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JUNE 19, 1996 CLINGER COMMITTEE TRANSCRIPT
CULVAHOUSE, DANNENHAUER, GRAY, HAUSER, GEMMELL

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THE HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE HOLDS A
HEARING ON FBI BACKGROUND FILES OBTAINED BY THE WHITE HOUSE

JUNE 19, 1996

SPEAKERS LIST: U.S. REPRESENTATIVE WILLIAM CLINGER (R-PA),
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CLINGER: ...will come to order. We are going to proceed this morning, I will give an opening statement, Mrs. Collins will give an opening statement, then other members, I would press if they have opening statements that either submit them for the record or use the time period which would be allotted to them if we proceed after the witnesses to make their opening statement.

We meet this morning to discuss a very troubling development that has been uncovered in the course of our investigation into the White House travel office matter. The scope of this morning's hearing will be limited to a consideration of the procedures that have been in place for a number of years for the White House request for classified information, FBI files. At a future hearing we will consider how those procedures have been carried out by the present administration.

On May 30, 1996, several weeks after the White House ostensibly had claimed executive privilege over 3000 pages of Travelgate documents which it continued to hold, the committee received from the

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White House 1000 pages of those documents. Two pages of these documents revealed a White House request for the FBI background files of former travel Office Director Billy Ray Dale. The reason given for the request was the Mr. Dale was being considered for access to the White House. The request was made seven months after Mr. Dale had been fired by the White House and accused of criminal wrongdoing.

As a result of these accusations, a 30-month Department of Justice investigation was seven months in progress, seven months along when this really highly suspect request from the White House was made. Needless to say, this request was of more than passing interest to the committee.

Last week, FBI Director Freeh issued a report indicating that the White House sought and obtained more than 400 such FBI confidential background files, as he said, without justification, in the same timeframe, in late 1993 and early 1994.

The FBI report notes that at the time FBI officials noticed that, and I'm quoting, "unusually large numbers of requests for copies of previous reports only," but when they contacted the White House security office to ensure that its new occupants understood the process, the FBI was assured that the White House was, quoting, "simply updating their files."

These files were predominantly those of Republican officials from the Bush and Reagan administrations and included prominent figures such as former Secretary of State James Baker, former Bush Press Secretary Marlin Fitzwater, former CIA Director William Colby, and even one of today's witnesses, former Reagan White House Counsel A.B. Culvahouse. These improperly obtained files were never returned to the FBI until only in the last few weeks.

In his report, Director Freeh also noted that among the unquestionably unjustified acquisitions were reports related to discharged travel office employees Billy Ray Dale and Barnaby Brasseux. He also noted that an additional 71 files were requested inappropriately and were only turned over to the FBI on June 13. That was one day before the FBI report was issued.

Seventeen other files, we understand, are still in question, still retained by the White House, and are still sort of in limbo as to whether they should be returned to the FBI.

So while we continue to try to uncover the facts and determine what led to what I think all agree was an incredible invasion of the privacy of more than 400 individuals, I'm very pleased that new procedures have been put in place, albeit belatedly.

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CLINGER: As Director Freeh noted in his report, the longstanding former system of providing FBI files to the White House relied on, in his words, "the good faith and honor of those who were integrally involved in the process."

This standard, apparently sufficient for more than 30 years in the absence of any reported abuse, demonstrated serious weaknesses when individuals who were incompetent individuals or perhaps worse were put in charge of the system at the Clinton White House.

It now seems abundantly clear that the system in place was, in fact, vulnerable to misuse. And actions have now fortunately been taken to remedy those weaknesses. And I, again, applaud Director Freeh for making the changes swiftly and for accepting responsibility for the actions of the FBI. He could have assigned blame to lower-level file clerks or imagined computer glitches, but he did not.

Director Freeh has described the prior system which has been used throughout both Democrat and Republican administrations and which it now appears was indeed very vulnerable to abuse.

I believe the changes and new safeguards in this exchange of sensitive information will be welcomed on a bipartisan basis. As The Boston Globe noted, and I'm quoting, "High officials' misuse of confidential information about their own citizens has produced some of the most shameful chapters in American history -- not all of it, unfortunately, in the past."

It is important that we not only avoid repeating the mistakes of the past, but that we put procedures in place that assist in assuring that no new abuses arise, and that is the function of this committee. I also welcome the changes made by the White House counsel in procedures in conjunction with the FBI recommendations.

But while new systems are welcome in this extraordinarily sensitive area, I would note no system that involves sensitive security matters can be invulnerable to incompetent, or worse, malicious individuals who do not have a sufficient appreciation for the seriousness of such a responsibility as handling FBI background files.

The casualness with which this White House has approached many areas of security and protocol reflect, I think, a contempt for process and a disturbing lack of respect for following the rules. It seems a White House that is intent on keeping secret so many of its own documents has an unacceptably loose standard when it comes to the confidential background files of average American citizens, private

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citizens.

Incredibly, while the White House says it acknowledges this gross error in obtaining the files of Reagan and Bush officials, the individual who oversaw this office was only placed on paid administrative leave two days ago.

A longtime Democratic political operative and Clinton/Gore campaign aide, Craig Livingstone, was placed in charge of personnel security from day one of the Clinton administration. His direct superior, Rose Law Firm partner Bill Kennedy, came a month or so later to the White House as the deputy counsel. Mr. Kennedy subsequently was relieved of his duties in overseeing these matters when news of his failure to pay nanny taxes and his failure to include this information on his own background investigation was brought to light.

While Mr. Kennedy and three White House counsels have come and gone, Mr. Livingstone remained in this intensely sensitive position until this past Monday, June 17. And one has to ask the question: Why? Was this really the best individual the White House could find for this extremely sensitive position? And isn't it troubling that Mr. Livingstone sought out another seasoned political operative to be detailed to the White House?

CLINGER: And it is this 50-something-year-old man who initially was described by the White House as a low-level clerk, apolitical individual, bureaucrat, who fouled up these sensitive procedures.

The reason we have background files in the first place is so that it is possible to access the suitability of those in sensitive positions.

It is ironic that while the White House wants us to accept its defense of gross incompetence as the reason for obtaining these files, it was willing to retain an individual at the center of the incompetence until the mounting furor forced its hand and it hoped that we would ignore the fact that the low-level clerk was, in fact, an experienced investigator with Democratic political credentials going back many years.

It's important to note at the outset that we never would have learned of what Director Freeh correctly called "egregious violations of privacy" if not for the contempt vote in this committee over a month ago in trying to obtain White House compliance with our bipartisan subpoenas.

The documents which revealed this travesty were among the 1,000

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pages of Travelgate documents that the White House had withheld for months.

The White House never disclosed to the committee that it was withholding Billy Dale's FBI background file, which the White House sought and obtained over seven months after he was fired. Instead, the White House said it had personnel files on Mr. Dale, which are an entirely different item, and were in fact separately provided to the committee.

It was only on the morning of the contempt vote that these documents were turned over.

I have to say that this kind of evasiveness does not inspire the confidence that allows us to complete this investigation and, on the contrary, raises our level of skepticism about the various reasons and excuses that have been offered with regard to this whole matter.

The White House and the involved individuals have offered numerous excuses for what even Chief of Staff Leon Panetta has acknowledged was an inexcusable mistake.

As the New York Times has noted, "President Clinton's staff has a talent for forcing people to choose between incompetence and skullduggery as an excuse for their managerial snafus."

We are still deposing witnesses -- the committee is still deposing witnesses and gathering the documents we think are necessary to find out the facts behind this unprecedented, unauthorized and inappropriate gathering of confidential FBI background files.

Whether this was part of a larger pattern of trying to compromise the FBI or part of the all-too-familiar pattern of incompetence and incredibly mismanaged record-keeping at the White House, will be the subject of further investigation and further hearings which we will be announcing very shortly.

I want to welcome our guests to the hearing this morning. Look forward to their testimony as they tell us what went on during their watch and how these procedures were conducted at that time.

And I'm now pleased to recognize the gentlelady from Illinois, the ranking member of the committee, Mrs. Collins.

COLLINS: Thank you, Mr. Chairman. I thank you for holding

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hearings on this subject of the improper use of FBI files and I want to be very clear at the outset that we have no disagreement on one important issue -- it was wrong to request the files of former administration officials, and it was wrong for the FBI to provide that information.

I cannot emphasize enough my concern when the private files of any American are put in the wrong hands.

I strongly believe that the right to privacy is one of the most important rights of our Constitution. When privacy rights are abused, in connection with the potential for political misuse, my concerns are compounded.

Therefore, I welcome these hearings for two important reasons. First, if properly conducted, they can determine what actually happened in this particular case and separate fact from fiction or speculation. Second, they can provide the necessary insight to insure that this problem is not repeated in the future.

COLLINS: We have relatively few facts at this moment, but a high dose of speculation. The principal fact, and it's a big one, is that a large number of summary background files from the FBI relating to employees of the previous administration were improperly requested by the White House, and improperly provided by the FBI.

What we don't know is exactly why the files were requested, who reviewed their contents and to whom the information contained in those files was disseminated.

We have also learned another startling fact. Under the procedures utilized by this administration as well as previous administrations dating back 30 years, it was easier to order FBI files than it was to order a box of paper clips.

Apparently, all that was required was a simple request form which has not been significantly changed since the Johnson administration, with the name of a White House counsel typed at the top. No signature was required. No explanation of the need for the information was required.

Thus, there was absolutely no accountability. Now this procedure must end. The FBI and the White House are both making changes in this system and this committee should take a long hard look at the changes to determine whether they go far enough.

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The evidence to date also raises serious questions about the placement of individuals with campaign background in important positions in the Office of Personnel Security.

Now I would expect that the committee's going to look into measures to insure that in the future such employees are career civil servants rather than political appointees.

This committee must examine both how this improper use of these files occurred and why it occurred.

But regardless of the reason for these files being requested by the White House, it was wrong. But there is a significant distinction between requests being made for a sinister political use and requests being made due to a mistake.

Now I am certain that all of my colleagues here today understand the seriousness of this distinction. We have to, therefore, explore the circumstances leading up to the requests for the files as well as their subsequent use to determine just how serious this problem was.

Now, I would urge all of my colleagues to consider their statements very carefully today. It's important that we stick to the facts and not rumor and not speculation.

For example, I've heard various comments about this case alleging that the files were requested to get the dirt on the fired travel office employees. Others have speculated that the White House counsel or even the first lady were behind some sort of campaign to embarrass former employees.

However, I am unaware that the committee has the facts to prove such allegations.

The White House has characterized the episode as a bureaucratic snafu. Only further investigation will determine whether that is correct. So similarly, I will not represent that theory as a matter of fact.

In short, speculation may make good partisan headlines, but it will do very little to enhance the credibility of our committee's investigation.

COLLINS: One of the witnesses today may begin to shed on how the White House came into possession of the wrong FBI files. Ms. Nancy

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Gemmell came to the White House in the Nixon administration and served in the Personnel Security Office in the Reagan, Bush and Clinton administrations. She has reported to have helped the train employees of the personnel security office on the so-called "update project" to reconstruct the files of hold-over personnel with White House passes. She is perhaps the only person testifying today who will have firsthand knowledge of this matter and can begin the process of uncovering what took place.

So, I urge you, Mr. Chairman, to proceed as quickly as possible to get to the bottom of this issue. We need to bring in those actually responsible, including, Craig Livingstone, Anthony Marceca, Lisa Wetzl and any others in the Office of Personnel Security to publicly testify on exactly what occurred. Mr. Livingstone and Ms. Wetzl have already testified in depositions to this committee.

And their testimony is very important. For example, Ms. Wetzl appears to be the individual who after Anthony Marceca left, uncovered the fact that he had wrongly requested the files of individuals no longer employed there. She apparently also discovered outdated Secret Service lists that may have formed the basis for the request. I believe that this committee should put all of the facts on the table. At the last hearing it was my understanding that you, Mr. Chairman, had placed all the depositions the committee had taken on the Travel Office matter on the public record.

My view is shared by the Parliamentary's Office, who reviewed the transcript. However, you subsequently contended that you had placed just four transcripts on the record with no explanation whatever of how those four were chosen. I repeat that all of the depositions should be placed on the record, including for example, those of Craig Livingstone, Anthony Marceca and Lisa Wetzl. There is no reason for the committee to be engaged in -- for the committee to be engaged in any secrecy or coverup.

The deposition authority was requested because, as you Mr. Chairman stated on the House floor, and I'm quoting now, "it would be extremely impractical to expect this committee to hold enough hearings to place all the necessary witnesses under oath publicly." In other words, the purpose of the deposition authority was to provide a practical substitute for public hearings, not to convert public testimony into secret testimony.

We're not a grand jury. We are a public institution and our rules require us to hold public hearings. The Democrats on this committee have supported your efforts to require the administration to provide all of the information we need, Mr. Chairman. Similarly, we support total disclosure by this committee. And I therefore ask unanimous consent that all transcripts of all depositions be placed at this point in the record, and yield back the balance of my time.

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CLINGER: Is there object...? Well, I object to the releasing of all the depositions at this point and the reason for that is that we are still in the process of taking depositions which we do not prejudice future depositions that may be taken. I can assure the gentlelady that we have every intention of making all of the depositions that we have taken thus far as part of the public record...

COLLINS: Mr. Chairman, may I ask...

CLINGER: ...will be useful.

COLLINS: ...when you plan to do that?

CLINGER: As soon as we have completed the deposition process which should be within the next two to three weeks.

UNKNOWN: Mr. Chairman?

CLINGER: And now I'm prepared to ask the witnesses in this hearing to come forward and let me introduce them as they come. The first witness is Mr. Boyden Gray, who is the former White House counsel to president George Bush; next, Mr. Dick Hauser, former White House deputy counsel to counsel Fred Fielding under President Ronald Reagan;

CLINGER: Mr. A.B. Culvahouse, who is the former White House counsel to President Ronald Reagan; Miss Jane Dannenhauer, former White House assistant to the counsel to the president in the Office of Personnel Security under Presidents Nixon, Ford for 2 1/2 months, Carter, Reagan, Bush and for one month President Clinton -- so has served under many of their preceding presidents; and finally, Miss Nancy Gemmell, assistant to the Office of Personnel Security under Presidents Reagan, Bush and Clinton.

Let the record note that we did invite Mr. Michael Cardozo, who was the deputy White House counsel during President Carter's administration, who was unable to attend or declined to attend.

Ladies and gentlemen, it is the practice of this committee to swear all witnesses so that we do not prejudice the rights of any witness, and if you have no objection, then I ask you to rise and swear you?

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Do you swear the testimony that you are about to give will be the truth, the whole truth and nothing but the truth?

ALL: I do.

CLINGER: Let the record note that all of the witnesses nodded or answered in the affirmative and I will ask you, Mr. Gray, welcome to the committee. I look forward to your testimony.

GRAY: Thank you very much, Mr. Chairman, members of the committee, you have my prepared statement so I will try to be as brief as possible to summarize, to try to provide you a basic framework for understanding what information we tried to -- we did get from the FBI and then how we used it.

I, of course, can only speak for the Bush administration, but we tried to follow the procedures developed in previous administrations. Anything I did right, I owe to my predecessor A.B. And anything I did wrong was our fault.

There were three categories of information that we sought from the FBI. And I divided it into three in order to try to make it understandable because there was an enormous amount of paper flow involved and it was a complex process.

The first category involved requests for name checks from the FBI. That is a run-through of their computer base to see if there were any recent potentially illegal activity on the public record so that we had an early warning signal as to whether or not we had a difficult problem on our hands.

We had these name checks run to build -- when we came into a new administration -- to build a temporary access list for people who were awaiting the full field investigations, the full investigations that would give them permanent clearance to the White House or to a Cabinet-level post.

You might want to think of this first category as a waiting list. These were, again, people who were awaiting full investigation but we had to do a brief check to make sure that they could be let into the complex for a temporary period.

Usually that list was supposed to provide for access only for 90 days.

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Now the second category was the request for a full field investigation by the FBI in connection with new appointees, White House staff, Cabinet.

Of course, in some cases, appointees would have served in previous administrations and so the full field investigation would consist of an update since their last investigation.

In each of these cases, the individual would be required to fill out before the full field investigation could begin a very lengthy form called Form 86 -- very, very comprehensive -- many, many pages -- took hours and hours to fill out.

GRAY: This would be done before the FBI would start its agents into the field and, of course, by the very nature of everything, an individual who had filled out this form knew pretty well what he or she was in for.

The final category is one that has received attention in the press recently -- was the updates of the semi-permanent White House -- White House staff, the people who served president after president after president.

This was not the highest priority because these were people already there who had already been cleared, but when the back was broken, as it were, of clearance for the new people you wanted to get in, you would -- we would recreate -- we did recreate by asking for the FBI to give us copies of the files of current White House employees who were holdovers or who continued in their posts from administration to administration.

In due course, these files would have to be updated on a rotating four-year basis, depending on when the individual's last clearance check had been run. The requests would go to the FBI on an office-by-office basis.

When the time came for an update, of course the update would be requested of the FBI on a chronological basis depending on when the four years was about to be over.

I want to note here that what this meant for us in any event was that an old, if you will, dead file of someone not actually working in the White House without an old -- requesting an old, dead file without some update information, that is by way of a name check at the FBI or a fuller FBI investigation, served no purpose.

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It would have been of no value. It would have led to no other action.

Now what did we do with all this information? How did we obtain it? And what did we do with it?

The paper flow was managed in our days by an extraordinary individual named Jane Dannenhauer, who is sitting up here, who had an unenviable task of managing what some people who used to ferry documents around the White House used to say was enormous.

One of our messengers said that the paper flow into the counsel's office was ten times the paper flow for all the rest of the White House combined -- staff. I'm not talking about the president.

So it was a huge task.

Jane Dannenhauer was an assistant to the president and the office operated under my supervision, under A.B.'s supervision, under Dick's supervision, Fred Fielding, who was counsel in the first Reagan term.

The paperwork, as I say, was very tricky. Many of you will still have difficulty, I'm sure, a week from now or two weeks from now understanding exactly all the details, and frankly, there are times when I wonder if I still understand all the details. You will have to ask Jane if you can confound us, which you well be able to do, as to actually how the paper was conducted.

But I want to make very, very clear that, as professional and as dedicated and as good-humored as Jane was, she did not make substantive judgments on this material.

GRAY: That was reserved virtually exclusively to the White House, myself and my deputy, who was John Schmitz in the Bush administration. If there was, she would read the files, and if there was anything remotely questionable, the file would shoot straight up into my office where it would be read only by John Schmitz. And if he felt he couldn't make a decision based on guidelines developed by myself and him with the president, chief of staff, if he felt he could not make a decision based on those principles, he would kick it to me for further discussion, perhaps with the president or the chief of staff.

I would guess that John Schmitz must have read hundreds maybe a thousand of these. I myself probably read about 100. I never got used to it. I have a very uncomfortable feeling every time I was

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forced to read one, you're peering into someone's life, seeing things that nobody has any right going. But it was a necessary task, which we felt we had to do in order to protect the country in connection with security, potential security breaches, and of course, to protect the president politically.

Doing this work really thankless work of reading these -- just -- unpleasant work of reading these files was a central obligation of the counsel's office. I felt I never got out of it for the entire first year to do anything that I considered more personally rewarding or fun. It was a very, very difficult task. People will say, well, gee whiz, you and your deputy were political, are political, and the answer to that is, yes. Certainly we're political in the largest sense of the word.

But we were reviewing files of our own people, not files of a Carter administration or say the Clinton administration. I think -- I hope I've given you an outline of how we -- of what information we obtain and generally how we obtained it. And I will stop there and let the others pick up.

CLINGER: Thank you very much, Mr. Gray. And I will go to Mr. Hauser, I believe.

HAUSER: Thank you, Mr. Chairman. Mr. Chairman, the members of the committee, I am pleased to be before you today to address the important issues of White House handling of FBI files. I have a written statement which I've submitted. And I'm going to just touch on some of the elements of my statement. And I hope that my experiences during the Reagan administration will be helpful to the committee.

I had the honor of serving as deputy counsel to President Reagan from early in 1981 until mid-1986 when I left for the private practice of law. As deputy counsel, I was involved in the clearance process for presidential appointees and the White House staff. At some point in 1981 I assumed a greater responsibility for this from Mr. Fielding, eventually assuming almost exclusive responsibility.

I would, however, continue to share and discuss with Mr. Fielding background reports that raised questions or required his judgment because of the issue, position or the individual involved. Background reports, for the reasons of Mr. Gray was describing, were treated with great respect and access was restricted to the Counsel's Office. To my knowledge, and I've discussed this Mr. Fielding, background files were never shown to others in the White House, including the president, the vice president, the chief of staff or the director of presidential personnel. It was understood and accepted that it was the counsel's job whether clearance should be approved.

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And this decision would have been made by Mr. Fielding or me. Now, certainly there were a small number of instances in which aspects of the background reports would have discussed with some of the individuals I've mentioned. But it was on an a need-to-know basis and it was without sharing the file.

HAUSER: In addition to the appointment process and staffing of the White House which was a continuing process throughout the administration, the files of White House staff, career-appointed, would have been updated on a routine basis -- usually every four years.

These, too, would have been reviewed by me if they contained any derogatory information. And access to the files was similarly limited.

I do not recall any instance in which the report of an official from a prior administration was requested unless it was in connection with an appointment by President Reagan.

Restricting access to information contained in the FBI background reports was intended to serve two important purposes. One, assuring the privacy of the prospective appointee or staff member; and two, maintaining the integrity of the background investigation process.

These issues have larger public policy implications and I mention these because I have heard that -- sort of like no harm, no foul. People haven't used these, therefore there is no harm to the individual or to the larger public interest.

But I'd like to point out that there is already a significant loss of privacy imposed on individuals entering public service and the careless treatment of privacy protections will surely be a deterrent for some considering public service.

When called, some will stand aside. I am personally aware of highly qualified individuals who refuse the call to serve fearing loss of privacy. And this response is likely to be reinforced by a breakdown in the handling of FBI files, whether by this administration or future administrations. And the ramification for the staffing of future administrations is serious.

In addition, a background report is designed to produce complete and accurate information on the character, associates, reputation and loyalty of the subject of the background check. Understandably, when interviewed by the FBI, friends, associates, co-workers and neighbors

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of the subject are often reluctant to be candid, particularly if they are aware of derogatory information, for fear that it may be leaked or improperly circulated.

As a consequence, these sources may sugar-coat important information or seek anonymity for fear of attribution, thus diluting the quality and usefulness of the background report.

I think we can all recall instances where issues relating to suitability were not adequately surfaced during a background investigation. This problem is likely to be compounded in the future and I know that this is a concern shared by the FBI.

Also, the careless or casual handling of matters so sensitive and personal as background investigations erodes the confidence of citizens not only in the integrity of the decision-making process, but in government generally. And once this trust is lost, it is hard to regain.

I would like to briefly comment about the special inquiry unit of the FBI. I had the privilege of working with several chiefs of that unit who were dedicated, hard-working and responsive. We worked cooperatively to improve and expedite the background investigation process, and any problems encountered would be discussed and resolved.

I think I'll stop there, Mr. Chairman. I hope these comments are helpful and I'd be pleased to answer any questions. Thank you.

CLINGER: Thank you very much, Mr. Hauser. And now we'll hear from Mr. Culvahouse. Thank you.

CULVAHOUSE: Thank you, Mr. Chairman. I also have submitted a written statement for the record. Many of the points covered therein have been covered by my predecessors and colleagues, and I'll just briefly summarize a few points.

I had the privilege of serving as President Ronald Reagan's White House counsel for 22 months beginning in March 1987. I was recommended to the president by Senator Howard Baker, who was then the new White House chief of staff. I had the honor of serving as Senator Baker's chief legislative assistant for three years during -- really my first assignment was to sit behind Senator Baker during the Senate Watergate Committee hearings as he posed that famous question to John Dean.

CULVAHOUSE: Senator Baker and I when we came to the White House

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had negotiated with President Reagan, because of the pressure that the White House was under to deal with the Iran-Contra investigations, the authority to revamp the White House staff really to our liking, with some exceptions.

Interestingly enough, Mr. Chairman, in terms of the inquiry of this committee, I remember the two of us sitting down with Marlin Fitzwater, who described the press operation -- the strengths and weaknesses thereof -- and as Marlin was leaving, Marlin said, and oh, by the way, there is this office in the White House called the travel office. Most of the political White House staff believe it to be populated by people appointed by President Johnson, but please don't fire them because, if you do, the White House press will make my life forever difficult.

So we took Marlin's advice.

We got the same reports when I looked at counsel's office staff. It was a system that -- it was a group of people that worked well. They were hugely respected, and I think the two people that received the highest marks, not only from their fellow White House staff members, but from the Secret Service, the FBI, and the many people with whom we worked, were my deputy, Jay Stephens and Jane Dannenhauer. They ran a professional operation that was -- it wasn't broke. It didn't need to be fixed. And I was encouraged not to make any changes.

I did not and I'm glad I didn't.

I think that the culture and the procedures that were developed were a tribute not only to my predecessors, to Fred Fielding, Dick Hauser and Peter Wallison, but frankly to people like Lloyd Cutler and Michael Cardozo in the Carter administration.

As the FBI report points out, many of these procedures date back to 30 years. That is not to say they couldn't be improved. It's not to say that we haven't -- we shouldn't learn lessons from what has gone awry, but I think the culture of professionalism, of confidentiality, of care and attention to detail is something that's grown up over the years and is not attributable to one president or to two presidents, but to several presidents and several White House counsel.

Reviewing FBI files is a solemn legal and ethical obligation. I share with Boyden Gray my distaste. It was the least attractive feature of my job. I did not want to know that much about my colleagues or about other senior governmental officials.

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If you think -- if you look at the question -- at standard Form 86, it is designed to affirmatively encourage the furnishing of adverse information, of derogatory information. It asks, have you ever had counseling for drug, alcohol abuse or mental health counseling? It asks, have you ever been arrested other than a minor traffic offense? It asks, have you used drugs in the last 18 years? Have you ever had a problem with alcohol? Have you failed to pay taxes?

And then there's the catchall at the end: And please tell us anything else that might be embarrassing to you, your family or the president?

And that's not asked only of you -- the person going through clearance. It's asked of your friends, your neighbors and people who may not be your friends.

CULVAHOUSE: And then you also have the FBI, its name check, it goes to the SEC, there are people the same names.

So in my experience almost every -- I can't say this -- the significant number, perhaps the majority of FBI files I saw had some derogatory information -- often wrong, often uncorroborated, often unfair -- but it had some negative information, and it's information that deserves to be treated with the utmost confidentiality, but at the same time it's necessary.

We collected this information for two reasons, really. One, what I would call the security reason, for White House pass holders, the people like me, all of us at this table, who every day were in close proximity to the president, to the vice president, to foreign leaders, to senior governmental officials. The Secret Service, the FBI and counsel's office all had a vested interest in making sure people in close proximity, whether they were the White House chief of staff or a groundskeeper, did not pose a security risk to the president, to the vice president, to foreign leaders.

The second reason was upholding the president's constitutional responsibility to nominate officers of the executive branch, people appointed to commissions and people appointed to the federal judiciary. And the FBI files were a fundamentally important part of us determining that these people were suitable to hold those positions and to so represent to the United States Senate for those who had to be confirmed.

So it is a necessary process and it's a process that I think in general has worked well, but you cannot minimize the importance of protecting the confidentiality of the information for the reasons that

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Dick Hauser explained.

If people are concerned, whether it's the individual filling out the forms or the neighbors or their friends or the teachers are concerned that the information is going to be disseminated widely, treated cavalierly, used for political or other illicit purposes, then you're going to get information that's not candid, that's not forthcoming, or you're going to get just false information, and that's not good for the White House, it's not good for the government, it's not good for the Senate confirmation process, and that's what deserves to be protected.

Finally, I have read with interest the recommendations of the FBI in its report. I think in the main they're good and generally laudatory. Any system that's been in existence, as the FBI points out and the chairman points out in his remarks, for 30 years, can probably stand some improvement, some tweaking.

It will result in additional paperwork. I don't think it would have changed our internal procedures very much. Certainly with respect to putting people into clearance, and dealing with senior White House positions, those people were not -- name checks, FBI files were not requested except with the senior authority of the Counsel's Office.

It would have involved, it would have involved more senior lawyer involvement in lower level positions in the White House, people who were not going to be Senate confirmed, who were not presidential appointees, or who were not going to get a commission from the president. And that's probably OK, that's going to result in some additional workload on counsel's office, but I'd rather have a system that's maybe overly protective of information than see what appears to have happened in this case.

Mr. Chairman, I thank you for the opportunity, I'm happy to answer any questions.

CLINGER: Thank you very much, Mr. Culvahouse.

CLINGER: And now I'm pleased to call upon Ms. Jane Dannenhauer.

DANNENHAUER: Mr. Chairman and members of the committee, my name is Jane Dannenhauer. I retired in March, 1993 ...

(UNKNOWN): Would she pull the microphone a little closer, I want to make sure we can hear all she has to say?

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DANNENHAUER: I'm sorry. I departed the White House staff on March 1, 1993. Until January 20th of that year I held the position of assistant to the counsel to the president with the responsibility of directing the White House Security Office under the counsel. Our security office, with a staff of five, was responsible for providing, through Secret Service, clearance into the White House complex all White House personnel, and all other permanent staff of support offices such as records management, correspondence, communications, telephone operators and other offices that continue operation from administration to administration.

At the beginning of the new administration, the major thrust obviously is to clear all new White House personnel. They along with the prospective presidential appointees have the very highest priority in our clearance process. Prior to January 20, 1981, the focus was to provide the names of the new staff members to Secret Service, along with the FBI check information to allow admittance to the complex on the appointed day.

After January 20, and for several months thereafter, the White House Security Office was consumed with the collection of Standard Form 86, completed and signed from the proposed presidential appointees and new White House staff members for the FBI to complete the background of the investigations as expeditiously as possible.

Later in the first year of the new administration as time permitted, we started the process of restructuring the files on support personnel. Although this project was not a priority it was necessary to have the prior FBI reports of these current employees in order to implement the policy of updating background investigations on a four-year cycle. That was the policy at the time.

The reason this project was not a top priority was the fact that these employees had completed background investigations and held permanent passes. In this connection, we requested and received from the FBI copies of these previous reports. These reports were placed in our vault and the dates of completion recorded in a log to determine when to begin the four-year update in each case.

Each previous report received from the FBI was reviewed by me and sent to the deputy counsel and counsel if an earlier update might be indicated. In this manner, counsel was aware of any possible problems with the existing personnel as well as with new personnel. This update process continued throughout each administration of which I was a part and included only those employees currently working at the White House.

During the years I was responsible for the Security Office, I was

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very fortunate to have dedicated and loyal staffs who were honored to serve the presidency. There were no detailees from other agencies in the Security Office or volunteers without a full background investigation. In the Reagan and Bush administrations my assistant was Nancy Gemmell, who worked with me for 12 years. And she, as well as our other three assistants, were detail-oriented and meticulous with the handling and storage of these very private files.

They and the staffs of previous years were well aware of the sensitivity of the files and the extreme caution needed to protect them. I was privileged to serve in four administrations starting in October, 1972 with the Nixon administration.

DANNENHAUER: I was employed by the Ford, Reagan and Bush administrations in the same capacity. Also, at the request of Mr. Robert Lipshutz, counsel to President Carter, I and one of my assistants at the time remained for two and a half months to train the new staff member and await a new director. By so doing, such assistance ensured a smooth transition.

I would be pleased to answer any questions. Thank you, Mr. Chairman.

CLINGER: Thank you very much, Ms. Dannenhauer.

Ms. Gemmell.

GEMMELL: Good morning, Mr. Chairman and members of the committee. My name is Nancy Gemmell. I began my government career at the Department of the Treasury in 1968.

CLINGER: Get a little closer to the microphone if you can.

GEMMELL: All right. Should I start over? All right.

I began my government service in 1968 at the Department of the Treasury. In 1969, I began my White House service. I was privileged to have served in the special projects office, for many years to have worked in the president's appointments and scheduling office, and also in 1981 until my retirement on August 13 of 1993, in the White House Security Office.

My government service began during the Johnson administration, spanning the Nixon administration, the Ford administration, the Carter administration, two terms of the Reagan administration, the Bush

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administration, and again, until August 13 of 1993, the Clinton administration.

It has been my honor to have served these administrations and I will be pleased to take your questions. Thank you.

CLINGER: Thank you very much. Thank all of the panel for your very helpful testimony. We will now proceed under the five minute rule, and I will lead off with the first series of questions if I may.

To me, and this is sort of addressed to the panel generally, but certainly to me one of the real problems here is who is in charge of this office, who is put in charge of this office, and there was apparently in this case political operatives were in charge of the office. So I would ask, Mr. Gray, Mr. Culvahouse, Mr. Hauser, give us your sense of what the qualifications should be for a person that would be in charge of this office, what kind of background would be, in your view, essential to be the administrator of this office?

GRAY: Someone with great precision, attention to detail, management skills, great patience, great, great discretion. One could say, if you did a description of Jane Dannenhauer you would have a good profile of the person you wanted.

Now, of course, she's not, I'm sure, unique, but she did a fantastic job for us. It is exceedingly difficult to manage this mountain of paper without letting any of it leak out, and at the same time not having, if you will, the fun of being able to act substantively on the material that you are managing. The decisions based on the process that she so well managed, or such a person would manage, rests with the White House counsel.

CLINGER: Now one of the elements that was raised in the FBI report by Mr. Freeh was that the system that had been in place for 30 years, literally since Lyndon Johnson's time, had worked pretty well. It relied upon the initial thing that prompted the return of an FBI file to the White House was a form sent out over the name of the White House counsel.

But he also indicated that the system really relied upon the honor and integrity of the people making those requests. In your experience who should have the authority?

Mr. Nussbaum didn't apparently know who was doing this in his name. He disclaimed any knowledge of these forms being sent out.

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Doesn't there need to be somebody who is aware of who is requesting these forms and under what criteria these forms are being requested?

GRAY: Well, let me see if I can answer this and Dick ought to, because A.B., I think, was not there at the beginning of the administration which may make his situation slightly different.

But if you look at it from the very, beginning, nothing would get triggered, nothing would get triggered, unless the subject of an inquiry would have filled out various forms, and thereby consented to the process. In our case, White House personnel would come to me with -- all right -- this is who we want to put into clearance for X, Y or Z job and then we would kick it downstairs. And then the process would unfold.

The only time, I think, generally speaking, where something would get initiated without my having triggered it in some fashion was with basically the permanent White House staff or replacement for secretaries, people who weren't senior White House staff there.

Of course the permanent White House staff have already been cleared, know that they undergo updates every four years and would be on notice that once an old administration went out taking their files with them, that they had every reason to expect that the files would be restored once the new administration got its act in place.

CLINGER: Mr. Culvahouse? Mr. Hauser?

HAUSER: My experience is the same as that of Mr. Gray's, that at the beginning of an administration it's really through the processes initiated through the form 86 -- waivers are obtained from individuals.

These are a people who are applying for jobs, understand that a background investigation will be done as part of the clearance process and the issuance of a pass. So, there's nothing mysterious about that. And they're consent is obtained.

CLINGER: Mr. Culvahouse?

CULVAHOUSE: Mr. Chairman, I strain to think of a situation where we ever needed or thought we needed to look at a file of someone who's background check had been done during a prior administration without that person's express written consent.

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And really the only time we would have liked to have done it, frankly, was in when we were building a short list for Supreme Court nominations. We had a number of sitting federal judges that were on our short list. We didn't, we would have preferred not to have had gone to those judges and get their consent just because of leaks. And we were trying to fill Justice Powell's seat under a magnifying glass.

But ultimately we concluded after consulting with the Justice Department and the FBI that we had to go get Judge Kennedy's consent.

CULVAHOUSE: So that is -- you know, in our culture, the culture that we grew up in and Dick Hauser helped develop, you never ever requested that information without the knowledge and consent of the individual involved.

CLINGER: Thank you.

Mr. Culvahouse, you referred to the standard Form 86 and noted the very sensitive information requested for your military history, if you have any mental problems, if you have drug problems, drinking problems, et cetera.

I mean, it's a very long thing, and I would ask unanimous consent that this form would be made a part of the record at this time. It's very sensitive information. And according to information also on the form, the questionnaire is for sensitive positions.

We've been conducting background checks, using this form for over 50 years. But on the form it states, "The information you give us is for official use only. We will protect it from unauthorized disclosure. Authorized disclosures include the Privacy Act routine uses shown on this form."

What would you define as an official use? I mean, isn't that pretty much of a guarantee to the person who's filling this out that it is going to be very, very tightly controlled and not being released to unauthorized people?

CULVAHOUSE: Yes, sir. As indicated in my opening statement, other than Jane Dannenhauer, there were only two lawyers in my office other than me who were authorized to look at the forms. One of those only looked at judicial forms, and that's because that's a fairly convoluted process with a lot of burden. And the other person was my deputy and me. And no one else did.

We had 12 lawyers on my staff and none of them looked at FBI

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forms. It was a matter of supreme sensitivity. And lots of people are rightfully concerned about who's going to see their FBI files.

CLINGER: Thank you. My time is expired, and I would now turn to the gentlelady from Illinois, Ms. Collins.

COLLINS: Thank you, Mr. Chairman.

Mr. Chairman, before I begin asking my questions, I'd like to make the committee aware that White House Chief of Staff Leon Panetta and Counsel of the President John Quinn have just announced that a new senior security officer will now be directing personnel security matters for the White House. His name is Chuck Easley, who is now head of security for the executive office of the president.

He served a total of 20 years in the United States Army. And he has a wide and distinguished background in security matters and will bring very needed expertise and experience to the important duties of the office.

And now I'm going to ask my question, Mr. Chairman.

Ms. Gemmell, you've had a long and distinguished career at the White House, beginning with the Nixon administration. No. Beginning with the Johnson administration, I believe you said.

GEMMELL: The Johnson administration at Department of the Treasury, and Nixon administration at the White House. Yes, ma'am.

COLLINS: And you've served in the Special Projects Office, the Appointments and Scheduling Office, and from 1981 until your retirement in August of '93 in the Office of Personnel Security. Is that correct?

GEMMELL: Yes, ma'am.

COLLINS: OK. Did you train the employees of the office on standard operating procedures before you retired in 1993?

GEMMELL: Yes, ma'am. That was in process.

COLLINS: OK. That was in process?

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GEMMELL: In process. Yes, ma'am.

COLLINS: So that means that some had been trained or what?

GEMMELL: The staff still, for instance, the detailee that has been referenced still was not on board, so there was still going to be staff changes made. It was not a firm staff at that point.

COLLINS: At the point when you left?

GEMMELL: Yes, ma'am.

COLLINS: OK. We know now that the Clinton administration requested the FBI security files of individuals from the Bush White House. And based on your experience, how do you believe this might have happened?

GEMMELL: I can only say that now, having been removed from that office for almost three years, and having to look from the outside in, I can only speculate that a follow-up procedure, which would have been to request the Secret Service to provide a final list, a second list, was never made.

COLLINS: And if it was never made, then what implications would be there?

GEMMELL: Basically, the Secret Service list was used as the primary source, not the only source, but the primary source.

If a follow-up list had never been requested from them, basically, a cross-reference check would have been almost impossible to make.

COLLINS: Were you regularly involved in updating the security files of the career White House employees, beginning with this administration -- with the Reagan administration?

GEMMELL: Yes, ma'am. I was.

COLLINS: And did you rely on lists of names provided by the Secret Service for your primary source of these updates?

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GEMMELL: We always heavily relied on the Secret Service, not only for current information but for accurate information. And certainly, to the best of my knowledge, nothing like this has ever happened before.

COLLINS: Well, did you inform others in the office to request that an additional list from the Secret Service would be needed for these updates?

GEMMELL: Yes, ma'am. It was very much understood that the initial list the office had was just that, an initial list to be used to start the first steps of the update project. It was very well known that many personnel decisions had yet to be made, and therefore that follow-up would have to be done.

COLLINS: OK. Do you recall if the list provided by the Secret Service would have had an "A" for active, or and "I" for inactive next to their names, to the names?

GEMMELL: No, ma'am. I do not recall.

COLLINS: Well, when you requested copies of security files from the FBI, you feel that in a standard form with the White House's name printed on the top, and I don't know if you could see this or not, but I guess it looks something like this?

GEMMELL: Yes, ma'am.

COLLINS: OK. Did any of your superiors review these form requests before you gave them to the FBI?

GEMMELL: No. When were requesting a previous background report, no, ma'am.

COLLINS: So, then during the regular update projects in which you were involved, how often would you request a list of names from the Secret Service?

GEMMELL: Basically, only twice, ma'am. At the beginning, to initiate the process, and then the second cut to be used as the final cut.

COLLINS: OK. And you would do that for any particular offices, or for high turnover offices, or what -- is that the reason why you

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requested the second one?

GEMMELL: Yes, ma'am. Exactly.

COLLINS: Did you leave behind any Secret Service list of names that you had requested for the update project when you left in August of 1993?

GEMMELL: The list that was received from the Secret Service was left behind. It was still in process far from being completed. Correct.

COLLINS: Mr. Culvahouse, according to the FBI, since the last 1950s, the White House has routinely requested background investigations and checks to determine the suitability of applicants for federal employment, or the wisdom of allowing particular individuals to gain access to the president.

COLLINS: All that was required in order for the White House to gain access to these background files was a simple form with the name of the White House counsel typed on the top, similar to this one, is that right?

CULVAHOUSE: Yes, ma'am.

COLLINS: OK. It's my understanding that these pre-printed forms were also used while you were in the White House. Is that -- while you were the White House counsel, is that right?

CULVAHOUSE: Yes, ma'am.

COLLINS: OK. When you were the White House counsel, these forms had your name on them, is that right?

CULVAHOUSE: That's correct.

COLLINS: OK. But it's my understanding that you did not actually sign these request forms, is that true?

CULVAHOUSE: I did not actually sign the forms. That's true.

COLLINS: OK. How many people had access to these reports?

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These forms?

CULVAHOUSE: That's -- I think the forms resided only in Jane Dannenhauer's office, and that office would be the only office that would have the forms.

COLLINS: OK. So did you -- then did you personally review all the request forms before they were sent to the FBI?

CULVAHOUSE: Did I?

COLLINS: Yes.

CULVAHOUSE: No, ma'am. As I testified in my testimony, my office at very senior levels would have reviewed -- would have approved putting the people into the clearance -- the making of the request forms -- for all nominees, all appointees, all senior White House positions.

The one category that my office at senior levels would not have been aware of would be more junior positions at the White House -- secretaries or whatever, where the retention or the hiring of that individual had been approved by the head of the Office of Administration or the head of Presidential Personnel. And we -- that person would be put into clearance on that authority with Jane Dannenhauer sending the person's name in.

And then when the feedback would come back from the Bureau, that -- the FBI file would be reviewed from my office to make sure that person was an appropriate person to have a pass.

COLLINS: So you would personally know...

CLINGER: Time has expired. I'm sorry to say the gentlelady's time has expired.

COLLINS: Oh, Mr. Chairman.

CLINGER: I've got...

(LAUGHTER)

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When I look at the large array of members that are here to ask questions, I'm going to have to hold very strictly to the five-minute rule. Now I recognize the gentleman from Indiana, Mr. Burton.

BURTON: Thank you, Mr. Chairman. Mr. Chairman, I'd like to have my complete statement submitted for the record.

CLINGER: Without objection, so ordered.

BURTON: Mr. Chairman, let me make three quick points before I ask some questions.

First of all, the misuse of FBI files is not an isolated incident. In 1993, the Clinton political appointees at the State Department retrieved the personnel files of 160 political appointees who served during the Bush administration.

They went on to leak to the press sensitive information on at least two of these people from their files -- Elizabeth Tampusi (ph) and Jennifer Fitzgerald (ph). And this was a horrible abuse of these people's right to privacy. So I wanted to point that out.

Second, I'd like to restate what Louis Freeh said, the Head of the FBI, because I think it bears repeating.

He said, "The prior system of providing files to the White House relied on good faith and honor. Unfortunately, the FBI and I were victimized." Now this is a Clinton appointee saying this. "I promise the American people that it will not happen again on my watch."

I think that's a very vivid statement, and I'm happy that Mr. Freeh was honorable enough to make that.

The last thing I'd like to point out is that on June the 8th, in an article in the Washington Post, Mr. Marceca said he read the files and notified Mr. Livingstone if they contained derogatory information.

Now, Mr. Culvahouse indicated that every single one of these forms had a list of questions, and at the end was a question -- is there anything else you should tell us that might cause embarrassment to the White House or cause some problems?

And this would have constituted derogatory information that was very confidential. I'm correct in that?

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CULVAHOUSE: Yes, sir.

BURTON: Can you ever recall anybody giving that kind of information to other people at the White House that was not properly cleared or was that ever disseminated to other White House personnel when you were there?

CULVAHOUSE: No, sir. That was the hardest part, Congressman Burton, of our job in the clearance process is explaining to the chief of staff, sometimes the president himself, the office that the director of the office of legislative affairs, if the individual had Congressional patronage, or the office of presidential personnel, that for reasons we can't tell you, we are not going to clear that individual. That individual will never be nominated by the president of the United States.

BURTON: But you wouldn't publicize that in any way?

CULVAHOUSE: No, sir.

BURTON: Let me ask you this. As I understand it, there were over 408 requests made of people from previous administrations over Mr. Nussbaum's -- not his signature but his name typed in on a form. Can you ever recall -- any of you -- any administration requesting 50, 100, 200 or 408 records of previous employees from previous administrations?

CULVAHOUSE: Not me, Mr. Burton.

HAUSER: As I said in my opening statement, I recall of no report for anybody from a prior administration unless it was in connection with an appointment by President Reagan.

BURTON: To another post like the Supreme Court?

GRAY: Well, there are many positions on some of your independent agencies that require Democrat appointments, so there may be somebody in that connection.

BURTON: But never unless it was involving another potential appointment by that current administration?

GRAY: Yes. That's correct. That's correct.

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BURTON: Would you say that 408 requests from previous administrations with no prospect of additional employment within the current administration would be out of line?

CULVAHOUSE: Well, I think it's extraordinary. I mean, to have 400 prior employees of the White House going from A to Z, that would suppose there were probably, you were -- if you do your arithmetic, 1,000 Bush appointees there. It's just -- it's inconceivable.

BURTON: Mr. Marceca said in this newspaper interview that he notified Mr. Livingstone on these 408 files if there was any derogatory information. Would any of you think that was in line? Or would you think that was out of line?

GRAY: Well, the job required assessing derogatory information, but the review of these 408 files served no apparent purpose. They weren't being appointed to anything.

And if you didn't update those files -- some of them were five, six, seven years old -- if you didn't update those files with a name check or fuller investigation by the FBI, as I said in my earlier testimony, those files were otherwise useless. They served no -- they served no purpose...

BURTON: Since they served...

GRAY: ... because those people were going to go nowhere.

BURTON: Pardon me for interrupting. Since they served no useful purpose, then one, I would think, could only deduct that they were going to be used for political purposes or for some other purpose that was not consistent with good government.

Anybody have any comments on that?

BURTON: Or is that a deduction that I alone can make?

GRAY: All I can say is that, there being no legitimate purpose, you have to wonder what the real purpose was, why anybody would have continued reading these files after they got past James A. Baker III. Why anyone would continue to read is a mystery to me.

CULVAHOUSE: Congressman Burton, Judge Freeh has already said

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that the files should not have been there, that it was a gross invasion of privacy. There is no appropriate reason for the files to be there.

So a review for derogatory information or even for positive information was inappropriate in my view. The files should not have been there, and they should not have been reviewed. Period.

BURTON: Let me ask one final question. Ms. Dannenhauer said that only employees currently working at the White House under her watch were scrutinized with this kind of information, only current employees. Is that right when you were there, all the time you were there?

DANNENHAUER: You mean -- are you still talking about the great numbers of 445 people? I'm sorry.

BURTON: My question is, people who are prospective employees or currently working at the White House were the only ones that you recall that you asked for this kind of information?

DANNENHAUER: Oh, absolutely.

BURTON: OK. Thank you, Mr. Chairman.

CLINGER: The gentleman's time has expired. Now please recognize the gentleman from California, Mr. Waxman's time.

WAXMAN: Thank you, Mr. Chairman. Mr. Gray, Mr. Culvahouse, and Mr. Hauser, is it accurate to say that you did not review every request that went from the personnel office to the FBI for security information? Mr. Hauser?

Does anybody disagree with that statement? You didn't -- you gentlemen didn't review every request, isn't that accurate?

HAUSER: That would be true. But you have to -- again, as Mr. Gray and Mr. Culvahouse indicated, in many instances, in most instances, the requests were triggered by the Form 86 or the consent of the individual being done.

I think the only category where that may not have been done was to seek the prior completed background investigation...

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WAXMAN: Whatever reason the request was being made, you gentlemen didn't review each request that was sent to the FBI, and you didn't get access to it unless there was a problem that was found at a lower level. Isn't that correct, Mr. Hauser?

HAUSER: Generally correct.

WAXMAN: And Ms. Gemmell, you testified that you would get lists from the security office, Secret Service office, rather, and you would send those names on to the FBI. Isn't that accurate?

GEMMELL: Yes, sir. After, of course, several other steps. But, yes, sir.

WAXMAN: That was generally the process?

GEMMELL: Yes, sir.

WAXMAN: We've had a 16-year period when the Republicans have been in office, and most of these men who were counsel to the president, were counsel to a president who succeeded a previous Republican president. There was Reagan, Bush, and then -- so they were there during those three terms.

When Mr. Reagan came into office in 1980 there was a transition from a Democrat to a Republican. Do you recall whether all of the files at that time on people working in the administration were handed over to the new administration?

GEMMELL: The same process was used. But certainly, this problem never surfaced. As I said before, this is the first time this has ever occurred to my knowledge. Yes, sir.

WAXMAN: Well, the White House -- the Clinton White House claims that the Bush White House cleaned out all the personnel security files of all White House employees and others with access.

WAXMAN: Was that done by the Carter administration before the Reagan administration took over?

GEMMELL: Yes, sir. It was. There would have been no files there.

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WAXMAN: So they had to start all over again to compile these lists.

GEMMELL: That is correct. Yes, sir. Yes, sir.

WAXMAN: And at that time did they have to then send in for the people who were held over?

GEMMELL: Absolutely. Yes, sir.

WAXMAN: And where would they get the names to send to the FBI of all the holdovers?

GEMMELL: Again, sir, we used the Secret Service list to rely upon.

WAXMAN: So what we have here is a new administration taking over after 16 years. As best I can tell, he just had too many names that Twelve.

(UNKNOWN): Wish it was 16.

WAXMAN: Twelve years, yes, forgive me. You wished it were 16, and you're trying hard now for partisan purposes to accomplish that goal. But the fact of the matter is, after 12 years, this new administration came in with people who were not all that familiar with the processes.

Ms. Gemmell, did the Clinton administration ask you to stay on to help them out with this activity?

GEMMELL: I was extended, sir, on one occasion. Yes. My first departure date, if I recall correctly, was to have been I believe around June the 8th. They did extend me then until August the 13th. Yes, sir.

WAXMAN: And did they ask you to stay on beyond that?

GEMMELL: No, sir. They did not.

WAXMAN: Now, Mr. Marceca says in his explanation that he was trying to update all these files and he took the information from the

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Secret Service. A indicated that we did
no had too many names that
didn't make any sense for him to request information about, isn't that
right?

He just had a long list. And no one could understand why he had
such a long list, including people from the old administration.

GEMMELL: Again, sir, trying to look from the outside in now, I
do believe that there was a serious, very serious problem of no name
recognition by the individuals working on that list. Yes, sir.

WAXMAN: Individuals working on the list before it went over to
the FBI?

GEMMELL: Yes, sir.

WAXMAN: Does anybody here have information to give us other than
speculation that the information once it was received from the FBI was
treated in a way that breached confidentiality? Anybody know that
firsthand?

(UNKNOWN): How would they?

WAXMAN: I gather -- Mr. Gray, do you have someone that's doing
that?

GRAY: Well, I think that our testimony has indic and they didn't think thr
ough whether they needed to

WAXMAN: No, no. That's my -- my question is do you know, of
your own knowledge, that once they got all these long list of names
that probably were not appropriate to ask for the summaries of the FBI
files, that anybody got access to that that shouldn't have?

GRAY: Well, I would argue that Mr. Marceca shouldn't have access
to those files and shouldn't have read through them. That's what I
would argue. I mean you asked...

WAXMAN: But Mr. Marceca was assigned, detailed over. Now, maybe
that was different than what previous administrations.

GRAY: If you're asking do I know whether he in turn gave that

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information to anybody else, no...

WAXMAN: You speculated this might have been done for political purposes or some nefarious goal...

GRAY: Congressman Waxman, I...

WAXMAN: It's more likely than not it was just done because they had a wrong list and we their files review whether they needed to request that information, but no one to my knowledge has indicated that there was inappropriate treatment of the list.

In fact Mr. Marceca says that it wasn't his job to determine who should or should not have been on the Secret Service White House access list, he wasn't going to make that judgment, so he got the list from others. And then he said there were only three files that he reviewed in the course of the update project that he delivered to Mr. Livingstone. Otherwise these were all (OFF-MIKE).

GRAY: Mr. Waxman, I was on that list. He presumably reviewed my file. I did not consent to him, Mr. Livingstone, or anyone else at the Clinton White House reviewing my file.

GRAY: It was inappropriate. And he shouldn't have been there and he shouldn't have done it.

WAXMAN: When you had a list of -- and when you were in charge of this -- did you know that everybody had agreed to have that administration to administer. And that these categories

GRAY: But those were the only files we reviewed by ...

WAXMAN: Some people were being reviewed to see if they were going to be appointed, not that they were.

CLINGER: The gentleman's time has expired.

GRAY: They always consented to that, Mr. Waxman. Always.

(UNKNOWN): May I add something, Mr. Chairman?

The distinction here, Mr. Waxman, is we're dealing with current employees versus prior employees. Current employees have an

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expectation that their file is going to be resident at the White House and that it will be updated in due course.

The people who were on that list were not current employees. It could have been easily verified, as Ms. Dannenhauer had done for the years, or Ms. Gemmell had done.

And the notion that they were cleaned out -- there is something called the Presidential Records Act, and files leave. This is traditional from admines that took place in Den. And that these category of files were of a lower priority, because the people who were employed at the White House in a holdover position had current permanent passes. There was not a concern for them.

The Secret Service was aware of who they are, had copies of their files and had passed on them as well. So I think there is a qualitative difference here between current and former employees and their respective files.

CLINGER: The gentleman's time has expired. I'm now pleased to recognize the gentleman from New York, Mr. Gilman, and ask him if he might yield to me for one question?

GILMAN: I'd be pleased to yield to the gentleman.

CLINGER: Just to establish, Ms. Gemmell, that you did leave the White House in August of 1993, I believe.

GEMMELL: August 13. Yes, sir.

CLINGER: And so you were not there at the time of these -- this spiking of requests for documents -- for FBI files th add, Mr. Chairman, these a re only the files that we know

GEMMELL: No, sir. I was not.

CLINGER: Thank you.

GILMAN: Thank you, Mr. Chairman. What we have before us today is not partisanship, it's just bad practice and bad procedure.

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In October of '92 Vice President Gore, then a member of the Senate, stated in very strong reaction to President Bush's Freedom of Information request for information about Mr. Clinton -- and I quote -- "This is an abuse of power unprecedented to my knowledge in the midst of a political campaign to have the president of the United States ordering tax dollars to be used in an official search for information of a personal nature in all of the government files about a political opponent."

And now Mr. Chairman, here we are holding hearings on the very actions the vice president condemned just some four years ago. Except this time it the files of some 481 private citizens.

And I might add, providing files relied on only the files that we know about. We've also been requesting the administration for some 2,000 pages of documents on -- based on an executive privilege claim they're being withheld, which I believe is constitutionally questionable and against the precedents established by presidents going back to the Kennedy administration.

At every turn in this affair the Clinton administration has attempted to downplay its significance. In fact, George Stephanopoulos, one of the president's close advisers, said the committee on June 8 -- and I quote -- "instead of making these charges, they should be apologizing for the original false charge."

(UNKNOWN): Yes. I love George.

GILMAN: Let's not make any mistake that this hearing is about far more than streamlining procedures for recordkeeping.

As the director of the Federal Bureau of Investigation declared about this issue on June 15 -- and I quote -- "The prior system of prov, sir?

GILMAN: Yes.

GEMMELL: It would be and I were victimized." Close quote.

This country doesn't need any more Watergates. It doesn't need another Constitutional crisis.

GILMAN: Obstruction of justice, contempt of Congress, violations of the Federal Privacy Act, misuse of the Federal Bureau of

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Investigation are all very serious charges. But so is an abuse of the faith and honor that not only the FBI but the American people must necessarily entrust to the president and to the White House.

It is our hope and concern, Mr. Chairman, that the Clinton administration will change in attitude and demeanor and begin to help this committee complete this important investigation of the Travel Office firings and we'll maintain the integrity of the security system of the FBI files.

I would like to ask Ms. Gemmell, who was your superior when you were in office, Ms. Gemmell?

GEMMELL: With the Clinton administration, sir
GILMAN: And

GEMMELL: It would have Mr. Livingstone.

GILMAN: And before that?

GEMMELL: And before that, it would have been Ms. Dannenhauer.

GILMAN: And, Ms. Dannenhauer, let me ask you, describe what files if any remain in the Office of Personnel Security after an administration ends up its term?

DANNENHAUER: Well, first of all, the name of the correct -- the correct name of our office always was White House Security. It was not personnel security, because we also handled the presidential -- it was only during the new administration where they separated it out apparently and changed the name to White House Personnel Security.

GILMAN: And what files remain in that office?

DANNENHAUER: No files. No, sir.

GILMAN: Have you ever assisted the new administration after a political party change at the White House as in the Bush-Clinton changeover?

DANNENHAUER: Yes, sir.
eventually. Yes. He came in.

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But initially
administration?

DANNENHAUER: Well, I would sit down with the attorneys in each case, or in each new administration and explain to them what we had and what we were doing there. And it was quite sometimes lengthy but we tried to explain and without getting into the -- all the minutia...

GILMAN: How long did you remain when the administration changed over?

DANNENHAUER: Well, which administration, sir?

GILMAN: ... in the Carter administration...

(LAUGHTER)

DANNENHAUER: ...I mean this -- the current -- to this administration?

GILMAN: In the Carter administration?

DANNENHAUER: Carter administration was two and a half months. It was until April 1, because they did not have a director.

GILMAN: When the Clinton administration came into the White House, did you meet with Craig Livingstone?

DANNENHAUER: Yes. I did, eventGRAY: I don't think I wou

But initially I met with about four, possibly five attorneys and showed them exactly what we -- what are office was functioning with. And so eventually it was Mr. Kennedy, he was not there in the very beginning. I believe he came maybe three weeks later. I'm not sure of the date. But in the very beginning -- I there were two attorneys that I discussed it with and then maybe be two or three more.

And none of those people, were, of course, over that office.

GILMAN: And, Ms. Dannenhauer, did any of the former counsel think that -- or advise you that the documents showing the White House requests for Billy Dale's FBI records should have been subject to

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executive privilege?

DANNENHAUER: No, sir.

CLINGER: Yes. Could I address that to the former counsel who are here? Did any of them -- did any of the counsel advise Ms. Dannenhauer that a request would be subject to executive privilege?

GRAY: I don't think I would have, but the question never came up. It's sort of a hypothetical. I don't think this material is privileged, but it never came up in the Bush administration.

CLINGER: Can I ask the other counsel?

CULVAHOUSE: The same answer from me, sir.

CLINGER: Would the gentleman yield just...

GILMAN: I'd be pleased to yield...

CLINGER: ... just to clarify that, if I may. That there -- this whole thing began to develop because of one of those slips that we've referred to over Mr. Nussbaum's request. It was indicated that for Billy Ray Dale, and that was originally a claim of executive privilege. Do you think that was a legitimate claim of executive privilege for that?

GRAY: I would say definitely not legitimate.

CULVAHOUSE: I agree with that, Mr. Chairman. I agree.

GILMAN: Thank you. Thank you, Mr. Chairman.

CLINGER: The gentleman's time has expired. I'm now pleased to recognize the gentleman from California, Mr. Lantos, for five minutes.

LANTOS: Thank you very much, Mr. Chairman. And I want to commend you for holding these hearings.

It was observed last week that in this town, every snowfall is a blizzard, and every event is historic. And if you look at the

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paraphernalia, it seems like a historic event, but of course, it clearly is just an attempt at a political smear of the White House.

I must admit, I'm appalled if my friend will stay from New York, I was appalled to hear my friend from New York draw an analogy of an attempt to dig up dirt in a presidential campaign on one of two candidates, and the stupid mistake obtaining existing FBI files on some 400 bureaucrats of one type of another.

None of these people was running for president, Mr. Gilman. This was not a presidential campaign. When the Bush administration tried to get the dirt on Mr. Clinton, that was an attempt to interfere with the pYour file was obtained with your prior consent.

ke
which we all condemn.

GILMAN: Well the gentleman yield?

LANTOS: I'd like to move on -- No. I will not yield. I only have five minutes.

Let me move on to another issue that Mr. Culvahouse mentioned, which I think is rather interesting. You understandably are irritated, as I would be irritated, if some clerk at the White House got my FBI file for no reason whatever. I sympathize with you and empathize with you.

But isn't it true that in conducting the FBI investigation of you, you initially gave your consent, didn't you? As everybody else did.

CULVAHOUSE: Yes. That is correct.

LANTOS: So, you know, you provided your consent for an FBI investigation. This stupid request should never have been made. They should never have gotten your file, and you are absolutely correct.

But these were not files which were obtained without consent. Your file was obtained with your prior consent.

CULVAHOUSE: Mr. Lantos...

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LANTOS: Let me just finish, because I don't have time. I...

GILMAN: Will you let the witness answer the question? Could we let the witness answer, Mr. Chairman?

LANTOS: I'm using my five minutes any way I choose.

GILMAN: I'd ask unanimous consent we don't take that out of his time and allow the witness to answer.

COLLINS: I object.

CLINGER: If the, if the member asks the witness a question, I think the witness should be permitted to answer.

LANTOS: I have not asked a question, Mr. Chairman.

(LAUGHTER)

Now, let me sort of try to establish where we are. We all agree that privacy is paramount. We all agree that this procedure by the two people in the office was stupid, inexcusable, unacceptable, and they probably should both be fired, and I hope they will.

But the fact remains that just as Mr. Bush was never personally involved in requesting FBI files, Mr. Clinton was not involved in requesting your file or anybody else's file. We now have instituted the tightest procedures in American history so this idiotic mistake will never again take place.

CLINGER: He never consented to his file being in the Clinton administration for any purpose. And there is no justification by which that file could have been obtained.

LANTOS: The point I was making that he...

CLINGER: The gentleman is out of order.

LANTOS: ... consented...

(UNKNOWN): Regular order, Mr. Chairman.

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(UNKNOWN): Regular order.

CLINGER: The gentleman is out of order. The time belongs to the gentlelady from Maryland.

MORELLA: Mr. Chairman, do you want me to continue with my time, or should we wait until we vote and come back? There just seem to be a lot of distractions.

CLINGER: I think it might be appropriate at this time. The committee will recess. Oh -- wait. I think we're going to have a series of votes. So in view of the fact that we're going to have a series of votes, I would like to go until second bells. So, generally, we'll...

MORELLA: So let me continue now then.

Thank you, Mr. Chairman, for holding this critical hearing today. I think the American public deserves to know the policy, procedure and privacy issues. These are all very important to all of us.

And I want to point out that this investigation began in July of 1993 when the chairman first sent a letter regarding the circumstances surrounding the firings of seven White House Travel Office employees.

The document that triggered the release of the FBI file list was only discovered when the 1,000 pages that were produced by the White House the day that the House was scheduled to vote on the contempt resolution -- that they arrived.

Contained in those 1,000 pages was a memo from former White House Counsel Bernard Nussbaum to the FBI requesting confidential FBI reports on Billy Dale, who had been fired seven months before. We now know that Billy Dale's file was among those 400 confidential FBI files requested by the White House, predominantly comprised of former Reagan and Bush appointees and some who had not worked in the White House for over a decade.

Incidentally, with Jim Baker's name there -- we know that he may have run for the presidency.

Mr. Chairman, this committee, I believe firmly, has a responsibility to raise some critically important questions and in the words of the FBI, the White House requests for the 481 FBI folders

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were -- quote -- "without justification, and served no official purpose."

And so we must determine why the files were requested, what was done with them, and why long-time political operatives were in positions that allowed them to have access to and to hold on to such sensitive information.

Ultimately, we must answer the question, was it a result of gross and inept mismanagement, as has been suggested, or something that had another underlying rationale that was more sinister?

So today's hearing is important to lay the groundwork, the background in terms of how things had been done in previous administrations so we can compare them with what has been done with this egregious behavior.

Our witnesses, in sharing their experiences, they're very profitable because they give us -- tell us about how they received and secured confidential FBI background files with access lists and all of the other. Once we understand all of this, we can then compare and contrast the actions of the administration in the hopes of also correcting it in the future and trying to redress the problems that have occurred because of this.

I think a frightening breach of privacy has occurred. More than 400 citizens, some of whom are my constituents -- I have looked through that list -- have been victimized. This is a critically important step en route to discovering the truth.

And I'd like to address a few questions to some of the panelists.

For instance, Ms. Dannenhauer, did you allow volunteers or interns to work in the White House Office of Personnel Security to help prepare the forms to order background files?

DANNENHAUER: No, ma'am. We did not.

MORELLA: Why didn't you?

DANNENHAUER: Because they were not cleared.

DANNENHAUER: We had to have -- everyone in that office had to have a full background investigation by the FBI. Now we did have

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details from other offices within the White House but they -- we had to verify that they had full background investigations.

MORELLA: So this leads me then to a question for Ms. Gemmell. Did interns work in this office during the Clinton administration?

GEMMELL: Yes, ma'am. There were both students and volunteers.

MORELLA: Did they work in the vault ever?

GEMMELL: Yes, ma'am. They did.

MORELLA: Did they have clearances, if you know?

GEMMELL: No, ma'am. They would not have had completed full field background investigations.

MORELLA: How old were they?

GEMMELL: Extremely young, ma'am. I would say...

MORELLA: To me, everybody is young, but...

GEMMELL: I would say perhaps between 18 and 20.

MORELLA: Between 18 and 20.

GEMMELL: Yes.

MORELLA: Let me, I guess, ask both of the women, Ms. Dannenhauer and Ms. Gemmell, was Mr. Livingstone working on other things such as advance while you were there?

DANNENHAUER: Did you want me to answer that?

CLINGER: The witness can answer -- witness can answer the question.

MORELLA: Yes. Let me ask you.

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DANNENHAUER: He was not there really very long while I was there. I only worked with him probably part time. He would come in -- maybe be there a half a day as far as I can remember. And then he did come in ultimately probably some time -- oh, it probably would have been February.

MORELLA: So your understanding is he did not. He didn't work full time.

Do you think you have to work full time at that job?

DANNENHAUER: He eventually, I think, might have worked -- I would not know that.

CLINGER: The gentlelady's time has expired.

MORELLA: Right. But you do see it as a full time job?

DANNENHAUER: Oh, yes. Yes, ma'am.

MORELLA: Thank you, Mr. Chairman.

CLINGER: We now have two votes that are pending. I'm going to ask the indulgence of our panelists that we'll recess the committee for about 15 minutes -- I'm not going to take a long break here -- so that we may go and vote and we will return as rapidly as possible.

Thank you all.

RECESS

CLINGER: The committee will resume its sitting and come to order. And if our witnesses can retake their places, why, we'll proceed with the questioning.

The next gentleman I'd like to recognize, the gentleman from West Virginia, Mr. Wise, five minutes.

WISE: Thank you, Mr. Chairman. I want to open my questions by stating that I think that based on what has come out so far, not only in this hearing, but also in the media and depositions and other

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information, there's absolutely no question, I think, on anybody's mind that you could probably in the court of public opinion today definitely get a verdict of gross incompetency, probably with a count of total insensitivity.

As one who used to chair the Privacy Subcommittee of this full committee, I take great umbrage at what has transpired. And Mr. Culvahouse, I think that the concerns you've expressed are quite appropriate.

Now, having said that, I also think it's important that this be a bipartisan inquiry and that we try to proceed as much as possible because the issue really -- everyone acknowledges there was great incompetency in the handling of these records and, as I say, insensitivity.

WISE: The real issue, though, is does it go beyond that?

And it seems to me the proper approach of this committee is the two issues, one is how did this procedure happen and what steps are being taken to make sure it didn't happen again.

The second one, though, is a much more serious -- is a very serious one and that is, was there anything beyond incompetency, here? And did -- what were the purposes in securing or obtaining these files?

In that vein, I have some questions which, if I can, get them answered quickly would be very, much appreciated. First of all, in terms of the procedure that was used, which as I understand it from all the counsels testifying and, I believe, Ms. Gemmell and Ms. Dannenhauer as well, the procedure that's been used is basically been in place for at least 30 years.

That was the procedure -- that was at least what Mr. Shapiro found in his report to the FBI. And in it he -- and so that while we can talk about how closely people adhere to the procedure the FBI itself on page -- at least page three of their statement -- press statement, Director Freeh said, it is now clear that the system was very vulnerable to misuse and that government officials over several decades, including himself, Director Freeh, had not provided adequate oversight of the system resulting now in violations of privacy.

So, this was a system that had intrinsic flaws from the beginning, is that not correct?

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CULVAHOUSE: I don't agree that the system had intrinsic flaws, because it went 30 years without any problem like this.

WISE: But in terms of, Mr. Gray, in terms of the procedure that was used, there was always the opportunity -- was there not -- for this reason.

You have testified, and you have said in your statement that you, yourself, did not review each of these requests for update files personally, that you used a form that had your name, I presume stamped on it as your predecessors in successors also used, is that not the case?

CULVAHOUSE: Yes. That is the case.

But I believe the FBI itself understood that something was slightly irregular because they notified the White House, Freeh's -- Shapiro's report makes this clear that they notify the White House during this file search for the 400, that no name checks were being done. That is, they weren't in addition to copying the file and sending it over -- doing a name check on that file.

Now, and the White House apparently responded, and nobody was identified as being either the maker or the recipient of the telephone call. That -- they understood that and that was consistent with what the White House was doing.

And what I tried to say in my earlier testimony was the unearthing of an old file like that, without a name check, should raise a red flag right there, because there could be no legitimate purpose for asking for that file or I would suggest providing it.

WISE: Well -- but your statement, which I thought your written testimony was very, very complete and assisted me in preparing for this -- you note on page nine that this memorandum would -- and you're talking about updates here -- this memorandum would as a formal matter show the White House counsel as the requesting official. However, the document was routinely issued by the Director of the Security Office without review or signature by anyone in the Counsel's Office.

CULVAHOUSE: Let me repeat, though, if I...

WISE: Well, I mean I think you stated it well, and you put your position out there. But I also think it's important to state that no White House counsel, at least according to -- what -- it appears that no White House counsel was personally signing off on these requests,

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because I need to get to the second part which is...

CULVAHOUSE: Yes, yes. I believe -- I would like to just correct this. Except for people who were already working at the White House...

WISE: Thank you...

CULVAHOUSE: More or less permanent staff...

WISE: Yes, sir. Because...

CULVAHOUSE: People, like in the Travel Office or the Correspondence Office, people permanent staff, unless you're talking about those people, each one of us would have signed off on the request for...

WISE: I'm going to have to come back.

WISE: I have a unanimous consent request, Mr Chairman, and that is that during questions posed to these witnesses the impression was left by the Chair and others, incorrectly, that the White House did not turn over to the committee the personnel files of past and current White House employees because of concerns about executive privilege.

I would request unanimous consent to place into the record a letter from Jack Quinn, Counsel to the President, to Chairman Clinger, dated June 10, 1996, clarifying that the concern of the White House was not executive privilege but -- and I quote -- "the concern regarding these records was for the privacy of the individuals involved" -- closed quote. I would ask you now unanimous consent.

CLINGER: Without objection the letter will be entered in the record at this point. And the gentleman's time has expired.

And I now recognize the gentleman from New Mexico, Mr. Schiff, for five minutes.

SCHIFF: Thank you, Mr. Chairman.

I want to first begin by responding to the comments made by one of our colleagues a little earlier that this hearing is an attempt to bolster the Dole presidential campaign.

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Now, the fact is that the Dole presidential campaign didn't put FBI files into the White House, the Clinton administration did all by itself. And the fact of the matter is, Mr. Chairman, you have tried to close this matter a number of times.

You've tried to put the Travel Office investigation to rest. But each time you've tried to do that, new information, unexplained information, damaging information has come out. The first time around we had a hearing on administrative investigations of the Travel Office firings, and we found out the White House hid documents from the administrative investigators.

Then we had a hearing in which it was testified to by a White House administrator through a memorandum he wrote that quite possibly the firing of those employees was ordered by people much higher than himself which is what we were told by the White House. And finally, at the point of a legal gun, a House vote for a criminal contempt of Congress citation, we get these documents.

We learn about the existence of FBI documents inappropriately at the White House. And we've received no real explanation as to why these documents were hidden from us.

There was a reference, I think I just heard, that this was to protect the privacy of the individuals involved. Well, we don't have the FBI files in this committee and we haven't asked for them. The fact is, if this was an innocent bureaucratic mistake, as we're being told, why didn't the White House reveal that it happened a long time ago?

Why...

(UNKNOWN): Will the gentleman yield? It's my understanding you do have those files...

SCHIFF: I'm sorry but I...

(UNKNOWN): But you're making an incorrect statement, sir.

SCHIFF: Regular order, Mr. Chairman.

(UNKNOWN): Would the Chairman correct?

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CLINGER: Regular order, regular order.

SCHIFF: I'm sorry. But nobody on that side of the aisle will yield. So, I'm not about to start now.

The fact of the matter is, that these documents not only were not revealed by the White House, which you'd think they would have done is this was an innocent bureaucratic mistake, but we had to pry them loose against their claim of executive privilege which is normally a national security reason to keep things from Congress.

So, I think there is more than ample room to understand why this investigation continues. I too, wish that we -- it would be put to rest. But new revelations have prevented that from happening.

With that, Mr. Chairman, I have a few clarifying questions.

Ms. Gemmell, if I may address you, because I believe that you are the most recent employee at the White House, having left in August of 1993. And I'd like to ask, do you know what list Mr. Marceca was working from for which he obtained the White House, excuse me, obtained the FBI documents?

In other words, where did the list come from of names that he was using to ask the FBI for records?

GEMMELL: Sir, the only list, to my knowledge, was the list that was received from the Secret Service which was left behind at the time of my departure.

SCHIFF: All right and did you personally give them a list?

GEMMELL: Oh, no, sir. I had no idea who would be assuming that responsibility.

SCHIFF: Did you ever see the list?

GEMMELL: Yes, sir. I did.

SCHIFF: Can you describe what the update project that you were working on until August 13 was?

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GEMMELL: Basically, again, sir, it was just simply setting up the very first stages of it. And basically that means that you were making dummy files, in other words, file jackets that would be used down the road. So, therefore, you were typing file labels, you were typing subject files as an example, if you were processing the General Service Administration employees, you would type a subject file for that group also.

SCHIFF: Did you have a way of dividing up the Secret Service files, that is, GSA group here, or White House group there, or something like that?

GEMMELL: As I recall, the list of employees was by category. In other words, was by office.

SCHIFF: All right, and how many different offices were there, do you know, involved here?

GEMMELL: Numerous, sir, because that list would have also included such entities from the outside, so to speak, such as AT&T Telephone Company employees, C&P Telephone Company employees that were also housed there at the White House.

SCHIFF: I understand. I'd like to go down the list of witnesses because several witnesses tried to answer questions that were propound of them and were interrupted by the members who were asking the question. I would like to see if any witness did not get an opportunity to finish an answer that they might have -- might have wanted to.

Mr. Gray, may I start with you? Is there anything that you wanted to add or state that you didn't have the opportunity to?

GRAY: Well, if you think about the harm that's done by allowing an Army employee, a Democratic political operative -- it could be a Republican political operative in a Democratic administration -- to look over all of these files at his leisure some 400 of them, in the future, in the future, people who are to be recruited to serve in administrations and as to them people who are going to be asked about these people as to their character and their ability -- it's going to have a chilling effect, because how are you going to know whether you can trust the confidentiality of what you're doing.

That's the harm here. And it's all very well and good to say that they're going to put procedures in, and I, certainly hope that these procedures are adhered to. All I'm saying is damage is done and as A.B. said, how does he know when another Republican president is

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elected that this information won't be somehow used in a surreptitious way in a new confirmation process involving him.

SCHIFF: Mr. Culvahouse, do you have anything you wish to add, sir?

CULVAHOUSE: I've been ably represented by Mr. Gray.

SCHIFF: All right, Mr. Hauser?

HAUSER: The point I want was going to make was on the damage issue as it related a question from Mr. Lantos, but I did want to respond to one other question earlier in terms of the treatment of these files. If there was an individual for whom, coming through the process that there was derogatory -- we would not make that information even available to the individual.

The subject of the investigation.

HAUSER: And we would direct them to the FBI to file a privacy act request, an employee request, so that they may adequately respond to the file themselves.

Also, I don't think it's clear about update -- what an update is. We are not updating and the process, this project update, is not updating an investigative file to bring it current. It is simply to recreate a file that pre-existed at the White House. And there's a big distinction there between, again, current employees and prior employees. That's all I would add.

SCHIFF: Thank you. I see my time has expired.

CLINGER: The gentleman's time has expired. Let the record note that we have -- the committee has received the background file on Billy Ray Dale. We did not request it. It was sent to us by the White House. It is the only background file, however, that we have had. In fact, we've specifically indicated we did not want to receive any other files. So we only have one in our possession.

And now, I would be pleased to yield to the gentleman from South Carolina, Mr. Spratt, for five minutes.

SPRATT: Thank you, Mr. Chairman and thank our witnesses for their testimony. On June the 12th, The New York Times published an

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account of this matter. And in it they say that the Secret Service maintained two lists: one was a list of those who had full or unfettered access to the White House, and each of them had what's called colloquially a "hard card"; and there was a second list according to this article, which was a complete list of everybody who had access, those with full access and those with just limited access, whatever that is. Is that correct, Ms. Gemmell?

GEMMELL: Sir, I was never aware that there were two separate procedures.

SPRATT: Have you since been informed that this is the case? You say you never were. Is this -- is this...

GEMMELL: Of course, I saw the same information in the paper. Yes, sir.

SPRATT: And is it correct in this article that Mr. Marceca requested from you a list and the list given was apparently the second list, the more comprehensive list, which the Secret Service had failed to update by deleting those who had turned in their cards?

GEMMELL: Sir, all I can say is that when we requested the list from Secret Service, that the list requested was for current pass holders.

SPRATT: Current pass holders?

GEMMELL: Yes, sir.

SPRATT: And it didn't distinguish between those with hard cards, those with full access, or those with limited access? It was just current access?

GEMMELL: No, sir. Again, I didn't even know that such another list existed.

SPRATT: Did you transmit that request to the Secret Service?

GEMMELL: Yes, sir. I did.

SPRATT: And did you have any conversations by telephone or personally with the Secret Service agent who compiled the list?

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GEMMELL: I may well have because the list does require additional information for the update process. So that sounds reasonable.

SPRATT: Do you have any recollections of those conversations or any description or characterization which the Secret Service placed upon the list in transmitting it to you?

GEMMELL: No, sir. I do not.

SPRATT: Is it your understanding it was maintained in some sort of computer data base?

GEMMELL: Yes, sir. It was a computerized list.

SPRATT: So it was just a computer run which they delivered to you of these names only?

GEMMELL: That is correct. Yes, sir.

SPRATT: Did you examine the list and find anything yourself out of order, out of date about it?

GEMMELL: No, sir. Because again, it was simply represented to us as being a current past roster.

SPRATT: And did you then hand the list over once it was submitted to you to Mr. Marceca?

GEMMELL: No, sir. I did not. When I retired, the list was left in the vault. I did not know who would be picking up with the project.

SPRATT: I see. How did it come into his possession? You -- after that you have not since been employed in the personnel office?

GEMMELL: No, sir. I have not.

SPRATT: OK. So you obtained the list and was left in the vault, and this was apparently the list that Mr. Marceca by some means obtained?

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GEMMELL: Yes, sir.

SPRATT: Do you know a Linda Vessel? Wetzl? Was she working there during your time?

GEMMELL: I believe it might be Lisa Wetzl.

SPRATT: Lisa, I beg your pardon. Thank you.

GEMMELL: Yes, sir.

SPRATT: Now, are you familiar at all, have you discussed with anybody the manner in which she came upon the same list and determined herself that there were errors in it and then undertook to correct the flaws?

GEMMELL: No, sir. I have had no discussions of that nature.

SPRATT: Mr. Gray or Mr. Culvahouse or anyone else who has had the experience, what laws, executive orders, and White House memoranda control this process? Is there a statutory law that controls access? Are there standing executive orders that control the security clearance process?

CULVAHOUSE: Well, there's the Privacy Act to begin with, and then there are all kinds of intelligence guidances and statutes that involve security clearance. And you have to understand that other agencies other than the FBI do security clearance work for other agencies. So there are a myriad of statutes and procedures that affect this process. But in terms of how, as far as I know, how our offices ran this process -- no, there's no law anywhere...

SPRATT: It was custom and procedure? You understood the sensitivity of it.

CULVAHOUSE: Custom and procedure.

SPRATT: You didn't have any written memoranda that dictated how access would be obtained?

CULVAHOUSE: That's correct.

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you've finished doing your form 86, you know what you're in for. The only time that we wouldn't have triggered a request to the FBI for a prior file is in connection with basically the permanent staff of the White House who, has Dick has tried to say I think, are on notice by the fact that they're permanently employed there are going to have their files recreated and updated in the ordinary course of the four-year turnover.

CLINGER: Gentleman's time has expired. I'm now pleased to recognize the gentleman from New Hampshire, Mr. Zeliff, for five minutes.

ZELIFF: Thank you, Mr. Chairman.

ZELIFF: I'm particularly concerned here because two people from New Hampshire are on that list -- Paul Collins and Dave Carney and Bobby Charles, my staff director of our subcommittee on national security.

And when Mr. Lantos made his comments and others, I kind of think of this as kind of my relationship to my bank. My banker has my confidential files, and if they are shared with my competition, the question might be, well, so what? What damage occurred? Well, a lot of damage occurred, and it's pretty hard to quantify it.

I would ask -- and I guess 18 or 20-year-olds that haven't been cleared that have access this, being able to order files -- I would ask Mr. Gray and also Mr. Culvahouse, how serious is this? Is this something that Democrats as well as Republicans ought to be concerned with? This is a process that's been in force for 30 years. Isn't this something to do with integrity and honor? What are your reactions to how serious -- what about our national security? How far could this be breached.

GRAY: Well, it's hard to know just what harm was done, but let me first say that I don't know where this so-called list came from. I gather Nancy Gemmell doesn't, either. I don't think anybody does. At least I don't.

But let's assume that somehow a list materialized that somebody started acting on by requesting individual files off that list. What I don't understand is how anybody could have read through 400 files. I don't see how they could have read past four files or read past Jim Baker and continue to spend two or three months reading through these files that were going to produce no official action. I just don't understand that.

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And people were in and out of this room -- detailees, interns, people with no clearance. Who else was looking at these files? That, to me, is the puzzle here.

Maybe they were requested accidentally from the FBI. Maybe the FBI accidentally provided them, although they noted there was some irregularity because there were no name checks being requested in addition. But how anyone could have read through them and then left them there and had no intention up until the confrontation with this committee of turning them back, that, to me, is a total mystery.

ZELIFF: Well, is it possible -- let me just add a question, and then -- it's possible that a team of people were looking at this if one person couldn't go through them? How many people would it take? I mean, are there are a lot more people or is it just the fact that they were there?

GRAY: Well, it's the fact that they were there and security does not appear to have been very tight. I don't know who went in and looked at them. I just don't know.

ZELIFF: Mr. Culvahouse?

CULVAHOUSE: Congressman, I share many of Boyden Gray's concerns.

CULVAHOUSE: I mean, the reason that all of us are troubled by this is that we -- our process was so tied -- it was professionally administered by Jane, who deserves most of the credit. She was the only person in her office, all of whom were cleared, all of whom were trained, that looked at the files.

She was the only person who requested the files. There were no detailees, no interns, no one who wasn't trained, no one who wasn't cleared. And then other than Jane and the Secret Service and the FBI, it was only one or two lawyers in the counsel's office that looked at the files. So that is the concern that we are being -- that we are conveying.

And finally, everyone that we looked at had consented to their file being looked at by us. So that's the concern. That's the potential for harm.

ZELIFF: So there was a code of conduct at least among yourselves that you knew the difference between right and wrong and there was a code of conduct that you adhered to? Is that a fair statement?

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CULVAHOUSE: Yes, sir.

ZELIFF: And Mr. Chairman, I just get concerned because of the hearings that we've had on the White House Communications Agency, Travelgate and others, and it just seems to me that we have a situation here where -- and some people on the other side have indicated -- well, in spite of the fact that this is just gross or great incompetency, you know, so what. There's no damage. I think that it is serious and I think it leads to integrity.

Ms. Gemmell, was there a photocopier in that room?

GEMMELL: Yes, sir. There was.

ZELIFF: And what did they use the photocopier for?

GEMMELL: Normally to process, make copies of the pass requests to Secret Service and also make copies of the name check requests as well as full field investigation requests going to the FBI -- the request forms.

ZELIFF: And was there a possibility of any of these 18 or 20-year-olds or people that weren't cleared -- is it possible that they could have made copies of any of the information that was available?

GEMMELL: Copies of the forms?

ZELIFF: In terms of these files?

GEMMELL: Of the files? I can say, sir, at least when I was there, they were never left alone in that office.

ZELIFF: So there was, while you were there, a procedure that never left anybody alone that they could have made copies of the files?

GEMMELL: No, sir.

ZELIFF: Did you actually see the list that Special Agent Anthony Marceca was using?

GEMMELL: I can only assume it was the same list that was left

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behind.

ZELIFF: But did you actually see it? And go through it? And you know -- I mean, are you familiar with the list? And you saw the list?

GEMMELL: I certainly saw the list that was delivered by Secret Service. Yes, sir.

ZELIFF: But did you see the list that he was using?

GEMMELL: No, sir. I retired before he was brought on board.

ZELIFF: OK. I just -- I just would like to make a statement to those who feel that this is no big deal.

I just feel very strongly, Mr. Chairman, that as we get to the bottom of this, whether they were used or whether the people feel that damage was done, I certainly think that the people involved have a right to know how they were used, and they are the ones that are concerned. I certainly wouldn't want to have my medical records passed around or my financial records passed around.

And I yield back the balance of my time to you, sir.

CLINGER: The gentleman's time has expired.

(LAUGHTER)

Thank you for your generosity.

(LAUGHTER)

ZELIFF: Thank you. So noted.

CLINGER: And I would be pleased to recognize my colleague from Pennsylvania, Mr. Kanjorski, for five minutes.

KANJORSKI: Thank you very much, Mr. Chairman.

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Ms. Gemmell, let me get something straight. You'd sat in this position several administrations. Was it common at the end of every administration regardless of party affiliation for all the records in the computer in the White House to be destroyed? Or emptied? Or purged?

GEMMELL: No, sir. They were not destroyed. All files departed the premises. They were considered to be part of presidential papers.

KANJORSKI: OK. Now, was it -- when files were requested during the Reagan administration and the Bush administration from the FBI under these forms, these were copies of FBI files? These weren't the original FBI files? Is that correct?

GEMMELL: That is correct, sir.

KANJORSKI: They created some copy of files and you don't know whether they were complete files or partial files? Is that correct?

KANJORSKI: I mean, there was no one at your office that went back to the FBI to check the original source of what was in the original FBI files. It was just that a request was made and a file was sent over and purported to be, quote, "the file," whatever that meant by the FBI?

GEMMELL: That is correct, sir.

KANJORSKI: And that was a copy. It wasn't their original. Is that correct?

GEMMELL: That was a summary copy, yes, sir.

KANJORSKI: And when you -- and when whoever was in charge of reading through this file read through it and had no reason to refer it to counsel because there were no problems of security involved, that file then would be put into the vault. Is that correct?

GEMMELL: That is correct, sir.

KANJORSKI: And that's the process that occurred in all the administrations you were there?

GEMMELL: Yes, sir. That is correct.

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KANJORSKI: And then at the end of the administration, all those files that were in the vault, and they would sometimes would have to be thousands, would then be made part of the presidential archives, and sent to wherever all the records of that particular presidency went. Is that correct?

GEMMELL: Yes, sir. Those files were sealed.

KANJORSKI: Right. So that it is reasonable to assume that in the Reagan administration and the Bush administration, there were files of everybody who had an SF-86 file or a clearance from the White House, where a copy of their FBI file came over to the security office, that in all these presidential libraries around this country there are these type of FBI files?

GEMMELL: That is my understanding. Yes, sir.

KANJORSKI: Now, do we know whether they're under seal or are they open to academics or anybody to get in and read those files? I think most presidential papers are available to academics, aren't they?

GEMMELL: Actually, sir, if it is permissible, this is the area of expertise of Ms. Dannenhauer. If I would be allowed to defer to her.

KANJORSKI: Ms. Dannenhauer, do you know are these files sealed in all these libraries around the country?

DANNENHAUER: Indeed, they are sealed. Yes, sir. And they are sealed for a number of years.

KANJORSKI: Do you know how many years they're sealed for?

DANNENHAUER: It used to be 25. I'm not sure if it's still 25.

(UNKNOWN): I think it's 20.

DANNENHAUER: Twenty now? I think it's 20 years.

KANJORSKI: OK. But in all the course of the administrations Ms. Gemmell served under, nobody thought that it may be that these are of

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such import to the individuals involved to protect privacy that rather than keeping the file in the vault that the file was either sent back to the FBI for destruction or for protection, but instead it's proported on. So we may have -- we may have individual files on -- FBI files all over this country in different vaults. Is that...

DANNENHAUER: Well, they would be in each presidential library, yes, sir. But they are...

KANJORSKI: But anybody who had an authority to ask for an FBI file would get a copy of the individual's FBI file and then they're put into some vault somewhere and they're all over the country.

DANNENHAUER: But there are other papers in there, sir. That's why they're considered presidential papers, part of the presidential papers...

KANJORSKI: There are other papers...

DANNENHAUER: But they are separated out from the regular presidential archives. They were never intermixed with the presidential archives, the regular presidential archived files. It was separate.

KANJORSKI: But you're not saying that...

DANNENHAUER: And they were sealed. Yes, sir.

KANJORSKI: Oh. But you're not saying that the files had additional information put in the FBI file? The FBI file remained the FBI file? It may become part of another file, but that was substantially nothing that the White House added to it. It was just what was sent over from the FBI representing that file?

DANNENHAUER: Yes, sir. But that was part of each individual file. That report, if you're speaking of the reports, they were never separated -- they were never separate from...

KANJORSKI: That is a good question. I think everybody in this listening audience, I have never had the ability to work in the FBI.

KANJORSKI: So, I don't know what we're talking about with an FBI file. You're obviously an expert on this. Are these the raw files, absolute raw files, or are these the developed files and summary

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sheets developed by the people at the FBI that do the raw file and raw investigations?

DANNENHAUER: It's the latter, sir. They are summaries.

KANJORSKI: It's the summary?

DANNENHAUER: Yes, they are summaries. Yes, sir.

KANJORSKI: So, it's not exactly what Ms. Jones told about her neighbor next door in raw, quoted, verbatim material. It's a summary. So if Ms. Jones said that the person being investigated into was unworthy of having a job and in the midst of that investigation she asked for a time-out so she could go and talk from the person from outer space, in the FBI report, it would sort of indicate that this individual being interrogated was not very responsible, and therefore not a great deal of credence should be paid.

DANNENHAUER: You would have to ask that question, sir, of the FBI. They are the ones preparing the summaries. We get the summary of the raw data. We never see the raw data.

KANJORSKI: But so that the record is very clear, under Mr. Gray's administration, Mr. Culvahouse's administration, Mr. Hauser's administration, they never went to the FBI and said, "Hey, guys, we only want to use these files to check things, and there's no need for us to continue these files remain here. Let's set up a procedure and send them back." They allowed thousands of files so that in the Reagan administration literally thousands of files would have come over by the FBI, then when they left office, their files went off to the archives.

DANNENHAUER: Under seal. Yes, sir.

KANJORSKI: Then the Bush administration would come in. You'd have to update all these files and call for all these new recreated copies of FBI files, put them in the vault. Then when the Bush administration leaves, they go off to the Bush archives. Then the Clinton administration comes in, and they've got a call for a third set of all these personal FBI files, and they're brought over, and finally, they remain in that vault for this period of a year or two, and we haven't yet had an archives established, and may not...

DANNENHAUER: But sir...

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As we have been discussing, these files contain some of the most sensitive information on individuals that is collected anywhere in our country, and the information often untested and uncollaborated can ruin a person's life if it is made public.

We've been discussing how privacy is something that's very dear to us as Americans.

ROS-LEHTINEN: And I find it incredible that the White House was able to request such confidential documents from the FBI and then simply store them as Mr. Zeliff has pointed out in his questioning in an unsecured area. Not only was the room wide open, but as the testimony has revealed interns, without security clearances, routinely worked in the room and the copy machine was there only feet away from the area, anyone could have made copies and no one would have been the wiser. So we hope that we can get to the bottom of all of these terrible issues.

I have a -- some questions about the kinds of list that were used, phone lists, etcetera and I wanted to ask Ms. Dannenhauer a few questions. This is the phone list of the executive office of the president early on in the administration. James Baker is not on this list -- I was looking through it -- neither is Marlin Fitzwater or, nor is Mr. Culvahouse. So, there are many ways to find out who was at the White House at a specific time. And I want to understand how this could have happened.

So, Ms. Dannenhauer could you tell us if you cross checked information before you sent it out, what kind of cross references did you use, can you name them for us?

DANNENHAUER: Excuse me, are you speaking of the current administration, because I was not there?

ROS-LEHTINEN: No, the expertise that you have during the time that...

DANNENHAUER: Oh, the expertise...

ROS-LEHTINEN: Right.

DANNENHAUER: Well yes, we would cross check many, many lists before we would ever order anything from the FBI, indeed we would. And if there was a question on the Secret Service list initially, if we didn't -- the advantage we had, I think, was that we knew a lot of

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the names. We wouldn't know the people personally, but we knew a lot of the names at the start of a new administration.

And so, if there is something there that we are not certain of, we would have other ways to find out by going to White House personnel. In the Bush administration we refined it, in that the day the person came in to sign in to the -- for employment, the correct papers would be given to that person and they would immediately send them to us for the 86 forms.

ROS-LEHTINEN: So, you had mentioned two of the list already. A White House personnel list, Secret Service list, what other kinds of list were used to cross reference names or to check?

DANNENHAUER: Well -- excuse me, but in the beginning that would just be those two places because we wouldn't have had a directory yet at that -- at the early stage.

ROS-LEHTINEN: So, those would have been the lists that you had used. The payroll list, would that be what you would call the White House personnel list?

DANNENHAUER: Oh no. No, that would have been completely different. No, the White House gets a piece of paper, we called it a blue sheet. It was filled out with every person and we had to have that sheet to do then the cross check. If the people had been coming in on access, then we could cross check with Secret Service. But we had a sheet on everyone, we had to have that vital information in order to do a name check. You'd have to have the date of birth, place of birth, social security number and their current address. We couldn't do anything without that, the FBI wouldn't do a check without that.

ROS-LEHTINEN: Ms. Gemmell, could you answer what kind of lists were available to your office of those who were currently on the payroll of the White House?

GEMMELL: Normally, ma'am, once again, the primary source for the update project was always the list from Secret Service, provided by Secret Service.

There was -- not during the current administration but during previous administrations -- what we commonly referred to as the staff book. That was a list of names that was compiled by a security consultant. It could be used as a double-check, a reference check source, but again, not as the primary source.

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ROS-LEHTINEN: But when you say that something didn't exist, what were you referring to?

GEMMELL: The staff book.

ROS-LEHTINEN: This -- would this be what didn't exist or is...

GEMMELL: No, ma'am. The staff book actually was a list of individuals by department within the White House complex, and their pass types.

ROS-LEHTINEN: And this -- this executive office of the president, what would you call this? This listing?

GEMMELL: That would have been the telephone directory.

ROS-LEHTINEN: And you would not say that this would be the kind of guide that you would use? Or it would be?

GEMMELL: No, ma'am. Actually, that would have been a very incomplete document from our standpoint because it would not have had the names, for instance, of all the residence staff, all the GSA staff, all the -- you know -- extraneous entities such as the stenographer reporting form...

ROS-LEHTINEN: Thank you. Mrs. Dannenhauer, would you say that your jobs was a glamorous job or it required a lot of hard detailed work, didn't it?

DANNENHAUER: Well, I can only say that it was very low-key, as far as the rest of the White House was concerned. A lot of people...

ROS-LEHTINEN: And can you offer then, your opinion on why Mr. Livingstone would be so interested in this job during the time that you overlapped with him at the White House?

DANNENHAUER: I would have no idea because the paperwork alone makes people think twice before they even look in our office, so I don't think anybody really -- and I'm sure that the counsel -- counsels -- will agree with me that nobody really, really is looking for that job when they come in.

ROS-LEHTINEN: So it's peculiar to you why anyone would have such

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an interest?

DANNENHAUER: Indeed.

CLINGER: The gentlelady's time has expired.

Now pleased to recognize the gentlelady from New York, Ms. Maloney, for five minutes.

MALONEY: Thank you very much, Mr. Chairman. The president has declared the gathering of FBI files of hundreds of Republicans -- some of them top-level advisers -- to be inexcusable, and he has apologized to everyone who would listen.

We must learn today whether this was indeed a bureaucratic snafu or an unauthorized overzealous abuse of power by low-level White House staffers acting on their own or something most sinister.

I would agree with my distinguished colleague, Mr. Lantos, who called earlier that the individuals involved should be fired. I share the outrage that the president has expressed to the American people over this mistake -- and it's inexcusable.

But today I get the unmistakable sense that many on the other side of the aisle and a few of the witnesses at the table this morning believe that the incident under review today was politically motivated, an effort to dig up dirt on Republican members of -- on Republican officials.

And if I'm not mistaken, that is a predetermined conclusion and not a statement of fact.

I would think that to support such a sweeping and dramatic conclusion, they would point to a tight chain of circumstantial evidence that inevitably leads to a conclusion. The evidence we have so far is a military detailee requested -- and this detailee should be fired -- in near-perfect alphabetical order names of staff running from A to G.

And I have the list here.

MALONEY: I have a list of 341 people that the gentleman requested, and on this list is Helen Abdoo, Douglas Adair, Joseph Agin, Richard Alvarez, and you go through 19 names before you get to a

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name that I recognize which is James Baker.

Then you go through 100 more before I get to another name that I recognize -- and that's Marlin Fitzpatrick. And I would like to think that if this was a political operation, they would have had maybe Mr. Gray's name on it or maybe...

GRAY: They appear to have stopped with me or Wendy Gramm just above me.

MALONEY: But you're -- well, it would have maybe been on an alphabetical list, but if -- in other words, they wouldn't have gone through 300 people that nobody knows to check on them.

And if some high level White House politico was running an operation, wouldn't they go directly to some names like John Sununu or Don Regan, or other such people. And isn't it because there was no such operation that Sununu, Reagan and Mr. Gray and others were not at the beginning of the alphabet and therefore were not requested.

And I believe that this explanation stands more with a terrible bureaucratic foul-up, snafu, than a sinister conspiracy, but then I do not start with a predetermined conclusion like some of you at this hearing.

In the documents here, I have this one document that was executed on June 9th of 1996, and it was signed by Anthony Marceca, and in it, and I quote, and I want to put it in it, he says, and he talks about his work and what he did with these files. Then he says, "There were only three files that I reviewed in the course of the update project that I delivered for Mr. Livingstone's review. To the best of my recollection, none of these files were former high-ranking Reagan or Bush administrative officials, such as" and he leaves names out. "My recollection is that one of the individuals involved worked for the General Services Administration. One worked for the telephone company. And one was a groundskeeper."

And that's his evidence that he put forward. Well, that doesn't sound like a -- an operation to get information on politically active Republicans.

But I do have with me part of the FBI file on Patricia Schroeder, which she gave me. And in her file, someone broke in her home, and she was put on a terrorist list because of her terrorist affiliation as Sandinistas/Marxist/Lenin? And was a, quote, "agent of influence."

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MALONEY: But the most comical part in here is a report someone who's in her home who's trying to find out if she's associated with the Socialist's Workers Party or not. And as proof that she might be, he puts in this campaign button he took, "She wins, we win, Schroeder."

So this is part of her FBI file. And that seemed more of an effort to get dirt or to discredit someone. By the way, I've ordered my own FBI file. I think every member of Congress should maybe take a look at what's in these files.

Mr. Chairman, I would like to try to correct one statement that I believe was erroneously made. Earlier you stated that the committee never asked for Mr. Billy Dale's FBI background file. But I have the committee's subpoena to the White House that asks for every scrap of paper in the White House related to Billy Dale, and I'd like to put that subpoena into the record.

I'd like to ask Mr. Gray one question. Do they keep files on -- this is just a personal question -- on all members of Congress? Do they keep FBI files on all members of Congress?

GRAY: I have no idea. You'd have to ask the FBI that. But if I could just make a comment briefly about your earlier remarks? There are some people probably that I don't know on this list, but a great many of them are known to those who are active in politics. In many ways it's a list of the next generation of Jim Bakers. And I believe that if you'd read just two or three paragraphs into the FBI report, I don't care who you are, you'd figure out that this was not someone permanently employed at the White House.

CLINGER: The gentlelady's time has expired.

MALONEY: If I may respond? Only because he did raise an important point. I did read through the file, and I really do not know any of the people on the list. And I would venture to you say you probably don't either, with the exception of the two names that I mentioned. And as he mentioned...

CLINGER: The gentlelady's time has expired.

MALONEY: One was a telephone operator.

CLINGER: The gentlelady's time has expired.

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MALONEY: That's not your future James Baker.

CLINGER: I would introduce...

MALONEY: One worked for the GSA as a secretary...

CLINGER: The gentlelady's time has expired.

MALONEY: UK. Thank you, Mr. Chairman.

CLINGER: I introduce Mr. Culvahouse, who is on the list and you might be interested in meeting.

Let me just say this, that I hope that those of you who request your background files from the FBI are prepared to wait a considerable amount of time because I'm told they're now working for requests from 1992. So it may be while before you're able to get them.

(UNKNOWN): Maybe we can go through Mr. Livingstone and get them a little faster.

(LAUGHTER)

CLINGER: That's true. Excellent suggestion. I'm now pleased to recognize the gentleman from New York, Mr. McHugh.

MCHUGH: Thank you, Mr. Chairman. I'd like to follow up on a couple of questions that, quite frankly, I'm still unclear on. The first is just for my own satisfaction. How unusual is it from the distinguished panel's experience to engage the services of an outside detailee, even forgetting for the moment this was a proven Democrat operative, one with a great deal of investigative experience apparently, but to engage an outside detailee to engage in this process in previous administrations? Unusual, common, somewhere in between?

DANNENHAUER: Well, sir, I can only speak for the administrations where I served. And we had no outside agency details in our office. Now, that's not to say they might have been in some other offices. I have no knowledge, of course. But they are -- I know from the past -- they are traditionally used in some offices. But not in our -- never in our security office. No, sir.

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MCHUGH: Thank you. Ms. Dannenhauer, earlier in response to a question you said that had you become aware of inappropriately requesting a file you would have immediately returned it.

MCHUGH: And then I believe you said, but that didn't happen. Did I hear you correctly. And through all the administrations you served on, you never had a situation with an inappropriately obtained file?

DANNENHAUER: I don't see how -- nothing in my -- brings it back to my memory, because we had all these safeguards. We only asked for the things that we were already working on. We had a reason for it. We would tell the FBI what that reason was. So we wouldn't want anybody else's file. Why would we? I mean, we were working on staff, we were working on presidential appointees. That really energizes enough work in that office that we would not have even accepted another one, even if there had been a mistake. But there was no mistake.

MCHUGH: Thank you. Mr. Gray, you noted that it was your understanding the FBI had advised the White House during this process of supplying the files, that no name checks were being done on these people. Could you, for someone who's not familiar with the process, what should that have told the White House was happening? What does that mean when you say no name checks are occurring?

GRAY: That they were asking for these files with no apparent reason to do anything with them in terms of getting the individual involved cleared for access to the White House. Because, in order to clear anyone on that list of 400 you would have had to do a name check at least to update, to bring forward the, you know, fill in the missing years between that person's last date of service. And if they weren't doing that then what were they doing with the file, if they were not updating it?

MCHUGH: So from your experience if this was a bureaucratic snafu the FBI's notification of the White House that no name checks were occurring should have been a clear message that something was awry and amiss and that they should follow-up and see what was going on and yet they failed to do that, is that a fair statement?

GRAY: Well, clear message. I don't want to get into the qualitative -- it certainly is a signal that something was a little unusual.

MCHUGH: Thank you. Ms. Gemmell, you noted in a previous question that you saw what you believed to be the list provided by the Secret Service. You then noted you didn't hand that over to anyone

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because you didn't know who was going to be performing this function, is that correct?

GEMMELL: That is correct.

MCHUGH: The list that you saw, to the best of your recollection, does it correlate to the names we have seen out here? Did that list comprise over 400 names of Republican employees of the White House from the past administrations, or was that a totally different list? Do you recall that?

GEMMELL: Sir, to begin with, the particular portion of that list that would have housed these names was not being worked on, but the actual size of the list would have been far greater than 400 names, sir. For an example, it would have also included all of the staff members serving in Office of Management & Budget, Office of Administration. In other words, it would have included all of the Executive Office of the Presidency offices.

MCHUGH: So it would be your impression then that the list that we're dealing with now -- the 400-plus names, at least that's what it is for the moment, was a -- to be charitable -- a refinement of the Secret Service list that you were familiar with. And there had been other lists, I understand that, but the Secret Service list you are familiar with?

GEMMELL: Yes, sir, 400 names would have been just a portion of that huge printout received.

MCHUGH: And not in disposition? In other words, not by office, but strictly alphabetical, which is contrary to how those lists are supplied, too. Is that correct?

GEMMELL: Yes, sir. The breakdown of the list is by division first, and then alphabetical within the division.

MCHUGH: So this bureaucratic fumbling was, from your perspective, of whittling down the list from what you feel are thousands to mere hundreds, was a bumbling, a rather artistic effort to direct some very specific inquiries on some very specific people that just remarkably happened to be Republicans, A through whatever? Is that a fair statement.

GEMMELL: I really feel that I can't comment, sir, since I wasn't there.

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MCHUGH: Would you disagree with what I said, not agree with it -- forget it, would you disagree with that as a theory?

GEMMELL: Not in totality, no sir.

MCHUGH: Thank you very much. I yield back, Mr. Chairman.

CLINGERS: The gentleman's time is expiring. And now I'll be pleased to recognize the gentleman from Vermont, Mr. Sanders, for five minutes.

SANDERS: Thank you, Mr. Chairman. I just would like to make a brief statement, and that is that this is clearly a very serious matter of whether it was a bureaucratic mistake or a politically-motivated one.

Americans have a right to privacy, and FBI files contain very serious private and possibly derogatory information that individuals would not want to be read by anyone not needing the information for security purposes, and certainly not by politicians who may -- could have the potential to leak that information to the press.

It's my understanding that they contain medical files, credit history, and interviews with family members and close friends. They document sensitive issues about someone's history that is nobody's business but their own.

And I am very concerned that competent procedures and security personnel may not be in place at either the White House or the FBI to protect these sensitive files. I hope these hearings point out where the problems lie, and we can ensure the public that their privacy will be adequately protected and this abomination will not happen again.

Thank you, Mr. Chairman.

CLINGER: Thank you, Mr. Sanders. I'm now pleased to recognize the gentlemen from California.

HORN: Thank you, Mr. Chairman. I think as we've listened to this and we've read the papers and we've read some of the briefings, it's very clear that there's a breach of trust of the citizens of this nation who serve their country when their most sensitive personal history is perused for seemingly political purposes. And Mr. Chairman, I'd like to have my statement put in the record at this point.

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CLINGER: Without objection, so ordered.

HORN: ... and pursue some of these questions. As I understand it, the Secret Service has briefed several members of the other body that they've checked and there were no glitches in their computers, and that these lists of White House personnel were always available.

So it was easy to cross-check the list we're talking about versus who's involved on the White House personnel that needs clearance to get into the White House. I'm concerned, my staff director of the subcommittee I chair, government management information technology, Russell George, happens to be on that list. He was a Bush White House appointee.

And so my colleague from New York, who mentioned that list, there are a lot of people whose names we recognize on that list, and they have been involved in politics and particularly in service to their country.

Now as I recall the numbers, and I've watched this form Eisenhower up, there's generally 3,000 presidential nominees that the president nominates. There's 300 that they seriously work with, and the counsel's office I'm sure is involved.

As I said the other day, I think personally, the president ought to sign the list, not go through every file, but sign the list that goes to the FBI on a request for files. I have worried since, well, I guess since I came to this town in the late '50s.

HORN: I wasn't worried about Eisenhower, I was worried about most people since in terms of the groupies they get on the White House staff that might like to go and see what this operative is doing or that operative and that the degree to which they have access to these files.

And I'm really amazed, very frankly, that the White House counsel didn't put their name on it with a signature. I think that's minimal, that not just typed form should be going to the FBI, but somebody ought to look at that list in the Counsel's Office and get your signature on it and not your secretary's signing your signature which we know happens on the Hill as well as happens in the executive branch.

And I guess I will ask you, would you have known, any of you that were in the White House, if the president of the United States requested an FBI file, or his chief of staff, they didn't necessarily

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have to go through you. They could pick up the phone, say, I'm the president, I'd like to see that file. I'm the chief of staff, I'd like to see that file. How do you make sure that all of those requests went through your office?

CULVAHOUSE: We had a rule which I think we inherited from the previous administrations that no one in the White House, of course, I suppose the president could do it. But no one else...

HORN: I think he could...

CULVAHOUSE: ... in the White House, certainly not the chief of staff, could go and talk to the Department of Justice and certainly not to the FBI without going through us. And we in turn, would have to go through the attorney general of the Office of Legal Counsel of the associate attorney. There were rules about who we could talk to and who we couldn't. We couldn't -- I couldn't even and never did talk to the FBI except through the established channels that we had for -- the spin unit or whatnot...

HORN: Well, let's put the question this way, do any of the five of you know of requests for files by the president of the United States, any of them, to with whom you served, or the chief of staff to the president which the requests were made outside of the counsel's office?

GRAY: No, sir.

HORN: No -- no?

HAUSER: I'm not aware of any. And I'm not...

HORN: You're not aware...

HAUSER: And I'm sure we would have been advised by the FBI if there had been such a request.

DANNENHAUER: No, sir.

HORN: No.

GEMMELL: No, sir.

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HORN: No, all right. So, at least in the period you served, which is essentially the Johnson administration up here isn't it, as I remember through Bush, and it seems to me you can, at least based on your knowledge -- now, we haven't heard from the FBI. And I guess my next question is, did the FBI ever request the return of any of these files. That any or your files that you had taken.

In other words, as Mr. Kanjorksi found out, once those files go to the White House, they're not a copy of the original file, they're a copy of the summary of that file. Now, I take it the summary is made by the FBI?

CULVAHOUSE: That's correct.

HORN: And then sent over. So, none of you have really gone over to check what the raw data was versus what the FBI said the summary was?

CULVAHOUSE: On very rare occasions we would look at the raw data.

HORN: OK.

GRAY: But with one exception, on judicial nominees which go through a slightly different process we do get all the raw data. It is our -- my experience that the summary we get would contain any derogatory information. And that's what we would often go back and ask that...

HORN: I'm sorry -- the summary would do what with?

GRAY: It would contain all derogatory information...

HORN: ... all derogatory information. OK.

GRAY: I'd be very surprised if that got edited out at all. And also in terms of what happens to the files, I think, the Presidential Records Act literally requires those files to go through to the presidential library. It is all inclusive. When a president leaves office, the White House -- there's no paper with writing on it left.

HORN: Well...

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GRAY: And that's probably a flaw in the Presidential Records Act.

HORN: Yes. I'm sympathetic to a lot of that. On the other hand, when you've got a quote, "permanent" unquote, staff that has worked there from five to 10 to 15 to 30 to more years.

HORN: I don't know why those personnel files, if you would, are not left for the president that comes in.

Now if the president comes in, as you know, they're free to fire anybody they want. These are pleasure appointments. But generally, they keep people with competency between administrations. This administration seems to have dipped down more than more, but generally those people that are the gardeners, the head usher -- head ushers come and go, of course, we know, too, in a few cases -- but generally those people are the people who make that place run.

And it isn't the OMB top officials or the White House top officials. I can see taking those files. Or I can see sending them back to the FBI, in either case. But I guess I'm worried that, A, you're looking just at summaries. I would want to see more if I was reviewing somebody. And you're saying they do for judges. But I'd sure want to see if for cabinet officers if they were in my cabinet. I'd want to look at that file.

And in previous administrations, the Eisenhower administration, which I served, I know that when a cabinet secretary had a question on something, he went over to the FBI to look at the file. The file was not sent over. And sometimes the secretary was right and the FBI was wrong.

CLINGER: The gentleman's time has expired. And I now please recognize the gentleman from Wisconsin, Mr. Barrett for five minutes.

BARRETT: Thank you, Mr. Chairman. Mr. Chairman and Ms. Collins, I want to thank both of you for holding these hearings. I think it's extremely important that these hearing be held. This is a serious matter. And I think one of the appropriate roles for the Government Reform and Oversight Committee is to hold a hearing on exactly this type of issue, to find out what the problem was.

I think any time you have this easy access to FBI files that all Americans should be concerned. And I think it's appropriate for us to determine exactly why these files were released, and I'm happy that we're doing that.

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I think as we look at this, it's important to note that the president had apologized for this. The president recognizes also that this is a serious matter. Leon Panetta recognized it's a serious matter. I see today that Mr. Panetta announced that the White House is restructuring its personnel security functions by incorporating them into the security office of the Executive Office of the President. I think that shows, again, that the White House recognizes that this is not a matter to be taken lightly.

I think that our role also has to be to find out what the reason these files were requested. I think that's important for our committee to be doing that. And I think equally important our committee should be working aggressively to make sure that this type of mistake does not happen again. I think, frankly, that the FBI bears a little of the fault as well.

I know that the director of the FBI was critical both of the White House and his own agency. And I think appropriately so. Because I think that the FBI has to be mindful of the personal liberties of our American citizens.

Mr. Culvahouse, why do you think you were on the list?

CULVAHOUSE: My name starts with a C, and I served in the Reagan and Bush White House.

BARRETT: Mr. Gray, why do you think you weren't on the list?

GRAY: Because they went through G-o and stopped. They didn't do any Gr's. And Gra would have been pretty high at the list, but it's possible that Wendy Gramm would have been the next person. But they stopped at G-o, thank God.

BARRETT: Do you think that there are more bad guys whose names begin with A through G-o, than people whose names begin with Gr through Z?

GRAY: I have no -- one reporter who I will not identify -- this is sort of slightly frivolous but said that why do you think they stopped at your name. I said, I have no idea.

He said, do you think it's -- yours was the first name that was recognized? And I said, that's very flattering. Eat your heart out Jim Baker, Ken Duberstein ...

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(LAUGHTER)

But he said, well, until we know more, why don't you just claim credit?

But I have no idea. In all seriousness, I have no idea why they stopped at G.

BARRETT: Mr. Culvahouse, any idea reason why you think they went A through G and then stopped at G?

CULVAHOUSE: Well, at this 10 seconds I accept the explanation that someone recognized that there was a problem. What is mystifying to me, however, is why they kept the files if they recognized there was a problem. I think had it not been for the efforts of this committee, at the end of the Clinton administration, whether it's next January or January four years hence -- our files will be on their way to the Clinton library without us ever knowing that they were there.

BARRETT: Ms. Dannenhauer, why do you think they went A through G, G-o, excuse me, Mr. Gray?

DANNEHAUER: I wouldn't have any idea. No, sir...

BARRETT: Ms. Gemmell?

DANNENHAUER: ... it doesn't it's just unexplainable. I would not know...

BARRETT: Any thoughts as to how the A to G mystery occurred?

GEMMELL: No, sir, not at this time.

BARRETT: Mr. Hauser?

HAUSER: I have no idea. What's mystifying to me is...

BARRETT: Let's turn the mic on -- that's fine -- that's fine -- I appreciate that.

(LAUGHTER)

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HAUSER: I don't see any see any sinister motive in picking A through G as I said. If there are people that are not popular, I assume there is many people who are not popular, who's names begin Gr as begin with C. So, I don't -- I guess I conclude from that this could be just a screw-up, frankly, in terms of returning the documents.

For me, this whole issue of whether the White House, even in its archives should hold these documents and have them be made public for 20 years and then -- held private -- and then released in 20 years, I, frankly, think that we should as a committee be looking at that issue. Whether it's a Republican White House, a Democratic White House, or Mr. Sanders gets the White House -- an independent White House.

I think that people just because they have wanted access of one form or another to the White House, 20 years later having their FBI files released, I don't know that that's an appropriate price for them to pay. And I think -- I would ask that we would look at that as a committee.

GRAY: Just one point. I -- we had a discussion amongst ourselves. We don't know whether the requirements of Privacy Act would prompt the general 20 year release standard under the Federal Records Act. It may be that -- and then -- they're probably experts at the archives who could tell you this, that may be that the Privacy Act requirement would forever protect these records and that they would not be subject to the general 20 year release standard of other White House documents on the Federal Privacy -- under the Presidential Records Act...

BARRETT: Again, I think it's...

GRAY: It's a fair question...

BARRETT: If there was an FBI file on me, which there might be, I certainly would want to make sure that the Privacy Act it'd trump that. The last question I have, Ms. Dannenhauer, maybe you could help me with this. How many records are we talking -- here we're talking 400 people. Four hundred out of how many have been requested, what percentage of the files requested do these 400 constitute?

DANNENHAUER: Again sir, I would not know because I wasn't there.

BARRETT: But maybe -- you were there over a number of years. Sort of a -- maybe you could give me a rough annual -- I assume in the beginning of an administration you'd have far more requests on a

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monthly basis than you would in the third or fourth year. Are we talking, 2,000 requests a year, are we talking 5,000 requests a year, 10,000 requests a year?

DANNENHAUER: I can only -- I cannot recall, sir. But I did see actually some numbers in the papers about the number of name checks going over to the FBI.

DANNENHAUER: And I believe that was reported in the paper and it had the numbers by month, I believe I saw.

But as far as the lists are concerned, only Secret Service would be able, I think, to accurately answer that question.

BARRETT: Can anybody answer that question on the committee? OK.

I yield back my time. Thank you.

CLINGER: The gentleman's time has expired.

I think the record should note that the -- Director Freeh's report did indicate that there was an inordinately high number of requests during that period of November-January '94. I'm now pleased to recognize the gentleman from Florida, Mr. Mica, for five minutes.

MICA: Mr. Chairman, and my fellow committee members. WE have to really go back to see why we're here. And that's because we were looking at Travelgate, which involved the abuse of the FBI and the IRS in the firing of the White House travel employees.

The reason we're here also is we requested 3,000 pages of documents, most of which we know exist because of other materials we've obtained, and we've been denied those documents for two years. I think we had a bipartisan subpoena to get those documents.

We also were involved in passing this contempt citation on Mr. Quinn, the legal counsel, asking him to produce the documents which he still has not done.

And by way of getting a thousand pages and holding off on this contempt citation, we -- we still have two-thirds of the documentation relating to this affair missing.

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Mr. Chairman, I'm calling on you again -- I'm going to call on the speaker, and I'm going to bring the matter to the floor of the House that we pursue this contempt citation. This isn't a matter of national security. It isn't a matter of national policy. This is a matter of abuse within the White House so I wanted to start with that statement.

Then I have some questions. And let's -- let me just try to get to the heart of this. First of all, was it right or was it totally wrong for the White House to request these files?

Was it right or wrong?

GRAY: I think it was wrong.

MICA: Wrong.

CULVAHOUSE: It's wrong because...

MICA: That was the initial infraction.

GRAY: It's wrong because these are not current employees so there's no just and probable basis and no consent.

MICA: Was it unprecedented to request a blanket list like this of former White House employees? Do any of you know of this ever being done before?

CULVAHOUSE: Well, Ms. Dannenhauer has already testified that it never occurred.

MICA: But nobody knows of its ever being done...

CULVAHOUSE: I'm not aware of it.

MICA: All right. The other point is the White House at one point said the Secret Service provided the list. This -- you testified -- Ms. Gemmell, you've never seen a list like this before. This wasn't a Secret Service-type list that you're familiar with?

GEMMELL: We did receive a list from Secret Service for processing.

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MICA: But this list -- you may be familiar with -- you've not seen anything like this provided on former employees of an administration?

GEMMELL: No, sir. No, sir.

MICA: And also, it's unprecedented that access to files in this manner -- did any of you see interns running around or detailees involved in this process before?

Before -- again, you testified that you saw this happen and you're -- how long were you there during the Clinton administration?

GEMMELL: Until August 13 of '93.

MICA: So you were also then involved in their initial clearing of passes for the White House? Would that be correct? Security clearances?

GEMMELL: For the new staff members, yes, sir.

MICA: For the new staff members.

MICA: And did that proceed in the same fashion as previous reviews that you are familiar with? Or were there?

GEMMELL: Yes, sir. It did.

MICA: It did. But this was unprecedented that in fact there was access by detailee -- well, I want to say interns at this point. Is that correct?

GEMMELL: Yes, sir, it was a first-time occurrence.

MICA: OK. Is it standard procedure, Mr. -- or was it standard procedure to the counsel here, to the former counsels, for non-White House employees to personally review FBI reports?

Were you ever aware of any non-White House employees in the White House reviewing any of these -- were you aware of any?

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CULVAHOUSE: No, sir, other than the Secret Service, who reviewed it for presidential security purposes.

MICA: Secret Service. Were you aware of any?

HAUSER: No, sir. The only thing I might think of is that there might be another security officer from another agency who had a need for some limited purpose, but other than...

MICA: But White House -- non-White House personnel within the White House. Had you ever seen this...

HAUSER: No.

MICA: ... happen before?

HAUSER: No.

MICA: Had you ever seen this happen?

GEMMELL: No, sir.

DANNENHAUER: No, sir.

MICA: Are any of you aware of a detailee being brought into this process? Were you aware of a detailee ever being brought into this process?

GRAY: No.

MICA: Were you aware?

HAUSER: No, sir.

MICA: Were you aware of a detailee? Were you aware of a detailee.

GEMMELL: No, sir.

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DANNENHAUER: No, sir.

MICA: Now if a detailee came in that had this type of political background, would that have been some concern and had access to -- you're aware of Mr. Marceca's background -- very political we've now found out.

What would be your reaction if someone came in like that? Would you have raised some questions about his or her acts?

GRAY: Well, I would have thought that I would have been responsible for hiring them, and since I wouldn't have hired him, I don't know how I would have reacted if -- no, I don't.

MICA: What would you have done, Mr. Culvahouse?

CULVAHOUSE: I would have told him to go work for the White House Office of Political Affairs and not my office.

MICA: And what would you have done if you'd seen a person of this background, and certainly somebody would have checked out this person's background, in fact, if they were coming into this sensitive area. What would you have done, Mr. Hauser?

HAUSER: I agree with Mr. Culvahouse. He would have been better suited for another office within the White House.

MICA: And of course, you two weren't in a position, but -- was that acceptable?

GEMMELL: Yes, sir. It would not have happened.

MICA: Yes. Ma'am.

DANNENHAUER: No, sir. It would not have happened.

MICA: Finally, Mr. Culvahouse, Mr. Freeh said that the FBI was victimized. What about -- now I can -- I'm chairman of the House Civil Service Subcommittee. I oversee federal employees whether they're in the White House as political employees or whatever.

They have some rights under civil rights and privacy act. He

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said the FBI was victimized. Weren't past employees victimized? Weren't you victimized? And wasn't the privacy act victimized?

CULVAHOUSE: Yes, sir.

MICA: Thank you.

CLINGER: The gentleman's time has expired. I now recognize the gentleman from Virginia, Mr. Moran, for five minutes.

MORAN: Thank you, Mr. Chairman. Mr. Chairman, I still think that this is primarily a partisan political effort to embarrass the White House, and that it has yet to be determined whether there's any real substance to the allegations of malfeasance -- in other words, deliberate wrong-doing versus misfeasance, which is simply clumsy incompetence.

MORAN: And I suspect that if the Bush administration hadn't cleared out virtually all the files; but, instead, had cooperated with the incoming administration, the way in which the Carter administration cooperated with the Reagan administration during the transition, that this stuff may very well never have occurred.

But, Mr. Chairman, I need to use my time to settle a score with Mr. Dale. Since Mr. Dale's dismissal is really the *raison d'être* for all this stuff that has come to light, had Mr. Dale not been accused of wrongdoing after his dismissal, we never would have gotten into any of this.

In the last Travelgate hearing I implicitly accused Mr. Dale of the crimes for which he was indicted. His daughter followed me down the hallway after that hearing. I was not responsive to her because I would assume that any daughter would defend her father under any circumstances.

But last week, I was on a TV debate show, one of these, what, CNN things with Mr. Dale. And, afterwards, he confronted me in what I guess you'd call an intense and personal way. He was obviously very angry. But what struck me was not so much the intensity of his anger as the fact that it was the reaction of somebody that has been falsely accused.

I lay out that context to explain why I didn't make the effort to contact other people that perhaps I should have until last week. I have just assumed that what I read in the papers and have been provided in terms of background material was sufficient.

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But I have subsequently talked to people over and under and around Mr. Dale, while he served several administrations. And, as a result, I've come to the inescapable conclusion that, in fact, Mr. Dale is an honest professional who was, in fact, falsely accused.

I say that because it needs to be said. And others, in fact, have said it and have not been heard. Most of the people that I've talked to, I have to say, are actually Democrats, many of whom worked for the Carter administration.

I do think that, since being accused, Mr. Dale has pursued his intent to seek vengeance on the Clinton administration with remarkable success. But I'm not sure that most of us would not have done the same under similar circumstances.

So, since that's the source of much of our hearings, I feel as though it's only right to say what I believe now to be the case.

MORAN: Now since I have a little time left, let me ask Ms. Gemmell, particularly, if the explanation that we have heard basically that these two folk, Mr. Marceca and Mr. Livingstone over him, were given information that the list, the Secret Service list, which was deficient in terms of background summary FBI file information was available, and apparently was available in this vault, is it not possible that without any intent to do wrong, they accessed this list and went about filling in these forms because people who were both on the active and inactive lists were on this list that the Secret Service initially had put together?

That is their explanation, that they learned of this list and that in fact the reason they were assigned to doing it was that we had far too many people who had access to very sensitive information who had never been adequately investigated by the FBI. And so they were told by Mr. McLarty, get on the stick. Get these files filled out. We can't have all these people running around without clearance having been provided.

And this was just part of that effort, although it was much too inclusive a list, and many of whom were inactive people. The list that then we subsequently get was a list that had been where these people who never should have been looked into we called by the person that came in afterwards, a Clinton person, to correct this. And that was given to the Clinton admin -- to the, excuse me, to the committee.

Now, that's their explanation. Can you tell me that is not possibly true? Is there any reason to believe that could not have been the case, been the explanation for all of this?

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CLINGER: The witness can respond. The gentleman's time has expired.

GEMMELL: The only way I know how to respond, sir, is that once again, knowing the young people that were in the office at the time, typing those standard forms, being used as the request forms, I do believe that they would not have had the experience to have the name recognition.

CLINGER: The gentleman's time has expired. And let me thank the gentleman for his graciousness and remarks about Mr. Dale. I'm sure Mr. Dale is appreciative of that civility on the part of the gentleman from Virginia.

I now recognize the gentleman from Massachusetts, Mr. Blute, for five minutes.

BLUTE: Thank you very much, Mr. Chairman. And I want to commend you for having these hearings, and in a larger sense, commend you for your steadfastness and commitment to getting to the truth and the issue of the travel office firings and the other issues that have come before this committee.

The truth is the *raison d'être* of this committee. That's our job for the American people, to provide oversight on the executive branch.

BLUTE: And I think under your leadership this committee has done a very good job in getting to the truth.

It seems to me that the issue here is the, and I think Mr. Culvahouse mentioned, the culture under which you operated your office and your responsibilities versus the culture that existed in the Clinton administration that would allow such a thing to occur.

You clearly, under both Democrat and Republican administration, had a culture of responsibility and a culture of sensitivity to the importance of privacy issues with materials that you had the responsibility to deal with. And unfortunately it seems that this administration did not set that culture of responsibility, and indeed there was a lack of sensitivity to the importance of privacy questions on these important documents.

I want to ask you how, and I think it's important for the American people to understand, how these records are used. You get summary of FBI background checks that are extensive and thorough, you

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view them and you make judgments about the person that you're reading about.

I wonder if you could explain how you use these documents to make a judgment about whether somebody should get an FBI clearance or not. In other words, does the FBI make recommendations?

GRAY: The FBI does not make recommendations. The FBI does not pass substantive judgment. That is left to us to do, and it differs from administration to administration, from president to president, but basically it's fairly common sense. You see a pattern of, say, drunk driving, you see a pattern of shoplifting, you see heavy drug use, and you say, gee whiz, this person probably ought not to be in this job.

And though one could go on for hours talking about it, but it's a common sense sort of walking your way through who would you entrust with the nation's secrets, who would you trust to vindicate the public good and to make your boss look good. I mean it's a fairly straightforward thing.

CULVAHOUSE: Likewise, Congressman, as a result of, I mean we've all made mistakes, and the result of the ill-win indictments (ph) we went back and tried to figure out where we had gone wrong in approving some assistant secretaries of the Air Force or whatever that ultimately found themselves in trouble.

And you'll see a pattern, you'll see a pattern of people not paying taxes on time consistently, a pattern of poor credit records, of disrespect for authority, and some people that maybe have the right political connections but are not the kind of people that ought to be occupying positions of responsibility or ought to be in the same room with the president of the United States or the prime minister of Great Britain.

BLUTE: And your feeling is that the information that you're viewing is so sensitive that you would not, I think someone testified, you would not even tell the president of the United States the why you're recommending that this person not be given clearance?

CULVAHOUSE: He insisted with me I think on two or three occasions that I give him a glimpse, not the document, but I give him a hint of what it was about, and he quickly backed off and said, "I don't want to know any more."

BLUTE: But that wouldn't be a standard request?

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GRAY: No, and I think I testified that these files were not shared with anyone outside the White House Counsel's Office. And our concern, Mr. Blute, is that when there is a breach of privacy, for whatever reason, that the usefulness of those reports is going to be diluted in assisting the president to discharge his functions, to staff his administration, and that's a real concern.

BLUTE: My other question relates to the personnel matters within that office, within your office. Obviously, Ms. Dannenhauer and others have performed their role admirably and well, but that is the responsibility of the legal counsel to oversee that entire operation, is that correct?

CULVAHOUSE: That's correct.

GRAY: That's correct.

BLUTE: Let me ask you something that was reported recently in Time magazine. This week they are reporting that three former Clinton administration staff members have said that Mr. Livingstone had a habit at various cocktail parties and other places of insinuating that he had read their security files.

Now, I'm wondering what would be your reaction, as the legal counsel to the president of the United States, if someone made it known to you that someone within your purview, within your office who had access to secure files, was speaking of these files in a cavalier way out there? What would be your reaction to that?

GRAY: I would hope that the individual who heard this would have come to me or one of us and said, "Do you know this is happening?" And then I hope I would have fired the person immediately.

BLUTE: Could that be a serious breach of the security of your?

UNKNOWN: Yes, sir.

UNKNOWN: Absolutely. I mean that would have been just, I mean an outright breach of any discussion outside the confines of the counsel's office.

BLUTE: Well, Mr. Chairman, I think what we have here is what I said earlier, a culture of irresponsibility and a lack of sensitivity to the importance of the privacy matters that this office deals with, and I think this report just further exemplifies that lack of

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responsibility.

I yield back the balance of my time.

CLINGER: Thank the gentleman. And now please recognize my colleague from Pennsylvania, Mr. Chaka Fattah, for five minutes.

FATTAH: Thank you, Mr. Chairman.

Mr. Gray, is there any reason, based on all of your experience, to think that the Secret Service is a political operation in any way or a professional operation? How would you characterize them?

GRAY: Highly professional.

FATTAH: So that if they developed a list that they submitted for any purpose, that would have been strictly professional, the make-up of that list.

GRAY: That would be my instinct, yes.

FATTAH: OK. And just based on your impressions and your work and your long experience with the FBI, that is a professional organization, too, would you characterize them?

GRAY: Absolutely. Highly professional.

FATTAH: So that if we would take from what Mrs. Gemmell has said, that this list, let's assume that this was the list that the Secret Service had produced, it was placed in the vault, these new employees came in, they got the list, they sent it over to the FBI. Now, there was nothing that either the Secret Service did wrong in producing the list or that the FBI did wrong in submitting the reports, it was only the judgment of the White House personnel, Livingstone and this detailee, that really is in question here. Is that fairly correct? You're not questioning either the FBI's role in this or the Secret Service's role.

GRAY: Not the Secret Service, although I still don't understand where the list came from. But as to the FBI, I think Director Freeh has said that, raised questions in his own report, in Shapiro's report about...

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FATTAH: But you said earlier in your testimony that, well, maybe accidentally they, you know, I mean that's understandable, you don't ascribe any...

GRAY: I, no...

FATTAH: Any untoward motive...

GRAY: One way or the other, I...

FATTAH: ... to either of those entities?

GRAY: One way or the other I just don't know, sir, but once having gotten the files I don't see how they could have read through them and then...

FATTAH: How the FBI, once they have gotten the files?

GRAY: No, the White House.

FATTAH: Or how the White House had gotten it? OK, that's what I'm saying, I'm trying to center in on this. But the real issue here is these employees at the White House, the detailee and Mr. Livingstone and their actions once they had gotten the files from the FBI.

Now -- and there's been a lot of comments about the fact that they had political reputations and had previously been involved in partisan political activity. Now, many members of Congress have been involved in partisan political activities, yourself, others, you're not saying that as a general course people who've been involved in politics somehow can't act in professional ways?

GRAY: Absolutely not, sir, I said in my testimony that I'm political in the largest sense, myself, all of us are.

FATTAH: So, it is not because of their political leanings that you question, or that we should have some concern about their activities, it's whatever they did with the files?

GRAY: No, sir, I think there is question about whether or not you would bring a detailee in from outside, not responsible to the White House counsel, who had a background of being a political

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operative, which I don't think I have, I hope, sir, maybe I do. But, his being a political operative in campaign activity and what not, I think that's what...

FATTAH: I want to follow this through. So, you think that people being involved in political campaigns somehow creates a dynamic in which they can't act professionally in a work environment?

GRAY: No, I didn't say that, no sir. I said that this particular individual given his background as a detailee, not apparently responsible to the counsel of the president, that's what gives me...

FATTAH: You are aware that -- well, you may not be aware -- let me say this, that here in the House we have people in the speaker's office who have been detailees from the military and from other operations who are doing important work on behalf of the Congress -- people who have at times had political leanings. Most Americans, I guess, at times have had political leanings, may have been active in campaigns.

I guess the point I'm trying to get at is, that the real issue here is not the list that was created by the Secret Service or the FBI creating the files and sending them over, or even the political background of these two individuals. That the real issue for the committee it would seem, in our search for answers, is to try to figure out whether anything improper was done other than an accidental mistake in terms of not having the list updated.

Now, whether that was the Secret Service's responsibility to make sure that they had an additional updated list, or whether it was their responsibility, somewhere in the midst of this, there was an outdated list that was being used to order these files. But the question becomes, once these files came in, whether anything improper happened. And we'll have to have another panel, obviously none of you can comment on that. But you all have had a great deal of experience.

Let me try to ask a different question because as we beat up on this White House about making this mistake, I'm interested, given your long experience. I guess Ms. Gemmell, you've had the most experience of anyone at the table working in the White House. Have you seen any administrations that have been mistake free?

GEMMELL: No.

FATTAH: Mr. Gray, have -- in the administration that you worked in, was it mistake free?

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GRAY: No, everybody makes mistakes, but sir, I would...

FATTAH: Excuse me, Mr. Culvahouse.

CULVAHOUSE: Every administration makes mistakes.

FATTAH: Did the administration that you worked in, did it make a mistake or two?

CULVAHOUSE: Absolutely.

FATTAH: OK. Now, I think we all know the answer to that question. And so as we go forward, looking at this matter, what we should be, it seems to me, concerned about, Mr. Chairman, looking at whether there was any improper use of these files that were mistakenly gotten. And it is at least Mrs. Gemmell's testimony that she believes that it could have been accidentally, an accidental mistake that they were ordered but notwithstanding that, to see whether there was any misuse.

FATTAH: And I think that is the question that we need to search for. I want to thank all of you for your participation here today. I know it's been a long day, at least for me.

But I think that, as we go forward, we should keep in mind that all administrations have made mistakes. It is entirely plausible that the explanation that has been given is, in fact, an explanation that is truthful. And, as we hasten for, I believe, partisan reasons...

(AUDIO FEED INTERRUPTED)

... long this list would have been. Would it have been an alphabetical list? Would it have known who was active and inactive? What kind of information would have been left?

GEMMELL: Sir, the list was supposed to have been of active personnel only. It would have been quite voluminous. I have no idea at the number. It would have been a staggering number.

UNKNOWN: You don't see any reason why Mr. Dale's name or Mr. Culvahouse's name would have been on that list, then, do you?

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GEMMEL: No, sir. It should not have been.

UNKNOWN: OK. Thank you. I think that clarifies my question. People who no longer work at the White House and in some cases have been gone for several years should not have been on that list that you...

GEMMEL: Absolutely not.

UNKNOWN: Thank you.

The purpose today, we've tried to show that the practices of the past administrations has not been consistent with what this administration has followed. And I think we have seen that up and down. We've (ph) heard (ph) testimony about the vault and where the FBI files were kept. Were they kept in the same place under both administrations, all administrations?

GEMMEL: Yes, sir. They were.

UNKNOWN: So, the current administration kept them in the same room that the Bush administration and the Reagan administration kept them?

GEMMEL: Yes, sir. They did.

UNKNOWN: That clarifies that. We heard from one of my friends on the other side that when he asked Mr. Culvahouse, has this hurt you, what damage have you shown -- You wouldn't necessarily know what damage could come from people seeing your file that shouldn't see it, would you?

CULVAHOUSE: No, sir. I don't. That's probably yet to be told, as I live the rest of my career, and if I have the bad judgment to try to go into government again.

Congressman, the -- You know, I suspect I'm not a terribly sympathetic figure. I can probably take care of myself if someone uses my file.

The people that I worry about -- I can think of two or three occasions; Dick and Boyden can probably think of others that happened to them -- where we would be told if someone wanted to work in the White House, someone who was qualified, usually a lower-level person,

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maybe a secretary or someone with a lot of technical expertise, you had concerns about going through the background process.

I can think of a couple of occasions where I counseled people who would reveal things like -- and I'm not going to give you the exact situations -- they were recovered alcoholic or they'd gone through a messy domestic situation and would have a poor credit report.

We would counsel them that if that's all it was, if they were forthcoming with the FBI and if there was nothing else in the record, that they would survive the clearance process, that it would only be known to professionals at the FBI, at the Secret Service; only be known to people like Jane Dannenhauer, my deputy and me, if there was an issue. But I probably wouldn't read it that's all there was.

That person, in a couple of cases, went through clearance under that representation. It turns out I misrepresented what happened because that person left at the end of the Reagan administration or mid-way in the Bush administration. But now their file has been reviewed by someone not on the list I gave them. And those are the people who are at risk. Those are the people I feel particularly bad about.

UNKNOWN: What about somebody being interviewed and you're asking them to be candid and honest. If they knew that this information could be used by other people for other purposes, wouldn't that have a chilling effect on being able to get honest checks in the future as well?

CULVAHOUSE: Yes, sir.

UNKNOWN: Anybody? Mr. Boyden?

GRAY: Absolutely.

UNKNOWN: I think that's really the point of this.

UNKNOWN: And we don't know what damage may or may not occur to the current people on the list. But in the future, in terms of the utility of these files the confidentiality and their use could be damaged by this incident. And I think that's what -- we have a collective responsibility to try to come back and ensure that this doesn't happen again, and try to restore some integrity to process.

The irony here is that the administration claimed executive

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privilege over these documents originally, particularly Mr. Dale's file, which was -- what -- the specific question was, our question would be, my question would be, at what point does this seem, under your knowledge of executive privilege, to fall under that definition? And you want to ask, if someone in your office had seen this and a document was requested from the committee, would you claim executive privilege on this?

Do you understand the question?

GRAY: In terms of the transmittal form between my office and the FBI...

UNKNOWN: Right.

GRAY: Just the transmittal form, the pre-printed form, I would not have claimed executive privilege, because that does not reflect my advice to the president with respect to the nomination process, which I would claim executive privilege.

And I tend to be an executive privilege hog, much to the dismay of prior congressional committees.

UNKNOWN: But I mean, that was your job, too. As the president's counsel, that's your job as we move into these (ph). I just think it's important to note that there are still 2,000 documents that we have not seen.

This release of the last one has caused a firestorm with the press and media, and of course with the committee as well, as we start seeing that iceberg, as a little bit more of it becomes visible, has caused a lot of concern in my -- you know, we're wondering what the next 2,000 documents fall, of which privilege has been claimed. And probably, if we see privilege claimed for documents like this, what does this mean for what is left on their?

We've also seen that the bureaucratic detailee turned up to be a political operative, that the files that was said they was given to them by the Secret Service may in fact be something far more. And we it's going to be a very interesting meeting when we find out how this list was obtained.

The question for me is not who was on it, but who was off it. People actively working at the White House who never got the security clearances, and these seemingly hadn't been requested. People working there every day, people like Harry Thomason, who was working in and

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out every day. And as far as we know, never received the appropriate clearances or checks. So I yield back.

CLINGER: The gentleman's time has expired. I'm now pleased to recognize the gentleman from Indiana, Mr. McIntosh, for five minutes.

MCINTOSH: Thank you, Mr. Chairman. First of all, I've got an opening statement that I'd like to put into the record, if I may.

CLINGER: Without objection, all members' opening statements will be included as part of the record.

MCINTOSH: Let me say, I think the real question that needs to be addressed today that has been overlooked to some extent is in recent months, has there been an attempt to cover up the fact that White House, these files were at the White House? And I think we need to ask ourselves and ask appropriate officials, when did senior White House and Justice Department officials first learn of the existence of these White House files, FBI files in White House?

Was it June 6, when they began returning them? Was it May, when the asserted executive privilege? Was it February when they met with Chairman Clinger? Or was it earlier? And when did they know about that? What did they know, and what did they decide to do about it?

Now the first part of this issue, I think, we need to focus on exactly when the files were sent back. My understanding is that 338 were sent back on June 6. One more file relating to Travelgate was sent on June 10. Seventy-one additional files were sent on June 13, when the FBI issued its report condemning the White House for the way it handled this matter.

But I also understand there's still 17 files, when you add up all the numbers that have not been sent back, according to the FBI's list of now many files they think were sent over to the White House.

MCINTOSH: The second issue in this relates to executive privilege. And I would like to ask our witnesses, either -- any of the former counsels to the president. While you were serving as counsel to the president you've mentioned that the issue of executive privilege came up. And I wanted to ask you were you familiar with the Reagan memorandum concerning executive privilege on that? Mr. Gray as well? Was that memorandum followed after 1982 when it was put into place in every instance where there was an issue of executive privilege and whether it should be asserted?

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GRAY: We followed it?

CULVAHOUSE: Absolutely, Congressman McIntosh.

MCINTOSH: And Mr. Hauser as well. Is it correct that in that policy there is a statement that there will not be a claim of executive privilege relating to documents that have to do with allegations of credible wrongdoing?

CULVAHOUSE: That's correct.

MCINTOSH: And is it also correct that under this memorandum the president states that there will only be an assertion of executive privilege when it is specifically authorized and signed personally by the president?

GRAY: That's correct. And I think it's upon the recommendation of the Justice Department.

MCINTOSH: Now, it is my understanding that the current administration also continues to follow this policy. Are you all familiar with that. You may not have any reason to know what their policy is?

GRAY: I read that they had, but I -- of course, you're involved with your own process here. It doesn't appear that they did in connection with your own contempt proceedings.

MCINTOSH: Well, that's what I wanted to get into a little bit. In looking at this there is a letter -- and Mr. Chairman, I'd like to make part of the record the chronology about the events here and specifically refer to pages that refer to White House withholding of records where it mentions on February 15th that Mr. Quinn had a meeting with Chairman Clinger and at that point indicated that they were going to be holding certain documents for various privileges.

And that later on May 9th Mr. Quinn sent a letter to Chairman Clinger, which I've got a copy of here, and I'd like to also include that in the record and read from it where he says consistent with that opinion -- the Reagan opinion on executive privilege -- the president has directed me to inform you that he invokes executive privilege as a protective matter with respect to all documents in categories on page three, which include the documents that executive privilege has been asserted over.

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Until such time as the president after consultation with the attorney general, makes a final decision to which specific documents require a claim of executive privilege. This letter constitutes your notice of that invocation of privilege.

Now the question I've got for our witnesses: Is there any procedure under the Reagan executive order, which is cited here in the letter, for an assertion of executive privilege where the president has not been informed of the matter and not reviewed the documents, but in some sense a protective executive privilege, I think is the label they put in this letter?

GRAY: I'm not aware of it. It's sort of like a trial -- a trial claim, a practice claim of privilege. I'm not aware of the so-called protective privilege.

MCINTOSH: And if there was any indication to say we're intending to exert executive privilege, although we haven't done it. Would you have suspected they would immediately begin reviewing the documents with the president in order to make that determination?

GRAY: In my -- I can't speak for A.B. or Dick, but we, I don't think would have provoked a committee into a committee vote without having a thorough review of the underlying documents. This was a lesson drawn out of the very early Reagan years and I don't think we would have done that again. But Dick was there...

CULVAHOUSE: In fact, the process that you describe sounds backwards to me. It was a process that was entered into with the Justice Department where there was a review of the documents. And only after there was concurrence by the Department of Justice and the attorney general and the White House counsel that documents were appropriate for an assertion of executive privilege, would there be a presentation to the president?

MCINTOSH: To the president -- well, it appears to me since Mr. Quinn's letter asserts the president has authorized him to assert this privilege and assuming he is being forthright in his letter, that there is a real question of where these FBI -- the fact of this list of FBI files presented to the president? Did the president know that there were FBI files, did he know that they were still in the White House?

Certainly, did Mr. Quinn or Attorney General Reno know about their existence in the White House? And why was there no action taken to return those files until later in June when the FBI became involved in the matter indicating they disapproved of the procedures?

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Mr. Clinger, let me call on this committee to hold further hearings to get to the bottom of these questions.

CLINGER: May I assure the gentleman from Indiana that we do intend to hold further hearings for that precise purpose. And now, I'm pleased to recognize the gentleman from Minnesota, Mr. Gutknecht for five minutes.

GUTKNECHT: Thank you, Mr. Chairman.

I think many of the questions that I had wanted to ask have been asked. But I do want to sort of frame this whole issue because I think we've heard from some of the folks on the other side that no harm, no foul, this is no big deal, it was an honest political, or it was an honest bureaucratic mistake, some of those things.

But let me just -- in fact, our colleague from New York, Ms. Maloney said that there were no big names on the list and so it's no big deal. Well, let me just remind the committee that Representative Forbes' wife was on the list, 12 Congressional aides were on the list, two of our subcommittee staff were on the list. Mr. Culvahouse was on the list, Tony Blankley, the speaker's press secretary was on the list.

Hardly anyone in America, I think, believes that this was some innocent list. And more importantly none of these people were likely to be appointed to high ranking positions in the Clinton White House.

And I guess the question is, why is this important? Why does America care, why should we care about this? Well, I think there are a lot of reasons. Benjamin Franklin once observed that reputations are like fine china, they are easily broken and never well mended. And I think from the beginning of history, world leaders have understood the power of having a secret police that could spy on the individuals who lived in their kingdom, or their fiefdom, or their country, or whatever.

And I think it's important for a lot of reasons because there has been a violation of what I believe is a sacred trust of the FBI. Those of us who grew up watching Elliot Ness and the Untouchables on television have this sort of image of the FBI as an agency that you could trust, they were the good guys, they fought for truth, justice and the American way and that some how they were working for us.

But I think this example demonstrates the tremendous potential for damage to be done to American citizens with a collection of raw data with unprotected ability of certain individuals for political

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purposes to get their hands on this data.

GUTKNECHT: And then ultimately this data could be leaked when it was found to be politically favorable to certain people. Let me just go back and restate what some of the things that we've learned. And I feel a little bit like Will Rogers. You know, he used to say, The only thing I know is what I read in the newspapers.

And as we reread some of the columns and some of the articles and some of the things that have been put into the national newspapers over the last several weeks, it makes a very interesting story. And frankly, the more we learn, the more questions that are raised, not only for this committee, but I think for all Americans.

For example, in the L.A. Times on June 6th, "Mark Fabiani, a White House lawyer insisted that the information in the files was never seen by White House officials. 'What we have here is obviously an innocent bureaucratic mistake and the bottom line is that Mr. Dale's files were not singled out.'"

Well, now we know that's not exactly true. As a matter of fact, the more we learn about Mr. Marceca and the other individuals who were involved in this, they were not low-level, uninformed bureaucrats. I mean, they were hand-chosen.

In fact, it was quoted in The Washington Post of June 9th of this month that, "Anthony Marceca, an Army civilian investigator, who was assigned to the White House Personnel Security Office in late 1993 and early 1994, said he reviewed the files for, 'derogatory information.' If he found such information, he said he passed it along to Craig Livingstone, the director of the office."

And the more we learn about these two individuals, the more questions it raises not only about this White House, but the way that business was conducted over there. Let's just review what we now know about Anthony Marceca.

First of all, we now know that the White House specifically requested by name the assignment of the Army aide who improperly got more than 340 -- now we learn it was at least 400 names -- and frankly, I think if we get the rest of the subpoenaed documents, I think we'll find that the list is much longer than 400 names.

My own guess is that it's more like a thousand because just knowing what we know, to get through G, you get to about 400. The rest, it might be a thousand names that are on this list.

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Anthony Marceca is an investigator with the Army criminal investigation division. We know that. He also had frequent contacts with the first lady, Hillary Rodham Clinton, as well as Vice President Al Gore. This has all been published in the papers or in Newsweek Magazine. He did work for a special committee of the U.S. Senate.

He also did work for various national campaigns, including Ed Muskie, George McGovern, and Gary Hart for president. He ran for delegate to the Democratic National Convention several times. These are all published reports.

"Colleagues remember him as a character in dark glasses and a trench coat who enjoyed cultivating a cloak-and-dagger image. He found a soul mate on the campaign trail in Mr. Livingstone."

And who is Mr. Craig Livingstone?

Well, he worked on the personal staff of Geraldine Ferraro during her vice presidential campaign and was on Gary Hart's staff when he sought the Democratic nomination for president. We know that to be a fact.

"He worked on Vice President Al Gore's advance team in 1992. Livingstone has no law enforcement background, a former restaurant bouncer. He was on the 1984 Hart campaign when he met ex-cop Marceca."

I think the question that we need to ask about these two individuals from this esteemed panel that's been collected today, would you or your folks in your administration have put these kinds of individuals in charge of very sensitive FBI raw data?

CULVAHOUSE: Well, I'll take a stab at answering your question maybe for all of us. I think the great contrast that you see between the way backgrounds were conducted in this administration and in our respective administrations was that Craig Livingstone is making the decisions here, as opposed as somebody at the level of counsel or deputy counsel to the president.

CULVAHOUSE: And there was a very tight control on the operations of the office between the counsel and the individuals who worked in the security office. And I think it's qualitatively very different.

GUTKNECHT: Anybody else comment -- I mean would you have put these kinds of political operatives in that kind of a responsibility in your administrations?

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UNKNOWN: No, sir. Congressman, that is not to cast any stones at Mr. Livingstone or Mr. Marceca. There may have been a place at the White House as I've suggested, the office of political affairs, or some other place, the advance team, where they could have rendered good service. But there are a number of offices at the White House where you want a different kind of individual with a different attitude and a reputation for professionalism and discretion.

CLINGER: Gentleman's time has expired.

GUTKNECHT: Thank you, Mr. Chairman.

CLINGER: And I now recognize the gentleman from Indiana, Mr. Souder for five minutes.

SOUDER: Personally listening most of the day it's been a little scary and I'm sure that some people around the country may be concerned as you mentioned about applying for government jobs. But I particularly wanted to talk to Mr. Culvahouse and have a line of questioning here, really, these are kind of yes or no questions.

We've heard that drunk driving, drug abuse, shoplifting, may be some of the things in there. But a lot of the discussion today is kind of laundered this and made these sound like they're fairly formal files, and I have some questions about the types of things that could appear in them. And I just wondered, for example, in the medical area, could the record show that somebody was HIV positive, which may be known?

CULVAHOUSE: Yes.

SOUDER: Could it be shown that somebody had been treated for mental health problems?

CULVAHOUSE: Absolutely, that's a question that's specifically asked.

SOUDER: Could it be that somebody could be investigated or have domestic violence, sexual harassment, child abuse charges, even if they hadn't been convicted in court?

CULVAHOUSE: Yes, sir.

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SOUDER: Could you have a questions and allegations in there which may not even be true on sexual preference, whether someone was having a marital affair?

CULVAHOUSE: Yes, sir.

SOUDER: This isn't just some kind of financial examination. This is like open season on people's personal lifestyles on their background, going into the hands of political appointees. And I know that, Mr. Gray, I want to see if this is correct. You said that it could have -- it gave you chills to the types of details involved. Is that a proper characterization, and does it, indeed, as you look at this, give you chills as to where these files might be floating even around interns or political people?

GRAY: Yes, sir.

SOUDER: The -- if -- do you view this, given, I understood, at least Mr. Culvahouse is saying, and I think others, that you would not have -- you view this as a breach in Mr. Culvahouse is on the list, a breach of the confidence that you had. In other words, you knew that there would be reviews within the administration that you were in, but do you view that as a breach of the agreement with you, and a breach of privacy and confidence that they appeared in the hands of possibly political people?

GRAY: Yes, sir. I've gone through clearance four times. One as a Senate staffer for nuclear weapons clearance for the Joint Committee on Atomic Energy, then the White House clearance process, then Secretary Cheney appointed me to an advisory commission to look at command and control issues -- with nuclear weapons. And then the -- for the Senate Intelligence Committee to reform the espionage laws. And each time I knew that someone would be reviewing my files. But I had a pretty good idea of who those someones were, what kinds of people they were.

GRAY: But never in my wildest dream did I think a White House, I guess, dominated by a political party of which I am not a member would be looking at my file.

SOUDER: If a doctor breaches confidentiality, they can be subject to a civil or criminal suit. Do you believe people in political positions who violate that breach should be vulnerable to similar?

GRAY: Congressman, I've reserved judgment on those issue. I would need to know more. I think if it were knowing, willful,

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intentional, then the answer is yes. If it were an innocent mistake, although a mistake of such magnitude as hard to envision, then probably not.

SOUDER: Furthermore, as Congressman Gutknecht has pointed out, we don't even know what magnitude for sure is there.

I wanted to insert into the record a brief comment that make it clear there are documents here, that it was Mr. Marceca who in fact requested these documents. And I would like to submit these for the record, Mr. Chairman?

CLINGER: Without objection. Without objection.

SOUDER: Also in our notes, on the chronology on the Travel, in some of the Travelgate hearings that the political appointee, the director of the Department of Army said that Mr. Marceca is a sound and logical thinker, capable of handling any number of critical and sensitive missions at one time. He goes on to say a number of positive things.

But there was an interesting line at the end. "Do not be dissuaded should the military leadership of the Criminal Investigation Command object to the detail of Mr. Marceca." If the military command people involved in criminal investigation where a person had been, had expressed concerns, would that have been a warning flag to you when this person was coming through, if you had been in a similar position in the White House looking at this person?

CULVAHOUSE: I think so, yes. But I don't really understand what the last sentence means.

SOUDER: Apparently he had been involved in directing some agents in the Department of Army, and the director of the Department of Army, in effect, was signaling over the White House that they may have professionals object to this appointment. But he, who is a political appointee, was saying go ahead and trust him.

CULVAHOUSE: That would have raised a flag. Yes, sir.

SOUDER: I have no more questions. Mr. Chairman, I yield back.

CLINGER: Thank you. The panel will bear -- we have more questioner, and he's been very patient and has waited here a very long time, and I don't think he can probably conclude his five minutes

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before we would have to go vote. So if you can bear with us, we'll go vote and come back as fast as we can, and Mr. LaTourette will have an opportunity to ask his questions, and then we'll release you. Thank you all.

(BREAK)

The committee will resume its sitting. And when we broke for the vote on the House floor, we had reached Mr. LaTourette as the final panelist for his questions. Our clean-up hitter, Mr. LaTourette, is here, and as soon as we have our witnesses in place, I will recognize Mr. LaTourette for five minutes.

Here they come. The chair will now recognize the gentleman from Ohio, Mr. LaTourette, for five minutes.

LATOURETTE: Thank you very much, Mr. Chairman, and it's humid outside, I would note for the record.

Mr. Chairman, I want to add my voice in praise of you and the ranking member, in this case, for scheduling this hearing. I think a number of us on the committee might be chomping at the bit to talk to Mr. Livingstone or Mr. Marceca. But by providing this panel today, I think that you've given the members of the full committee the opportunity to see how this procedure was handled in administrations dating from the Johnson administration through the present.

And for that I would comment that you and Mrs. Collins deserve credit and praise. One of the great advantages of sitting in this place in the dais is that when it gets to be your five minutes, you've heard all of the collective wisdom of your colleagues, and there aren't a whole lot of issues left, and you do get, in fact, to bat clean-up.

I do want to comment that I think everyone on the committee recognizes the serious and sensitive nature that are contained in these FBI files. I can remember in 1992 -- February of 1992, I had a good friend back in Lake County, Ohio, who was nominated by President Bush during your tenure, Mr. Gray, to a federal bench appointment.

And they not only had to complete the form, but also the FBI probed into his background. I'll never forget. I was the prosecutor at the time, and the judge came upstairs, and he would go to Columbus for judicial conferences. I would go to Columbus to be a member of the Ohio Prosecuting Attorneys Association.

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He said, "You're not going to believe what they're asking about." And not only the issues that Mr. Souder of Indiana raised earlier, but he cautioned that they'd pulled the records from the hotel where we stayed and found out what kind of movies he watched when he was alone in his room at night and cautioned me never to watch "Bambi Goes To Congress" or anything like that next time I was down in Columbus.

I do want to just follow up on some things that have been mentioned during the course of testimony. Several of you have mentioned the privacy act during the course of your testimony. And specifically, I believe that refers to the Privacy Act of 1974.

And I would ask those gentlemen who have been counsel to the president or in the counsel's office, it's my understanding that the Privacy Act of 1974, in addition to providing civil remedies for people who are aggrieved due to the release of information, is also a penal, a criminal statute.

And in the case that there may be a criminal sanction for not only people who willfully or knowingly release information but also for people who make the request. Is that all of your understanding as well, that it's six months, 5,000 bucks is the penalty for that type of infraction?

CULVAHOUSE: Tell you the honest truth, I'm not an expert on the penal provisions of the act.

LATOURETTE: OK. Based upon your time as counsel -- again any of you that served as counsel, are any of you aware of an exemption for the willful distribution of information collected -- private files?

UNKNOWN: No, sir. Not for willful distribution.

LATOURETTE: Ms. Gemmell, I want to go back to something that Mrs. Morella of Maryland was asking you earlier, and that has to do with I believe you not only said students or interns, but also students and you described them as being in the 18- to 20-year-old range working in this particular office. Is that right?

GEMMELL: To the best of my knowledge. Yes, sir, that would have been their approximate ages.

LATOURETTE: OK. And this only occurred during the time that you were there, sort of in the holdover between January and August during the Clinton administration?

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GEMMELL: That is correct. Yes, sir.

LATOURETTE: It never occurred in any administration that you'd worked prior to that?

GEMMELL: Absolutely not.

LATOURETTE: Where did these people come from? These -- who are these -- I mean, can you just go to the White House and say, "I want to volunteer," and they put you down in the secured personnel room?

How does a volunteer get to volunteer down there, do you know?

GEMMELL: I really do not know whether these young people were personally known to Mr. Livingstone or not.

LATOURETTE: You also mentioned that if you had to look from the outside in as to how this transpired, there would have been a lack of name recognition, and by that I took it to mean that when they were typing the forms -- these 18- to 20-year-old students and volunteers -- they may not have recognized James Baker or some of the other people on the list.

LATOURETTE: You did not mean to suggest that Mr. Livingstone or Mr. Marceca, gentlemen who have a long time involvement with the political process, wouldn't have known those individuals. You didn't mean to say that?

GEMMELL: Absolutely not.

LATOURETTE: OK. I want to talk about something that was talked about at the very beginning, that there are three reasons why the White House might suggest information from the FBI. Name checks was the first one. That's sort of like running somebody on the Leeds (ph) machine to see if there's a hit for a criminal violation or a traffic ticket; the full field investigation, that's the Form 86; and then updates on semi-permanent that are done on a four-year basis, if you recall that set of testimony.

I want to focus on those four-year updates. Would that -- If someone, say, a clerk from the Bush administration was held over into the Clinton administration, a non-political appointee, someone who had worked in the White House for 10, 15 years, is it my understanding that their FBI file would be updated every four years? Is that the procedure?

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LATOURETTE: OK. So, when the Clinton administration came in, or any new administration came in,...

CLINGER: Just so that we get the record, if you could respond...

LATOURETTE: Oh, I'm sorry.

CLINGER: ... verbally so that we have it in our record.

GEMMELL: I'm sorry, sir. Yes, sir. That is the case.

LATOURETTE: OK. And, so when a new administration would come in, all those non-political appointees that would be subject to a four-year review, you'd make your request of the FBI that we need to see those, we'd need to have those files here so that when their four years comes up we're going to tickle them and we're going to give, have you give us an update of what they've been doing since our last review. Is that correct?

GEMMELL: Yes, sir. We kept a log, as I mentioned earlier and then we would, month by month, go through the lists -- All the ladies would do that -- and make sure that they got the 86 Form and we would proceed with the four-year update.

LATOURETTE: OK. And, as you went through month by month, let's say that you had an individual that was hired in the middle of President Bush's term, so two years, that you'd have something to tie the two years into President Clinton's term, you'd have to do an update. Is that right?

GEMMELL: We would if he were kept on, yes, sir.

LATOURETTE: That's right, if they were still at the White House.

GEMMELL: Yes, sir.

LATOURETTE: Can you recall, either of you ladies at the end, any time during your tenure with all the administrations that you served that somehow that four-year review process of held-over employees was expedited for any reason that you were...

DANNENHAUER: Not to my knowledge, no, sir.

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LATOURETTE: ... for a year?

DANNENHAUER: It was a very routine, very routine and very voluminous job. So, we would adhere very closely to what we had to do.

LATOURETTE: Mrs. Gemmell, can you recall any such instance?

GEMMELL: I could only reiterate what Ms. Dannenhauer's said.

LATOURETTE: OK. So, neither of you, to your knowledge -- and, again, we're going from the Johnson administration through this, through the end of the Bush administration -- can recall a time where you would have been requested by a supervisor to expedite a four-year review for a held-over employee, someone who, perhaps, stayed from another administration?

DANNENHAUER: No, sir.

LATOURETTE: OK. Thank you very much.

I -- In my last time remaining, I want to focus on the FBI because there have been some observations that it's perhaps -- these two political operatives that were put in charge. They're the ones to blame and only to blame.

Were any of you gentlemen or you ladies ever refused a request made to the FBI? In other words, does the FBI have any responsibility at all when they get one of these forms with the counsel's (ph) name typed in to question or ask a question, why the heck are you guys or you gals asking for this information?

DANNENHAUER: Well, sir, I could just answer that by saying whenever we made a request, we had a reason on that request.

DANNENHAUER: And if they -- they just wouldn't question it if it were a name check, a full field, or the copy of the previous report. And that's what we asked the bureau for.

LATOURETTE: And would it...

DANNENHAUER: We always had a reason, sir.

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LATOURETTE: OK. And would it be fair just to restate some of the testimony that we've heard throughout the course of today that with this list that we're talking about today, none of you can think of a legitimate reason for the request by the White House to the FBI for these 408 personnel files?

DANNENHAUER: No, sir.

LATOURETTE: Nobody.

GRAY: No.

HAUSER: No, sir.

CULVAHOUSE: No.

GEMMELL: No, sir.

LATOURETTE: Thank you very much for your patience, Mr. Chairman.

CLINGER: Thank you, Mr. LaTourette. Now I have to announce to the panel that I lied to you. There is, in fact, another member who has arrived from a Budget Committee meeting and I would like to recognize the gentleman from Connecticut.

SHAYS: Thank you, Mr. Chairman. First off, I think both sides have established their positions and I understand the panels have done a very good job of responding, and you've set the foundation for future hearings.

I just wanted to say for the record, I consider this an extraordinarily important hearing and appreciate your participation. I was, in fact, at a Budget Committee in which we voted out welfare reform and Medicaid reform. And I feel particularly impelled to say that because as someone who participated on the HUD investigation -- and Mr. Gray, as you realize because the White House cooperated fully with Mr. Lantos and this committee when we looked at abuses by a previous administration and we in the minority then, the Republican minority, cooperated fully with the Lantos hearing.

Mr. Kemp, Secretary Kemp, cooperated fully. The White House cooperated fully. And there could have been a temptation to say this was a witch hunt.

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But we were in a hunt for the truth, and I just want to say for the record I consider this hearing of the same stature. Mr. Clinger has been working for years patiently. He hasn't gone before the press and -- except at extreme moments.

He has allowed the White House more than ample time to cooperate and they didn't.

We were forced at a hearing to actually hold the White House in contempt. And only then did we get the list that we had been requesting.

And it turned out to be not a list of seven people, but a list of 400. And we know why it was basically a coverup.

So anyone who has followed this knows there has been a coverup and we are simply looking to get the truth. And I have never, ever, found a chairman who has been more patient in his effort and has been less abusive of power, totally responsible.

And I just -- I wanted to be on the record on that point as someone who participated with another member of this committee on what was called the Lantos hearings.

WE in the minority cooperated fully, and we need that same cooperation from this minority, and I just thank the gentleman for allowing me to put that on the record.

CLINGER: Thank you for those kind words. If you need any more time, why...

(LAUGHTER)

Ladies and gentlemen, I just want to thank you all very, very sincerely for your appearance here today, for the excellent testimony you've given. I think we've made a very good record as to what transpired in earlier administrations, both Republican and Democratic, in terms of this issue of background checks and who controlled them and so forth.

We've had a very good discussion, I think, of executive privilege and when it applies and when it does not apply. And you have been very helpful in the information you've given the committee.

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I can announce that we will hold additional hearings on this matter. I really wanted to use this hearing to sort of establish a base of what -- what have been the procedures in the past. Now we need to establish were there variances from those procedures that occurred in this administration?

So we will be looking at that.

We also, I think, need to explore the question of -- there's this nebulous list and it is still not clear in my mind as to where the list came from, how it was ginned up, and apparently, the Secret Service is indicating they really couldn't have produced such a list as we've had.

CLINGER: I really wanted to use this hearing to sort of establish a base of what have been the procedures in the past. Now, we need to establish were there variances from those procedures that occurred in this administration. So, we will be looking at that.

We also, I think, need to explore the question of this, there is this nebulous list, and it is still not clear in my mind as to where the list came from, how it was ginned up and apparently the Secret Service is indicating they really couldn't have produced such lists as we've had. So, there is a real question here that needs to be looked at.

I would stress, we're not making any allegations of wrongdoing at this point. We are merely trying to get all the facts on the table. We are, I would also close by saying, we have not lost sight of the fact that there are still 2,000 pages of documents that are outstanding with regard to our basic investigation, which has to do with the Travelgate firing and we will proceed and pursue getting those documents before us as well.

So, I think we can anticipate there will be a hearing either Wednesday or Thursday of next week to pursue these matters in more detail.

Thank you all very much and the committee stands adjourned.