.) How many versions of the Personal Data Statement Questionnaire have been used since January 20, 1993?
- 11.) To which employees or applicants were these questionnaires distributed? Which employees or applicants were directed to supply the information requested in the questionnaire -- by position, by employing office, and whether Title 3 or Title 5.
- 12.) What White House offices used this questionnaire for employment screening purposes?
- 13.) Which components within the Executive Office of the President used the questionnaire for employment screening purposes?
- 14.) Which offices and/or employees reviewed the completed questionnaire?

June 28, 1996, Request to White House Counsel Jack Quinn (due July 1):

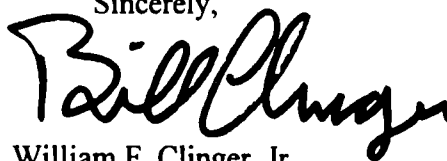
- 15.) Please provide all records of interviews, recommendations, letters of reference and other information pertinent to the hiring of Mr. Livingstone.

June 21, 1996, Request to White House Counsel Jack Quinn (due June 24):

- 16.) When did Mr. Livingstone obtain his security clearance; what level of clearance did he receive, and who vetted him? *SAME AS ABOVE Rm 84*
- 17.) Please provide Usher's Records or Secret Service records for every occasion on which Mr. Livingstone has been in the White House residence from January 1, 1996, to the present. *May 1 - June Produced list in Progress*
- 18.) Please provide all records of visitor logs for visitors to the White House who were waved in to see Mr. Marceca from August 1993 through March 1994 and any visits he made to the White House from January 1, 1996 to the present.
- 19.) Please provide all records of visitor logs for visitors to the White House who were waved in to see Mr. Livingstone from January 20, 1993, to present.
- 20.) Please provide all records of phone logs or messages for Mr. Livingstone from January 20, 1993, to present.
- 21.) Please provide all records reflecting any reprimands regarding issues related to White House passes or security clearances or the obtaining of FBI background files of William Kennedy, Craig Livingstone, Anthony Marceca, or any staff (paid or unpaid) of the Office of Personnel Security or White House Counsel's Office.

I look forward to your response.

Sincerely,



William F. Clinger, Jr.
Chairman

cc Jane
Wendy

Wendy -

I'd like to be
kept up to date
on this, and we
should probably
do a "rolling"

Response -
Jack



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 13, 1996

BY COURIER

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

Dear Ms. Sherburne:

In accordance with the oral agreement made with you by my Deputy, Tom Kelley, on the evening of June 6, 1996, I am returning herewith a xerox copy of the contents of carton CF216. That carton was one of the three cartons of records you turned over to Mr. Kelley and Inspector Kitchen that evening. We have retained the original carton and its contents.

Sincerely,

Howard M. Shapiro
General Counsel

Enclosure

THE WHITE HOUSE

WASHINGTON

June 25, 1996

MEMORANDUM

TO: All Staff of the White House and Office
of Administration

FROM: Jane C. Sherburne
Special Counsel to the President

Wendy S. White
Associate Counsel to the President

RE: Clarification of House Committee Document Request
of June 21, 1996
(Memorandum to Staff dated June 24, 1996)

We have received a number of telephone calls concerning the scope of the above request. We have redrafted the request, in order to clarify what documents we believe are being sought, as follows:

All memos to and/or from Craig Livingstone, Anthony Marceca, William Kennedy, Bernard Nussbaum, Vincent Foster, Joel Klein, Lloyd Cutler, Abner Mikva, John M. Quinn, Jane Sherburne, Beth Nolan, Cliff Mauton, Christopher Cerf, Trey Schroeder, Ed Hughes, Jonathan Denbo, Mari Anderson or Ms. Lisa Wetzel regarding --

1. Procedures for the updating of White House passes;
2. Security clearance procedures and the use of FBI background files requested by or on behalf of the White House Office of Personnel Security; or
3. The operation of the Office of Personnel Security.

The request, as we understand it, does not require production of your Personal Data Statement & Questionnaire or communications with the Office of Personnel Security about individual matters. In addition, you need not produce at this time any routine requests for White House passes or requests for security clearances prepared in the ordinary course of business.

We understand that this request raises a number of issues. Please do not hesitate to call us for help in resolving them. (Jane Sherburne 6-5116 or Wendy White 6-7361).

EL

100

1 3

2408 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0529
(202) 225-7976

DISTRICT OFFICE
8436 WEST 3rd STREET
SUITE 600
LOS ANGELES, CA 90048-4183
(213) 851-1040

COMMITTEES
COMMERCE
GOVERNMENT REFORM AND OVERSIGHT

PHILIP M. SCHIRO
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives

Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA
June 27, 1996

Dear Colleague:

As you know, the House Government Reform and Oversight Committee held a 9 1/2 hour hearing yesterday on the White House Office of Personnel Security's collection of FBI files on previous employees of the White House as part of its Update Project.

Having had the opportunity to hear the testimony of witnesses who worked in the White House Office of Personnel Security, I wanted to share with you specific information that is relevant in our review of the Administration's actions in this matter.

As you know, the Update Project consisted of the Clinton Administration's reconstruction of the security files of "holdover" employees, detailees, agency representatives, and others who had access to the White House complex. This project was necessary because every departing Administration takes all of its security files on the thousands of people with access to the White House complex and turns them over to the National Archives with Presidential Papers. In addition to recreating these files, the White House Office of Personnel Security had to determine which holdovers were due for their required five-year FBI background reinvestigation.

Lisa Wetzl, a witness at yesterday's hearing, had been employed by the White House Office of Personnel Security and personally worked on the Update Project. Ms. Wetzl's testimony was largely overlooked by the press, but it will be especially helpful to Members who are seeking the truth about the office's inappropriate request of some FBI files.

Ms. Wetzl has been accused of no wrongdoing, and no questions have been raised about her character and integrity. Her testimony was competent, credible, unequivocal, and under oath. She is no longer employed at the White House and has no logical reason to perjure herself. Indeed, it makes no sense to me that Chairman Clinger, after receiving her deposition, did not ask her to testify and initially refused a request by the Minority that she be allowed to do so.

Ms. Wetzl was employed in the Office of Personnel Security from August 1993 until September 1995. This is significant

because she is the only person who worked on the Update Project whose employment coincided with the other individuals who worked on this project: Nancy Gemmell and Anthony Marceca.

Nancy Gemmell was the only career employee from the previous Administration who stayed on in the Office of Personnel Security with the change in Administrations. She guided Ms. Wetzl and Mr. Marceca on office procedures and began the work on the Update Project for the Clinton Administration prior to her retirement in August 1993. She had worked in the Office of Personnel Security since 1981. When she decided to retire, the Clinton Administration asked her to stay on until August 1993.

Anthony Marceca, an investigator with top security clearance for the United States Army Criminal Investigative Division, was detailed to the White House from August 1993 - February 1994. He arrived at about the time Ms. Gemmell retired and was the next person to work on the Update Project. According to Ms. Wetzl, Mr. Marceca was detailed primarily to work on the paperwork for FBI full field background investigations of new employees. She said that he began to work on the Update Project "at some point after he started."

Ms. Wetzl was responsible for completing the Update Project that Ms. Gemmell and Mr. Marceca had begun. She testified that since the Update Project had not been a priority in the office, she did not begin her work on it until the late fall of 1994, six months after Mr. Marceca returned to his job at the Army Criminal Investigative Division.

Ms. Wetzl is also the one who made the discovery that the Secret Service lists Ms. Gemmell and Mr. Marceca relied upon were out of date.

One of the two issues at the core of this investigation is the accuracy of the list of names of holdovers the Secret Service maintained and provided to the Office of Personnel Security.

In her sworn testimony yesterday, Ms. Wetzl stated that she knew Mr. Marceca was using a Secret Service list for the Update Project because of the "distinctive green and white computer paper" that contained the list of names he worked from.

She testified that Ms. Gemmell had also used a Secret Service list and that she had left it in the office vault when she retired. Ms. Wetzl said she knew "immediately" when she reviewed Ms. Gemmell's Secret Service list that it was out of date because it was "extremely long, and appeared to contain hundreds of names from past administrations."

Ms. Wetzl also cleared up the confusion many of us have had about the Secret Service lists: why did it seem that people were using different lists and how could the Secret Service list of names be inaccurate when the Secret Service claims that they are

regularly updated?

In her opening statement, Ms. Wetzl testified: "The list I used was provided to us by the Secret Service on a monthly basis, but we could ask for updated copies more frequently... It was well known around our office that the Secret Service lists included names of people who no longer had active passes... On many occasions, I would inform the women who worked in the Secret Service office who had provided us with the lists that their lists contained names that should no longer be there, or that persons were listed as working in the wrong office."

Ms. Wetzl also stated that she took it upon herself to contact supervisors of White House offices to request an accurate list of holdover employees because she could not rely on the accuracy of the Secret Service's list. On "many occasions" she notified the Secret Service with corrections. In fact, she testified that copies of memos she sent to the Secret Service notifying its staff of mistakes in the list are still at the White House Office of Personnel Security. These documents are under seal by order of Independent Counsel Kenneth Starr. It is my hope they will be released in the very near future.

The second issue at the core of this investigation is whether there was any intent to misuse FBI files for political purposes.

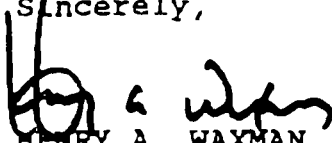
Ms. Wetzl also testified under oath that during her entire term in the Office of Personnel Security, she knew of no effort to use the FBI files as part of a smear campaign or to create an enemies list, and that no one ever asked or directed her to assemble information or to use any confidential information for any reason, political or otherwise.

Moreover, Ms. Wetzl told the Committee that to her knowledge no one in the office requested FBI files in the six months between Mr. Marceca's departure and the date she began to work on the project. Finally, she testified that a log system was in place for any removal of files from the office to the White House Counsel's office.

There will undoubtedly be additional questions that need to be answered in this matter. But if Ms. Wetzl's testimony is accurate, and there is no evidence that suggests otherwise, then it is clear that the Update Project was handled ineptly. What the sworn testimony also makes clear, however, is that the project was not motivated by political reasons, that the information in the FBI files was not used in any political way, and that access to the files was more limited than has been publicly suggested. In short, Ms. Wetzl's sworn testimony reveals that the office's employees made very serious mistakes, but no testimony in yesterday's hearing indicated that the staff was involved in intentionally unethical or illegal activity.

I hope this information is helpful to you as you continue to follow the developments of this important issue. Please contact Pat Delgado of my staff if you would like to have a copy of Ms. Wetzl's statement or if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman", written over the printed name.

HENRY A. WAXMAN
Member of Congress

United States District Court

FOR THE DISTRICT OF COLUMBIA

TO: Executive Office of the President
c/o Jane Sherburne
Special Counsel to the President

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☒ PERSON

☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE United States District Court for the District of Columbia Third & Constitution Avenue, N.W. Washington, D.C.	COURTROOM Grand Jury/Third Floor DATE AND TIME July 11, 1996/ 9:30 am
--	--

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

See attached rider.

Personal appearance not required if the requested documents are delivered on or before the return date to SA Russell Bransford at the Office of the Independent Counsel, Suite 490 North, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004, telephone number (202) 514-8688, for submission to the Grand Jury.

☐ Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE IN CHIEF OF COURT Nancy M. [Signature] (BY) DEPUTY CLERK	DATE July 1, 1996 (D705)
This subpoena is issued upon application of the United States District Court for the District of Columbia.	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY Steven M. Colloton, Associate Independent Counsel Office of the Independent Counsel 1001 Pennsylvania Avenue, N.W., Suite 490-North Washington, D.C. 20004 (202) 514-8688

"If not applicable, enter 'none.'"

U S GPO 1993-0-350-792/80396

SUBPOENA RIDER

- A. Any and all documents within workspace assigned to the White House Office of Personnel Security, including but not limited to Room 84 and Room 98 of the Old Executive Office Building;
- B. Any and all documents sent to the White House Office of Records Management (or to any other location for archiving or storage) by, or on behalf of, any employee of the White House Office of Personnel Security between January 20, 1993, and the present;
- C. Any and all indices of documents sent to the White House Office of Records Management (or to any other location for archiving or storage) by, or on behalf of, any employee of the White House Office of Personnel Security between January 20, 1993, and the present;
- D. Names, addresses, and telephone numbers of any and all employees of, or persons assigned to, the Office of Personnel Security between January 20, 1993, and the present, including volunteers and interns;
- E. Any and all documents referring or relating to Anthony Marceca or Craig Livingstone, including but not limited to:
 - 1. documents contained in personnel files of Anthony Marceca or Craig Livingstone, and any other documents referring or relating to prospective hiring or termination of, job descriptions for, or dates and terms of employment at the White House of Anthony Marceca or Craig Livingstone, including documents relating to administrative leave taken by Mr. Livingstone in June 1996 or Mr. Livingstone's resignation in June 1996;
 - 2. documents, memoranda or correspondence created, drafted, authored or signed by Anthony Marceca or Craig Livingstone;
 - 3. documents and communications that refer or relate to work or other White House activities of Anthony Marceca or Craig Livingstone;
 - 4. electronic mail (including mail that was forwarded or copied) to or from Anthony Marceca or Craig Livingstone between January 20, 1993 and the present;

5. WAVES records referring or relating to Anthony Marcaca or Craig Livingstone;
6. documents referring or relating to Anthony Marcaca or Craig Livingstone that are stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs, and any other media capable of storing magnetic coding, microfilm, microfiche and other storage devices, voicemail recordings, and all other written, printed, or recorded or photographic matter or sound reproductions, however produced or reproduced,

but excluding any Personal Data Statement & Questionnaire in the possession of a current employee or documents relating to background investigations or security clearances of a current employee that are in the possession of such employee.

- F. Any and all documents referring or relating to requests made by the White House between January 20, 1993 and February 28, 1994, to the Federal Bureau of Investigation for background investigation reports and materials;
- G. Any and all calendars; datebooks; records of conversations, meeting or interviews; records of telephone conversations; telephone call logs; telephone records; messages; message books; message logs; or similar documents or records (including those now in the custody of the White House Office of Records Management, or in the custody of former White House employees now working in any other position in the Executive Branch of the government) that refer or relate to Anthony Marcaca or Craig Livingstone, and which were created or maintained by or for, or are in the custody or control of, any of the following persons:

Erskine Bowles
Hillary Rodham Clinton
William Jefferson Clinton
Deborah Coyle

Jeff Eller
Vincent W. Foster, Jr.
Mark Gearan
Albert Gore, Jr.
Nancy Hernreich
Harold Ickes
William H. Kennedy
Bruce Lindsey
Michael McCurry
Thomas McLarty
Cheryl Mills
Dee Dee Myers
Bernard Nussbaum
Leon Panetta
John M. Quinn
George Stephanopoulos
Patsy Thomasson
David Watkins
Margaret Williams

- H. Any and all documents produced to or made available for review by Congress in connection with any inquiry relating to requests made by the White House between January 20, 1993 and February 29, 1994 to the Federal Bureau of Investigation for background investigation reports and materials.

If any of the above requested documents and/or communications have previously been produced, please so state and identify the documents and/or communications by Bates number.

Definitions and Instructions

1. Definitions

a. The term "document" or "documents" as used in this subpoena means all records of any nature whatsoever within your possession, custody, or control or the possession, custody, or control of any agent, employee, representative, or other person acting or purporting to act for or on your behalf or in concert with you, including but not limited to memoranda, records, reports, notes, books, files, summaries or records of conversations, meetings, or interviews, summaries or records of telephone conversations, diaries, calendars, datebooks, telegrams, facsimiles, telexes, telefaxes, electronic mail, computerized records stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes,

ORRIN G. HATCH, UTAH, CHAIRMAN

STROM THURMOND, SOUTH CAROLINA
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
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JONAS ABRAHAM, MICHIGAN

JOSEPH R. BIDEN, JR., DELAWARE
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PAUL SIMON, ILLINOIS
HERBERT KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
RUSSELL D. FEINGOLD, WISCONSIN

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

MARK R. DESLER, *Chief Counsel*
MANUS COONEY, *Staff Director and Senior Counsel*
CYNTHIA C. HOGAN, *Minority Chief Counsel*
KAREN A. ROSS, *Minority Staff Director*

July 3, 1996

The Honorable Leon Panetta
Chief of Staff to the President
The White House
Washington, D.C. 20500

Dear Mr. Panetta:

As you know, the Senate Judiciary Committee is conducting an investigation concerning the improper request by the White House for the FBI background files of more than 400 individuals who no longer worked at the White House. As part of that investigation, and in order to prepare for additional public hearings, we are requesting that present and former White House personnel, as specified below, produce documents and records to this Committee.

The White House may have custody, control, or possession of records, including documents or records of present and former White House personnel, that relate to the FBI files controversy. Our request embraces these documents and other records, within the custody or control of the White House including the Office of Records Management, relating to those matters.

On June 13, I sent you a letter asking a series of questions about the White House's improper acquisition of FBI background files of individuals from prior administrations. On June 19, Counsel to the President Jack Quinn responded on your behalf that in deference to the Independent Counsel, you had not conducted a search for material that would allow you to respond fully to these questions, but that you would provide the information you had available. I believe that providing the Committee with the documents I am requesting is consistent with Mr. Quinn's representations in his June 19, 1996 letter.

Accordingly, please provide all documents, regardless of format, including, but not limited to, e-mail, electronic "dump files," memorandum, correspondence, notes, and material in any other medium, including drafts of the foregoing, that relate in any manner to the following (1) the White House Personnel Security Office's "Project Update"; (2) the White House Personnel Security Office's procedures for requesting, reviewing, maintaining, and safekeeping F.B.I. background information files; (3) the staffing of the White House Personnel Security Office; (4) access to and the operation of the White House Personnel Security Office (5) meetings between any member of the White House Personnel Security

Office and members of the White House Counsel's Office, the Office of the White House Chief of Staff, the Office of the Counselor to the President, the Office of the First Lady, and the Office of Presidential Personnel; (6) visitors to any member of the White House Personnel Security Office; (7) communications to or from the White House Personnel Security Office; (8) reprimands or disciplinary action taken regarding members of the White House Personnel Security Office or the White House Counsel's Office concerning F.B.I. files and confidential background information; and (9) all individuals serving in the White House who were authorized to review F.B.I. files.

The relevant time period for this request is from January 20, 1993, to the present.

Your response should include, but not be limited to, the following:

(A) A listing of all persons who served in the White House Counsel's Office from January 20, 1993, to the present. Please include the individuals' titles and dates of service. Please identify all individuals who served in the Personnel Security Office or provide a separate list of those individuals. Please include, or list separately, all volunteers, interns, or other unpaid staff who worked in the White House Counsel's Office or the Personnel Security Office from January 20, 1993, to the present. Please include the salaries of all persons who served in the Personnel Security Office during this time.

(B) A listing of all persons in the White House Counsel's Office or any other White House office who had the authority to review F.B.I. background files from January 20, 1993, to the present.

(C) The dates when all individuals serving in the White House Personnel Security Office -- including, but not limited to, Mr. Craig Livingstone and Mr. Anthony Marceca -- obtained their security clearance, the level of clearance, the name of the individuals or individuals who conducted their background investigations.

(D) All memos to and/or from Craig Livingstone, Anthony Marceca, William Kennedy, Bernard Nussbaum, Bruce Lindsey, Vincent Foster, Joel Klein, Lloyd Cutler, Abner Mikva, John Quinn, Jane Sherburne, Beth Nolan, Christine Varney, Steve Neuwirth, Cheryl Mills, Cliff Mauton, Christopher Cerf, Tray Schraeder, Ed Hughes, Jonathan Denbo, Mari Anderson, Lisa Wetzl, Mack McLarty, Patsy Thomasson, and David Watkins regarding the following subjects:

- (i) updating White House passes
- (ii) security clearances
- (iii) FBI background files or FBI background investigations
- (iv) operation of the White House Personnel Security Office
- (v) Craig Livingstone
- (vi) Anthony Marceca
- (vii) replacing personnel files removed by the Bush Administration
- (viii) project update

(E) All records of Craig Livingstone's entrances and exists to the White House complex from May 1, 1996, to June 20, 1996.

(F) Any records of every occasion on which Craig Livingstone and Mr. Anthony Marceca have been in the White House from January 20, 1993, to the present.

(G) All records of visitors to the White House to see Craig Livingstone or Anthony Marceca from January 20, 1993, to the present.

(H) All records of phone logs or messages for Craig Livingstone or Anthony Marceca from January 20, 1993, to the present. Please provide any calendars and another other documents reflecting any meetings in which Mr. Livingstone and/or Mr. Marceca participated.

(I) All information on who hired Mr. Craig Livingstone. Please name all individuals who made recommendations or who approved Livingstone's employment in the Personnel Security Office.

(i) Please provide all information on who requested Mr. Anthony Marceca to be detailed at the White House in 1993.

(ii) Please provide the dates of Mr. Anthony Marceca's detail in the White House Office of Personnel Security.

(iii) Please provide the dates of any other position(s) Mr. Marceca held with the White House prior to or following his detail in the White House Office of Personnel Security.

(J) Please provide a copy of any Memorandum of Understanding between the White House or the Clinton/Gore transition team and the FBI and/or the Justice Department regarding FBI background reports.

(K) Please identify all persons who assisted in compiling and/or typing the alphabetical list of names of the 333 persons whose files were improperly requested and received by the White House. Please indicate the location of the original and when it was compiled.

(L) Please provide any documents relating to the discovery, archiving, or storage of the 333 improperly obtained FBI files since 1993. Please indicate when the files were sent or transferred to the White House Office of Records Management for storage, and if the files were then transferred to the United States Archives, and who approved the transfers. Please indicate when any of these documents were retrieved from the White House Office of Records Management or the Archives, who retrieved these files, and the purpose of the retrieval.

(i) Please provide all documents relating to the storage of all material from the White House Office of Personnel Security with the White House Office of Records Management.

FBI has
change out forms

(ii) Please indicate the dates on which this material was stored and the location(s) of these stored materials.

✓ (iii) Please identify the dates on which additional storage containers and/or storage areas added to the White House Office of Personnel Security.

(M) Please provide any logs, check-out sheets or other similar documents maintained for all FBI background files stored in the White House Personnel Security office since January 20, 1993.

(N) Please provide any documents describing how the White House determined that the first 333 files, and then the 138 files returned to the F.B.I. later, were improperly requested. If no such document(s) exists, please provide a written description of the process by which the White House determined that these files were improperly requested.

(O) Please advise whether Mr. Livingstone's or Mr. Marceca's attorneys are being paid by the United States, and if so, under what authority. Please advise whether any commitment has been made to reimburse Mr. Livingstone or Mr. Marceca for their attorney's fees, and if so, who made that commitment and under what authority it was made. Please provide any documents relating to this matter.

(P) Please provide a copy of the "Personal Data Statement Questionnaire" that, according to the June 20, 1996, *Washington Times*, was distributed to the 1993 career White House employees. Please indicate the date(s) on which these questionnaires were distributed. Please provide the list of all holdover employees to whom these questionnaires were distributed. Please describe how that list was compiled at the time of the distribution of the forms. Please provide any other documents relating to the distribution of this questionnaire, other than the individual employee's responses.

(Q) Please provide any documents relating to President Clinton's assertion of executive privilege cited on May 10, 1996, as the basis for Mr. Quinn and Mr. Watkins' non-compliance with the subpoena issued by the U.S. House Committee on Governmental Reform and Oversight. Please provide any documents created before, contemporaneously with, or after that assertion of privilege regarding Billy Dale's FBI file or the request form for that file. Please provide any documents discussing or analyzing whether executive privilege could be asserted with respect to Billy Dale's FBI file or to the request for that file. If no documents exist, please describe any review conducted concerning the assertion of privilege over Mr. Dale's file or the request form for that file, who conducted the review, and to whom the review was provided.

(R) Please provide all documents relating to President Clinton's revised claim of executive privilege on or about May 30, 1996 permitting the release of 1000 pages of documents, but requiring the withholding of 2000 pages of documents from the U.S. House Committee on Government Reform and Oversight.

(S) Additionally, a June 26, 1996 Washington Times article entitled, "Security System Computerizes Personal Data," which alleges that the White House has a secret computer system that tracks detailed personal information on "tens of thousands of people." The article further alleges that in addition to storing information about family ties, political loyalties and whether people are "important" by region, city or state, the system has the capability of interfacing with the computers at the Democratic National Committee. If true, the use of taxpayer dollars for such political purposes may be in violation of 31 U.S.C. 1301.

Please provide the following information:

- (i) All records of or pertaining to the facilities management contract for the Office of Administration's Information Systems and Technology Division (awarded to PRC, Inc. and/or any subsequent vendors) from January 20, 1993 to the present;
- (ii) The name of the individual(s) who ran the facilities management contract for the Office of Administration's Information Systems and Technology Division (awarded to PRC, Inc. and/or any subsequent vendors) from January 20, 1993 to the present;
- (iii) All records of procurement under the facilities management contract for the Office of Administration's Information Systems and Technology Division (awarded to PRC, Inc. and/or any subsequent vendors) from January 20, 1993 to the present, including, but not limited to, all sub-contracts under that contract;
- (iv) Any and all information provided by the Democratic National Committee that was entered into the database;
- (v) Identify by name and title the political appointees who oversaw the creation and implementation of the database;
- (vi) Identify by name and title the individuals who had access to the database;
- (vii) Identify by address and room number the locations of the special remote computers that could access the database;
- (viii) Provide a list of the fields in which information was input into the database; and,
- (ix) Provide schematics, flowcharts, guidelines and codes on how to operate the database system.

Another purpose of this letter is to direct to your attention one particular request in my letter to you dated June 13, 1996, that was not answered and urge you to have it addressed immediately. Question 7A of the June 13 letter asked for "a copy of the lists upon which these request[s] [for FBI files] were made." In light of reports that the list may have been destroyed, I ask that you immediately search for and provide to the Committee a copy of any such lists as soon as possible, even if your response to this particular inquiry precedes your reply to other requests contained in this letter.

Committee staff have contacted the Independent Counsel to ensure that this request will not impede the Independent Counsel's investigation. The Independent Counsel has informed us that it will communicate with the White House directly as to any concerns regarding the timing or the terms of this document request. If the White House intends to refuse to comply with certain production requests in this letter based on concerns about the Independent Counsel's investigation, we expect you to identify the specific objections raised by the Independent Counsel as to specific requests in this letter.

Please indicate where, including from which White House Office, and from whom each of those responsive documents was obtained. It would also be helpful if you provided a list of materials that you are submitting so that the Committee and your office will have a common list of records supplied by the White House.

If the White House decides to withhold any documents, please provide a log identifying each such document, the date, author(s), recipient(s), the subject matter of any such documents, and the basis on which the document is not being provided. The Committee's staff is available to meet with you and your staff to expedite your response to this request and to answer any questions. If you are aware that any document responsive to any request contained in this letter has been destroyed, please identify any such document and the circumstances of its destruction including the names of those who destroyed it and the date of such destruction.

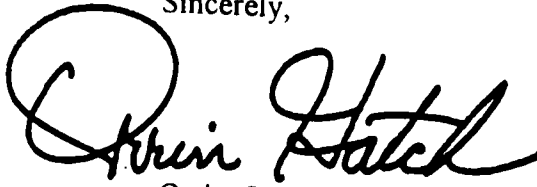
The materials should be delivered to Anna Cabral, Chief Clerk, 224 Dirksen Senate Office Building. You may submit copies in response to this request so long as they are identified as such, but the Committee reserves the right to obtain the originals. If a document exists in multiple copies in different locations, please provide a copy from each location. As you know, the Committee is seeking to complete its work as expeditiously as possible. Therefore, it is necessary that the Committee receive these documents no later than July 12, 1996.

This request is an initial request and may be supplemented by additional ones. We

recognize that you may wish to designate a White House official who will be responsible for responding to this request.

Your cooperation with this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Orrin Hatch". The signature is fluid and cursive, with the first name "Orrin" and last name "Hatch" clearly distinguishable.

Orrin G. Hatch
Chairman

cc✓ The Honorable Jack Quinn, Counsel to the President
Mr. Terry Good, Director, White House Office of Records Management

OGH:mcr

draft

RESOLUTION

Be it resolved that, pursuant to its authority under Rule 26 of the Standing Rules of the Senate, the Senate Committee on the Judiciary hereby authorizes its Chairman to issue to Anthony B. Marceca of Odenton, Maryland the subpoena attached as Exhibit 1 to this resolution, which commands Mr. Marceca to appear before the Committee to testify to what he may know relative to matters under Committee consideration and to produce certain documents within his possession, custody, or control.

07-16-96 10:24AM FROM JUDICIARY COMM. 000 TO 94501215 1000

Attachment 1

Draft

UNITED STATES OF AMERICA

Congress of the United States

To Anthony B. Marceca

522 Camelot Court

Odenton, MD 21113, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to
appear before the _____ Committee on the Judiciary
of the Senate of the United States, on Thursday July 18, 1996,
at 10:00 o'clock a.m., at their committee room SD-226

_____, then and there
to ~~testify what you may know relative to the subject matter under consideration~~
~~by said committee~~

~~produce the documents described in attachment A~~

Heretof fail not, as you will answer your default under the pains and pen-
alties in such cases made and provided.

To any agent of the United States Senate
to serve and return.

~~Given~~ under my hand, by order of the committee, this
18th day of July, in the year of our
Lord one thousand nine hundred and ~~ninety-six~~.

Chairman, Committee on the Judiciary

01-10-90 10:24AM FROM: JED:CHRY: 00000000 10-01001210

Attachment A

All documents, and all computer disks containing documents, regardless of format, including but not limited to, e-mail, electronic files, electronic backup and dump files, memoranda, correspondence, notes, records, reports, files, any material in any other medium, including drafts of the foregoing, that refer, reflect, or relate in any manner to the following:

- (1) the White House Personnel Security Office's "Project Update" or "Update Project;"
- (2) the White House Personnel Security Office's procedures for requesting, reviewing, maintaining, and safekeeping of background files;
- (3) access to the White House Personnel Security Office;
- (4) meetings between any member of the White House Personnel Security Office and members of the White House Counsel's Office, the Office of the Chief of Staff, the Office of the Counselor to the President, the Office of the First Lady, the Office of Administration and Management, the Office of the Vice President, the Office of Presidential Personnel, or any other component of the Executive Office of the President;
- (5) communications to or from the White House Personnel Security Office;
- (6) FBI, IRS, or other investigations, documents, files, records, or other material or information on or pertaining to any current or former employees of officials of the Executive Branch;
- (7) seeking or securing employment, a Presidential nomination or appointment, or detail in the Executive Branch since November 1, 1992;
- (8) work performed, or communications to or from, any political party, party officer, political campaign, or political organization since January 1, 1992; and
- (9) all records relating to any criminal complaints or charges against Mr. Marceca at any time.

THE WHITE HOUSE
WASHINGTON

July 26, 1996

COPY

Anna

MEMORANDUM FOR COLLEEN CALLAHAN
SPECIAL AGENT IN CHARGE
UNITED STATES SECRET SERVICE

FROM: TERRY GOOD *Terry Good*
DIRECTOR
OFFICE OF RECORDS MANAGEMENT

RE: REQUEST FOR WAVES INFORMATION

Attached is a request from Anna Chavez of the White House Counsel's Office for information from the USSS WAVES files relating to 1) " . . . any record of visitors waved into the White House complex to see Craig Livingstone or Anthony Marceca and 2) " . . . any documents recording any entrances or exits into the White House complex by Anthony Marceca." The relative time period for both requests is January 20, 1993 through July 15, 1996. I would appreciate your assistance in responding to this request to the extent possible.

Lee Johnson, Tom Taggart and I are prepared to work with you on this project.

cc: Wendy White

THE WHITE HOUSE

WASHINGTON

TO: COLLEEN CALLAHAN
SPECIAL AGENT IN CHARGE

FROM: ANNA M. CHÁVEZ *Amc*
OFFICE OF THE COUNSEL TO THE PRESIDENT

DATE: AUGUST 2, 1996

RE: CONGRESSIONAL SUBPOENAS AND REQUESTS

In response to your telephone call of August 1, 1996, I am providing your office with copies of three congressional requests and one Independent Counsel subpoena regarding the White House Office of Personnel Security investigation. I have marked the relevant sections of each document. As you will see, all four documents request essentially the same WAVES material. Therefore, I have narrowed our request to include a search of WAVES lists for the time period of January 20, 1993 through July 15, 1996. The lists should be searched for any record of visitors waved into the White House complex to see Craig Livingstone or Anthony Marceca. In addition, we need any documents which record any entrances or exits into the White House complex by Anthony Marceca.

If you have additional questions, please feel free to call me at 6-5047. I appreciate your assistance in this time-sensitive matter.

enclosures

cc: Wendy S. White
Tom Taggart, Jr.

THE WHITE HOUSE

WASHINGTON

TO: TERRY GOOD
DIRECTOR OF RECORDS MANAGEMENT

FROM: ANNA M. CHAVEZ *Alhe*
OFFICE OF THE COUNSEL TO THE PRESIDENT

DATE: JULY 26, 1996

RE: CONGRESSIONAL AND INDEPENDENT COUNSEL REQUESTS

The Executive Office of the President has received several subpoenas and production requests over the past few months regarding the FBI investigation. We are currently in need of WAVES lists that pertain to the time period of January 20, 1993 through July 15, 1996. The gate list tapes should be searched for any record of visitors waved into the White House complex to see Craig Livingstone or Anthony Marceca. Also, we need any documents recording any entrances or exits into the White House complex by Anthony Marceca. I was informed by Special Agent in Charge Colleen Callahan, Room 23 OEOB, that you must request the loading of gate list tapes.

Thank you for your assistance. If you should have any questions, please feel free to call me at 6-5047.

cc: Wendy White

THE WHITE HOUSE

WASHINGTON

TO: TERRY GOOD
DIRECTOR OF RECORDS MANAGEMENT

FROM: ANNA M. CHAVEZ *Amc*
OFFICE OF THE COUNSEL TO THE PRESIDENT

DATE: JULY 26, 1996

RE: CONGRESSIONAL AND INDEPENDENT COUNSEL REQUESTS

The Executive Office of the President has received several subpoenas and production requests over the past few months regarding the FBI investigation. We are currently in need of WAVES lists that pertain to the time period of January 20, 1993 through July 15, 1996. The gate list tapes should be searched for any record of visitors waved into the White House complex to see Craig Livingstone or Anthony Marceca. Also, we need any documents recording any entrances or exits into the White House complex by Anthony Marceca. I was informed by Special Agent in Charge Colleen Callahan, Room 23 OEOb, that you must request the loading of gate list tapes.

Thank you for your assistance. If you should have any questions, please feel free to call me at 6-5047.

cc: Wendy White

THE WHITE HOUSE

WASHINGTON

TO: Wendy White
Special Counsel to the President

FROM: Anna M. Chavez *AME*
The Office of Counsel to the President

DATE: July 29, 1996

RE: F1 Logs

I am writing to report that our office has searched the F1 logs dated January 20, 1993 through March 31, 1996 and June 1, 1996 through June 30, 1996 for visits to the private residence by the following persons: Arthur Coia, Craig Livingstone, and Anthony Marceca. In all three cases, I have found no responsive documents.

June 28, 1996

MEMORANDUM

TO: JODIE TORKELSON
FRANK REEDER

FROM: WENDY WHITE

RE: CRAIG LIVINGSTONE'S PERSONNEL FILE

On June 21, 1996, Chairman Clinger of the House Government Reform and Oversight Committee asked the White House Counsel's Office to provide the following information to the Committee:

"[P]lease provide all information on who hired Mr. Livingstone, who vetted his file and reviewed his background and who made any recommendations on Mr. Livingstone's behalf. Was Presidential Personnel Chief Bruce Lindsey involved in Mr. Livingstone's hiring? Was Chief of Staff Mack McLarty involved in Mr. Livingstone's hiring? Was White House Counsel Bernard Nussbaum involved in Mr. Livingstone's hiring? Was Senior Advisor George Stephanopoulos involved in Mr. Livingstone's hiring? Please identify all individuals who played any role in Mr. Livingstone's hiring?"

In order to respond to this request, would you please provide to me a copy of Mr. Livingstone's personnel file for review by our office.

THE WHITE HOUSE

WASHINGTON

TO: Carolyn Huber
Special Assistant to the President and Director of
Personal Correspondence

FROM: Anna M. Chavez *AME*
Office of the Counsel to the President

DATE: July 26, 1996

RE: Telephone Logs

I am writing to inform you that the Counsel's Office is in possession of your telephone message books dated from 9/14/93 through 6/24/96. As you my know, we acquired your phone message books in order to search for documents responsive to an Independent Counsel subpoena. The Counsel's Office would be happy to store the phone logs for you. However, if you would prefer to have them returned to you, we can make arrangements to that end. I can be reached at 456-5047. Please let me know of your preference.

Thank you for your assistance.

cc: W. White

THE WHITE HOUSE
WASHINGTON

June 24, 1996

TO: All Staff of the White House and Office of
Administration

FROM: Jane Sherburne *JS*
Special Counsel to the President

Wendy S. White
Associate Counsel to the President

RE: Document Requests from House Committee on Government
Reform and Oversight dated June 21, 1996.

We have received the following request for documents from the House Committee on Government Reform and Oversight:

"All memos to and/or from Craig Livingstone, Anthony Marceca, William Kennedy, Bernard Nussbaum, Vincent Foster, Joel Klein, Lloyd Cutler, Abner Mikva, John M. Quinn, Jane Sherburne, Beth Nolan, Cliff Mauton, Christopher Cerf, Trey Schroeder, Ed Hughes, Jonathan Denbo, Mari Anderson, or Ms. Lisa Wetzel regarding anything having to do with the updating of White House passes, security clearances, FBI background files or any operations of the Office of Personnel Security."

Please search your files for responsive materials. After conducting your search, provide the documents to Wendy White in Room 136 of the Old Executive Office Building as soon as possible. The Committee has asked for a response by the close of business today. While we will advise the Committee that we are unable to meet this deadline, we want to respond as quickly as we can.

Should you have any questions regarding this request, please call Wendy White at 6-7361.

PANETTA, LEON E.
WHITE HOUSE OFFICE

CHIEF OF STAFF

WH

1FL/WH

THE WHITE HOUSE

WASHINGTON

July 31, 1996

BY FACSIMILE

The Honorable William F. Clinger, Jr.
Chairman
Committee on Government Reform
and Oversight
2157 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Clinger:

A member of your staff has requested that we provide the addresses and telephone numbers of certain interns who worked in the Office of Personnel Security.

Ed Hughes and Jonathan Denbo are represented by Brad Berenson. Mr. Berenson's telephone number is 202/736-8498. Below are the last known addresses and telephone numbers for the other individuals:

Melissa Evantash
407 Conshohocken State Road
Balacynwyd, PA 19004
(703) 998-6415

Samantha Ziskind
23800 Larillo Street
Woodland Hills, IA 91367
(213) 624-1030

Joseph Foudy
415 Concord Street
Cresskill, NJ 07626
(201) 894-1161

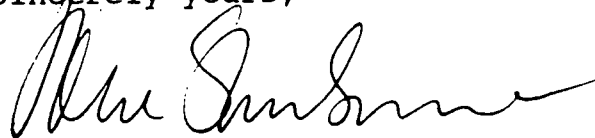
Myong Grae Lee
20 Graffin Drive
Latham, NY 12110
(518) 783-5505

Emily Moulton
315 East 72nd Street
#21 L
New York, NY 10021
(212) 861-0105

Jennifer Dowdell
9520 Cove Drive
North Royalton, OH 44133
(202) 530-9827

Please give me a call if you have any questions.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Jane C. Sherburne', written in a cursive style.

Jane C. Sherburne
Special Counsel to the President

cc: Honorable Cardiss Collins

THE WHITE HOUSE
WASHINGTON

July 31, 1996

BY FACSIMILE

The Honorable William F. Clinger, Jr., Chairman
Committee on Government Reform and Oversight
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Clinger:

This letter responds to your letter of July 23, 1996 to Jack Quinn, in which you identify what you understand to be outstanding Committee requests. We have responded to your requests in letters dated June 25, July 5, July 8, July 9 (two letters), July 12, July 14, and July 16, 1996. As we have explained in these responses, our answers necessarily have been incomplete because the Independent Counsel requested that we secure both the Office of Personnel Security and the room in which the Office of Records Management maintains records archived from OPS. As a result, any records responsive to your numerous requests that may be located in these offices have been unavailable to us for review.

The Independent Counsel recently has permitted access to the records in ORM and we have begun the process of reviewing them for material requested by the Committee. Additional responsive documents will be provided shortly. As soon as we have access to documents in OPS, we will review them and produce any additional responsive material to you as promptly as possible.

The specific questions that you identify as outstanding are discussed below. In general, as we observed earlier, answering many of the questions repeated in your July 23, 1996 letter would require the White House to undertake an investigation of the FBI files matter, including the interviewing of witnesses. We have determined, as you know, not to undertake our own investigation in light of ongoing inquiries by others. We have, however, been providing documents to you that bear on the questions you raise. Further, your Committee has been questioning the relevant witnesses, both through depositions and in hearings, and we have encouraged White House officials to cooperate with your efforts. For example, the Committee has questioned Craig Livingstone, William Kennedy, Bernard Nussbaum, George Stephanopoulos and others about the hiring and clearance of Craig Livingstone. Further, you have reviewed Mr. Livingstone's confidential FBI file. Our own

Hon. William Clinger, Jr.
July 31, 1996
Page 2

inquiry of these same individuals for the purpose of providing to you answers to questions you have already asked them would appear to an unnecessary duplication of your own efforts.

1.) Who sponsored Mr. Livingstone during the Presidential transition for White House employment?

Response: We have provided all White House records we have been able to locate related to this question. As we are not conducting our own investigation, for the reasons set forth above, we do not have additional responsive information.

2.) What role did Eli Segal play in support of Mr. Livingstone's application?

Response: We have provided all personnel documents available to us related to the hiring of Mr. Livingstone. In addition, I am attaching to this letter a recent statement released by Mr. Eli Segal that addresses this question. As we are not conducting our own investigation, for the reasons set forth above, we do not have additional responsive information.

3.) Who provided letters of recommendation on Mr. Livingstone's behalf?

Response: We have provided all White House records we have been able to locate related to this question.

4.) Is it correct that although Mr. Livingstone was appointed on March 11, 1993, his security clearance was not approved until December of 1995?

Response: No. (Please see response to Question 5.)

5.) If Mr. Livingstone did not receive a security clearance until December of 1995, why did four White House Counsels permit him to review sensitive FBI background files?

Response: As I have explained in the course of deposition questioning, Mr. Livingstone's FBI background investigation was completed and adjudicated in March 1993; he was granted a temporary security clearance at that time, pending issuance of a permanent pass. On the basis of that and a review of his background file, in May 1993, the CIA granted Mr. Livingstone an SCI-level clearance.

Hon. William Clinger, Jr.
July 31, 1996
Page 3

Carrying on a practice that had been in place during prior administrations, favorable adjudication of a background check was considered the equivalent of a "Top Secret" clearance. (Of course, access to Top Secret material is afforded only to those with a "need to know.") Mr. Livingstone received his permanent pass in November 1993.

In August 1995, the President signed an Executive Order that had the effect of requiring that the White House undertake an independent review of a White House employee's file for purposes of granting a security clearance. Pursuant to the practice established as a result of this Executive Order, and as evidenced by documents we have provided to the Committee, Mr. Livingstone's security clearance was formalized in December 1995. For more information about the security clearance procedures, please refer to Jack Quinn's July 30, 1996 response to Chairman Clinger's letter of July 22, 1996.

6.) What role did Mr. Stephanopoulos play in hiring Mr. Livingstone and, considering their relationship, is it appropriate to have Mr. Stephanopoulos serve as your spokesman on this matter?

Response: We have provided all White House records we have been able to locate related to this question. We understand the Committee deposed Mr. Stephanopoulos and presumably used the opportunity to question him directly about this matter.

7.) What role did Mr. Stephanopoulos play in supervising Mr. Livingstone in the [Clinton/Gore '92 campaign] Counter-Event Operations office? If Mr. Stephanopoulos did not supervise this office, then who did?

Response: As set forth above, we are not conducting our own investigation. (We understand the Committee has taken the deposition of Mr. Stephanopoulos.) We have provided all White House records we have been able to locate related to this question.

8.) Has the White House conducted its own inquiry into the matter?

Response: No.

Hon. William Clinger, Jr.
July 31, 1996
Page 4

9.) Have any White House staff participated in interviewing participants in the FBI story during the last several weeks?

Response: Although we are not conducting our own investigation, we have, of course, spoken with people who may have information necessary for responding to your inquiry as well as others.

10.) How many versions of the Personal Data Statement Questionnaire have been used since January 20, 1993?

Response: We have provided a complete response to Questions 10-14 concerning the Personal Data Statement Questionnaire in a letter from Jack Quinn to you dated July 30, 1996. In brief, we have identified six versions of the PDS used during this Administration.

11.) To which employees or applicants were these questionnaires distributed? Which employees or applicants were directed to supply the information requested in the questionnaire -- by position, by employing office, and whether Title 3 or Title 5.

Response: As elaborated in Mr. Quinn's letter of July 30, 1996, the PDS forms are distributed to Title 3 employees in the White House Office, the Office of Policy Development, the Office of the Vice President, and the Executive Residence. In addition, the PDS forms are distributed to non-career members of the Senior Executive Service employed by the Office of National Drug Control Policy, the Office of Science and Technology Policy, and the United States Trade Representative.

12.) What White House offices used this questionnaire for employment screening purposes?

Response: Please see response to Question 11, above, and Mr. Quinn's letter of July 30, 1996.

13.) Which components within the Executive Office of the President used the questionnaire for employment screening purposes?

Response: Please see response to Question 11, above, and Mr. Quinn's letter of July 30, 1996.

Hon. William Clinger, Jr.
July 31, 1996
Page 5

14). Which offices and/or employees reviewed the completed questionnaire?

Response: As elaborated in Mr. Quinn's letter of July 30, 1996, until recently, PDS forms completed by Title 3 employees in the White House Office, the Office of Policy Development, the Office of the Vice President, and the Executive Residence were reviewed by the Director of OPS. Currently, they are reviewed by the EOP Security Officer. PDS forms completed by non-career members of the Senior Executive Service employed by the Office of National Drug Control Policy, the Office of Science and Technology Policy, and the United States Trade Representative are reviewed by their respective general counsel offices.

15.) Please provide all records of interviews, recommendations, letters of reference and other information pertinent to the hiring of Mr. Livingstone.

Response: We have provided all White House records we have been able to locate at this time related to this question.

16.) When did Mr. Livingstone obtain his security clearance; what level of clearance did he receive and who vetted him?

Response: Please see response to Questions 4 and 5 above. As Mr. Kennedy has explained in his testimony before the Committee, he was responsible for adjudicating Mr. Livingstone's background file.

17.) Please provide Usher's Records or Secret Service records for every occasion on which Mr. Livingstone has been in the White House residence from January 1, 1996, to the present.

Response: The relevant records show no occasion on which Mr. Livingstone has been in the White House Residence from January 1, 1996 to the present.

18.) Please provide all records of visitor logs for visitors to the White House who were waved in to see Mr. Marceca from August 1993 through March 1994 and any visits he made to the White House from January 1, 1996 to the present.

Response: Records responsive to this request have been maintained by ORM in the room that only recently has become available to us. We currently are reviewing these records and will produce any responsive material as promptly as possible.

Hon. William Clinger, Jr.
July 31, 1996
Page 6

19.) Please provide all records of visitor logs for visitors to the White House who were waved in to see Mr. Livingstone from January 20, 1993, to present.

Response: Records responsive to this request have been maintained by ORM in the room that only recently has become available to us. We currently are reviewing these records and will produce any responsive material as promptly as possible. Please be aware that it will require approximately 40 hours to load and run the computer tapes that contain the information necessary for responding to this request.

20.) Please provide all records of phone logs or messages from Mr. Livingstone from January 20, 1993, to present.

Response: Records responsive to this request have been maintained by ORM in the room that only recently has become available to us. We currently are reviewing these records and will produce any responsive material as promptly as possible.

21.) Please provide all records reflecting any reprimands regarding issues related to White House passes or security clearances or the obtaining of FBI background files of William Kennedy, Craig Livingstone, Anthony Marceca, or any staff (paid or unpaid) of the Office of Personnel Security of White House Counsel's Office.

Response: We have not located any such records.

We have been and will continue to be diligent in our efforts to review documents as they become available to us and to provide you with responsive material promptly.

Please give me a call if you have any questions.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

Enclosure
cc: Hon. Cardiss Collins (with enclosure)

ELI J. SEGAL

7/2/96

Statement

In December, 1992, at his request,

I agreed to "sponsor" Craig Livingstone for a position on the advance staff in the Clinton Administration. I did so based on the able work he performed on the advance staff in the Clinton Gore presidential campaign in 1992 and in the California primary of the Hest. presidential campaign in 1984.

Eli J. Segal

THE WHITE HOUSE
WASHINGTON

August 1, 1996

BY HAND DELIVERY

The Honorable William F. Clinger, Jr.
Chairman
Committee on Government Reform
and Oversight
2157 Rayburn House Office Building
U. S. House of Representatives
Washington, D.C. 20515

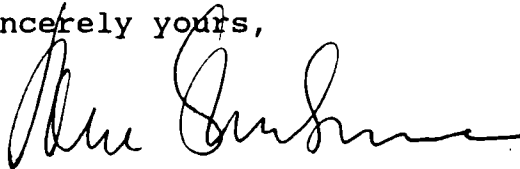
Dear Chairman Clinger:

This letter is in response to the request made during my deposition for certain documents. Enclosed are documents bearing Bates stamped numbers CGE 48343-48350.

CGE 48343-48344 is a June 11, 1996 letter from Mr. Howard Shapiro to me regarding certain requests for previous FBI reports made by the White House. The index referenced in this letter was provided to the Committee under the Bates stamped numbers of CGE 48000-48057 on July 9, 1996. CGE 48345-48350 is the White House's June 13, 1996 response to Mr. Shapiro's letter.

As always, we request that you treat these documents as "Highly Confidential" in accordance with the protocols set forth in Ms. Williams August 9, 1995 letter to Mr. Larsen.

Sincerely yours,



Jane C. Sherburne
Special Counsel to the President

cc: Honorable Cardiss Collins (w/enclosures)

JUL-25-1996 10:08

Sharp & Lankford

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ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

July 22, 1996

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MINORITY—(202) 225-3061VIA FACSIMILE: 202-745-2505

William F. Coffield
Sharp & Lankford
1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: William H. Kennedy, III

Dear Mr. Coffield:

Under the authority of Article I of the Constitution of the United States and Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform and Oversight has been conducting an investigation into the White House Travel Office matter and the release by the Federal Bureau of Investigation (FBI) of sensitive background files. Under Committee Rule 19, the Government Reform and Oversight Committee has been granted the authority to issue interrogatories.

On June 18, 1996, your client, Mr. William Kennedy, testified before the Committee on his involvement in the supervision of the White House Office of Personnel Security. At that time he cited the Privacy Act, 5 U.S.C. 552a (1994), as a testimonial bar, preventing his response to a pertinent question posed to him by a Member of the Committee. Following requests by Members of the Committee, I agreed to consult with proper authorities to determine whether a witness before a congressional committee can avoid answering otherwise legitimate questions because he is legally precluded by the Privacy Act.

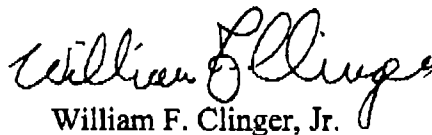
The House Parliamentarian has informed me that his office is not in a position to rule on the use of a Federal statute as a bar to responding to a legitimate congressional inquiry. I have, therefore, sought a legal opinion from the American Law Division of the Congressional Research Service (CRS) which is attached for your review. As you will read, senior CRS attorney Morton Rosenberg has concluded that for numerous reasons, the Privacy Act does not act as a defense in these circumstances. I agree with Mr. Rosenberg's analysis and therefore direct that your client respond under oath to the attached written questions, which will be included in the Committee's record. Our need for the Committee to recall your client for a sworn deposition will depend upon

William F. Coffield
July 22, 1996
Page Two

the degree of candor with which your client responds to these questions.

Please instruct your client to respond to these questions, under oath, and return them to me no later than 5:00 p.m. on Friday, August 2, 1996. Your cooperation in this matter is appreciated.

Sincerely,


William F. Clinger, Jr.
Chairman

Attachment

cc: Hon. Cardiss Collins

QUESTIONS SUBMITTED TO WILLIAM KENNEDY

1. (a) Have you reviewed the White House's or the Federal Bureau of Investigation background investigation file of David Craig Livingstone? If yes, when did you review this file? Did you ever receive any updates of Mr. Livingstone's background investigation file? Did you discuss the contents of this file with any other person?
- (b) Did you ever tell anyone that Mr. Livingstone was "a done deal" -- or any similar words -- or that you could not change his appointment as the Director of the White House Office of Personnel Security because it was the First Lady's wishes?
2. ✓(a) What concerns or derogatory information, if any, about Mr. Livingstone's FBI background investigation were brought to your attention by either the Secret Service or the FBI?
- ✓(b) Were you aware of any derogatory information contained in Mr. Livingstone's FBI background investigation at the time he was officially hired as Director of Personnel Security at the White House? If yes, please explain what information you knew at that time?
3. ✓ Did you or did you not know about Mr. Livingstone's admitted history of drug use? If you did know, why did you allow him to assume a sensitive position with the White House or continue to hold that post?
4. (a) What communications have you had with any individuals regarding the background and qualifications of David Craig Livingstone from January 1, 1993, through the present? Name the individuals involved in any communications, the approximate time which the communication occurred, and the nature of the communication.
- (b) In your appearance before the Committee, you stated that following a discussion with Mr. Foster, you discussed Mr. Livingstone's background with Ms. Varney. You further stated, "Those issues were resolved on a basis that led to Mr. Livingstone's retention." What issues were discussed with Mr. Foster and Ms. Varney? What steps were taken during your discussion with Ms. Varney to reach the resolution which led to Mr. Livingstone's retention? How and why were those steps decided upon as opposed to any alternative courses?
5. Did any individual, at any time, instruct or encourage or otherwise influence you to employ or continue the employment of David Craig Livingstone at the White House?
6. Do you have any knowledge of who recommended Mr. Livingstone to be employed at the White House in February, 1993?

7. In testimony before the Committee in an open hearing, agents of the U.S. Secret Service have testified that they discussed with you their concerns over recent past drug use by White House staff. One of the solutions was the imposition of random drug testing. Who, if anyone, on the White House staff, including the President and First Lady and the Vice President, have you discussed this matter with? Did anyone instruct you to develop an arrangement with the Secret Service which would allow the issuance of a permanent pass to White House staff with former drug usage?

Scope

8. (a) Have you reviewed the Federal Bureau of Investigation background file of Anthony Marceca? If yes, when did you review this file? Did you ever receive any updates on Mr. Marceca's background investigation file? If yes, when?

(b) Have you ever reviewed the background investigation report on Mr. Marceca completed for his employment with the U.S. Army? If yes, when?

9. ✓ Were you aware of any derogatory information contained in either Mr. Marceca's FBI or Army background investigation file at any time while he was detailed to the White House, as well as before or after his detail?

10. Are you aware that Mr. Marceca was interviewed for a permanent position within the Clinton Administration? If yes, what positions was Mr. Marceca interviewing for at the White House and with whom did he have interviews or discussions concerning a permanent position?

11. Did any individual, at any time, instruct, encourage or otherwise influence you to employ or retain the employment of Anthony Marceca at the White House?

12. ✓ Please respond to the question asked by Congressman David McIntosh:

"Mr. Kennedy, did you or did you not know about Mr. Livingstone's alleged history of drug use? And if you did know about it, why did you allow him to assume a position with the security clearance in the white House in such a sensitive post?"

(Same as
3)



Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7000

July 19, 1996

TO : Honorable Bill Clinger, Chairman
House Government Reform and Oversight Committee
Attn: Kevin Sabo

FROM : American Law Division

SUBJECT : Efficacy of a Witness Claim that the Privacy Act
is a Bar to Responding to Questions Posed by a Committee
if the Answer Would Reflect Personal Matters in an FBI
File

During an investigative hearing held by your Committee on June 26, 1996, inquiring into the matter of the White House's acquisition of copies of confidential FBI background checks and security clearances, including those of former White House officials and employees, a witness, Mr. William Kennedy, a former associate counsel in the White House Counsel's Office, refused several times to answer questions put to him by Members which, he claimed, would reveal matters contained in a FBI background file on David Craig Livingstone, the former Director of White House Personnel Security, who had been under his direct supervision. Mr. Kennedy claimed each time that disclosure of such matters would violate the Privacy Act, 5 U.S.C. 552a(1994), and that he was barred from testifying in a way that would reveal the protected information. See unpublished transcript of hearing on "Security of FBI Background Files" at pages 72, 242, 253 and 331-332, dated June 26, 1996.

At the time of his last assertion of Privacy Act protection, you ruled that the statute was not a legitimate ground to refuse to answer, advised him that refusal to respond could subject him to a citation for contempt of Congress, and directed him to answer, explaining the relevance of the line of inquiry to the subject matter of the hearing, and the reasons for your ruling. Your ruling was appealed and a vote of the Committee was called but was suspended in order to obtain a ruling from the House Parliamentarian. Pertinent excerpts from the proceeding follow:

Mr. MCINTOSH. Thank you, Mr. Chairman.

Mr. Kennedy, did you or did you not know about Mr. Livingstone's alleged history of drug

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use? And if you did know about it, why did you allow him to assume a position with the security clearance in the White House in such a sensitive post?

Mr. KENNEDY. Mr. Chairman, I am going to address you instead of the Congressman. You know, my reluctance to answer these questions stems from two areas, one of which is the fact that I believe the Privacy Act governs this and I am---I think I am being asked a specific question.

Mr. CLINGER. You are being asked about a question that Mr. Livingstone has already indicated that he, in fact, had engaged in recreational use of drugs. So I think that the--raising the Privacy Act as a reason for not answering is not appropriate.

Mr. KENNEDY. The second question is, you are asking me about legal work I performed within the office of counsel to the President, and I have no guidance on that.

Mr. CLINGER. Mr. Kennedy, I would remind you that you are under subpoena before this committee. You have been presented with a question which you have indicated that you will not respond to. I have ruled that the Privacy Act, I don't think, is a legitimate bar to that.

Mr. WAXMAN. Mr. Chairman--

Mr. CLINGER. I would urge you to answer the question because you potentially could be in contempt of this committee.

Mr. WAXMAN. Mr. Chairman, if I might be recognized on this issue?

It seems to me if you are going to ask a witness to violate the statute of the Privacy Act, it ought to be done in executive session. It ought not to be sprung on a witness at this moment, and on behalf of our side and some of your Members.

Mr. MCINTOSH. Mr. Chairman, let me point out that this was the fifth time this question has been asked.

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Mr. WAXMAN. Mr. Chairman, I am making a point.

Mr. CLINGER. One at a time.

Mr. WAXMAN. I think we ought to have a further inquiry as to what the proper procedures and precedent have been in the past when something of this sensitive a nature is being brought forth. I think we owe it to everybody involved.

Mr. CLINGER. I would respectfully say to the gentleman that it is my opinion that Mr. Livingstone has, in fact, waived his protection under the Privacy Act with regard to--the very limited regard to the fact that he has admitted to occasional use of drugs, not drug abuse, not a drug problem but occasional use of drugs.

Mr. WAXMAN. May I ask whether this is relevant?

Mr. CLINGER. The question now to Mr. Kennedy was, knowing that, or did he know that, as he aware of that fact, and if he was aware of that fact, did it raise a question in his mind as to whether this was an individual who should, in fact, have the responsibility of reviewing very sensitive files? And I would suggest to Mr. Kennedy that that is a question that you can answer.

Mr. MCINTOSH. Mr. Chairman, I will point out for the record this is the sixth time now that you have asked it--that this question has been asked today.

Mr. KENNEDY. Mr. Chairman, in a nutshell, Mr. Livingstone went through the normal review process that basically all people being considered for a hard pass in the White House had. There were issues in Mr. Livingstone's background which were reviewed by me. I discussed them with Mr. Foster. I was directed by Mr. Foster to go to Ms. Varney. Those issues were resolved on a basis that led to Mr. Livingstone's retention.

Mr. CLINGER. But in reviewing that file, you were aware of the fact that Mr. Livingstone had

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engaged in occasional drug use; is that correct? Since Mr. Livingstone has already indicated that that was the case.

Mr. KENNEDY. Mr. Chairman, could I consult with my counsel for a minute, please.

Mr. WAXMAN. Point of order, Mr. Chairman?

Mr. CLINGER. The gentleman will state it.

Mr. WAXMAN. I would like to inquire of the Chair his understanding of the rules and this particular privacy statute, whether he can require witnesses to disclose to us anything that is in anybody else's file that he has seen? Because as I understand the Chairman's ruling, we would then be permitted on our time to ask him about anybody else's file, to disclose anybody's information about them that is private.

Mr. CLINGER. No, that is not correct. I will tell the gentleman that in this instance the ruling was based on the fact that Mr. Livingstone has testified in this hearing to occasional drug use, and that, in my mind, would not open up Pandora's box.

* * *

Mr. WAXMAN. Point of order, Mr. Chairman.

Would this witness, in answering your question, violate the privacy statute law? And are you insisting that he violate a law in order to give you some irrelevant but of information? Is that where we are, Mr. Chairman?

Mr. CLINGER. Where we are is that I have indicated that because of Mr. Livingstone's admission, I guess, that there was, in fact, some drug use, that that therefore would represent a waiver of rights under the Privacy Act with regard to that very, very specific question.

Mr. WAXMAN. Mr. --

Mr. CLINGER. Now, if Mr. Kennedy does not choose to answer that question, we will take under advisement whether or not that constitutes

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contempt and at the next hearing on this matter we will consider that.

You know, I am not--I don't mean to pose any threats here but I do say that I think I have indicated that my ruling, subject to being reversed at some stage of the game, but my ruling is that the witness must answer the question.

Mr. WAXMAN. Mr. Chairman, I will seek to appeal your ruling to the Parliamentarian because I cannot believe--

Mr. CLINGER. You have every right to do that.

Mr. WAXMAN. I do not believe that you can insist that a witness violate the law and give us confidential information.

* * *

Mr. CLINGER. I am going to ask the clerk to suspend the reading of the roll.

In view of the contentiousness of this issue and the concerns that have been raised on the Minority side, I have agreed to refer this matter to the Parliamentarian and at that point we will get a ruling from the Parliamentarian as to the appropriateness of the question. But I can assure you because of this and other matters that have arisen, we will be visiting with this panel again, at which time it will be anticipated that that will be a question that will be in order at that time, unless the Parliamentarian rules against us. So given that understanding, we would now move to--

Mr. MICA. Mr. Chairman, I have a unanimous consent request.

Mr. CLINGER. The gentleman will state it.

Mr. MICA. --to admit these documents, if there is no problem--

Mr. CLINGER. I believe these documents have been shown to the Minority.

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Mr. WAXMAN. I am sorry. I am going to object because we haven't had a chance to check it out. You can put it in the next hearing or the one after that or the one after that because this is certainly something that is worthy of at least 10 or 12 more hearings.

Mr. CLINGER. I thank the gentleman for his gentle sarcasm.

* * *

Mr. EHRLICH. Parliamentary inquiry. Just for the record, would the Chair state the precise issue and frame the issue that the Parliamentarian will rule on?

Mr. CLINGER. Yes, I would be delighted to do that.

The question was asked of Mr. Kennedy whether he knew of any drug use on behalf of Mr. Livingstone, and if he did know that, did it enter into his decision as to whether or not to hire Mr. Livingstone for this sensitive position. The issue is, would it violate Mr. Livingstone's rights to privacy under the Privacy Act if, in fact, Mr. Kennedy were to answer that question.

My ruling was that it would not so violate his privilege under the Privacy Act because Mr. Livingstone himself had indicated that, and Mr. Livingstone's deposition has been made a part of the record.

That being the case, I felt that Mr. Kennedy would be required, being under subpoena, to respond to the question propounded to him by you, or by whoever, and that appealing--Mr. Waxman then appealed the ruling of the Chair. I have agreed that we will not submit that to a vote at this hearing; that we will confer with the Parliamentarian as to his ruling and we will revisit this issue at the next hearing.

Transcript at pp. 331-335, 336, 340-342.

Prior to the hearing, on June 14, 1996, Mr. Livingstone was deposed and testified to the fact that he had discussed with Mr. Kennedy various matters

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contained in his FBI background report, which Mr. Kennedy had at that time. These included Mr. Livingstone's prior drug use and problems he had in previous employments.

Q Do you know -- in March of 1993, did you receive a permanent pass?

A No, I don't believe I got my permanent pass until October of 1993, or thereabouts.

Q So in March of 1993 you only had a temporary pass?

A Yes, ma'am.

Q Do you know who participated in your vetting?

A. Mr. Kennedy, Bill Kennedy.

Q Do you recall if Mr. Kennedy had any problems with any matters in your background?

A Yes, he did discuss some issues with me.

Q Could you describe what those were?

A My drug use, and he basically gave me what he called a "Come to Jesus" opportunity to talk to him about any issues in my life that he should be aware of. And I related to him some situations in my life that I considered less than favorable and I wanted him to be aware of them.

Q Could you describe what those were?

A Yes. When I was in college I worked at the Sears store. I think this is in 1981 or '92. I worked as a sales clerk and I was brought in by the supervisor to discuss, as I recall it, an improper exchange of an item which I had purchased. I believe the issue was I was supposed to go to the supervisor since I had purchased it myself, and the discussion was they didn't think that was -- I had followed proper procedures, and I was let go.

Q Any other matters?

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A I also told them I was at another job where I was contract employee where I was asked about my education. The woman I had worked for had thought I had gone to a particular school, and because I was engaged in conversation with her daughter and someone who worked at the company, she questioned me about it and checked my file and discovered I had not gone to that school.

I did not tell her I went to the school to get employment there, nor did I put that on an application with her, but she thought the fact I would bring it up in a conversation like that was incredible, and did not renew my contract. When I discussed that issue with her prior to my employment at the White House, she asked me if I learned my lesson and if I had misrepresented my education to anyone else since then, and I said, no. And she said she considered the matter resolved.

And from what I understand from Mr. Kennedy, he said that they had mentioned it in the FBI, but -- or someone had mentioned it in the FBI, considered I did good work and said it was an anomaly. And I wanted to be as forthright as I could with Mr. Kennedy about it, so I did talk to him about it before he hired me.

Q You had mentioned your drug use to Mr. Kennedy, or he had talked to you before about it? I am sorry, which was it?

A During the course of my FBI interview, the FBI investigator asked me about drug use and asked me if I had used drugs within the last 5 years, if I remember the question right. And I had said, no. And he said, you understand that the White House wants to know if you had ever used drugs? So I said the answer to that would be that I had used different types of drugs up until about 1985, as I recall answering the question.

The transcript of the deposition was made available to Members of the Committee and their staff prior to the June 26 hearing and was made put of the hearing record at the opening of the hearing. Transcript at pp. 12, 341, 342.

Mr. Kennedy was also deposed prior to the hearing (on June 18, 1996), and while indicating that he had had discussions with Livingstone about concerns

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he had about Livingstone's background, he was not pressed to discuss his conversations with Livingstone after his attorney raised a Privacy Act objection. Mr. Kennedy's deposition was also made put of the record at the beginning of the hearing. Transcript at p. 12.

Discussion

It is undisputed that your Committee has jurisdiction and authority under House Rules X and XI, over that matter under inquiry and that Mr. Kennedy was made aware of the pertinence and relevance of the question asked. Having been subpoenaed, Mr. Kennedy was properly before the Committee. He has not invoked any recognized constitutionally based testimonial privilege. Under these circumstances we believe it is likely that a reviewing court would hold that the Privacy Act is not a valid legal basis for refusing to answer the questions put to him by the Committee on the basis of one or more of the following rationale: (1) The Privacy Act specifically exempts Congress and its committees from its non-disclosure requirements. (2) The White House Counsel's Office is not subject to the non-disclosure requirements of the Privacy Act. (3) Since Mr. Livingstone's deposition testimony, which informed the Committee about the contents of his FBI background file, was before the Committee before Mr. Kennedy was asked to testify, Mr. Kennedy's testimony would not likely be deemed a prohibited disclosure under the Act. (4) Without regard to any consideration of consent or waiver, law enforcement officials would be authorized to disclose matters in Livingstone's background file for purposes of civil or criminal law enforcement. (5) The Privacy Act has not been recognized as an effective testimonial privilege before a congressional committee.

More particularly, the Privacy Act provides that "no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would" fall under one of twelve exceptions to the general ban. 5 U.S.C. 552a(b). One of those exceptions permits disclosure "to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of the Congress or subcommittee of any such joint committee". 5 U.S.C. 552a(b)(9). Thus it would not appear that anything in the Act itself would provide a basis for a witness to refuse to testify before a congressional committee.

Moreover, it would appear that the Privacy Act does not even cover the White House Counsel's Office. The Act applies to "agencies" and adopts the definition of "agency" utilized in the Freedom of Information Act (FOIA), 5 U.S.C. 552a(a)(1). FOIA, by its terms, specifically applies to the Executive Office of the President, 5 U.S.C. 552(f), but the legislative history of that 1974 amendment makes it clear that "agency" is not meant to encompass "the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President". H.R. Rept. No. 1380, 93d Cong., 2d Sess. 15 (1974). See also S.Rept. No. 1200, 93d Cong., 2d Sess. 15 (1974); and

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Soucie v. David, 448 F.2d 1067 (D.C. Cir. 1971)(which announced the "sole function" test adopted in the legislative history of the 1974 amendment). Indeed, it has been specifically held that the Office of White House Counsel is not an "agency" for FOIA purposes. *National Security Archive v. Archivist of the United States*, 909 F.2d 541 (D.C. Cir. 1990). It seems likely that the Office would similarly not be deemed an "agency" for purposes of the Privacy Act. As a consequence, Kennedy's refusal to respond based on the Act appears still more tenuous.

Further, to the extent that Mr. Livingstone's statements in his deposition recounting his conversation with Kennedy about his background informed the Committee as to the content of his FBI file, those statements may have made it possible for a disclosure to be made to the Committee even without regard to the general prohibition on disclosures by an agency of covered records. The courts have generally held that the release of an otherwise protected record to an individual who is already familiar with its contents is not a prohibited disclosure: "[A] communication is not a 'disclosure' subject to the act, unless it imparts information to someone who does not already know it". *Reyes v. Drug Enforcement Administration*, 834 F.2d 1092, 1096 (1st Cir. 1987). See also *Quinn v. Stone*, 978 F.2d 126, 134 (3d Cir. 1992); *Kline v. Department of Health and Human Services*, 927 F.2d 522, 524, (10th Cir. 1991); *Hollis v. U.S. Department of the Army*, 856 F.2d 1541, 1545 (D.C. Cir. 1988); *Pellerin v. Veterans Administration*, 790 F.2d 1553, 1556 (11th Cir. 1986); *FDIC v. Rye*, 642 F.2d 833, 835 (5 Cir. Unit B 1981); and see *Pilon v. Department of Justice*, 73 F.3d 1111, 1127 n.10 (D.C. Cir. 1996)(noting "that the Privacy Act approves those disclosures that are 'required' under the Freedom of Information Act (FOIA), sec. 5 U.S.C. 552 a(b)(2), and that under various FOIA exemptions, prior publication is a factor to be considered in determining whether a document is properly to be released"). In the instant situation, Livingstone's deposition testimony appears to have fully informed the Committee about matter in his FBI file of interest to the Committee which he had discussed with Kennedy, so Kennedy arguably would not be revealing anything the Committee did not know. In fact, the question put to Kennedy was why he did not act in certain way upon learning of Livingstone's prior drug use and employment record, not what was in the file. Livingstone's deposition testimony indicates that he volunteered his personal background information to Kennedy, recounting what he had told the FBI interviewer. He had not seen his background report. Thus the question posed to Kennedy could have been answered without regard to what was in the FBI report but solely with reference to what Livingstone revealed to him in conversation.

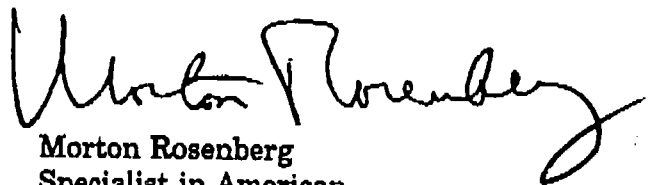
Additionally, it may be observed that Mr. Livingstone's file might be disclosed, without his consent, for purposes of civil or criminal law enforcement. 5 U.S.C. 552 a(b)(7). Thus there should be no apparent concern that the Committee's disclosure would affect the viability of Livingstone's rights under the Act in any possible subsequent civil or criminal proceeding.

Finally, the Privacy Act is not an effective testimonial privilege before a congressional committee in any event. Like assertions of attorney-client and

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work product privilege, a claim that the Privacy Act provides a testimonial bar, even assuming the absence of a congressional exemption, would denigrate the constitutionally based investigatory authority of the legislative branch. As with common law privileges which are designed for, and properly confined to, resolution of conflicting claims of individual obligation in a civil or criminal proceeding, a "privacy" privilege is less compelling in an investigative setting where a legislative committee is not empowered to adjudicate the liberty or property interests of a witness. This is the import of those cases which have recognized that "only infrequently have witnesses...[in congressional hearings] been afforded procedural rights normally associated with an adjudicative proceeding." *Hannah v. Larche*, 363 U.S. 420, 425 (1960) (denying constitutional right to cross-examine witnesses called before the Civil Rights Commission); *United States v. Fort*, 443 F.2d 670 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 932 (1991) (rejecting contention that the constitutional right to cross-examine witnesses applied a congressional investigation). Your Committee has recently reiterated the established practice in both Houses that the acceptance of common law testimonial privileges rests in the sound discretion of a congressional committee. "Proceedings against John M. Quinn, David Watkins, and Matthew Moore (Pursuant to title 2, United States Code, Section 192 and 194)", H. Rept. 104-598, 104th Cong., 2d Sess. 43-54 (1996). Mr. Kennedy should also be aware that a claim of attorney-client privilege by him was rejected by the Senate Banking Committee in December 1995 on the basis of the same rationale. See "Refusal of William H. Kennedy, III, To Produce Notes Subpoenaed By The Special Committee to Investigate Whitewater Development Corporation and Related Matters," Sen. Rept. No. 104-191, 104th Cong., 1st Sess. 9-19 (1995).

In sum, then, it is concluded that Mr. Kennedy's refusal to answer the questions posed by your Committee is not likely to be sustained by a court under the Privacy Act.



Morton Rosenberg
Specialist in American
Public Law