Case Number: 2006-1066-F

FOIA MARKER

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Folder Title:
House Committee on Government Reform and Oversight - Clinger [2]

Staff Office-Individual:
Counsel's Office-Paxton, Sally

Original OA/ID Number:
CF 959

Row:	Section:	Shelf:	Position:	Stack:
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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 31, 1996

BY TELEFAX

Jack Quinn, Esquire
Counsel to the President
The White House
1600 Pennsylvania Avenue, Northwest
Washington, D.C. 20001

Dear Mr. Quinn,

I have now spent over six hours reviewing documents that your staff redacted as non-responsive to the Committee's January 11, 1996 subpoenas to the White House. Putting aside the issue of whether documents should contain <u>any</u> redactions in response to a subpoena, my review revealed that practically every redacted document had responsive information that should have been disclosed within the 2,000 pages of documents that you have not produced to this Committee to date.

In accordance with our agreement on production of the 2,000 withheld responsive documents, I am requesting production of the following documents in unredact form not later than August 16, 1996:

1. Documents that reflect communications with outside attorneys and debriefings from those attorneys or those clients about various interviews, depositions or Grand Jury appearances.

2. Documents that provide questions and briefing materials for Congress.

Mr. Quinn
July 31, 1996
Page 2

3. Documents regarding Mr. Foster's office review and files.

I have instructed Committee staff to work with you to assist in identifying any bates stamp numbers of these three categories of documents. I look forward to working with you to come to a conclusion on these matters.

Sincerely,

Bill Clinger

William F. Clinger, Jr.
Chairman

THE WHITE HOUSE

WASHINGTON

July 31, 1996

VIA HAND DELIVERY

The Honorable William Clinger, Jr.
Chairman
Committee on Government Reform and Oversight
2172 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Clinger:

This responds to your letter of July 19, 1996, in which you asked for information and materials related to "individual random drug testing" at the White House.

As you may now know, the President's policy on drug use by White House staff is absolutely clear: zero tolerance. All applicants are tested before they report for work. Anyone who tests positive for drugs will be immediately relieved of his or her duties. No one who uses drugs illegally will work at this White House. And, to enforce this drug-free policy, we have a rigorous random drug testing policy that applies to all White House staff.

Each day, when White House employees report to work, they know that they may receive a letter requiring that they report for a drug test that day. Each year, approximately 12 percent of our employees are tested. They never know in advance that they will be tested.

In addition to the random testing applicable to all employees, 21 of the approximately 3,000 individuals who have served in the Executive Office of the President since January, 1993 -- nine of whom still work in the Executive Office of the President -- have been subject to more frequent, regular, non-random, surprise testing because of their past drug use. None of these 21 has ever tested positive in these tests. And, I emphasize that this more frequent testing is not "random," as you describe it. It is unannounced like our standard random tests, but this effort provides for twice-a-year tests precisely for these particular employees. Hence, I refer to this testing in this letter as "special drug testing."

The White House's comprehensive zero tolerance policy, which includes the above-described drug testing, ensures that our workplace remains drug free. We commend our program to the Congress, which, I gather, has no testing program. ("Drug Tests Still a Rarity on the Hill", Roll Call, July 22, 1996).

In preparing our response to your letter, we are mindful of your clear statement that you are not seeking information relating to particular individuals. As you have recognized, the disclosure of such information would raise serious privacy concerns. I am confident that we can nevertheless provide to you information to shed light on the President's drug-free workplace policy and, in particular, how it applies in the cases of those whose experiences with drugs in their past, and later commitment to a drug-free life, led to their being subjected to special drug testing.

Having said that, I must tell you that we have struggled to discern how we may be specifically responsive to your first and second requests without divulging information that would relate to particular individuals -- which you made clear you do not want us to do -- or leave you with documents that are so heavily redacted that they will not aid your understanding of the issues. Your second request, in particular, asks about four specific individuals by name. This request could be understood to suggest that you wish us to review these individuals' FBI background investigation files to see whether there is derogatory information of <u>any</u> sort that might have caused the Secret Service to raise a "concern". I invite you to call me to discuss these concerns.

In response to questions No. 3 and No. 4, I do want to make sure that you are informed about how special drug testing works. As part of its routine process for ascertaining the suitability of individuals for employment in the Executive Office of the President (EOP), all applicants are required to complete a pre-employment questionnaire, submit to a pre-employment security interview, and submit to a drug test[1]. Within 30 days of entering on duty, employees are required to submit a *Questionnaire for Sensitive Positions* (SF-86) and appropriate releases so that the FBI can conduct a background investigation. Upon completion of that investigation, the FBI background investigation file and related materials are referred to the Secret Service and, as appropriate, a recommendation is made for the issuance of a permanent pass.

In a small number of instances, the Office of White House Counsel, in consultation with the Secret Service, determined that an individual should be issued a pass only if he or she agrees to be subject to the more frequent, non-random special drug testing protocol described above. This means being tested unannounced twice a year under the same conditions as the standard random testing program in the EOP's Drug-Free Workplace Plan. These individuals are so designated because information developed in the course of the security clearance process or supplied by the individual suggested that it would be prudent to

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1 Only applicants for Testing Designated Positions (TDPs) pursuant to the Drug-Free Workplace Plan are required to submit to a drug test. All employees in the White House and well over 95% of EOP employees are in TDPs.

do so. **However, it bears emphasis that, as the Secret Service has acknowledged, the White House has never directed the Secret Service to issue a pass in circumstances where it was otherwise reluctant to do so.** See GAO Report B-265771, 18 (October 15, 1995) ("Personnel Security").

The White House Counsel's Office periodically advises the Office of Administration (OA), which administers the EOP random testing program, of the names of the individuals currently subject to special testing, to ensure that those individuals are included in unannounced tests twice each year. Periodically throughout the year, in the ordinary operation of its random testing program, OA draws a random sample of employees in TDPs. The individuals subject to special testing are called as part of that process and are tested under the same conditions as other EOP employees.

The White House Counsel Office staff who have been involved since 1993 in the overseeing or supervising of special drug testing are Bill Kennedy, Beth Nolan, and Chris Cerf. Of course, there are also career staff in OA who assist in administering the tests.

To aid your further understanding of how special drug testing works, I am enclosing copies of some of the relevant forms, including a sample of the agreement that a White House staff person subject to special drug testing would sign, and a copy of the EOP's Drug-Free Workplace Plan.

Sincerely,

Jack Quinn

Jack Quinn
Counsel to the President

Enclosures

cc: The Honorable Cardiss Collins

ATTACHMENT

THE WHITE HOUSE

WASHINGTON

PRIVILEGED AND CONFIDENTIAL
EYES ONLY

MEMORANDUM FOR MARY BECK
OFFICE OF ADMINISTRATION

FROM: BETH NOLAN
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Drug Testing

As we have discussed, the Counsel's Office will be notifying you from time to time of the names of individuals who should be subject to unannouced drug testing. Attached is a list of persons who should be scheduled for such testing this month. Please report to me that such testing has occurred. Any positive results should also be reported to me.

Please call me at 6-6229 if you have any questions.

ATTACHMENT

THE WHITE HOUSE

WASHINGTON

PRIVILEGED AND CONFIDENTIAL
EYES ONLY

MEMORANDUM FOR MARY BECK
OFFICE OF ADMINISTRATION

FROM: BETH NOLAN
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Drug Testing

As we have discussed, the Counsel's Office will be notifying you from time to time of the names of individuals who should be subject to unannouced drug testing. Attached is a list of persons who should be scheduled for such testing this month. Please report to me that such testing has occurred. Any positive results should also be reported to me.

Please call me at 6-6229 if you have any questions.

ATTACHMENT

MEMORANDUM FOR FILE

FROM: CRAIG LIVINGSTONE
DIRECTOR, WHITE HOUSE PERSONNEL SECURITY

RE: {Insert Name}

On April 25, 1994 , {Insert Name} was interviewed by Craig Livingstone regarding drug abuse as set forth in the Federal Bureau of Investigation's full field background investigation dated {Insert Date}.

{Insert Name} acknowledged the drug use set forth in the investigation. {Insert Name} was informed that any { } {illegal use of controlled substances} would be grounds for and would result in immediate termination. {Insert Name} agreed to submit to random drug testing in the future, as may be requested by the Office of Management and Administration, and agreed adverse results of any such testing will be shared immediately with the United States Secret Service. Such random testing will consist of at least two tests per calendar year, to be administered by the Personnel Management Division of the Office of Management and Administration.

{Insert Name}, by the placing of {her or him or his} signature below, has acknowledged that (i) {he or she} has read and understood fully the matters addressed herein; (ii) has been advised that {he or she} is entitled to obtain the advice of counsel regarding the contents hereof prior to its execution, and has obtained such advice if deemed necessary; (iii) is executing this Memorandum in the exercise of {her or his} free will, with a full understanding of the meaning hereof and without duress or coercion, and (iv) agrees that the information contained herein may be released to the United States Secret Service.

Executed this ____ day of __________, 1994.

____
Signature

cc: SAIC/White House Division
United States Secret Service

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,

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 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.

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.

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 Untied 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.

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 Untied 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.

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 Hart presidential campaign in 1984.

Eli J. Segal

THE WHITE HOUSE

WASHINGTON

July 30, 1996

BY HAND DELIVERY

The Honorable William F. Clinger, Jr.
Chairman
Committee on Government Reform and Oversight
2127 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John L. Mica
Chairman
Subcommittee on Civil Service
Committee on Government Reform and Oversight
B371C Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20513

Dear Chairmen Clinger and Mica:

This letter responds to your letter of July 2, 1996, regarding the Personal Data Statement Questionnaire (PDS) distributed to White House employees.

The PDS is part of the standard packet of forms distributed to prospective or new employees of the White House Office, the Office of Policy Development, the Office of the Vice President, and the Executive Residence. The packet also includes instructions, the Questionnaire for National Security Positions (SF-86), a memorandum of consent to an FBI background investigation, and an IRS tax check waiver. Until recently, the packet was distributed by the White House Office of Personnel Security (OPS); it currently is distributed by the EOP Security Office through the Office of Administration and various administrative contacts. (As you may know, the functions of the OPS were recently taken over by the EOP Security Office.)

All employees of these offices, including the Executive Residence, are non-career employees appointed under Title 3 of the United States Code, as opposed to Title V under which career civil servants are appointed. The packet normally is provided to new hires who have been offered employment contingent on a determination of their suitability, which is based on review of the forms and successful completion of an FBI background check. The packet also has been distributed by the OPS to employees of the Offices listed above in connection with the required five-year update of their FBI background investigations.

Until recently, the PDS forms were returned to the OPS and reviewed by its Director. Today, the forms are returned to the EOP Security Office and are reviewed by the EOP Security Officer. The forms were and are also occasionally reviewed by attorneys in the White House Counsel's Office. The purpose of the review is to ensure the suitability of individuals selected for employment in the White House.

The PDS also is distributed in connection with vetting of non-career members of the Senior Executive Service (SES) employed by Office of National Drug Control Policy (ONDCP), the Office of Science and Technology Policy (OSTP), and the United States Trade Representative (USTR). The completed PDS forms collected by the ONDCP, OSTP, and USTR are reviewed by their respective general counsel offices to determine suitability for appointment of their non-career SES officials.

Attached at Tabs A through F are several versions of the PDS form used during this Administration. The form at Tab A, which has thirty-three questions, was the original version used by the OPS. The form at Tab B, which has forty-three questions, was used by the OPS beginnning in the latter half of 1995. The form at Tab C, which has thirty-three questions, was used for a short period of time by the OPS after the longer form had been in use for some time; this form apparently was prepared erroneously by an OPS employee using the older form as a model. The form at Tab D is the form currently used by the EOP Security Office. Finally, the forms at Tab E and F are, respectively, a former and a current version of the PDS used in vetting non-career members of the SES. Although other versions of the form differing in non-substantive ways -- for example, with regard to routing information or typeface -- may have been used, we believe the forms attached fairly reflect the substance of the PDS's distributed within the EOP during this Administration.

We have not discerned the precise time periods that each version of the form was in use. To attempt to do so, we would have to review the personnel security files of individual employees hired at different times to determine from those records, if possible, which PDS each received. This exercise, which seems unwarranted because of the substantial similarity of the PDS forms used throughout this Administration, is infeasible at this time because of restrictions on access to the relevant records that we are currently observing at the request of the Independent Counsel.

I hope this information is helpful.

Sincerely yours,

Jack Quinn
Counsel to the President

Attachments
cc: Hon. Cardiss Collins
Hon. James Moran

THE WHITE HOUSE

WASHINGTON

July 31, 1996

BY HAND DELIVERY

Michael A. Superata, Oversight Counsel
Committee On Ways And Means
U.S. House of Representatives
1102 Longworth Bldg.
Washington, D.C. 20515-6348

Dear Mr. Superata:

Enclosed are copies of White House records we understand you requested from the FBI; specifically, the contents of a folder provided by the White House to the FBI on June 6, 1996, labeled "IRS Returned March-April 1993." These documents bear Bates Numbers WM 000001-000006.

Sincerely yours,

Jane C. Sherburne
Special Counsel to the President

cc: Janice Mays
Minority Chief Counsel (w/encl)

THE WHITE HOUSE

WASHINGTON

July 30, 1996

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

Dear Chairman Clinger:

This letter responds to the questions posed in your letter of July 22, 1996:

1. **The name of the office or agency which has the responsibility of granting security clearances for White House staff members.**

We understand your use of the term "security clearance" in these questions to mean a certification that an individual who requires access to information classified for national security purposes has been found eligible for and may therefore be permitted access to classified information, assuming, of course, that the individual has a need to know the particular information to which he or she seeks access. Security clearances can cover "Confidential, "Secret" or "Top Secret" information.

It bears emphasis that access to classified information requires <u>two</u> things: <u>first</u>, an appropriate level of "clearance," and <u>second</u>, a particularized <u>need to know</u> the classified information that might be imparted. It would be quite incorrect to assume that individuals who have a "Top Secret" clearance may therefore see Top Secret information, without regard to whether they need to have such access.

Since October 1995, the Executive Office of the President (EOP) Security Office in the Office of Administration has been responsible for granting security clearances for White House Office staff. Before October 1995, White House Office staff access to classified information was a function of receiving a permanent pass permitting access to the White House proper. This is because up until that date, consistent with the practice of prior Administrations, and as more fully explained below in our response to No. 6, the issuance of a permanent White House pass was treated as equivalent to a Top Secret clearance, again, assuming a need to know. Issuance of a permanent pass, in turn, was determined based on completion of the appropriate FBI background investigation and other reviews and a subsequent "suitability" determination. The compilation of these investigations was undertaken by the White House Office of

Personnel Security, the office responsible for assisting the Counsel's Office in making suitability determinations for White House employees.

In addition, several agencies (e.g., CIA and DOE) maintain "special access programs" for information within their domains. Officials from those agencies are responsible for granting special clearances (e.g., SCI clearances or "Q" clearances) to eligible White House Office staff with a need to know.

2. **The name of the individual who is currently the head of the office or agency, and any other individuals who have headed that office since January, 1993.**

Charles C. Easley, the EOP Security Officer, has headed the EOP Security Office since October 1986.

Craig Livingstone headed the White House Office of Personnel Security from March 1993 until June 1996. Jane Dannenhauer headed the office before March 1993. On June 19, 1996, the responsibilities handled by the White House Office of Personnel Security were transferred to the EOP Security Office, which previously handled personnel security matters for the rest of the EOP agencies.

3. **The process by which an individual working in the White House obtains a security clearance. Please include in the explanation, a chain of command for the application and other paperwork, a description of the forms that are completed by the applicant, and where the records for the security clearances on White House staff are stored.**

The process for granting security clearances to White House Office employees is governed by EO 12968, which was promulgated on August 2, 1995. The process begins with a staff member completing the forms that must be submitted as a prerequisite to the initiation of the background investigation required of all White House Office staff members. The staff member completes the following documents: Standard Form (SF) 86 (and accompanying consent form) and an IRS Tax Waiver form. The SF 86 provides employment and other personal history information about the individual. The IRS Tax Waiver Form, when completed and signed by the individual, authorizes the IRS to release to the White House information about the individual's history of compliance with the tax laws.

Upon receipt of these completed forms, the EOP Security Office (or, until June 1996, the White House Office of Personnel Security) asks the FBI to initiate a background investigation and requests a tax check report from the IRS.

Upon favorable completion of the FBI background investigation and IRS tax check, the EOP Security Officer requests the employing office to indicate what level of access to classified information the staff member will require. The EOP Security Officer will then review the file and determine whether the individual is eligible for access to information at the level requested by the employing office. If a favorable adjudication is made, the individual is briefed on the procedures for handling, storage and transmission of classified information in accordance with EO 12958, dated April 17, 1995. The individual must also sign a non-disclosure agreement (SF-312), in which the individual pledges under penalty of criminal law not to disclose classified information to any unauthorized individual. At that point, by means of a written document known as a security determination, the EOP Security Officer grants the individual a security clearance at the appropriate level.

Currently, all documents involved in the granting of security clearances for White House Office employees are maintained in Room 84, OEOB (formerly the White House Office of Personnel Security) or in Room 4018, NEOB (the EOP Security Office). These documents include the security forms described above, the background investigation files, the employing office's request that the individual be granted a security clearance, the SF-312, and the written security determination.

EO 12968 also provides for the granting of a temporary security clearance, which may be done when the employee has completed the security forms described above and a background investigation has been initiated.

4. **Please state whether current FBI full field background investigations are used in the completion of security clearances for White House staff members.**

   Yes.

5. **Please state whether the completion of a Name Check request can constitute the basis for a security clearance, for any purpose, in the White House.**

   Completion of a name check request alone cannot constitute the basis for a security clearance, unless the name check request reveals the existence of a recent background investigation that may make a new background investigation unnecessary. EO 12968, since August 2, 1995 the executive order governing the granting of security clearances, provides that a security clearance (even a temporary one) may not be granted until a full field background investigation is initiated.

6. **State whether the process in place for the granting of security clearances in the White House has changed in any way since January of 1993. If so, please provide a full explanation of any amendments to the process, and the reasons for those amendments.**

The process for granting security clearances to staff of the White House Office changed in October 1995 as a result of new procedures implemented in accordance with EO 12968, which was promulgated on August 2, 1995. One effect of this new executive order was to subject the White House Office to the same regime that governs other agencies' granting of security clearances.

Prior to this, the granting of security clearances for executive branch employees was governed by EO 10450, which did not apply to the White House Office. Accordingly, throughout the Bush and Reagan Administrations and up until October 1995, the White House Office did not formally grant security clearances to its employees. Because the procedures and criteria for issuing permanent White House passes were similar to those required for issuing clearances under EO 10450, the White House Office before October 1995 considered a White House pass to be the equivalent of a "Top Secret" clearance. Accordingly, the White House Office permitted employees with permanent White House passes and a need-to-know to have access to classified information up to the Top Secret level. This practice was followed in the Bush and Reagan Administrations. In promulgating EO 12968, however, the Clinton Administration consciously chose to draft it in such a way that it applied to the White House Office, in the belief that White House Office staff should be subject to the same security clearance procedures required for employees throughout the executive branch.

Prior to October 1995, matters relating to White House Office employee access to classified information were handled by the White House Office of Personnel Security, because that office coordinated the issuance of White House passes, which were treated as granting access to classified information on a need-to-know basis.

7. **State if, at any time, the granting of a temporary pass by the U.S. Secret Service to a White House employee constituted any level of security clearance. If so, please state the level of security clearance conferred upon a White House temporary passholder.**

As discussed above, until October 1995 and for many years before, a permanent White House pass was treated as equivalent to a Top Secret clearance, on a need-to-know basis. As a result of changes instituted by the Clinton Administration, the security clearance process for White House Office employees has been formalized. The determination that an individual may have access to national security information is now separate from the determination that the individual may hold a White House permanent pass.

The issuance of a temporary pass alone has not in this Administration been viewed as the automatic equivalent of any level of security clearance. However, there have always been circumstances in which the holder of a temporary pass may be granted a security clearance on another track -- for example, a temporary employee with a completed background investigation at another agency that could form the basis for an eligibility determination, or an employee whose background investigation has been favorably completed but to whom a permanent pass has not yet been issued.

8. **State if, at any time, the granting of a permanent pass by the U.S. Secret Service to a White House employee constituted any level of security clearance. If so, please state the level of security clearance conferred upon a White House permanent passholder.**

This question is answered in the response to No. 6, above.

Sincerely,

Jack Quinn

John M. Quinn
Counsel to the President

cc: The Honorable Cardiss Collins

THE WHITE HOUSE

WASHINGTON

July 30, 1996

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

Dear Chairman Clinger:

This letter responds to the questions posed in your letter of July 22, 1996:

1. **The name of the office or agency which has the responsibility of granting security clearances for White House staff members.**

   We understand your use of the term "security clearance" in these questions to mean a certification that an individual who requires access to information classified for national security purposes has been found eligible for and may therefore be permitted access to classified information, assuming, of course, that the individual has a need to know the particular information to which he or she seeks access. Security clearances can cover "Confidential, "Secret" or "Top Secret" information.

   It bears emphasis that access to classified information requires two things: first, an appropriate level of "clearance," and second, a particularized need to know the classified information that might be imparted. It would be quite incorrect to assume that individuals who have a "Top Secret" clearance may therefore see Top Secret information, without regard to whether they need to have such access.

   Since October 1995, the Executive Office of the President (EOP) Security Office in the Office of Administration has been responsible for granting security clearances for White House Office staff. Before October 1995, White House Office staff access to classified information was a function of receiving a permanent pass permitting access to the White House proper. This is because up until that date, consistent with the practice of prior Administrations, and as more fully explained below in our response to No. 6, the issuance of a permanent White House pass was treated as equivalent to a Top Secret clearance, again, assuming a need to know. Issuance of a permanent pass, in turn, was determined based on completion of the appropriate FBI background investigation and other reviews and a subsequent "suitability" determination. The compilation of these investigations was undertaken by the White House Office of

Personnel Security, the office responsible for assisting the Counsel's Office in making suitability determinations for White House employees.

In addition, several agencies (e.g., CIA and DOE) maintain "special access programs" for information within their domains. Officials from those agencies are responsible for granting special clearances (e.g., SCI clearances or "Q" clearances) to eligible White House Office staff with a need to know.

2. **The name of the individual who is currently the head of the office or agency, and any other individuals who have headed that office since January, 1993.**

Charles C. Easley, the EOP Security Officer, has headed the EOP Security Office since October 1986.

Craig Livingstone headed the White House Office of Personnel Security from March 1993 until June 1996. Jane Dannenhauer headed the office before March 1993. On June 19, 1996, the responsibilities handled by the White House Office of Personnel Security were transferred to the EOP Security Office, which previously handled personnel security matters for the rest of the EOP agencies.

3. **The process by which an individual working in the White House obtains a security clearance. Please include in the explanation, a chain of command for the application and other paperwork, a description of the forms that are completed by the applicant, and where the records for the security clearances on White House staff are stored.**

The process for granting security clearances to White House Office employees is governed by EO 12968, which was promulgated on August 2, 1995. The process begins with a staff member completing the forms that must be submitted as a prerequisite to the initiation of the background investigation required of all White House Office staff members. The staff member completes the following documents: Standard Form (SF) 86 (and accompanying consent form) and an IRS Tax Waiver form. The SF 86 provides employment and other personal history information about the individual. The IRS Tax Waiver Form, when completed and signed by the individual, authorizes the IRS to release to the White House information about the individual's history of compliance with the tax laws.

Upon receipt of these completed forms, the EOP Security Office (or, until June 1996, the White House Office of Personnel Security) asks the FBI to initiate a background investigation and requests a tax check report from the IRS.

Upon favorable completion of the FBI background investigation and IRS tax check, the EOP Security Officer requests the employing office to indicate what level of access to classified information the staff member will require. The EOP Security Officer will then review the file and determine whether the individual is eligible for access to information at the level requested by the employing office. If a favorable adjudication is made, the individual is briefed on the procedures for handling, storage and transmission of classified information in accordance with EO 12958, dated April 17, 1995. The individual must also sign a non-disclosure agreement (SF-312), in which the individual pledges under penalty of criminal law not to disclose classified information to any unauthorized individual. At that point, by means of a written document known as a security determination, the EOP Security Officer grants the individual a security clearance at the appropriate level.

Currently, all documents involved in the granting of security clearances for White House Office employees are maintained in Room 84, OEOB (formerly the White House Office of Personnel Security) or in Room 4018, NEOB (the EOP Security Office). These documents include the security forms described above, the background investigation files, the employing office's request that the individual be granted a security clearance, the SF-312, and the written security determination.

EO 12968 also provides for the granting of a temporary security clearance, which may be done when the employee has completed the security forms described above and a background investigation has been initiated.

4. **Please state whether current FBI full field background investigations are used in the completion of security clearances for White House staff members.**

Yes.

5. **Please state whether the completion of a Name Check request can constitute the basis for a security clearance, for any purpose, in the White House.**

Completion of a name check request alone cannot constitute the basis for a security clearance, unless the name check request reveals the existence of a recent background investigation that may make a new background investigation unnecessary. EO 12968, since August 2, 1995 the executive order governing the granting of security clearances, provides that a security clearance (even a temporary one) may not be granted until a full field background investigation is initiated.

6. State whether the process in place for the granting of security clearances in the White House has changed in any way since January of 1993. If so, please provide a full explanation of any amendments to the process, and the reasons for those amendments.

The process for granting security clearances to staff of the White House Office changed in October 1995 as a result of new procedures implemented in accordance with EO 12968, which was promulgated on August 2, 1995. One effect of this new executive order was to subject the White House Office to the same regime that governs other agencies' granting of security clearances.

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7. **State if, at any time, the granting of a temporary pass by the U.S. Secret Service to a White House employee constituted any level of security clearance. If so, please state the level of security clearance conferred upon a White House temporary passholder.**

As discussed above, until October 1995 and for many years before, a permanent White House pass was treated as equivalent to a Top Secret clearance, on a need-to-know basis. As a result of changes instituted by the Clinton Administration, the security clearance process for White House Office employees has been formalized. The determination that an individual may have access to national security information is now separate from the determination that the individual may hold a White House permanent pass.

The issuance of a temporary pass alone has not in this Administration been viewed as the automatic equivalent of any level of security clearance. However, there have always been circumstances in which the holder of a temporary pass may be granted a security clearance on another track -- for example, a temporary employee with a completed background investigation at another agency that could form the basis for an eligibility determination, or an employee whose background investigation has been favorably completed but to whom a permanent pass has not yet been issued.

8. **State if, at any time, the granting of a permanent pass by the U.S. Secret Service to a White House employee constituted any level of security clearance. If so, please state the level of security clearance conferred upon a White House permanent passholder.**

This question is answered in the response to No. 6, above.

Sincerely,

John M. Quinn
Counsel to the President

cc: The Honorable Cardiss Collins

2408 Rayburn House Office Building
Washington, DC 20515-0529
(202) 225-3976

District Office:
8436 West 3d Street
Suite 600
Los Angeles, CA 90048-4183
(213) 651-1040

Committees:
Commerce
Government Reform and Oversight

Philip M. Schiliro
Administrative Assistant

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29th District, California

July 26, 1996

The Honorable William Clinger, Jr.
Chairman
Committee On Government Reform and Oversight
2172 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing about the Special Order you held on the House floor last night, in which you released information from Craig Livingstone's FBI file.

During your Special Order you said that former FBI agent Dennis Sculimbrene reported that Bernard Nussbaum and William H. Kennedy, III told him that the First Lady Hillary Rodham Clinton recommended Craig Livingstone for his job because she knew his mother. Prior to last night, at a committee hearing on June 26, 1996, Republican members repeatedly asked questions of the witnesses about a relationship between Hillary Rodham Clinton and Mr. Livingstone and his family -- although it was unclear at that time what the factual basis for those questions were.

As you know, Mrs. Clinton, Mr. Nussbaum, Mr. Kennedy, Mr. Livingstone, and Mr. Livingstone's mother, Gloria Livingstone, have all provided statements that Mr. Sculimbrene's account is untrue.

In a conversation between our staffs last night, your staff conceded that you have no tangible evidence that Mrs. Clinton and Mrs. Livingstone have ever met. In addition, and most surprisingly, your staff conceded that despite last night's charges you have made no attempts during the course of your long investigation to obtain any direct evidence from Gloria Livingstone about any relationship she might have with Mrs. Clinton. I understand, for example, that you and your staff have not even interviewed Mrs. Livingstone, that you have not asked your staff to obtain any relevant information to support the claim of a relationship between her and Mrs. Clinton, and that you have made no effort to discover how and under what circumstances Mrs. Clinton and Mrs. Livingstone might have first met and what subsequent contacts they might have had.

The Honorable William Clinger, Jr.
July 26, 1996
Page 2

In addition, I object strongly to the refusal of my request yesterday to review the deposition Mr. Sculimbrene gave your staff last week. Early yesterday afternoon, your staff told my staff that the deposition was not available since it had not been concluded and was therefore not yet printed. Later in the day, however, indeed minutes before you began your Special Order, your staff called the Minority staff of the Government Reform and Oversight Committee from the House floor to indicate that he had been in error earlier and that a printed deposition was available.

I now understand that even though a printed copy is available to the Majority it is not being shared with Congressional Democrats or the public.

I am very troubled by this procedure. The allegations you raised last night, which have been denied by everyone with first-hand knowledge, depend on the veracity and credibility of Mr. Sculimbrene. Until we have an opportunity to review his deposition, we cannot get to the core of this matter. In addition, I request that Mr. Sculimbrene be called to testify before the committee before any other hearings are held on this matter.

I request a copy of Mr. Sculimbrene's deposition and that it also be made immediately available to the public given the seriousness of your allegations. Finally, I request that you verify by 5:00 P.M. today that you have no direct evidence of a relationship between Mrs. Clinton and Mrs. Livingstone and that you have made no attempts to acquire such information.

Sincerely,

Henry A. Waxman

HENRY A. WAXMAN
Member of Congress

FBI

THE WHITE HOUSE

WASHINGTON

July 25, 1996

BY TELECOPY

Louis J. Freeh
Director
Federal Bureau of Investigation

Dear Director Freeh:

As you may know, Congressman Clinger today divulged, on the House floor, an interview report from a confidential FBI background investigation that has been declared to be false by the person who was interviewed. I am writing to you to ask how we can work together to ensure continued public confidence in the accuracy of FBI investigations.

According to Mr. Clinger's statement today, the background investigation file on Mr. Craig Livingstone includes a report by Agent Dennis Sculimbrene on a conversation he says he had with White House Counsel Bernard Nussbaum concerning Mr. Livingstone's hiring. But, according to a statement issued by Mr. Nussbaum today, that conversation never took place.

This Administration and the American people have enormous confidence in the FBI, for good reason. And, the role that the agency plays in conducting background investigations and helping to ensure the suitability of appointees for their posts cannot be overstated. The President, you and the American people have a large stake indeed in the fairness and accuracy of this process.

That is why we are troubled, as we know you must be, by the implication that an FBI background investigation might include a false report. This matter is especially worrisome coming as it does on the heels of published reports of the conviction of one of the agents who did background checks at the White House on charges of falsifying at least 50 interviews that he claimed to have conducted.

It is equally troubling that a Member of Congress can publicly reveal confidential FBI information, whether for partisan purposes or otherwise. It should not escape notice that this is done at a time when Members of Congress have expressed worry that employees of the executive branch might have sought out confidential FBI information about certain individuals and planned to somehow use it publicly. While that charge has never been established against anyone in the executive branch, we now witness the same objectionable behavior by the very people who professed to be the guardians of privacy.

It is important that we take steps to ensure continuing confidence in the confidentiality and the integrity of the FBI clearance process. I look forward to your suggestions as to how we can work with you to that end.

Best regards,

Sincerely,

Jack Quinn

Jack Quinn
Counsel to the President

Attachment

FACT SHEET ON CHRIS EMERY

- The FBI conducts reinvestigations of White House employees every five years. Chris Emery, who worked as an usher in the White House Residence, has alleged that in 1993 the White House accelerated his FBI reinvestigation, which was not due to be conducted until 1996. He alleges that the White House used the information in his completed forms as the basis for terminating his employment.

    - Mr. Emery is not a civil service employee. His service was at the pleasure of the President.

    - Mr. Emery was terminated in early March of 1994. According to news accounts, Mr. Emery was released from service because he showed "an incredible lack of discretion." News reports in 1994 reported that Mr. Emery had discussed personal matters about the Clintons with Mrs. Bush.

- The FBI conducted Mr. Emery's first background investigation in 1986; as required, he was reinvestigated by the FBI in 1991.

    - The Office of Personnel Security ("OPS") requested Mr. Emery's reinvestigation in 1993 because it had no record that Mr. Emery had been reinvestigated in 1991.

        - On September 27, 1993, the FBI responded to a request by OPS (as part of OPS' effort to update its files) for Mr. Emery's previous FBI reports by providing **only** the report from his 1986 background investigation. Based on this information, it appeared that Mr. Emery was overdue for a reinvestigation.

    - The White House requested Mr. Emery to complete the various forms to commence a reinvestigation in November 1993. On January 5, 1994, the FBI received the paperwork necessary to start a reinvestigation, which included a consent form signed by Mr. Emery on November 15, 1993.

        - Mr. Emery refused to complete the Personal Data Statement Questionnaire, but did complete the waiver for an IRS tax check.

    - An informal communication between the FBI and OPS on January 7, 1994 uncovered that the FBI had failed to provide OPS with a copy of the 1991 FBI summary report in its request for previous reports sent in September 1993. As a result of identifying this error, the FBI did not initiate a background investigation and instead provided a copy of the 1991 previous report to OPS.

- The allegation that the White House would have requested an early reinvestigation of Mr. Emery's file to justify his termination does not make sense: Mr. Emery served at the pleasure of the President and could have been asked to leave at any time.

- Neil Lattimore commented upon allegations that the First Lady was involved with the obtaining of Mr. Emery's background summary file, "She doesn't know about any of this. We don't need any files to fire a worker who serves at the pleasure of the President."

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 24, 1996

Jack Quinn, Esq.
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Quinn:

I would like to briefly respond to your July 12, 1996 letter which purports to memorialize certain agreements made at our meeting that day. The following are the only issues which I believe we came to an agreement upon.

First, I have agreed that White House Counsel deponents will not be required to respond to questions with respect to any direct communications between White House Counsel and Committee Members. Second, I agreed that any direct communications between the Independent Counsel and Committee Members would not be a subject of inquiry. The foregoing do not limit our ability to question White House witnesses about their preparations of questions and scripts for our Committee hearings. Accordingly, I did not exclude questions concerning White House debriefings of outside private counsel following their appearances before the Independent Counsel.

I hope this clarifies the understandings we reached in our meeting.

Sincerely,

Bill Clinger

William F. Clinger, Jr.
Chairman

cc: Honorable Cardiss Collins

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

7/27

July 24, 1996

Wendy —
Would you please prepare a response to this. Thanks —
Jane

Jack Quinn, Esq.
Counsel to the President
1600 Pennsylvania Avenue, Northwest
Washington, DC 20515

Dear Mr. Quinn:

The following documents were not included in the White House production for review of Executive Privilege documents withheld from this Committee. These 205 pages of documents responsive to the Committee's January 11, 1996, subpoena were not listed on the May 23, 1996, White House privilege log.

DF 780030
DF 780050 - 780051
DF 780172 - 780187
DF 780623
DF 780641 - 780642
DF 780663 - 780678
DF 780690 - 780703
DF 780705 - 780706
DF 780827 - 780859
DF 780920
DF 781096 - 781098
DF 781110
DF 781356 - 781368
DF 781392 - 781453
DF 781509 - 781514
DF 781526 - 781527
DF 781532 - 781542
DF 781550 - 781557
DF 781818 - 781820
DF 781846 - 781851
DF 781883 - 781892
DF 781902
DF 781934

Please provide a production log with the copies of these documents to the Committee immediately.

Sincerely,

Bill Clinger

William F. Clinger, Jr.
Chairman

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

MAJORITY—(202) 225-5074
MINORITY—(202) 225-5051

July 22, 1996

VIA 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 Rosenburg has concluded that for numerous reasons, the Privacy Act does not act as a defense in these circumstances. I agree with Mr. Rosenburg'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 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

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)

CRS

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

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 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.

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 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 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.

> 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 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?

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 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

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. 19880; *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 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 sustained by a court under the Privacy Act.

Morton Rosenberg

Morton Rosenberg
Specialist in American
Public Law

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,

Jane C. Sherburne
Special Counsel to the President

Enclosures

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

MAJORITY—(202) 225-5074
MINORITY—(202) 225-5051

July 19, 1996

Jack Quinn, Esq.
White House Counsel
The White House
Washington, DC 20500

Dear Mr. Quinn:

As you know, the problems in obtaining permanent passes and delays relating to FBI background investigations are among the numerous problems discovered in the Clinton Administration's Office of Personnel Security which operated under the auspices of the Counsel's office.

These matters have been a focus of the Committee's ongoing investigation in light of the inappropriate acquisition of FBI background files of hundreds of Bush and Reagan officials at the same time when the White House was not completing FBI background investigations of its own new employees.

In recent depositions and testimony before the Committee, Secret Service agents described instances in which the issuance of permanent passes were denied for certain new employees in the Clinton White House due to recent and/or extensive drug use. The agents further informed the Committee that an individual random drug testing program was developed and instituted by the White House Counsel's office as a result of the drug histories of certain individuals for whom the White House Counsel's office sought access to the White House.

The Committee would appreciate receiving the following information in connection with the initiation and operation of the program for individuals at the White House with recent drug use. At this time, we are not requesting any information identifying the individuals involved in the individual random testing program itself.

1. All records relating to any instances in which the Secret Service turned down or raised concerns about any requests for permanent or temporary passes and any contacts or meetings discussing how to deal with such situations.

2. All records relating to any instances in which the Secret Service raised concern about Craig Livingstone, Lisa Wetzl, Anthony Marceca or Bill Kennedy.

3. All records relating to the individual random drug testing program including, but not limited to, all records concerning the development of such a program, any changes or modifications to the program, the operation of the program and the guidelines, rules and regulations regarding the program, the individuals involved with overseeing and supervising the program and how the program relates to the EOP's Drug Free Workplace Plan and any review or approval or the plan by the Justice Department.

4. All records relating to any documents or agreements that White House staff or Executive Office of the President staff in this individual random drug testing program are required to review or sign.

Please provide this information by 5 p.m. Tuesday, July 30, 1996.

Sincerely,

William F. Clinger, Jr.

William F. Clinger, Jr.
Chairman

THE WHITE HOUSE

WASHINGTON

July 18, 1996

The Honorable William F. Clinger
Chairman
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I appreciate our having been able to find a mutually acceptable way to handle the so-called "redactions" issue in our phone conversation today.

I understand that we will meet early next week to review the redacted documents, that you will be present throughout the session, accompanied by a staff member, and that Mrs. Collins or a designee and a member of her staff will also be welcome. We agreed, as well, that the Committee will not request redacted material, or any other material on the same topic as the redacted material, except to the extent that it was called for by the Committee's earlier subpoena. And, we understand that you reserve the right to request material, if any, that relates to Mr. Livingstone.

These agreements are, as I mentioned to you, particularly important in light of the fact that we are agreeing to provide access to material that is not only confidential, but also outside the scope of the Committee's document requests. I look forward to seeing you next week and putting this phase of the Committee's inquiry behind us.

Best regards,

Sincerely,

Jack Quinn

Jack Quinn
Counsel to the President

CC: MRS. COLLINS

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.

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, *19*96, *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 matters under consideration by said committee~~

produce the documents described in attachment A

Hereof fail not, *as you will answer your default under the pains and penalties 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* 16th *day of* July, *in the year of our Lord one thousand nine hundred and* ninety-six.

______

Chairman, Committee on the Judiciary

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.