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Billy Dale Security File - Wendy S. White Working Documents [Folder 2] [2]

Staff Office-Individual:

Counsel's Office-White, Wendy

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COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

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In the matter of: :

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WHITE HOUSE TRAVEL : DEPOSITION OF

: JANE C. SHERBURNE

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Tuesday, July 23, 1996

Washington, D.C.

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 1:00 p.m.

Appearances:

Present: Representatives Clinger, Souder, and Kanjorski.

Staff Present for the Government Reform and Oversight Committee: Barbara Olson, Chief Investigator; Barbara Comstock, Special Counsel; Kristi Remington, Investigator; Laurie Taylor, Investigator; Ronald Stroman, Minority Deputy Staff Director.

For MS. SHERBURNE:

ROGER M. WITTEN, ESQ.

Wilmer, Cutler & Pickering

2445 M Street, N.W.

Washington, D.C. 20037-1420

GAIL C. BERNSTEIN, ESQ.

Wilmer, Cutler & Pickering

2445 M Street, N.W.

Washington, D.C. 20037-1420

THEREUPON,

JUNE C. SHERBURNE,

a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Ms. Olson. We are on the record this morning for the deposition of Jane Sherburne, which will be administered under oath.

I would like to identify the people who are present in this room. Ms. Sherburne is accompanied with her attorneys, Roger Witten and Gail Bernstein from the law firm of Wilmer, Cutler and Pickering. Mr. Ron Stroman is here for the Minority, and I am Barbara Olson, here for the Majority. With me is Christi Remington and Laurie Taylor of Majority staff.

BY MS. OLSON:

Q I would like to provide you some background information concerning this investigation and your appearance here. As you know, pursuant to its authority under rules 10 and 11 of the House of Representatives, the Government Reform and Oversight Committee is investigating the White House Travel Office matter. This matter refers to all events leading to the May 19, 1993, firings of the White House Travel Office employees and includes all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1, 1993, to the present.

Our investigation also encompasses the activities of Harry Thomason, Darnell Martens, and Penny Sample at the White House, as well as all allegations of wrongdoing concerning the Travel Office employees.

The committee investigation is reviewing all actions taken by any division or field office of the FBI and the Department of Justice, both prior to and after the firings, which would also include issues relating to the White House's receipt of FBI background investigations on prior administration officials.

The investigation includes, but is not limited to, the investigation and prosecution in the United States v. Billy Ray Dale case and all investigations and subsequent reviews of the Travel Office firings by any agency which includes, but is not limited to, the White House Management Review, all FBI and Justice Department reviews, the IRS and Treasury Department internal reviews and reports, the GAO review, as well as the proposed United States House of Representatives resolution of inquiry which was considered and voted on in the House Judiciary Committee in July of 1993.

Do you understand that your answers that you give today should not exclude any information which you recall involving these subjects?

Mr. Witten. Barbara, let me just say a word here. I would like to state for the record my understanding that there have been negotiations and agreements between the committee and the White House regarding the permissible scope of this deposition and regarding the procedures to be employed in the event a question calls for the witness to divulge information that is the subject of an executive or another privilege that has not been waived by the President of the United States.

It is my further understanding that these agreements between the committee and the White House modify the scope of the inquiry as regards this witness and this deposition.

I also wanted to add at this point that Ms. Sherburne hopes to answer every question to the fullest extent of her recollection, but she has been given no authority by the President to waive any executive privilege, and nothing she says here today can or should be viewed as a waiver of any such privilege.

Ms. Olson. Okay. You have spoken of agreements to which I am not aware. The chairman will be here shortly. I do believe Mr. Quinn sent a letter where she stated certain agreements had been made. The chairman did not make those agreements.

Certainly, if there is an objection and a claim of executive privilege is lodged, I will go on and leave that for the record. If the chairman reviews that and determines that it is not a valid claim or believes that it is not a valid claim, he will confer with the ranking Minority and make a determination, which ultimately he may ask Ms. Sherburne to answer the questions in the form of interrogatories.

That obviously is up to the chairman to make that determination, and not me. So if a question is asked, I would just ask that you state the objection and the reason, and then I will go on to the next question.

Mr. Stroman. May I interject at this point. My understanding of the agreement between the chairman and counsel, White House counsel, is that Mr. Witten has accurately stated what the agreement is, the least part of what that agreement is.

In addition to that, it is my understanding that discussions and communications between committee staff and committee members and the White House Counsel's Office also are not subject to this deposition.

Ms. Olson. Can I just ask where your understanding comes from?

Mr. Stroman. Based on discussions between the chairman and Mr. Quinn.

Ms. Olson. Were you present during those discussions?

Mr. Stroman. I was.

Ms. Olson. Okay. And you were present in a meeting that Mr. Quinn had with the chairman concerning these discussions?

Mr. Stroman. Yes. In addition to that --

Ms. Olson. Can you state when that meeting was?

Mr. Stroman. I don't have the exact date. It was approximately a week ago.

In addition to that, I had a discussion with the general counsel of the committee, Kevin Sabo, yesterday, in which that understanding was also reiterated by Mr. Sabo.

Ms. Olson. What understanding was reiterated by Mr. Sabo?

Mr. Stroman. The understanding that communication and discussions between the White House Counsel's Office and committee members and committee staff are not appropriate subjects for questioning at this deposition.

Ms. Olson. Is your representation on this record that Mr. Sabo did include staff and said it wasn't appropriate for discussion in this deposition?

Mr. Stroman. It is my representation on the record.

Ms. Olson. Okay.

Mr. Witten. I thought I was making an innocent statement. I didn't realize it was going to lead to a colloquy. But, Barbara, you did mention in your response to what I said a letter from Mr. Quinn, and maybe it would be good to have that as part of this record.

Ms. Olson. I don't have a letter with me. If you would like to put something in the record, you certainly can.

The committee has been granted.

Mr. Witten. Do we have a clean copy of the letter? How do you usually mark things?

Ms. Olson. Just put "Deposition Exhibit." It will be No. 1.

Deposition Exhibit No. 1 is a July 12th, 1996, letter to chairman William F. Clinger from John M. Quinn, counsel to the President, and I don't -- I will look and see if there is a response from the chairman to that letter to also make it a part of the record, but at this time it is just going to be a part of the record.

[Sherburne Deposition Exhibit No. 1

was marked for identification.]

Mr. Witten. We are not aware of a response, but I can't represent to you that there isn't.

Excuse me. I would like to consult with my client.

[Counsel and witness confer.]

Mr. Witten. Thank you.

BY MS. OLSON:

Q Why don't we just start with your background leading up to you coming into the White House. Why don't I actually finish with the opening.

The committee has been granted specific authorization to conduct this deposition pursuant to House Resolution 369 which was passed by the House of Representatives on March 7th, 1996.

Pursuant to committee rule 19, which has been provided to you, both Majority and Minority counsel will be afforded an equal opportunity to pose questions to each witness. Committee counsel will proceed with equal rounds of questioning, each lasting up to 1 hour, until both counsel have completed their questioning.

The only exception to this will be if a member of this committee is present and wishes to pose questions to the witness. If so, the member will be afforded an immediate opportunity to question the witness, and committee counsel will then resume questioning when the members have completed all of their questions.

You are here today voluntarily and not under subpoena; is that correct?

A Yes.

Q This deposition is to be administered under oath, and you have been -- you have taken an oath at the beginning. You will be allowed to confer with your attorney. If you do not understand a question, please tell me and I will try to rephrase the question.

All objections raised by your attorney should be stated for the record, with the reason for the objection clearly stated. Once an objection is raised, as I stated earlier, in context of your executive privilege discussion, committee Majority counsel will review whether the objection is proper in the context of this deposition.

If counsel does not agree that the objection is properly before this panel, I will confer with Minority counsel and ask that they express their views on the record. If the objection remains, it ultimately may be presented to the chairman of the committee or his designee for resolution. The chairman has agreed to consult with the ranking Minority member before issuing his final decision on an objection.

As I stated before, if the chairman makes a ruling, you ultimately will be requested to respond either orally or in the form of a deposition.

You will be given a 5-day time frame in which you and your attorney may review your deposition once it has been transcribed and to correct any technical problems that you perceive occurred in the transcription and to clarify any matters. After the review period, you will be asked to sign the transcript. Do you understand that?

Mr. Witten. Well, again, it's my understanding that the procedures you have just summarized have in some respects been modified by the agreement that I understand is reflected in Exhibit 1, the July 12th, 1996, letter from counsel to the President to the chairman of the committee.

Ms. Olson. Can you just state what modifications you believe to have occurred?

Mr. Witten. Well, let me draw your attention, Barbara, with respect to procedure, to the last paragraph on the first page which carries over to the second page, and, I guess for the sake of clarity of the record, I will just read it, if that's all right:

At our meeting today I also restated our acceptance of your June 18th proposal to Mrs. Collins describing a process to resolve questions that a witness declines to answer because they invoke an executive privilege that has not been waived. To expedite that process, I committed to make our best efforts to respond to all such questions propounded in writing after the deposition, either with an answer or an assertion of privilege within 4 days of our receiving the questions, close quote.

Ms. Olson. Okay. I don't have any such understanding that that was agreed upon. My understanding of that letter is, that

was a letter from John M. Quinn to the chairman and the chairman does not believe that accurately reflects his meeting. However, this will all be presented to the chairman. Certainly he can make a ruling and a decision.

I was not at that meeting. I now find out that Mr. Stroman was at that meeting, so perhaps the chairman -- it is best left for the chairman to make a ruling at the finish. Certainly if you want to raise objections, they will be held in any case for the chairman to respond.

Mr. Witten. Thank you.

BY MS. OLSON:

Q You will be given a 5-day time frame in which you and your attorney can review the deposition. After the review period, you will be asked to sign the transcript. Do you understand that?

A Yes.

Q Can you just start by stating your full name for the record?

A Jane Cecile Sherburne.

Q And if you could just do a review of your background leading up to when you started at the White House?

A From?

Q Start at law school is probably the easiest.

A Law school. I went to law school at Georgetown; graduated from law school in 1983; went to Wilmer, Cutler and Pickering, where I practiced law until April of 1994, when I took leave to be a Special Government Employee for 6 months or so at the White House; went back to the firm in October; stayed at the firm until January, the beginning of the year -- I don't know if it was the 1st or the 2nd -- at which point I went back to the White House as special counsel to the President, where I have worked ever since.

Q And your leave to be a Special Government Employee was after April of 1994?

A I think it started sometime in April.

Q Okay. And can you just state what you did at where you worked?

A In 1994 I was a special associate counsel to the President. I worked for Lloyd Cutler and worked with him in preparing for congressional hearings on White House Treasury contacts, Foster document handling, and other related issues.

Q And did you come to the White House under the status of being a Special Government Employee, or was that determined after you had already been at the White House?

A In 1994?

Q Yeah.

A That's how I came, in 1994.

Q Do you know who made the determination of your Special Government Employee status in 1994?

A Lloyd Cutler.

Q Do you know if Beth Nolan reviewed your status or if anyone else assisted Mr. Cutler in making that determination?

A No.

Mr. Witten. No, you don't know?

The Witness. No, I don't know.

BY MS. OLSON:

Q And in January of 1995, you began in the White House as special counsel?

A That's correct.

Q And what areas of responsibility have you had since January of 1995?

A I manage a group of people responsible for responding to congressional hearings, press inquiries, independent counsel activities related to Whitewater, Travel Office, and anything else those things may mean.

Q Who reports to you at this time?

A Who reports to me? At this time? Miriam Nemetz, Sally Paxton, John Yarowsky, Mark Fabiani, Jim Webber, Chris Lehane, Michael Massey, Ches Johnson, Sara Weider. I don't think I have missed anyone. There are interns and volunteers that work with us from time to time.

Q Are there any detailees that currently report to you?

A No.

Q Have you ever had any detailees reporting to you, that you remember?

A No.

Q In January of 1995, did individuals report to you in the same capacity?

A In January of 1995, Miriam Nemetz reported to me. In January of 1995, Kim Holliday also reported to me.

Q Did Chris Cerf report to you at any time?

A No.

Q Who did you report to in January of 1995?

A In January of 1995, I had a principal reporting relationship to the Chief of Staff's Office and also reported to Ab Mikva.

Q Did there come a time when your reporting changed?

A Currently I report to the Chief of Staff's Office.

Q Is there any particular individual that you report to?

A I would say my principal reporting relationship is generally with Harold Ickes, but also with Evelyn Lieberman.

Q Have you ever reported to Jack Quinn?

A Yes, I did report to Jack Quinn for a period of time after he became counsel.

Q And was there any event that precipitated a change in your reporting?

A No.

Q Can you just explain why your reporting changed, if you know?

A I guess the reporting relationship would have changed because of the way the job had developed and evolved.

Q And what would it have been that developed and evolved that changed the reporting?

A It would have been --

Mr. Witten. Let's go off the record for a minute.

Ms. Olson. Sure.

Mr. Witten. Let me state on the record, the reason for going off the record is that her beeper went off.

The Witness. I had started to answer the question, and now I'm not sure of the question in my head. Could you repeat it, please.

[The reporter read back, as requested.]

The Witness. The work that the team that I managed was doing became discrete and defined enough, and the relationships had developed such that the natural reporting relationship was with the Chief of Staff's Office.

BY MS. OLSON:

Q What I'm trying to get at, I guess, is what became discrete and defined enough that changed from you being in a White House Counsel's Office reporting situation to a chief of staff's reporting situation?

A Well, we still function in the White House Counsel's Office, and I still, obviously, you know, from our nearly daily dealings, you know, work closely with Jack Quinn.

So I don't know that it's -- you know, that there is a significant change, other than most of the work that I do is directly of interest to the Chief of Staff's Office, and so that's the nature of the reporting relationship.

Ms. Olson. Okay.

Can we go down for a minute?

Mr. Witten. Off the record.

[Discussion off the record.]

Ms. Olson. Back on the record.

BY MS. OLSON:

Q Can you just describe what regular meetings that you attend in your position as special counsel to the President, either within the Chief of Staff's Office or within the White House Counsel's Office?

A Well, there's a Counsel's Office staff meeting Monday, Wednesday, and Friday, that I attend. Over time, there may be events that develop so that there are regular meetings for a few weeks, and then, you know, there's no need to have regular meetings anymore. But that one, the Monday, Wednesday, Friday Counsel's Office staff meeting, is the consistently regular meeting that I attend.

Q Are there any senior staff meetings that you regularly attend?

A No.

Q Are you aware of any senior staff meetings that were either going on in January of 1995, when you started, or currently being held on a regular basis?

A Well, certainly there are senior staff meetings, yes.

Q And do you attend those meetings, or have you ever attended those meetings?

A No.

Q Do you know when those meetings are held?

A I don't know if you and I are talking about the same meetings. What meeting are you talking about?

Q It is a senior staff meeting. I know early on Mr. Quinn was there when he was with the Vice President's Office, and Mack McLarty attends the meetings. I believe the White House counsels attended the meetings, and they have been described to me as senior staff meetings that are regularly held, I believe, on a weekly basis.

A I'm not aware of a weekly senior staff meeting. There are daily meetings of the senior -- of what is called the senior staff.

Q And when are those?

A I think they are at 8:15 in the morning.

Q And at this time they are each morning, based on your knowledge of these meetings?

A Uh-huh, yes.

Q Were they in January when you began?

A I assume so, but I don't know.

Q Okay. Do you attend any chief of staff meetings or any meetings within your reporting to Mr. Ickes or Ms. Lieberman that occur on a regular basis?

A No.

Q You have said that you report up to the Chief of Staff's Office, which would be Mr. Ickes or Ms. Lieberman. Can you just describe how that reporting process works?

A I don't think so. I'm not sure I understand what -- what do you mean?

Q I was trying to see if there were regular meetings.

A I don't provide a written report, that's for sure.

Q I wanted to see if there was some written memorandum on a weekly basis, or how do you, if you do, report information up to the Chief of Staff's Office?

A It changes over time. It depends on who is available. It depends on what the issue is. You know, sometimes we'll have early morning phone calls, sometimes I will do a drive-by, sometimes they will do a drive-by; you know, it just depends.

I regard it as my responsibility to keep them informed and bring to their attention anything I think needs to be brought to their attention. They are obviously free to come and ask me questions, which they do, and somehow, that seems to satisfy everyone.

Q Even though you report to the chief of staff, you are still within the White House Counsel's Office; is that true?

A That's correct.

Q And those that report to you are all within the White House Counsel's Office?

A That's correct.

Q You said that there were some interns and volunteers. Are there currently any interns or volunteers working in the White

House Counsel's Office?

A Yes.

Q Do you know how many?

A No.

Q Okay. Back in January of 1995, do you know if there were interns and volunteers working in the White House Counsel's Office?

A I'm sure there were.

Q Would you have any idea of how many were working back in 1995 or if that number has remained consistent?

A I have no idea.

Mr. Witten. Are you asking about her part of the White House Counsel's Office or the whole White House Counsel's Office.

BY MS. OLSON:

Q Maybe you could describe if White House Counsel's Office is divided up into areas, or how is it organized?

A Well, I have my team, and we have our own interns, and we have our own support staff within that team. And typically we have within that team, oh, you know, 3 or 4 or 5 interns that will help out, some on a daily basis, some on a weekly basis; you know, it depends on their availability. But I don't know what the number is or the frequency is for the rest of the Counsel's Office.

Q Do you know how many teams there are in the Counsel's Office?

A I think the team that I run is the only team in the Counsel's Office.

Q So any other interns that were in the Counsel's Office would work generally for the other attorneys within that office?

A That would be my understanding, but I don't know how the rest of the office works with interns.

Q Is there some particular reason or purpose that you have a team and you are the only one with a team in the White House Counsel's Office?

A Well, the group was set up in order to provide a response to, as I said, the Whitewater, Travel Office issues, and it was set up with the capacity to function with a press component and a Hill, you know, legislative liaison component, a legal component, so that all of those issues could be managed in a microcosm and not absorb the time and energy of others in the White House. So it was set up with that purpose in mind and lodged in the Counsel's Office.

Q Can you just tell us -- you have named some different components of your team. Is there an individual who is in charge of ethics issues within your team?

A No. We would rely on the White House ethics officer for that.

Q And who is that currently?

A I believe it's Kathi Whalen, but I'm not sure.

Q Do you know who the ethics officer was when you first came in in January?

A I believe it was Beth Nolan.

Q And did anyone take her position as ethics officer when she left?

A Is that the same as who is the ethics officer now?

Q Well, I didn't know if there was an interim person.

A I don't know.

Q You said within your team there is a person who did press. Who would that be, or who was assigned?

A That's Mark Fabiani and Chris Lahane.

Q And is there an individual that does the legal portion I think you described?

A Well, all the members of the team are lawyers, and so we have --

Mr. Witten. I don't think you meant to say "legal." Did you mean to say "legal"?

BY MS. OLSON:

Q I thought I heard "legal." There was press, and there was a legal side, and I didn't know if there was an individual who had certain legal responsibilities?

A Right. Not to suggest that there is anyone that is responsible for illegal. But the way we have Sally and Miriam Nemetz, Sally Paxton and Miriam Nemetz right now are devoted principally to the legal analysis and the fact analysis of the issues that we deal with.

Q And are there any other members of the team that you described that have any sort of particular specialties or areas that they look at besides press and sort of legal analysis?

A I think I also mentioned that there is a legislative liaison component.

Q Who is that?

A John Yarowsky and Jim Webber.

Q Okay. And the other individuals that make up your team, do they have any particular areas that they concentrate on?

A Michael and Ches are paralegals. Sara is an assistant. Does that cover everyone?

Q Did Natalie Williams work with you in the White House?

A Yes.

Q And what areas did she concentrate on when she was a part of your team?

A She focused on the Travel Office issue, and she was -- dealt principally with the legal analysis and fact analysis of that issue.

Q And do you know the basis for her leaving the White House?

A I believe she went back to her private practice at Debevoise.

Q And do you know if there was any other basis for her to leave? Did she ever communicate any other reason she had for leaving?

A I think she preferred New York to Washington.

Q Did she ever mention any preference of the work or make any comments to you about reasons for leaving concerning the type of work that she was doing?

A She was not thrilled with the Washington practice that involved the kind of politics that she was confronted with in her dealings with your committee and the issues, and she much preferred private practice in New York.

Q Okay. I wanted to show you document. I will mark it as Deposition Exhibit No. 2. It's a July 18th letter which is to Chairman Clinger, and it is from -- signed by Jane Sherburne. I ask if you recognize that letter.

A Yes, I do.

[Sherburne Deposition Exhibit No. 2
was marked for identification.]

BY MS. OLSON:

Q Did you draft that letter?

A Yes, I did. I drafted the letter. There are attachments to the letter. One is handwritten, one page of handwritten notes, and then a one-page statement of Wendy White.

Q On the first page there is a discussion that in December of 1995 you state that Tom Taggart located a file on Billy Dale which had been archived by the Office of Personnel Security. Do you know who archived that file?

A No.

Q Okay. And the file that was archived, do you know if that was Billy Dale's personnel file or his FBI background investigation file?

A I believe it was his FBI background investigation file -- well, not -- the summary, the previous reports, the file that you have got that we produced to the committee.

Q And aside from the FBI background summary file, are you aware of another file that is just regularly kept that is called a personnel file?

A I have been told there is such a file, yes.

Q And do you have any knowledge or any belief that everyone has generally a personnel file that works in the White House?

A I don't have any personal knowledge of that; I assume that's the case. It would make sense.

Q In the letter that you wrote to Chairman Clinger, you say that Natalie Williams was notified by Mr. Taggart of the existence of the file, and do you know if Ms. Williams reviewed the Billy Dale background investigation file at any time?

A No, she never reviewed the file.

Q When -- and in fact the attachment that Mr. Taggart signed on December 27th, 1995, he stated that he had spoken to her about Billy Dale's FBI background check and vetting report, and he has the word "retired" above it. Did Ms. Williams have any conversation with you at this time about the fact that there was a Billy Dale FBI background report that had been archived?

A Not that I recall, no.

Q Do you know if Mr. Taggart told Ms. Williams that Mr. Dale was retired and that the FBI background report had been requested after he was retired?

A No, I don't.

Q Did Ms. Williams have any conversation with you at that time about this file?

A Not that I recall, no.

Q Do you know if Ms. Williams had any conversations with anyone concerning the file, other than Mr. Taggart at this time?

A No, not that I'm aware of. You will have to ask her.

Q In this letter you state that Ms. Williams didn't retrieve it, and I believe you go on to discuss that the Government Reform and Oversight had not requested confidential personnel material.

Was it your belief that an FBI background investigation file was personnel material?

Mr. Witten. Could I just ask for a clarification?

Ms. Olson. Sure.

Mr. Witten. Jane had no contemporaneous knowledge that Natalie Williams had had this conversation with Taggart. So could you be sure to phrase your question, and Jane, could you be sure to phrase your answer, in a way that makes sure the record is clear as to when you learned what?

Ms. Olson. Okay.

The Witness. Okay.

Ms. Olson. And it is one of the reasons of going through this letter to find out who knew what, other than the facts which are stated here, to try to find out the circumstances surrounding this.

Mr. Witten. I wasn't objecting. I just wanted principally to warn everybody that a lot of her knowledge comes later and that we ought to keep that in mind.

Ms. Olson. Okay.

BY MS. OLSON:

Q There is a discussion that the file wasn't retrieved and a discussion that the committee wasn't requesting confidential personnel material.

A Well, it actually says we had notified you that we didn't understand you to be requesting that material.

Q And was it your understanding that the committee was aware that there was an FBI background file on Billy Dale that had been archived?

Mr. Witten. Was it her understanding when? That was the point of my comment before.

Ms. Olson. Well, in December of 1995 going through mid-February of 1995.

Mr. Witten. Thank you.

The Witness. No. I don't know what the committee understood.

Ms. Olson. Okay.

BY MS. OLSON:

Q In January and February when Wendy White came on and Ms. Williams spoke to her about the file, did you have any conversations with either Ms. White or anyone else concerning there being a Billy Dale file?

A FBI file?

Q Well, the file that is being discussed here in the 89, which is Billy Dale's FBI background file.

A No, I did not.

Q Okay. Subsequent to this whole matter becoming public, have you since had any discussions with Natalie Williams about her conversations with Wendy White and what she told Wendy White about the FBI background file?

A Yes, I have.

Q And when did you have those discussions?

A I had a discussion with Natalie when I prepared this letter because I wanted to make sure that we were accurately presenting the sequence of events. So I had a discussion with her about that.

Q Was there any other discussions other than the discussions you have described to prepare this letter?

A No.

Q Okay. There is some --

A You mean about the FBI file?

Q About the FBI file.

Mr. Witten. And you mean with Natalie.

Ms. Olson. That's who I am speaking to, Natalie Williams.

Mr. Witten. Okay.

BY MS. OLSON:

Q The file is discussed as personal and confidential personnel material. Did Natalie ever discuss with you or make any distinction between confidential personnel material and Billy Dale's FBI -- and anyone's FBI background file?

A At any time?

Q Uh-huh.

A Yes. When we had our discussion about this letter, she confirmed for me that she had viewed the FBI file as personnel-type material of the sort that would be subject to the Privacy -- would otherwise be subject to the Privacy Act.

Q Did she explain to you where she got that understanding that a background file was to be viewed the same as personnel material?

A No.

Q Do you know if she told anyone else other than you during this period -- and I'm referring to Natalie Williams -- that there was something more than just a personnel file that was being held in Mr. Taggart's office?

A By "this period," do you mean in December of 1995?

Q Through February.

A Of '96.

Q '96.

A I'm not aware of any other discussions or that she -- she hasn't told me about any other discussions.

Q The note that is signed by Mr. Taggart in December of 1995, when did you become aware of this note?

A I don't know.

Q Do you know if you had become aware of it before the FBI file issue became public and you began to write a chain of custody letter?

A I don't believe I did. I think I saw this shortly after June 4th, which was the first day that I think the chairman brought this issue to the public's attention.

Q And under what circumstances did you see this?

A See what?

Q The Tom Taggart note.

A I'm not sure. Someone provided it to me. I don't know -- I don't know who.

Q Maybe it would help if you just go through the procedure generally that you went through to draft this letter. You have already said that you did talk to Natalie to find out the background facts concerning this chain of custody letter.

A Well, I'm not sure -- I don't think I can answer that question either. I sat down at the typewriter and hammered out what I understood to be the sequence of events and then went through to verify with the relevant people --

Q Who?

A -- that, in fact, my accounting was consistent with their understanding. So I would have spoken to Natalie, as I said, and I certainly spoke to Wendy.

Q Did you have any conversations with Mr. Taggart?

A No.

Q Did you ever ask him if he spoke to anyone else, other than Natalie, early on about the FBI background file?

A No.

Mr. Witten. No, you don't know?

The Witness. No, I don't know.

BY MS. OLSON:

Q Do you know if he did speak to anyone?

A No, I don't know.

Q You mention a February 15th meeting that Mr. Quinn had with Chairman Clinger.

A Yes. I was present at that meeting too.

Q Okay. And in that, you had stated that there was a discussion whether the chairman and the committee wanted personnel materials covered by the Privacy Act, and I guess an in-camera review was offered.

Did you have any knowledge of the FBI background file at the time of the meeting on February 15th, 1996, that Mr. Quinn had with Mr. Clinger?

A No.

Q Do you know if Mr. Quinn had any knowledge of the FBI background file on Billy Dale at that time?

A No.

Mr. Witten. Barbara, you are obviously free to proceed if you wish, but it might be simpler if you asked her when she first learned of the Billy Dale file. It might allow you to skip some of the buildup.

BY MS. OLSON:

Q In this letter there is a discussion of the May 19th -- I mean May 9th, 1996, claim, protected claim of executive privilege, which was over all the documents that have been mentioned.

Can you describe -- were you involved in that protective claim of executive privilege over those documents? And by "involved," I mean involved in the decision that there would be a protective claim of executive privilege or in meetings where that decision was made.

A Yes.

Q Can you just describe how that decision came to be made?

Mr. Witten. Are you asking her the substance of the internal deliberations or some description of what happened?

Ms. Olson. I am asking for what meetings occurred, who was at them, when they occurred, and then I will probably follow up with a question on the substance. Right now I would just like to know who.

Mr. Witten. Let's start one by one with the setting questions, and then if we end up with a substance question, we will have to consult whether it violates privilege.

Ms. Olson. Okay.

BY MS. OLSON:

Q Can you tell me who was involved in those meetings?

A What meetings?

Q Where there was a decision that there would be a protective claim of executive privilege.

A Well, certainly Jack Quinn, Sally Paxton, Yarowsky, Wendy White. Those are the only people I can recall being at meetings about asserting a protective claim.

Mr. Witten. Are you asking just about White House personnel?

Ms. Olson. No. I want to know anyone who was at the meeting, inside or outside the White House.

The Witness. That's all I can recall at the meeting.

BY MS. OLSON:

Q Were there any discussions with the Office of Legal Counsel in the Department of Justice about executive privilege claims at this time? And obviously this is the May 9th, 1996, assertion.

A Yes.

Q And what were those? Let's start with who they were with.

A I'm not sure.

Q Okay. And what was the substance of those discussions?

A I didn't participate in those discussions, so I can't testify about the substance.

Q And were you ever told about the substance?

A Yes.

Q Can you tell us what that was?

A I can tell you the substance as it was reflected in the communications with the chairman.

Q Is there any substance not reflected? Were there any opinions given to individuals who had those communications with Justice that is not reflected?

A Not that I'm aware of.

Q Okay. Then why don't you -- since that is the total of what you are aware of, why don't you tell me what the substance was that is reflected in the letter?

A I would just as soon put the letter in the record if that's the case, rather than try and characterize the substance.

Q I don't see Department of Justice mentioned. Can you just describe where in the letter it describes the substance of the Department of Justice communication?

A Do you have a copy of the May 9th letter?

Q Yes.

[Counsel and witness confer.]

Ms. Olson. Until that letter comes up, I will skip it. We are going to go get it, and I will come back to it afterwards.

BY MS. OLSON:

Q Going back to the White House's discussion about the President's assertion of a protective claim, can you tell me what was discussed in the meetings in the White House that you have described about the claim of protective assertion of privilege by the President?

Mr. Witten. Well, as much as I hate to intercede, it's my understanding that you are asking for the substance of internal White House deliberations among White House staff members, and it's my understanding that that is subject to the deliberative discussion aspect of executive privilege, and it is our understanding that that has not been waived and that Jane is not free to discuss it. If you have some counter understanding, I would be glad to hear it.

Ms. Olson. No. I mean, I certainly am not going to make representations that the White House is waiving its executive privilege claim. If you are objecting on grounds of executive privilege and the White House has informed you that those are areas where they are still claiming executive privilege, then I will just for the record make the questions, you can make the assertions, and I will go on.

The Witness. If you want to ask whether there was any discussion in the -- that I'm aware of in the course of the consideration to assert the protective claim identifying the Billy Dale FBI file, I can answer that.

Ms. Olson. I understand.

BY MS. OLSON:

Q I guess what I'm trying to find out is who came up with the idea of a protective assertion of executive privilege which was a blanket invocation.

Mr. Witten. I think it was the Reagan administration that is first invoking.

Ms. Olson. I am not really asking you, if you don't mind. You are Jane's attorney, but I would really like to have the witness respond and not her lawyer tell me what he knows about the Reagan administration.

The Witness. I think it was the Reagan administration.

BY MS. OLSON:

Q And what is your basis of that?

A That's what I understood. There was a document -- it's laid out in the May 9th letter what the basis for that understanding is. My understanding is, the May 9th letter is the best reference for that.

BY MS. OLSON:

Q And have you ever looked at the Reagan memorandum on executive privilege?

A Yes, I believe I have.

Q Okay. And you believe from that that there is a protective assertion which is sort of a blanket invocation of the privilege?

A You are asking me for my legal judgment?

Q Well, your knowledge, if that's contained in that document, if that is the basis that you have operated on.

A Just so I understand the question, you are asking me if I believed, on reviewing that memo, if that memo said what, whether -- I don't understand what you are asking.

Q You testified that you based this on the Reagan memorandum. I asked you if you --

Mr. Witten. The question was, what happened first, not what to base it on, and she answered that the Reagan administration.

BY MS. OLSON:

Q I have asked if you had read the Reagan memorandum, and you said you had, and I was asking if you were aware of the Reagan memorandum's discussion of any protective assertion of blanket invocation of a privilege.

A I believe the Reagan memo talks about a process which I understood we were following here consistent with the process laid out in that memorandum. I don't know if they use the word "blanket." I believe they do use the word "protective," but I honestly can't remember. I reviewed the document when we went through this process, and I don't remember precisely.

Q Do you recall any discussions in any meetings that you had in either the White House Counsel's Office or other meetings where the Reagan memorandum and executive privilege was discussed?

Mr. Witten. I think I'm -- oh, if you are asking for the substance, I am going to have to make the same objection.

Ms. Olson. I am asking a yes or no question right now.

The Witness. Yes.

BY MS. OLSON:

Q And can you please describe the substance of those meetings.

Mr. Witten. Objection, on the grounds previously stated.

Ms. Olson. Okay.

BY MS. OLSON:

Q Can you just say if there was any individual in particular who seemed to provide advice on invocation of executive privilege for the White House or if it was just a meeting where everyone seemed to have equal input?

A I don't recall any particular person taking a particular position.

Q And I guess my question went to whether there was an individual who was sort of the point person for executive privilege within these meetings?

A I'm not sure what you mean by "point person," but I don't think there was anyone -- there was a general discussion in the meetings.

Q Do you know if the documents had been reviewed prior to this assertion, this protective assertion of privilege?

A The documents over which the protective assertion was made?

Q Yes.

A No, they had not. They had not been collected.

Q Okay.

A Many of them had not been collected. Some of them had.

Q Had some of them been reviewed?

A I believe so, yes.

Q By "many of them had not been collected," could you just give us a figure? Would that be more than 50 percent or less than 50 percent?

A I would say all of the -- you know, 8 inches that you reviewed today on the Foster document handling matter had not been collected, because we were still hoping to talk you out of wanting the Foster note documents, and we had been discussing that with you. I think we had discussed it with the chairman, because we recognized that that portion of the subpoena, which was just, you know, a small portion of a massive subpoena, would actually have massive consequences for us and cause a great deal of effort to try and collect the material. And so we had not collected that material, and you saw -- you know, that's what? 8 inches of a box of material. So I know that that had not been collected.

The remainder, I really don't have a clear recollection of that.

Q When you say it had not been collected, do you mean it had not been collected for any other previous investigation?

A That's correct.

Q And so the committee's January 11th subpoena, is it your understanding that that was the first request that required the collection of all of that material?

A It was the -- your request for counsel office work product was unprecedented.

Q And what is the basis of that statement?

A My work -- my experience in the Counsel's Office.

Q And would this include also your experience when you were working for Mr. Cutler back in 1994?

A Yes.

Q Was Department of Justice notified of this protective assertion of privilege that was made on May 9th, 1996?

A I think by reference in the letter, the Attorney General authorized it.

Q Do you know who at the Department of Justice was notified of this privilege claim besides the Attorney General?

A I believe, if we are not just talking about notification, there were -- they were involved in the decision. We did it with the -- on the advice of the Attorney General. The people who were involved in the discussions were Walter Dellinger -- I'm not sure who else besides Walter, because there was a group that was involved in the discussions about the ultimate claim on May 30th, and I don't know if that same group of people was the group that was involved in making the decisions and recommendations related to the protective claim, because I didn't participate in the protective claim discussions directly.

Q And since you say that all of the documents had not been collected, can you just state the basis for the Department of Justice's involvement? What type of information were they provided with?

A I don't think I can do that without waiving a privilege or getting into a privileged area.

Q Okay.

A You are asking for our communications with the Justice Department and the basis for a decision that was made?

Mr. Witten. There may be a way to make progress on this. I thought what Barbara might have been driving at was, did the White House provide Justice with factual information or just a legal question? Maybe that's where she was headed.

Ms. Olson. Why don't we start with that. If that's something you can answer, we can at least start with something you feel comfortable as being outside of any executive privilege problems.

Mr. Witten. I don't know the answer.

Excuse us for a second.

[Witness and counsel confer.]

The Witness. We provided the Justice Department with a factual description of the types of material we were talking about and then the legal question.

BY MS. OLSON:

Q At this point, what types of material did you know that you were talking about for the May 9, 1996, claim?

A It's all laid out in the May 9th letter, and I think the May 9th letter specifically talks about personnel materials of the type that would otherwise be subject to the Privacy Act.

Q And what was your understanding at that time that was contained within personnel -- the description of personnel materials?

A I don't think I had an understanding beyond expecting that it would be the type of -- that it would have been related to a particular individual and their personal circumstances in connection with their employment at the White House.

Q Did anyone ever describe what kind of personnel materials were being included within that description? And that may be -- I mean anyone who was in these meetings, did they ever go into any kind of description as to what was contained within the term "personnel materials" that you were claiming executive privilege over, or the protective assertion of executive privilege?

A Not that I am aware of.

Q So other than you have testified to just sort of general understanding of what personnel materials are, did you have any other basis to know what was within the documents that you were labeling as well as the White House counsel was labeling "personnel materials"?

Mr. Witten. I object to the form of the question.

BY MS. OLSON:

Q What was your basis for saying there were personnel materials that were being withheld? Had you seen them?

A My own basis?

Q Your basis. Had you seen any personnel materials that were being withheld?

A I don't know that I had. I may have, but my primary basis would have been reliance on Natalie and Wendy White, who would have been directly hands-on familiar with the material.

Q Okay. Do you know if they had reviewed any personnel material that this claim was being asserted over?

Mr. Witten. Does she know now or did she know then?

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[2:20 p.m.]

BY MS. OLSON:

Q Let's talk about back then. Did you know then, if they had reviewed any of the personnel materials or what kind of materials they were making this assertion over?

A On May 9th?

Q Uh-huh, and the time before, obviously any dates before that.

A I am sure I assumed they had. Now, whether I actually had personal knowledge that they had, I don't know.

Q Did there come a time when you learned whether or not, and I am going up to today's date, you learned whether or not they knew what type of material was included within the term "personnel material being withheld"?

A Yes.

Q Can you just describe that?

A Describe?

Q How you learned that and from whom you learned that.

A Sometime after June 4th, when the Chairman made public the fact that the committee had been provided the Billy Dale file and the requisition form, I made an inquiry about what actually had been produced in the course of that inquiry.

Q Can I ask you to clarify, what had been produced to the committee?

A Well, I wanted to know what the Chairman was talking about.

Q Okay.

A I saw a wire story and asked, what is this? And learned that what it was referring to was Billy Dale's FBI file.

So when I started asking questions about the FBI file, how it was obtained, I was told that it had been something that both Wendy White and Natalie Williams had perceived as personnel material.

Q Do you know if they perceived it as personnel material after being told that it was an FBI background investigation or if they perceived it as personnel material sight unseen?

Mr. Witten. I object to the form of the question.

BY MS. OLSON:

Q I will break it down.

A No --

Q If there is an objection, I will break down the question.

Do you know if they had perceived of it as a personnel material because they had looked at it?

A Well, I have to take Natalie and Wendy separately.

Q Let's start with Natalie.

A Okay. Natalie had never reviewed the file.

Q Okay.

A So she based -- as I understood it from her, she based her description of the file as personnel material on what Tom Taggart had told her.

And if you will note in Taggart's note, he described it as personnel or that she told him that she understood that the file involved personal and personnel privacy issues, and so she clearly, even at that time in December of '95, had been identifying it to Tom Taggart as personnel material. And what she described to me at a later point was that, yes, indeed, consistent with what she told Tom Taggart, she had, in her own mind, treated it as personnel material.

Q Even though Mr. Taggart clearly identified it as Billy Dale's FBI report, background check and vetting?

A Well -- and she clearly identified it back as personnel material. So, yes, on the face of the Taggart document, it appears that that is the case.

Q The same question for Wendy White, do you know if they actually looked at the personnel material or the group of documents that she was calling personnel material concerning Billy Dale?

A At any time?

Q Well, certainly after she became involved and after Natalie left through the May 9th period.

A She did not review the Billy Dale file before May 9th.

Q Okay. Did there come a time when you found out that she did review it?

A Yes.

Q And when was that?

A When did she review it or when did I find out she reviewed it?

Q When did you find out that she was reviewing it?

A That she had reviewed it?

Q Uh-huh.

A It would have been, I believe, June 5th.

Q Okay. Can you just describe what happened?

A It could have been June 4th, actually. It is whenever I learned it had been produced and she had been responsible for the production. And so I can't remember if I actually had a conversation with her or I just concluded in order to produce it she must have handled it and looked at it, but it would have been June 4th or 5th.

Q Okay. You don't recall whether or not you had a conversation with her about that?

A At some point I did, but I don't remember when.

Q Can you just tell us what happened during this conversation?

A I don't remember specifically.

Q Can you generally say if she described whether she had looked at this document or not?

A She told me that she had -- I know she told me that she regarded it as a personnel document, that that was -- she kept -- she continued to describe it as a personnel document. When I talked to her about -- I remember saying something like, you know, what is this Billy Dale FBI file? And she said, that's one of the personnel records we were talking about having privacy concerns over; that it -- you know, so she talked about it in terms of a personnel record when she described it to me.

Q Do you know when she realized -- did she tell you when she realized it was a background file, an FBI background file?

A Well, she never saw the document until May 21st. But I believe she inherited this Tom Taggart memo and was aware of that. So to the extent that the Tom Taggart memo makes reference to Billy Dale's FBI report, it's likely that she was aware of it. But I can't speak to when she actually first had conscious awareness that it was an FBI file.

Q Do you know when she inherited the Tom Taggart December 27th, 1995 memo or note?

A No. Presumably in the course of the transition from Natalie to Wendy.

Q How did you know that she had a copy of the Tom Taggart memo?

A I know she and I discussed it, and she may have been the one who provided this to me initially. It may have been even in the course of the discussion when I was asking her where the file came from that she gave me a copy of this memo.

But I just -- I honestly don't remember where I got this but I know she was aware of the memo, and I believe she told me that Natalie had given her the memo as sort of a reminder to her that should you ever demand that we produce the personnel material that we had wanted to treat, especially for privacy concerns, that Wendy White needed to be aware that this file existed.

Q In this letter, you state that there was a decision made not to claim Executive Privilege over personnel material prior to the documents going over to the Department of Justice. Can you just tell us how that came about or who was involved in that decision?

A I don't have a clear recollection of an event that resulted in a decision.

Q Do you have -- do you know why personnel material was removed from documents that were going over to the Department of Justice?

Mr. Witten. Could I have that question read back?

BY MS. OLSON:

Q Do you know why personnel material was removed from the documents going over to the Department of Justice?

A There's a presumption in there that documents were removed from something going over to the Department of Justice,

which is a false assumption.

Q Did there come a time that the documents went over to the Department of Justice to review materials?

A No. The mountain came to Mohammed.

Q Okay. Did there come a time when the Department of Justice came to the White House to review your materials --

A Yes.

Q -- the materials that were subject to the claim of Executive Privilege?

Was the personnel material removed from that group of documents?

A That the Justice Department -- I don't know that it was ever collected with that material. The Justice Department was only reviewing material that we were going to assert privilege on. If we had already decided that we weren't going to assert privilege, the Justice Department wouldn't need to look at it. So nothing was ever removed.

There was a pile of stuff that we thought could be subject to an appropriate claim of Executive Privilege that we wanted to stand behind, and that was the material that we asked the Justice Department to review and confirm that they supported the position that we wanted to take on that. And this material was never included in that, so nothing was ever, therefore, removed.

Q I guess it would be helpful if you would just describe the process. I am trying to get the process out in pieces and it's not coming out in pieces. How was this process done?

At some point, you have testified that you didn't have the documents together and there was a blanket privilege. Can you just start from that point of the blanket protective assertion and the collecting of all the documents together, whether they went in a stack or didn't go in a stack for Justice to look at?

A Sure. Let's try it. In February, we made a proposal to the Chairman about how to treat several categories of documents that were unresolved but arguably called for by the subpoena. We received no response to that proposal until, I believe it was May 2nd. And at that time -- and in the intervening period we had not collected the material that was still under discussion, some of the material. Some of it we had collected, but much of it, particularly this Foster document-handling material, we had not collected.

But some of it was there, including the personnel material. And, you know, you will recall --

Q What personnel material?

A The personnel material that was described to me and to you in the course of discussions that we had beginning, I believe as far back as November or October of 1995. I remember meetings with you where we were talking about the existence of personnel material and the fact that the subpoena called for personnel material and, gosh, that seemed like an invasion of privacy rights and could we make some sort of special arrangements for review. That's where we were in February anyway. So there was not at that time, on a number of different issues, a decision made that, in fact, the committee -- or we didn't understand that the committee was going to demand that material.

Once the committee demanded the material on May 2nd and said, you know, we are going to have our contempt hearing on May 9th so do or die, you know, either assert it or don't, we began a process of trying to understand what all was there that would be potentially responsive. And because we didn't at that time have time to collect it or review each page of what we had collected to determine whether a claim would be asserted over each particular document, we described the material generally, as you see in this May 9th letter, according to the categories that we thought the documents fell into, and then once the contempt was voted on in the committee, we proceeded to actually go through systematically to collect the material and make sure we had it all.

At the same time we were doing that, we had lawyers from the Justice Department come in and start looking at the material that we thought was particularly sensitive and plainly subject to a claim of privilege, to see if they would agree or disagree or we had to, you know, we were on the same page or not. So that process started at the same time we were collecting things.

As we were collecting things, there was material, as you know, in the thousands of pages that we did produce, that we decided was not either sufficiently, even though it was work product or it may have been related to the work we had done in preparing for hearings, but that it was not sufficiently deliberative to assert a claim over.

That cut we made ourselves. This isn't worth fighting over, those thousand pages. And we gave the rest of it, asked the Justice Department to review and then we all did fine-tuning down to the end until the May 30th production.

Q Okay. I want to take a couple of things in pieces. Now, all of this collecting that was going on after the May 9th contempt vote, this was all in response to a January 11th subpoena. Is that true?

A It's in response to a January 11th subpoena that was still under negotiation, because we made a presentation to the Chairman on February 15th --

Q After the due date?

A -- about the open issues in the subpoena that we put on the table and asked for consideration and received no response.

And so while waiting for a response, we did not --

Q Collect documents?

A -- do anything further.

Well, we had collected and produced, you know, some 40,000 pages of documents up until that point, and on February 26th, we produced, I believe, almost everything responsive to the subpoena except the material that we thought was privileged.

Q Which would be the 3,000 pages?

A That's correct.

Q But you hadn't collected it yet so you didn't know how much material it was, is that true?

A Well, a lot of the material in the subpoena explicitly called for the Counsel Office work product. That was an explicit request in the subpoena, and since we know that that was privileged, it wasn't something that there was any need to collect. We were claiming a privilege on it.

We were trying to work with the committee to determine if the committee was really going to pursue its interest in this material and had put a proposal on the table. So in that sense, collecting, you know, the 8 inches of material which was culled from drawers and drawers, was not a process that seemed fruitful.

Q So the only documents you had not collected were the documents that you knew you were going to claim Executive Privilege over?

A Yes. We knew we were going to claim or we believed were subject to a claim of privilege.

Q Which would include personnel files?

A Well, the personnel files, you will recall, in February -- I am not sure you were at that meeting, but in February the agenda to the meeting -- as a matter of fact, I think you weren't.

The agenda to the meeting talked about personnel files in its own category, and at that time I think we believed that one could assert Executive Privilege over these. We thought there should be a way to accommodate the committee's interest in these materials without violating the privacy of the individuals involved and hope that the committee would work with us to achieve an in-camera review of the personnel material, or something like that. But that was a proposal that we put on the table on February 15th and then didn't have a response to until May 2nd.

Q You said at that time you thought personnel materials were arguably within an Executive Privilege claim; did you have any basis for that at that time?

A Sure.

Q Can you state what those are?

A You are asking for my legal analysis?

Q Well, if there was some basis that was discussed or some analysis that was done or a basis that was given either from you or from others.

Mr. Witten. If we are going to get into a discussion, I think we might be in an area that is itself privileged. I might observe that it is extraordinarily odd to me for one party to a negotiation to depose the other under oath about the history of the negotiation and why they took certain positions, but I guess that's the way the committee is proceeding, and so I won't object.

Ms. Olson. Well, if you have an objection, please state it for the record. Otherwise, I ask that comments not be put on the record from the attorney about his opinion of the deposition.

BY MS. OLSON:

Q The documents that were collected and reviewed at the White House, do you know who came over to the White House to review the documents for the final Executive Privilege claim?

A It was primarily Richard Shiffren and Paul Coburn.

Q Are they both in the Office of Legal Counsel?

A Yes.

Q Was Mr. Dellinger involved in any of these negotiations?

Mr. Witten. I don't believe the witness testified to any negotiations.

Ms. Olson. Let me rephrase that.

BY MS. OLSON:

Q Was Mr. Dellinger present or involved in any of the decisions by the Department of Justice concerning these documents, that you know of?

A Yes.

Q Okay. Did he ever come to the White House to review the documents?

A He may have reviewed a sampling of them.

Q Were all documents reviewed at the White House, to your knowledge?

A No.

Q Were documents ever sent to the Department of Justice for review?

A I'm aware of one occasion where we brought some documents over to the Department of Justice for review.

Q Okay. Do you know if the President ever made any review of the documents?

A Personally?

Q Uh-huh.

A No.

Q Do you know if any memos on the documents or reasons for claiming Executive Privilege were ever sent to the President personally?

A Yes, of course.

Q Okay. Can you describe what was sent to the President that you know of, for claim of Executive Privilege?

Mr. Witten. Are you asking for the substance of the communication?

Ms. Olson. I am just asking for the substance of the material sent, so I guess it's the substance of the communication. She said she was aware of documents. I had described them as reviews and I just didn't want to describe them myself without the witness describing what was sent up there. She doesn't have to give the substance.

Mr. Witten. Say what you can about the process without disclosing the substance of the communication with the President, please.

The Witness. The President was provided a memo from the Attorney General and a memo from the Counsel.

BY MS. OLSON:

Q Do you know if any of the documents were also sent in with that memo?

A You already asked me if I reviewed any of the documents.

Q Do you know if any of the documents were attached to the memo that came from the Attorney General or from the Counsel?

A Any documents? What documents?

Q Any documents that Executive Privilege is being asserted over.

A No.

Q You said there were two memos. Do you know if any other documents were sent up concerning the invocation of Executive Privilege to the President?

A Are you talking about the May 9th protective assertion or the May 30th?

Q The May 30th.

A I don't believe so.

Q I apologize. I thought you were talking about the May 30th, when you said the two memos were sent in.

Were the two memos sent in for the protective privilege also?

A I believe so. The May 30th -- you know, there may have been another -- there may have been another third memo, a decision memo back, or something. I can't remember if the memo to the President had a decision line in it or if there was a decision memo sent back. There may have been three pieces of paper or it may have been incorporated into two.

Q May 21st is the date you list in your July 17th letter that Ms. White obtained the FBI file from the Office of Records Management; do you know what Ms. White did with the file after she got it on May 21st?

A I have no personal knowledge, no.

Q Okay. The next thing that she --

A I mean, she does describe it in her statement that's attached to the letter, what she did.

Q Right. The next thing that -- well, let me go back to that. You said she describes what she did with it in her statement. She received it on May 21st, from your letter of July 17th, 1996, which is Deposition Exhibit No. 1.

In her statement, which is also attached, which is a July 18th, 1996 statement, she discusses that she retrieved it, had it copied and prepared for production and then gave the original back on May 23rd.

Other than that information, do you know what she did with the file?

A No.

Q Did she contact you about it at that time?

A No.

Q Do you have any knowledge that she contacted anyone about it at that time?

A No.

Q Do you know if there were any discussions between May 21st and May 23rd about the file, the background file at that time?

A I am aware of no discussions.

Q Okay. The next thing in your letter discusses that it was copied and produced to the committee on May 30th. Did you have any knowledge or had you seen the Billy Dale file before it was produced on May 30th?

A No.

Q Were you aware that the Billy Dale FBI background file was being produced on May 30th?

A No.

Q You had described hearing about it in a January 4th statement.

Mr. Witten. June 4th.

BY MS. OLSON:

Q I am sorry. June 4th statement. Was that the first time that you had noticed that there was probably -- that Billy Dale's background investigation file had been at the White House and then produced to this committee?

A Yes.

Q Is it your belief that during the discussions with the President, when there were conversations -- I mean, with the Chairman, when there were conversations about not producing personnel material, were you aware that those conversations included the Billy Dale FBI background file?

A It would be difficult for me to have been aware of that since I wasn't aware of the file until June 4th, and as far as I am aware, there were no discussions in the Counsel's Office about the file prior to that time, prior to June 4th, or anywhere else in the White House, that I am aware of.

Q Do you know what happened to the file after it was copied?

A No.

Q Has Ms. White had any conversations with you about what she did with it after she copied it?

A I believe -- yes.

Q Other than giving a copy back to Mr. Taggart, which she states in her -- excuse me. Not a copy. Other than giving the original back to the Office of Personnel Security on May 23rd, has she had any other discussions with you?

A Yes.

Q Can you describe those?

A She told me at one point that, from the time she obtained the file and had it -- and returned it to OPS that, I believe she said she kept it in her safe.

Q Did she say why she did that?

A No.

Q And when she turned it to OPS, do you know if she returned it to Craig Livingstone?

A No, I don't.

Q Did she ever tell you who at the Office of Personnel Security she gave it to you?

A No, I don't think so.

Q Did Mr. Livingstone or anyone else ever discuss this file with you?

A Yes.

Q Can you just tell us what that discussion was?

A On June 5th, I asked to speak to Mr. Livingstone about the file, and I believe he may have at that time, or maybe it was the 6th, then retrieved the original. Now, we hadn't retrieved the original until the 6th.

Now, I am not actually sure when we retrieved the original, but I did discuss the file with Livingstone on the 5th in trying to understand what this requisition form was and why it would have been requested in December when Billy Dale had left in May.

Q And did he provide you with any information concerning why it was requested in December when Mr. Dale had left in May?

A Well, the initial discussion that we had, he seemed as confused and puzzled by it as we were. He said he thought that the file -- well, I even asked him -- I asked him about the other Travel Office employees, thinking did we do this for all of them? And he went back and looked for the other Travel Office employees' files and found only the remaining Travel Office employees whose last name started with a letter before G-O.

Q Such as Barney Brasseux?

A Barney Brasseux, and we saw that Brasseux had been requested and -- but then we couldn't figure out why the other ones wouldn't be. At some point in that afternoon he said, you know, this could have been part of the Update Project. And we discussed what the Update Project was and he described it for me, and he said, I don't really know but this could have been part of the Update Project. And that was really the extent of what he had pieced together by then.

Q How did he describe the Update Project?

A He said it was a project that they began, he thought, some time in the fall of '93 to retrieve previous reports of holdover employees and explained how the background files of holdover employees would have gone off with the Bush administration and that there was a need to recreate the files and there would have been requests to the FBI for previous reports. And he -- so he is describing that, and he said somehow or another, you know, Billy Dale's file perhaps was

requested as part of that because they hadn't gotten accurate information on terminations.

Q When you spoke to Mr. Livingstone on the 5th, and he went and checked for the other Travel Office employees, do you know if he actually had Mr. Brasseux's file in the vault at that time?

A I can't remember if his file -- no. I think he retrieved that from Records Management.

Q You said on June 6th that Mr. Livingstone retrieved the original. Can you just -- do you know --

A I said I wasn't sure if it was the 5th or the 6th.

Q Either the 5th or 6th. Under whose direction did he retrieve the original file?

A The original Billy Dale file?

Q Yes.

A That would have been under my direction.

Q And why was that?

A Because we were going to -- that's why I think it was the 6th. I think we were going to produce it or make sure that we were going to -- no, maybe it was later than the 6th. It couldn't have been later than the 6th.

I'm not sure, but I know I asked him to retrieve it and it could have been in connection with trying to look at the original -- I honestly can't remember.

Q Do you know if the Independent Counsel had made a request for the original at that time?

A I can't remember.

Mr. Witten. Hold on. I thought Independent Counsel activities were beyond the scope.

The Witness. That's true.

Ms. Olson. Is there an objection?

Mr. Witten. I object. My understanding of the agreement between the committee and the White House is that there would not be inquiry concerning the White House's dealings with the Office of Independent Counsel.

Ms. Olson. For the record, there is a notation that the file, on one of the lists, I believe, Mr. Taggart had, or Mr. Good had, that lists documents going in and out of ORM with a date of June 6th.

Mr. Witten. Do you find -- may I show her a document?

Ms. Olson. My question went to the Independent Counsel only in an attempt to refresh Ms. Sherburne's recollection. I see she has a document with her where I think there's an in-and-out date on the Billy Dale file.

The Witness. Yeah. I was just looking for Brasseux. June 6th, right.

BY MS. OLSON:

Q Can you just describe, if you know, why you directed Mr. Livingstone to retrieve the Billy Dale original? Does that refresh your recollection in any way?

A I'd have to check my correspondence records, but I believe -- I believe my correspondence records would show, although I am a little confused about the dates, that we had provided the file that day to investigators.

Q Did you have any concern about asking Mr. Livingstone to retrieve the original?

A No.

Q Did you have any concerns about fingerprints that Mr. Livingstone might be putting on that file?

A No.

Q Is there any reason that you had for asking Mr. Livingstone to retrieve the original at this point?

A No. It was his area of responsibility. It was his job.

Q Were you aware by June 6th that there was a question about Mr. Livingstone's handling of the file?

A Handling of the Billy Dale file?

Q Yes.

A No.

Q And by "handling," I mean his general handling of the file as director of the office and receiving a file for someone who had retired months before.

A I was obviously aware that there was a question about the -- why that would have happened, but whether it implicated Mr. Livingstone's conduct at that time, no.

Q And so there were no issues of whether it was appropriate or not to ask Craig Livingstone to retrieve an original file that crossed your mind when you asked it to be retrieved on June 6th?

A No.

Q Did Mr. Livingstone bring the original to you?

A I don't remember.

Q Do you remember if you gave him any directions about handling it? By "directions," I mean directions concerning fingerprints being placed on that file.

A I'm not sure. I may be confusing the Billy Dale file with the Barney Brasseux file because I know one of those files we handled carefully, and I think it was Barney Brasseux's. I think by the time we retrieved that, we recognized that there may be some forensic interest in the file. But I think at the time we asked Craig to retrieve, or I asked Craig to retrieve the Billy Dale file I don't think we had any notion that there would be any fingerprint interest in it.

But I'm a little -- I could refresh my recollection by looking at my correspondence records and when we provided the original files to the other investigators. So I don't want to confuse the record with that.

Q Okay. To your knowledge, has the President ever reviewed Billy Dale's file?

A No.

Q How about the First Lady?

A No.

Q To your knowledge, did the First Lady have any involvement in the hiring of Craig Livingstone or any involvement in bringing Craig Livingstone into the White House after the Inauguration?

A No.

Q Do you have any knowledge whether the President had any participation in bringing Craig Livingstone into the White

House after the Inauguration? And by "participation," obviously he is the President. But I mean some more direct participation other than just by the fact that he's the President and everyone ultimately works for him.

A Do I have any knowledge that he did or --

Q Do you have any knowledge whether the President had any hand in bringing Craig Livingstone into the White House?

A Any personal knowledge?

Q Yes.

A I have information that the President has given me, but I have no personal knowledge.

Q I don't understand. The President gave you information?

A Right. But do I have personal knowledge of the President -- your question is --

Q Do you have any knowledge? And you said you don't have personal knowledge.

A I don't have personal knowledge.

Q So you were not present?

A I was not present when Craig Livingstone was hired. I did not work in the White House then. So I have no personal knowledge of how he was hired but, yes, I have had conversations with both the President and the First Lady in which they have informed me that they had nothing to do with hiring Craig Livingstone.

Q Okay. And when was that?

A Sometime in the last -- since June 6th.

Q Can you be more exact with a date?

A No.

Q Do you know if it was in the past week?

A No.

Q Okay. And by your conversations with the President and First Lady, did you have personal conversations with them regarding Craig Livingstone?

A As opposed to what?

Q Face-to-face, as opposed to a memo or a letter.

A I don't -- if it matters to you whether it's face-to-face or by telephone, does that matter?

Q That's my question, yeah.

A Well, you said by memo.

Q Okay.

A What do you want?

Q How was your communication with the President made?

A I believe the communication with the President was face-to-face, and I believe the communication with the First Lady

was by telephone.

Q Okay. Did you take notes?

A No.

Q Did you memorialize those conversations in any way?

A No.

Q Did anyone direct you to have those conversations?

A No.

Q And you said that you had had the conversations with both of them on whether they had hired Mr. Livingstone. Did you ask them if they had had any participation in bringing Mr. Livingstone into the White House beyond directly hiring him?

Mr. Witten. I think she said they had nothing to do with it.

BY MS. OLSON:

Q Nothing to do with Mr. Livingstone coming to the White House?

A That would be right.

Q Was your question broad enough -- do you recall if you said, did you hire him; whereas perhaps someone didn't hire the person but might have had some hand in bringing them in?

A All I know is that when I concluded each conversation, I was satisfied that neither one had anything to do with the hiring of Craig Livingstone. I don't remember what precise question I asked.

Q Do you know if it went beyond the hiring or it went to just asking someone to bring him in, if they didn't directly hire him?

A I think my answer is my answer.

Q Did you communicate this information to anyone?

A Sure.

Q Who?

A I don't remember.

Q How long ago was this, after June 6th?

A It would have been sometime --

Mr. Witten. Asked and answered.

The Witness. June 6th and the present. It wasn't yesterday. It wasn't the day before.

BY MS. OLSON:

Q It wasn't within the last week, you don't believe?

A No, I don't believe so.

Q You don't recall who you communicated this to?

A No.

Mr. Witten. We have been going about 2 hours now. I don't want to interrupt a line of questioning, but if you are ready for a break, that would be fine for us.

Ms. Olson. I just have a few more on this letter.

BY MS. OLSON:

Q You said that Craig Livingstone had mentioned Project Update to you. Did you speak to his attorney?

A Ever?

Q At that time.

A No.

Q How did you find out that there were other files retrieved on prior administration officials?

A From his attorney.

Q Can you just describe that conversation, when you think it occurred?

A It occurred the day after I had had the conversation with Craig Livingstone about the Update Project.

Q Okay. And can you -- did he call you?

A Yes.

Q Or did you initiate the conversation?

A He called me.

Q Can you just describe what the conversation consisted of?

A He called me and said -- he said, I think I have good news for you. He said, I think we figured out what happened with the Billy Dale file.

And I said, oh, great. What happened with the Billy Dale file?

And he said, well, it apparently was requested as part of this Project Update and I think we have got confirmation of that.

And I said, oh, what's the confirmation?

He said that it was a list of archived material that had -- that included Billy Dale.

And I said, okay.

And he said, but there's some bad news.

And I asked him what the bad news was.

And he said, well, it appears that there were a lot of files requested and it looks like of people from the previous administration who were not holdover employees. And then he -- this was a telephone conversation. And then he asked -- told me he would ask Craig to bring me the archive list.

Q Okay. Did Mr. Turk tell you where he got that information?

A Mr. Turk?

Q Yes. I take it Mr. Turk was the person who called you?

A No.

Q Mr. Cohen?

A That's correct.

Q Okay. Did Mr. Cohen tell you where he got the information that he gave you?

A I don't know if he told me that or not. I assumed he got it from Craig.

Q Who was his client at the time?

A That's correct.

Q Did he give you other -- any other information that he had obtained from his client?

A No, not at that time.

Q Were you aware that Mr. Cohen was investigating this matter?

A No.

Q Had you directed him in any way to look into this matter or investigate this matter?

A No.

Q Had you asked him to have any conversations with his client and report them back to you?

A No.

Q Did Mr. Cohen discuss a statement that he had obtained from Mr. Marceca with you at that time?

A No.

Q Did he ever share a copy of that with you?

A Ever?

Q Ever, the statement from Mr. Marceca.

A Yes.

Q Did that come from Mr. Cohen?

A I am sorry?

Q This is Anthony Marceca.

A You asked me if David Cohen ever shared with me a statement of Anthony Marceca and you asked if it came from David Cohen?

Q Okay. When did he share the statement with you?

A The statement is dated what, March -- the 10th?

Q Do you know if he shared it with you the date that it was taken?

A I think he took it -- I think he told me he took it in the evening. I think it was probably the following day.

Q I think it was on a Sunday that he took it. Do you know if you received it on a weekend?

A No. I think I got it the following day.

Q Okay.

Ms. Olson. Why don't we break. I just have a couple more things, but we might as well break.

Mr. Witten. Okay.

[Recess from 3:05 p.m. to 3:15 p.m.]

RPTS BRYAN

DCMN KRISTOFFERSEN

[3:15 P.M.]

Ms. Olson. Back on the record. Ron, do you have any questions? I have been going on.

Mr. Stroman. Go right ahead.

BY MS. OLSON:

Q Are you aware of a personal data statement questionnaire that's been given to new employees in the administration?

A Yes.

Q I have an example of one which may have been a version that preceded you, but I will mark it as Deposition Exhibit No. 4, and I would ask you if you have ever seen that questionnaire or a similar questionnaire?

A I love the fax footprint from Night Line. I have seen this questionnaire, yes.

[Sherburne Deposition Exhibit No. 4

was marked for identification.]

BY MS. OLSON:

Q Okay. Can you just tell us what type of individuals this questionnaire is given to?

A I understand it's given to Title III employees.

Q Can you describe what your understanding is of a Title III employee?

A Basically understand that those are people who serve at the pleasure of the President. I don't know what else is encompassed, but I know that the people who get this out of the White House are Title III employees.

Q Do you know if any of the volunteers or interns are also given a data statement questionnaire?

A No.

Q I want to draw your --

Mr. Witten. No, you don't know.

The Witness. No, I don't know.

BY MS. OLSON:

Q I want to draw your attention to a question in the questionnaire which asks the individual on No. 28, question No. 28, to list current past political party affiliations. Do you know if that question is presented to individuals other than Title III employees?

A I don't believe it is.

Q And what is the basis for your belief?

A I have inquired.

Q Who have you inquired of?

A I have asked -- I have asked Chuck Easley, and I asked -- I think I asked Kathy Whelan, who is a lawyer in the Counsel's Office.

Q And were both of those individuals' responses consistent with your response that you believe that you didn't get a request?

A Since that was the basis for my statement, I would hope so, yes.

Q Okay. By Title III employees, do you know if individuals that were holdover Title III employees received a questionnaire that asked them their party affiliation?

A Only when they were up for reinvestigation.

Q And that would be their 5-year reinvestigation?

A That's correct.

Q And at that time they were asked -- given a questionnaire that included a question asking them their party affiliation?

A That's what I have been told.

Q Do you know the basis of that being done -- the basis of why that is being done?

A I'm sorry.

Q Do you know why that is being done, when people are reinvestigated for their 5-year FBI background update?

A That they fill out a personal data statement.

Q And that they are asked their party affiliation at that time.

A Are you asking me, do I know the basis for a White House policy on that, or do I have a view?

Q Do you have a basis?

A No.

Q Do you know if that has been discussed specifically with regard to the question about their political affiliation?

Mr. Witten. Object to the form.

BY MS. OLSON:

Q Do you know if there have been any discussions about whether or not individuals getting their 5-year FBI investigation should be asked their party affiliation?

A When?

Q Well, you have said it is when they are up for reinvestigation.

A No, no, no. When are you talking about, discussions? I assume that this -- I have been told that this questionnaire is based on a questionnaire that was used in the Bush administration, and if -- and I don't know, frankly, whether the request to identify party affiliation was included in the Bush administration questionnaire, and so I don't know if there were discussions at the time the Clinton administration decided to adopt the form, what kind of modifications took place. I wasn't there then, so I wouldn't know about any discussions that took place at that time.

Q Even if you weren't there, has anyone described why that question either was put in or remained in the questionnaire?

A Whether that question was --

Q Has anybody discussed anything about that question being in these questionnaires?

A Well, sure. Since your committee raised the issue, we have had discussions about it, yes.

Q Okay. Can you just describe those discussions, and let's start with who was there during those discussions before we get into the substance.

Mr. Witten. Excuse me. I'm going to have to consult my client, because since I'm at a loss as to what this relates to, I'm at a loss as to whether there is privilege and then as to whether it has been waived.

Ms. Olson. I'm sure there is a privilege.

The Witness. Well, this isn't, frankly, a subject matter that was ever going to be a subject matter of the deposition.

Mr. Witten. The statement that you read at the beginning of this deposition, the reason I'm at a loss and asking to consult with my client is, I can't see in the statement you read at the beginning of the deposition any reference to whatever this line of questioning is about.

Ms. Olson. I will tie it up. Billy Dale was accused of being a Republican. Billy Dale was fired for alleged wrongdoing, and I think it's relevant to know if there was a questionnaire to root out and find out the Republicans rather than firing them first.

I think it relates to bases for firing Billy Dale. It was brought up in our hearing, and I think that was one of the bases that the members of our committee were curious about, a questionnaire asking people about party affiliation, which is why I am asking her about holdovers and if there were any discussions about why that is in a questionnaire.

Mr. Witten. Okay. Thanks.

The Witness. When was Billy Dale reinvestigated?

Ms. Olson. He was fired on May 19th. He had already had his investigation.

The Witness. But he was not reinvestigated in the Clinton administration, was he? That's my recollection too. So Billy Dale wouldn't have received this questionnaire.

BY MS. OLSON:

Q Do you know that for a fact?

A I know that by virtue of the policy. If the policy was applied as I have been told it was applied, he wouldn't have gotten it, and I don't think -- but you may know this better than I -- that it was in his FBI file. Was there a personal data statement in his FBI file?

Q I haven't reviewed his FBI file.

A Okay. I don't know.

Q The question is still, can you just describe what discussions you had concerning this question in the personnel data statement? And let's start with the individuals who were present before I get into the substance.

Mr. Witten. I need to consult to make certain that there isn't any privilege that ought to be -- that might apply here.

[Counsel and witness confer.]

Mr. Witten. I hate to do it, but we are not aware of any waiver of executive privilege that might apply to internal deliberations in which Jane may or may not have participated relating to the issue you are raising, so we are going to have to present --

Ms. Olson. Okay. I will make this Deposition Exhibit No. 4, and particularly just so the record is clear, my question did go to any conversations that may have occurred between White House counsel about the use of a question asking individuals to list their current and past party affiliation.

I have a document which I will mark as Deposition Exhibit 5. It does have a Bates stamp No. It is CGE 48114.

[Sherburne Deposition Exhibit No. 5

was marked for identification.]

BY MS. OLSON:

Q Have you ever seen this memorandum? It's a September 7th, 1995, memorandum to Doug Mattics, M-A-T-T-I-E-S, from Christopher Cerf. Have you ever seen this document before?

A Yes.

Q Okay. Can you just tell us what context you have seen this document before?

A It was provided for my review in connection with the document production to your committee.

Q Okay. When this was sent on September 7th, 1995, do you know if you were provided a copy of it or were involved in any discussions concerning it?

A No. Do I know, or was I?

Q Were you?

A No, I was not involved in any discussions of this issue, but provided a copy of the document.

Q One of the issues that is raised in this memorandum is whether they should use the form, which is not necessarily described, but it's regarding security procedures for volunteers -- use the form only for new volunteers rather than root out any problems that may exist for existing ones.

The next sentence in this memo says, "Also, do we want to ask people their political party?" And it's followed by a question that says, "Might this be misunderstood in a political year?"

Relating back to Deposition Exhibit No. 4 as well as this Deposition Exhibit No. 5, did you have any conversations with any individuals in the Counsel's Office about the basis for this memorandum, Deposition Exhibit No. 5?

A Do you mean why it was written?

Q Uh-huh.

A No. I know it was produced with a number of other documents, I believe, that addressed security procedures for volunteers, and I believe those other documents provided more of a context than this document alone provides, but I did not have any discussions with anyone.

Q Are you aware of any discussions concerning whether the Clinton administration should ask volunteers for their political party?

A No.

Q In Deposition Exhibit No. 4, although you have claimed a privilege, do you believe it's privileged to discuss who was at the meetings that you claim the substance is privileged?

A No.

Q Then can you go ahead and respond to who was at the meetings?

A I don't remember. And I don't know that there were meetings. I know I had conversations with people about this, and I honestly don't remember beyond what I have already testified to.

Q Referring back to Deposition Exhibit No. 5, do you know what Mr. Cerf is referring to when he asks whether it wouldn't be better, quote, to let sleeping dogs lie on this?

A No, I don't.

Q Do you know what form he is referring to, to use only for new volunteers?

A No, I don't.

Q Are you aware of any problems that may exist for existing volunteers in context of this memorandum?

A No. But as I mentioned, this document was produced with a number of other documents that talked about the need to revise security procedures for volunteers, and those documents, I believe, provide a context in which this one should be read.

Q Do you know if those documents also include a questionnaire that asks the volunteers their political party?

A I don't remember.

Q I have a document I will mark as Deposition Exhibit No. 6, and I will ask you if you have seen that. It is a February 5, 1996 letter to Chairman Clinger from Jack Quinn, and attached is an addendum to affidavit of Jane C. Sherburne on the second page.

[Sherburne Deposition Exhibit No. 6

was marked for identification.]

BY MS. OLSON:

Q My question goes to the second page in your affidavit and the second paragraph where you state that you telecopied the Watkins memorandum to Leslie Berger, counsel to Mack McLarty. Is this your statement that you did or had your secretary telecopy the Watkins memorandum?

A Yes.

Q Can you just state the basis for telecopying the Watkins memorandum over to Mr. McLarty's attorney on January 2nd, 1996?

A You mean why did I do it? Because I wanted Mack McLarty's lawyer to be aware of it.

Q And what was your basis for that, if there was one?

A The memo treated a subject -- may I answer that?

Mr. Witten. Well, I thought the White House had waived executive privilege regarding the Watkins memo insofar as there were communications related to its existence in discovery and production, and so you may answer that to the extent it is within the scope of that waiver, or if I have misstated --

Ms. Olson. Well, my question goes beyond the scope, if you believe there is an executive privilege. I would like it on the record rather than getting a partial answer.

The Witness. I think I can answer the question. I don't think there is more to it other than what is within the scope.

Mr. Witten. Okay.

The Witness. The memo addressed subjects that included Mr. McLarty. We were making the memo available to the committee, and --

BY MS. OLSON:

Q Do you recall if it was after you gave it to Mr. McLarty?

A Well, it was January 3rd. And so I believe that Mr. McLarty's lawyer ought to be aware of a memo that we are providing to the committee.

Q And other than sending Mr. McLarty's lawyer the memo the day before it was provided to this committee to make him aware, was there any other purpose that you sent it to him for?

A No.

Q Did you ever ask Mr. McLarty what his views were on the Watkins memorandum?

A No.

Q Did you ever have any discussion with Mr. McLarty's attorney concerning Mr. Watkins' references to Mr. McLarty?

A Yes.

Q Can you please tell us what the substance of those conversations were?

A No.

Mr. Witten. The substance of those conversations don't relate to the discovery or the Watkins memo, and I believe the White House has not waived executive privilege, and you are not permitted to answer that question.

Ms. Olson. And you believe there is an executive privilege over conversations that a White House counsel has with an outside attorney? I mean, is that an executive privilege claim that is being made?

Mr. Witten. Yes.

The Witness. Well, it is not a claim that is being made. I am not authorized to waive a privilege.

BY MS. OLSON:

Q So you believe there is an existing privilege that has already been made by the White House over conversations that you had with an outside attorney, personal attorney?

Mr. Witten. She is not authorized to answer the question in the way you framed it.

Ms. Olson. Is that executive privilege also?

Mr. Witten. Ask your question; she will answer. We don't need to debate the executive privilege. I gather it is being debated at great length in other settings.

Ms. Olson. Well, I would like to clarify -- there is an objection, and I'm not getting an answer because of some executive privilege that hasn't been waived, so I just wanted it clear that is it your belief there is an executive privilege over conversations that you had with Mr. McLarty's personal attorney.

The Witness. Over the substance of those conversations.

Ms. Olson. Yes.

The Witness. I believe the substance of those conversations are subject to a claim of executive privilege that I am not authorized to waive.

Ms. Olson. Okay.

BY MS. OLSON:

Q And since "subject to" has become a term of art in the White House, do you mean there is an existing claim of executive privilege or that the White House has just made a subject to claim of executive privilege?

A I am not aware that the President has asserted executive privilege or invoked executive privilege.

Q Over documents that include conversations with outside attorneys?

A Over this question.

Q I think Leslie Berger is in some notes that are being withheld from this committee, and I believe there is an executive privilege over those notes.

A Well, then, you are answering your own question. Why ask me?

Q Does it also extend to conversations that you had concerning the Watkins memorandum?

Mr. Witten. I am not going to let you cross-examine the witness on the executive privilege legal issue. You may ask her fact questions, and she will answer them to the extent that she can.

Let's move on. You folks have been debating executive privilege for a long time, and you probably will for a long time, and I'm not going to permit it to be done under oath in the context of the deposition.

Ms. Olson. So noted for the record.

BY MS. OLSON:

Q I have a document which I will mark as Deposition Exhibit 7. It is a memorandum from February 9th, 1996, and it is to the counsel to the President from the deputy attorney general; I believe it's Jamie Gorelick. Attached to it, Bates stamp No. 47892 going through Bates stamp No. 47898, is a memo dated February 7th, 1996, on FBI background investigations.

[Sherburne Deposition Exhibit No. 7

was marked for identification.].

BY MS. OLSON:

Q Have you ever seen that memoranda?

A Yes.

Q Okay. Can you just describe circumstances under which this memorandum was produced to the White House? And by circumstances, I am asking if there was any event that occurred or any problem in existence that caused this memorandum to be produced.

A I have no idea.

Q Are you aware of any activities or actions at the White House that would have caused the Department of Justice to review the policies on FBI background investigations in February of 1996?

A No.

Q So as far as you know, this came unsolicited?

A I don't know anything about this memo, other than that it was provided to me for my review in connection with your document request.

Q Okay. I have a February 15th memo which I will mark as Deposition Exhibit No. 8, and it is a February 15th, 1996, memorandum to Andrea Oliver from John M. Quinn and Jane Sherburne concerning subpoenas that were issued by the Government Reform and Oversight Committee.

[Sherburne Deposition Exhibit No. 8

was marked for identification.]

BY MS. OLSON:

Q Have you seen that document before?

A Yes.

Q Can you tell us if this memorandum went to individuals other than Andrea Oliver?

A Yes.

Q Do you know what the list of individuals was or the classification of individuals that received this memo?

A I'd like just a second to finish reading it.

Q Sure.

[Pause.]

A What was the question?

Q I just asked who else this memo went to besides Andrea Oliver.

A It went to those who were issued personal subpoenas by this committee -- that is, the Committee on Government Reform and Oversight -- who were current and former White House employees during the week prior to February 15th, that subpoena.

Q Do you know if this was the first notice that was sent to any White House employees concerning the Government Reform and Oversight subpoenas?

A I don't remember.

Mr. Witten. When you say the Government Reform and Oversight subpoenas, are you referring to the subpoenas that are referred to in this memoranda, the one issued prior to February 15th? I don't know if there were any others.

The Witness. I don't think you started issuing subpoenas until January, did you?

Ms. Olson. January 11th, 1996, were the first subpoenas that were issued to the White House and the Department of Justice.

BY MS. OLSON:

Q Do you know if there were any other memorandums sent to the White House staff asking them to pull out documents in response to the January 11th subpoena?

A To any White House staff?

Q Uh-huh.

A I believe there was, yes.

Q Do you know if that was sent -- when that was sent out?

A In response to the January 11th subpoena? No, I don't.

Q Do you know if it was sent out before January 22nd, the due date of our subpoena?

A I don't remember when it was sent.

Q This subpoena, as you have testified, is directed to individuals that were issued personal subpoenas, and it says that the Counsel's Office will handle production of the responsive White House records.

Can you just describe how that policy came about or what decisions were made concerning the White House Counsel's Office handling this production?

A We had had some substantial experience with requests for documents that would go to individuals and -- you know, over the last couple years, and had learned as a result of that that people were frequently confused about what was a personal record and what to do with their White House records and handled them inconsistently and differently.

So as a result of that, we developed a system that would ensure that White House records were being produced through the White House and all evaluated under the same standard for privilege considerations, and helping people determine how to distinguish between or what were personal records and what they should do with White House records.

Q Do you know if the White House decided to produce records from people that no longer worked in the White House or were former White House employees?

A If a former White House employee had White House records that were responsive to a subpoena, the White House would produce them, yes. I'm not sure that was your question, but that's the question I'm answering.

Q Okay. And this was based on prior experience also, a decision -- your decision to ask former White House employees to turn back in their documents to the White House Counsel's Office?

A Turn back in their documents?

Q What was it based on? What basis did the Counsel's Office have to ask former employees to send their documents to the White House, if there was one?

A For the most part, it would have been questions that we would be getting from former employees who would, you know, over the history of all of these requests and all of these investigations, people would call and say, you know, gee, I took a -- I have a file X with me. Am I supposed to produce it in response to this subpoena, or how should I handle this? Do you guys want to see it? Do you want to know what I am producing?

So over time we developed a system for responding to that kind of a problem. If somebody -- if a former employee took a White House record with them, you know, they wouldn't, obviously, be authorized on their own to produce a White House record, and so it was something that normally people would bring to our attention and we dealt with it, and this is the

system we adopted.

Q Were employees ever told about taking White House records with them when they left the White House?

A I don't know what is done when somebody leaves if they are given information about the Presidential Records Act and what is supposed to stay and what is not supposed to stay. I don't know what system is followed.

I know that was something that I was aware of when I left the White House in October of 1994, and there were people who I was told I could call, as I recall, about any questions I might have about what is a Presidential record. But I honestly can't remember what resources are available for people or what advice they are given about how to handle personnel records or White House records when they leave.

Q Is it fair to state then that the White House, in your view, was that if someone left with White House documents, they remained White House documents, even if they were no longer employed by the administration?

A If they were created during the administration in the course of the individual's official duties? Sure, yes.

Q And they were still subject to executive privilege claims even though the individual had left the White House with those documents?

A Sure.

Q This letter says that responsive personal records should be provided directly to the committee. Did that policy ever change where personal records were also provided to the White House Counsel's Office?

A No, not that I am aware of. At least not under any document production that I have ever supervised.

Q This is a document I will mark as Deposition Exhibit No. 8. I will mark it in pencil, because I will replace this original with a copy -- Deposition Exhibit No. 9, I'm sorry. It is a July 12th, 1996, letter from Jane Sherburne to Chairman Clinger with one page attachment, and it says that there is a corrected copy of a document being provided.

[Sherburne Deposition Exhibit No. 9

was marked for identification.]

BY MS. OLSON:

Q Do you recognize that document?

A No. I mean, that's my signature, and I'm sure I sent this to you. I assume it was something that somebody provided to me and said, "This needs to be corrected," but I don't remember.

Q Do you know who provided it to you?

A I don't remember.

Q Has anyone discussed the fact that that document became a point of contention during prior depositions with this committee and the fact that it was redacted was brought up?

A I don't remember that.

Q Do you know if that was the basis for providing the unredacted version?

A No.

Q Have you had any conversations with individuals' lawyers that we have deposed concerning the substance of their deposition?

A About the FBI matter?

Q About any of our depositions we have done in the White House Travel Office matter?

A I'm sure I have, yes. But I don't remember one on this subject or that would have talked about a redacted document.

Q Okay. Then talking generally rather than just limiting ourselves to Deposition Exhibit No. 9, can you tell me the policy or the procedure under which the lawyers call you after having been deposed with this committee?

Mr. Witten. I object to the form of the question.

The Witness. I'm not sure I understand the question.

BY MS. OLSON:

Q Do you know why the lawyers call you after their clients have been deposed by this committee?

A I'm sure that they have different reasons for doing so.

Q Have you ever requested any lawyer to call you or requested any information concerning the topics that we have been deposing individuals about?

A Sure.

Q And could you just explain what the basis of those requests are?

A Well, I think it depends on the specific request or the specific witness, but typically we would be interested to find out what information the committee is seeking from witnesses and what the witnesses have responded to those inquiries.

Q And what use is the White House making with that information?

A Um, ensuring a full, accurate, complete record that is capable of being presented to the public.

Q Can you describe how the White House is going to assure the record is accurate by finding out what is going on in our depositions with witnesses?

A Well, if you selectively leak a deposition and we learn that something else occurred in the deposition, then we can set the record straight or give some balance to the selective leak.

Q Are you aware of any leaking whatsoever of these depositions from this committee on the White House Travel Office matter?

A Um, I don't know if there are leaks from depositions or documents, but I'm aware of information that seems to come into the public domain.

Q Well, we're talking about depositions here, so I was just asking if you are aware of any deposition information that has ever been leaked?

A I, off the top of my head, can't point to a specific example.

Q Then can you explain why your basis for talking to attorneys to assure an accurate record if these are leaked when it hasn't occurred?

A I didn't say it hasn't occurred.

Q If it has occurred, I would like it on the record.

A Well, then, why don't you go under oath and tell me --

Mr. Witten. Let's stop. Your question is argumentative, and I object. And you shouldn't talk back.

Ms. Olson. It probably is. I will move on.

BY MS. OLSON:

Q On other than preventing leaks that are inaccurate, are there any other purposes that the White House has for finding out what goes on in our depositions?

A Yes.

Q Can you please state those?

A Well, I think in order to understand and advise properly on executive privilege issues, it's helpful to understand what you are asking of witnesses, because then when another comes up and then they can be better prepared to handle the questions that might come their way in terms of privilege. That is certainly one.

Another is to determine if the committee is developing information that ought to come to the attention of officials in the White House -- supervisors, management -- that ought to be examined further.

And, fundamentally, I think, it is a situation where, when the majority of a committee is examining a White House, it is just good practice to know what you are being examined about, what the questions are, what the issues are, so that you can adequately prepare a response and an explanation and present as full and complete a picture as possible in that response, be it to the committee or to the public.

Q Are you aware of the fact that we had specifically kept these depositions confidential so that the White House wasn't helping to prepare witnesses to give responses but that we were getting the witnesses' individual responses without that preparation?

Mr. Witten. Object to the question, both its form and its tone. It's argumentative. I don't think it is capable of being answered. It was a speech.

Ms. Olson. It probably isn't capable of being answered. I will move on.

BY MS. OLSON:

Q Have you also discussed information other than executive privilege with the lawyers for witnesses that we've deposed? And this would be information outside of executive privilege concerns.

A I don't understand your question.

Q You had given us one of your reasons, so that you could have witnesses, later witnesses, better prepared for executive privilege.

A That was one of the reasons, yes.

Q And I guess the other reason is, since the White House is being investigated, there is a benefit for knowing what's being said in depositions so that you can respond publicly. Is that an accurate --

A It's generally good legal practice, yes.

Q Were any of these issues raised when you worked for Lloyd Cutler in April concerning the very same thing going on with the RTC?

Mr. Witten. I'm going to object again. It's very argumentative, Barbara. I think you are having a fight with Jane, you are not conducting a deposition.

Ms. Olson. No. I mean, I am shocked that I am getting a response by a White House counsel who I'm deposing who has obviously spoken to every lawyer who we have ever deposed and she is sitting here with that knowledge so that she can give a better response. And I don't understand a legitimate basis for this when she has been through this with the RTC and there

were all kinds of problems with that sort of information being transferred back and forth.

Mr. Witten. It is not the least bit shocking to me as an experienced litigator. But you asked the question, and she gave the answer. Either you like it or you don't, but let's move on.

BY MS. OLSON:

Q Can you just state that this occurred also in depositions and grand jury visits by individuals with the independent counsel?

Mr. Witten. My understanding is that this committee has agreed not to question these witnesses about dealings with independent counsel, which includes the grand jury, so on that basis I will instruct the witness not to answer the question.

Ms. Olson. I would like to make the record clear that I am not asking for communications with the independent counsel, which is the only area that the chairman has agreed to exclude. It is for communications with the independent counsel.

I don't want to know of communications with the independent counsel. I want to know if you have had communications with lawyers where they have told you what's gone on during grand jury appearances for their clients.

Mr. Witten. Your understanding is not the same as mine, so we will just have to get it sorted out.

Ms. Olson. We will present this to the chairman for a response. I just spoke to the chairman, however, and that is his stated understanding. So I would just like to put on the record it will be presented to him and he will, I'm sure, confer with the Minority before it is presented to your client.

Mr. Witten. As long as we are making a record on it, can you tell us what the relevance of your inquiry is of any conversations Jane may have had or anybody at the White House may have had with --

Ms. Olson. Lawyers for witnesses in grand jury appearances?

Mr. Witten. Yes.

Ms. Olson. There is an allegation that the White House Counsel's Office, of which Jane Sherburne is a part, has been controlling every investigation that has occurred concerning the Travel Office matter as well as now Filegate.

It appears that all of these investigations prove conclusively that there has been a control by the White House Counsel's Office so that they know the information that has gone on in depositions, grand jury appearances, as well as every preparation for testimony before congressional hearings.

I think it is relevant, it is certainly an issue the chairman is looking into, it is an allegation that has been made against the Counsel's Office, and it appears that Ms. Sherburne has stated that, certainly as far as our depositions are concerned, it is a policy of the Counsel's Office and in fact good legal practice to do just that.

So I am finding out if that's beyond our investigation, if it had to do with the Independent Counsel's Office also.

My other question was if the same thing happened with the Whitewater depositions, if those lawyers regularly called the Counsel's Office and/or Ms. Sherburne or those who worked under her to tell what happened during those depositions.

Mr. Witten. Thanks for putting on the record your argument.

Ms. Olson. You asked for my reasoning for asking the question.

Mr. Witten. And I'm thanking you for giving it.

Ms. Olson. And I -- there is a question, I think, pending. Is Ms. Sherburne directed not to answer for some privilege basis?

Mr. Witten. I think the last question related to the Independent Counsel's Office.

Ms. Olson. Yes.

Mr. Witten. And my understanding is that she is not authorized to answer the question as posed.

Ms. Olson. Then the question relates to lawyers calling Ms. Sherburne or any other members of the Counsel's Office that have been -- their clients have been deposed by Whitewater investigators.

Mr. Witten. Well, the Whitewater investigators include the Independent Counsel's Office.

Ms. Olson. Okay. I will limit it to Senate so that we will consider your objection to include the Independent Counsel as he is investigating Whitewater and Travel Office. So I will limit this just to Senate depositions with Mr. Chertoff and Mr. Ben-Veniste.

Mr. Witten. And the relevance to your inquiry of that is what you just stated?

Ms. Olson. You want me to state it again, that there is an investigation into White House's control of all investigations.

The Witness. So you want to know whether we spoke to any other lawyers about --

BY MS. OLSON:

Q If lawyers have called you from Whitewater.

A Yes, of course we did.

Q And would you say that that was a regular practice?

A Absolutely.

Q Has it been a regular practice in our depositions for lawyers to call you or other members of the Counsel's Office to discuss their client's deposition?

A Lawyers for White House officials, yes.

Mr. Witten. The question was, call you.

Ms. Olson. Or members of the White House Counsel's Office. I'm not limiting it to Jane. I realize that there are other individuals who are taking these calls.

BY MS. OLSON:

Q How did this come into being, or have all of these lawyers just decided to make these phone calls?

A Well, since in the first instance it would be entirely natural for White House officials who are being interrogated by the committee about the conduct of their official duties to be represented by White House counsel, flowing from the logic of that, which you rejected, it became obvious that in order to adequately represent the institution of the Presidency and do our job as lawyers, that we obtain the information that was being given by White House officials about their conduct of official duties from their private counsel who you did permit to be present.

Q And you are aware that the chairman specifically denied White House counsel's request to be present during these depositions?

A Yes.

Q For confidentiality purposes?

A And I am as aware, as you are, that --

Mr. Witten. Well, excuse me. I have to object to that, which she added, "for confidentiality purposes." We don't really know what was in the chairman's mind.

BY MS. OLSON:

Q Well, are you aware that the chairman stated that he didn't want White House counsel to be present because he didn't want the information to go back to other witnesses and perhaps change their testimony or at least shade their testimony, albeit unconsciously?

A I am certainly aware that the White House communicated to the chairman that it disagreed vigorously with the chairman's judgment in that regard, and if you want to ask me whether I ever instructed anyone to change testimony, you can do so, because the answer to that is, absolutely not.

Q Have you ever informed an attorney or a --

Mr. Witten. About to testify about information that was previously testified about.

The Witness. I don't understand that question.

BY MS. OLSON:

Q Have you ever told a future witness or that witness's attorney any statements that have previously been testified to about by a previous witness? Any communication about prior depositions to future witnesses?

Mr. Witten. Well, it strikes me that we are smack in the middle of communications regarding communications with Congress issue that you have been dancing around for a little while without objection, but I don't know whether --

Ms. Olson. Well, those are to Members of Congress. I am not asking whether she told a Member of Congress about what was said. I'm asking about future witnesses. We haven't deposed any Members of Congress, nor do I expect us to.

Mr. Witten. Well, again, I resist the impulse to debate your interpretation of the letter -- or of the agreement.

Ms. Olson. I understand. It will be presented to the chairman.

I would just put on the record that I spoke to the chairman, and clearly he did agree that we would not discuss the content of conversations between the White House and a Member of Congress. My question doesn't go to the Member of Congress; it goes to whether Ms. Sherburne or anybody else in the White House Counsel's Office has discussed any prior depositions' information with someone who is going to be deposed.

The Witness. I think the answer to that question is no.

Mr. Witten. Okay.

BY MS. OLSON:

Q You said it was important to have information for executive privilege purposes. Have you ever had any conversations with an attorney that is representing someone that has yet to be deposed about that information?

Mr. Witten. I was distracted and didn't hear the question. Would you mind reading it back, please.

[The reporter read back as requested.]

BY MS. OLSON:

Q In the context of an executive privilege discussion, have you ever discussed prior deposition information with a future witness or his attorney?

Mr. Witten. Well, what I'm struggling with here is, I don't believe you are going to be allowed to testify to the substance of your conversations with private counsel.

The Witness. Right.

Mr. Witten. And the question has been asked in a generic way, and I don't know whether it's objectionable in that form or not.

Ms. Olson. Your choice, Ms. Sherburne.

The Witness. She said, have you ever?

Mr. Witten. Do you mind if we consult for a second?

Ms. Olson. Of course not.

[Counsel and witness confer.]

Mr. Witten. Sorry.

The Witness. If I understand your question correctly, we have on occasion had discussions with lawyers for witnesses who are about to be deposed about executive privilege after other witnesses have already been deposed.

BY MS. OLSON:

Q Okay. And did those discussions include any review of questions we had asked that might have been within an executive privilege area?

A I can't recall a specific instance in which that happened, but it may have.

Q Okay. Do you know if you have had any conversations with Bob Bennett concerning Harry Thomason's deposition with us?

A No.

Q No, you have not had any conversations?

A No, I have not.

Q Have you had any conversations with anyone else in Mr. Bennett's office or otherwise representing Harry Thomason?

A Ever?

Q Concerning our depositions.

A Did you have more than one of Harry Thomason?

Q I'm unable to give you that information. Obviously you know that if you know there was one.

A You said "depositions," and I thought there was only one. And when you said "depositions," I thought uh-oh, maybe there is another time period that I'm thinking of. So I can't answer your question unless you answer mine.

Q About the one that you think that you know about. Have you had any conversations with anyone representing Mr. Harry Thomason regarding the one deposition that you think we had?

A No.

Q Are you aware of any executive privilege issues concerning Mr. Thomason?

A Nope.

Q I have a document that I will mark as Deposition Exhibit 10. It's a June 6th memo. It doesn't have a Bates stamp on it. It is a memo for the record, "Re: Counsel's Office request," and it is signed by Jane Sherburne, Sally Paxton, Thomas Kelly, David Kitchen, Terry Good, Lee Johnson, and I would ask if you recall that memo and if you could just give me the

circumstances of the creation of that memorandum. I have documents that were attached to it if you would like to look at them.

A Can we make the whole exhibit part of the record?

Q Sure.

[Sherburne Deposition Exhibit No. 10

was marked for identification.]

The Witness. The one page that was marked as the exhibit refers to an attached list, and the attached list looks like a bad copy of the attachment that is referred to in the memo, and I think it should be made a part of the memo, or part of the exhibit.

Ms. Olson. We will make it a part of the Exhibit 10. And the bad copy is the copy we received.

The Witness. Sorry about that.

BY MS. OLSON:

Q Were you present when the top page of the memo which is dated June 6th was created?

A Yes, I was.

Q Can you just describe what happened, the circumstances under which it was created, as you recall?

A We were in the Office of Records Management. Terry Good was at his computer, and he had done a draft of this memo, I had done another draft, and I stood over his shoulder, and we completed it together.

Q And what was the purpose of creating this memo or completing this memo with Mr. Good?

A It was to record the transfer of FBI files that had been stored in Records Management to the FBI.

Q And did you review those files that evening?

A No.

Q Do you know if Mr. Kitchen or Mr. Riley from the FBI reviewed them?

A Mr. Kelly?

Q I'm sorry -- Mr. Kelly, reviewed them.

A Review. There is review, and then there is review. What they did was, they put on their rubber gloves and went through the boxes and confirmed that what was on the attachment here --

Q Oh, I'm sorry, that was -- that should not be there.

A Okay -- that what's on the attachment here was, in fact, included in the boxes. But they didn't take anything out of the file folders and review them, but they went through and read off the names of the file folders and while Sally Paxton applied the check marks to confirm, as I said, that the list here accurately reflected the contents of the boxes.

Q Maybe you can describe about who put these boxes together and how the FBI came to pick them up. Who determined what boxes to give to the FBI, and how did the FBI come to arrive on June 6th?

A Well, when I told you that David Cohen had called me and said, "I think I have good news," the document that he had Craig Livingstone bring over to me was the attachment to this Exhibit 10, and when he described to me what it was, which would have -- that would have been on the 6th, and I came to understand that these were files or background reports or

previous reports that we had in our custody in the Office of Records Management, I called Howard Shapiro, who is the general counsel of the FBI, and told him that we had made this discovery and suggested that in the pendency of a further inquiry to understand what this was all about, it would be best for us to transfer custody of the files to the FBI, and he said that he would send a couple people over immediately. We made arrangements for them to come over.

In the meantime, I instructed Sally to work with Terry Good and Lee Johnson to locate the boxes identified on this attachment and to bring them down to the Office of Records Management where I was going to meet them with the FBI.

Q Did you instruct anyone to make copies of any of the documents that you were sending over?

A No. I specifically instructed Sally not to handle the documents or let Terry or Lee handle them.

Q So it's your belief that there were not any copies made after that point of sending them down to be produced by the White House?

A Not at the White House.

Q Okay. On the first page that you were given as an attachment are some lists. These were lists that the Government Reform and Oversight Committee requested from the FBI and received a letter back from you saying that you already had copies of these.

Do you know when those copies were made?

A Well, I think I sent you the transmittal letter from the FBI too.

Q Can you just describe how the copies were made that the White House had?

A Well, you have got the transmittal letter. I gave it to you specifically to show you that the FBI had made copies themselves and sent them back. I think it was on the 13th of June, but you have that information.

RPTS COLCHICO

DCMN QUINTERO

[4:15 p.m.]

Ms. Remington. What was the date?

The Witness. What was the date of the letter? I don't know. What was the date that -- I think it was the same day that the Chairman sent his letter.

BY MS. OLSON:

Q Just to make the record clear, was it the FBI that sent you copies of all the documents?

A All the documents?

Q That are listed on the second page of Deposition Exhibit No. 10.

A They sent me the documents that were -- yes, the documents that were in the second page of the exhibit, or identified on the second page of the exhibit.

Q Which basically are lists that were in box 1; is that correct?

A Well, that's what it is. It says what it says. Access list, access list, so forth.

Q I am trying to distinguish it from the other pages.

A Yeah. The other pages -- the other pages had material that were related to individual files.

Q And did the FBI send you copies of the individual files back?

A That would have defeated the whole purpose of getting rid of the material. No.

Q Okay. Was there a request made to the FBI to send you all the materials that were in box 1, all the lists?

A Yes.

Q Or did they just do it on their own?

A No. I asked them to. I guess we didn't reflect that in this letter. When we looked at that third box -- or I think of it as the third box, maybe it was the first box. When we looked at that box, we couldn't immediately tell without examining the contents whether it contained material that was at all related to the two boxes that contained the actual files.

And since we didn't want to handle the material, we decided to be cautious and just let them take it, review it, and if it related to it, you know, they could keep it. If not, you know, they could send it back. And I asked them if they took it and kept it, would they please make a copy of it for us. And they agreed to do that on the spot.

Q You said that there was a hesitancy to handle the material on June 6th. Is that correct?

A Yes.

Q Earlier, we were talking about Billy Dale's file which was removed from Craig Livingstone on June 6th. Do you know if that hesitancy occurred after you had directed Craig Livingstone to remove Billy Dale's file?

A Yes. I think the hesitancy was created by looking at this list that's attached to Exhibit 10.

Q However, it was after -- do you know, Mr. Livingstone, I take it, probably did not wear rubber gloves when he removed Billy Dale's file for you on June 6th?

A I have no idea, but I doubt it.

Q You didn't direct him to put fingerprints on the file?

A Put fingerprints on the file?

Q Not to put fingerprints on the file or to assure that no fingerprints got on the file?

A No, I did not.

Q Not to jump around, but we were discussing depositions and lawyers calling the White House Counsel's Office after a deposition. I wanted to move on to an issue about hearings and preparation of material for congressional hearings in the Travel Office matter.

Do you regularly attend the hearings and help prepare materials for Members for the hearings on the White House Travel Office matter?

I will break it down. Do you attend the hearings?

A Either I attend or people who work for me attend. We all attend.

Q Okay. And are you attending them in the audience or are you working in back rooms helping to prepare materials for the hearings?

A I do some of both.

Q Okay. In the most recent hearing on the Secret Service, were you helping to prepare materials in the back room for Members of this committee for a Secret Service hearing?

A I was monitoring the hearings.

Q Were you doing anything else other than monitoring the hearing?

A I would say I was principally monitoring hearings.

Q Okay. Were you doing anything else other than principally monitoring?

A I would have discussions with people who would come through. I think I even said hello to Barbara Comstock when she came through.

Q I believe you were in the Minority offices during the Secret Service hearing?

A Uh-huh. Yes.

Q Did you or any other Members of the Counsel's Office help to prepare any questions that were posed to the Secret Service during that hearing?

Mr. Witten. I would have thought that that was precisely in the area that had been excluded.

Ms. Olson. Is that an objection?

Mr. Witten. Yes.

Ms. Olson. Okay.

BY MS. OLSON:

Q Did you or any members of your staff help the Minority prepare questions for the first Travel Office hearing in October of 1995?

Mr. Witten. Again, that sounds to me like you are asking about communication between the White House staff and Members of Congress, and I thought that's what the committee agreed not to ask about. I may be mixed up on that.

BY MS. OLSON:

Q Not communications. I am asking if you or other members of the White House Counsel's Office have worked to prepare material for our hearings?

A I am --

Mr. Witten. I object to the form of that question.

The Witness. Worked to prepare material for the hearings?

BY MS. OLSON:

Q Have you prepared any material that's been used in hearings in the White House Travel Office matter?

Mr. Witten. Again, Barbara, it sounds to me like you are asking -- I was not a party to these agreements, but as I have been -- as they have been described to me, I thought that this committee had agreed not to question these witnesses about communications between the White House Counsel's Office and Members of Congress. Now, either you are asking about that or you are asking about their own internal preparations, which are also off limits.

Ms. Olson. So it's double-privileged?

Mr. Witten. Unless I am misinterpreting your question, and I would be happy to understand it, but I believe we are in an area where the committee has decided not to press.

BY MS. OLSON:

Q I just want to be clear. I am not asking you what communications you had with Members of this committee. I am asking if you or anyone on the White House Counsel's staff has prepared materials to be used in our hearings?

A I am not sure how to answer your question. Of course, we prepare for the hearings. Of course, we anticipate questions. Of course, we work the press, like you do, out in the hallway. You know, I am not sure --

Q Let me clarify. This is not hearings where the White House is testifying. These are hearings that do not have White House Counsel testifying, such as the first hearing which only had the drafters of reports testifying.

Did you prepare --

A Are you suggesting that we should be any less interested in a hearing where somebody is testifying about White House conduct as opposed to a White House witness?

Mr. Witten. We are getting into --

Ms. Olson. I am not going to argue it. Certainly not. I am just asking a question.

Mr. Witten. I think the question was argumentative. The answer was argumentative, and I think we ought to move on.

BY MS. OLSON:

Q Okay. The second hearing which was held was where the individuals from the Travel Office testified. Did you prepare or did anyone in the Counsel's Office prepare questions or materials to be used in that hearing?

Mr. Witten. Again, I think that's precisely within the area that the committee has decided -- has agreed not to -- I will try to say this in English. I am sorry. I think the committee has agreed not to press that question. So we would object to answering it.

BY MS. OLSON:

Q Once again, I am not asking for communications with a Member of this committee. I am asking if the White House prepared questions, briefing books and materials to be used in hearings which involved the Travel Office employees?

A I guess I am confused by the question, "to be used." I mean --

Q Or that was used.

A Or even that was used. It would be lovely if we -- you know, if we weren't the executive branch but were the legislative branch and could do both.

Q Right. Which you have, it appears.

Mr. Witten. This is getting very argumentative.

The Witness. I haven't answered a single --

Mr. Clinger. I take it, your point -- well, I think that we did agree that we would not deal with communications to Members. But I think what Barbara is asking about is not what those communications were. I think what we are saying is, you know, we are not entitled to know what those communications were, but were there -- you know, was there preparation for the hearings that was undertaken by the White House Counsel's Office?

We are not going to get into the specifics about what they might be, but just were you involved in the preparation of that material, of producing material?

The Witness. Mr. Chairman, we certainly prepared for the hearings.

BY MS. OLSON:

Q And I am not going to ask, you know, did you hand questions to Representative Collins. But did you prepare questions for the hearings to be used in any of the Travel Office hearings that have been conducted by this committee?

A Again, I have trouble with your question, "to be used." You know, of course, we prepared questions. Of course, we had an idea of how -- what lines of questioning might be appropriate. Were they used, to be used? You know, I can't answer that.

Q Well, I am saying --

A Of course, we would prepare for that. I don't understand --

Q I am saying --

A I don't even understand the implication of your question.

Mr. Witten. Why can't the question the Chairman asked and the answer the witness gave be a point made on this record? I don't think we need to go further. It's argumentative. "Used" or "to be used," suggests communications. I don't know how else someone would "use."

Ms. Olson. I am not assuming that Ms. Sherburne was there demanding that a Member use any material. I used the future tense, to be used, assuming that if, in fact, it was prepared, it was prepared in anticipation of a hearing to be used; not -- I am not asking her if her questions were used by any specific Member.

I am not asking her if John Yarowsky's questions were used by a specific Member. The record can clearly reflect that. I am just asking her if she or other members of the Counsel's Office sat down, prepared questions in anticipation of the various hearings that we have had on the Travel Office matter.

Mr. Stroman. Can I just ask, what's the relevance of that question, your question? What you are trying to get at?

Ms. Olson. Certainly.

Mr. Stroman. Thank you.

Ms. Olson. This committee is investigating the White House Counsel's Office and their manipulation of the investigations, as well as possible manipulation of hearings where they would prepare briefing books and questions which were ultimately presented in a hearing which did not involve the White House Counsel's Office but involved witnesses that we have already gone through, such as the seven fired Travel Office employees.

The Witness. You have seen everything we have ever done.

Ms. Olson. My question is whether there have been questions prepared by the White House Counsel's Office to be used in hearings. I am not asking whether they were actually used. I am asking if she anticipated that people would actually pick up her questions and read them off during one of our hearings.

Mr. Stroman. You mean one of the Members?

Ms. Olson. Anyone, if it was to be used in the future tense. I am not asking her if a Member took them, if they read them.

Mr. Stroman. Who else would use the questions? I guess that's my confusion. I mean, if you had questions, are you asking if they drafted questions for Members' use?

Ms. Olson. Yes, to be used by Members.

Mr. Witten. Isn't that communications with Members?

Ms. Olson. No. It's not a communication with Members. I am not asking her if she called Cardiss Collins and said I have got questions I want you to give them. I am not asking if that happened. The record can reflect that.

Mr. Stroman. Again, here is my own confusion about it; I mean, I understand the issue with regard to are you somehow coordinating testimony of witnesses or somehow trying to influence witnesses' testimony before the committee, or influence the testimony before a deposition. But I do not understand -- and, again, we can clarify this. I have never understood that there's an issue about whether or not the Minority Members of the committee have somehow been manipulated by the White House in terms of asking, you know, questions, relevant questions, before the committee. And I think that --

Ms. Olson. I --

Mr. Stroman. Let me just finish.

Ms. Olson. Certainly, Mr. Stroman.

Mr. Stroman. I would say that's where I would begin to draw the line. I mean, if you want to ask about, you know, helping witnesses testify, that's one thing. But preparing materials for which Members would then use to ask questions, I think, goes to within the legitimate realm of Members making decisions about what they choose to use and what they choose not to use.

Ms. Olson. Certainly, I don't want to know what Member choose to use when. My question to Ms. Sherburne is whether the White House has acted as an arm of this committee in actually preparing materials in anticipation that it would be used.

I am not accusing Ms. Sherburne of convincing the Travel Office employees of testifying one way or the other, because I don't think the White House has attempted to have the fired Travel Office employees say anything. I don't think the White House has attempted to have the Secret Service testify one way or the other. I don't believe that has occurred.

My question is just going as to whether they have prepared questions in anticipation for it to be used by the legislative branch in one of its hearings, that the executive branch, White House Counsel's Office, is sitting there preparing materials as if they are staffers on this committee.

Mr. Stroman. But again, I would say the issue of what the Minority Members --

The Witness. This is ridiculous.

Mr. Stroman. -- decide to use or not use is not the subject of this investigation. Therefore, it seems to me that that question is irrelevant and it goes to -- I am saying whatever the Minority decides to use in terms of any materials --

Ms. Olson. Certainly.

Mr. Stroman. -- is not the subject of an investigation of this committee.

Ms. Olson. But what the White House Counsel's Office decides to spend its time in working on in an investigation and working on hearings to put out materials, which I am not saying they gave them to the Minority or the Majority --

Mr. Stroman. Right, I understand.

Ms. Olson. Maybe they did questions for the Majority to ask. Maybe they did briefing books. I am not asking that. I am just asking if they prepared questions in anticipation of this hearing, if they prepared briefing books in anticipation of hearings, where they were not witnesses.

Mr. Stroman. Well, again, I just fail to see the relevance of that because I think that the questions go -- the issue of are you preparing questions goes to the issue of what the Minority Members decide. That's the only people you prepare questions for.

Ms. Olson. What do you mean?

Mr. Stroman. And the Minority?

Ms. Olson. What do you mean?

Mr. Stroman. Well, if you are asking, have they somehow influenced the witnesses or attempted to work with the witnesses

or influence the witnesses.

Ms. Olson. No. I said I did not believe they did with the fired Travel Office employees or the Secret Service.

Mr. Stroman. Then I am just confused, Barbara, as to what the issue is you are trying to get to.

Mr. Clinger. I think the issue is, is it appropriate for the Counsel's Office to be as intimately involved in the preparation for the hearings as there seems to be some intimation that they were? In past administrations, there was sort of a fire-wall between the White House Counsel's Office and the Congress in terms of -- or at least this is what we have been told. So the issue here really is, is there an inappropriate use of the White House Counsel's -- the White House Counsel doing something that's inappropriate? I mean, you would agree that a legitimate area of our investigation is, was the White House Counsel in any way blocking, subverting, trying to stall --

Mr. Stroman. Yes.

Mr. Clinger. -- cover-up what went on.

Mr. Stroman. Absolutely.

Mr. Clinger. So I think these questions relate to was there an effort here to somehow --

The Witness. Facilitate.

Mr. Clinger. -- stonewall or create a stonewall kind of atmosphere. Again, I can come back and say we have no business knowing and we have agreed that we would not ask questions about whatever the specific advice or counsel, or whatever, was to a Member of Congress, but I think it's a legitimate question to say, were you in fact involved in producing -- and you would say it's perfectly appropriate. You might say, well, we don't think it's appropriate but the question, it seems to me, would not be within the purview of what we said we would not put in.

Ms. Olson. You can, obviously, instruct your client not to respond, because you also have your Executive Privilege claim. But the question is pending.

Mr. Witten. If I may, it's not my intention to argue, either, with the Chairman or his counsel. But if I might make an observation, the specific question that we are dealing with is whether the White House Counsel's Office drafted questions that Members of the Minority might or might not decide to use?

Ms. Olson. I didn't ask that.

Mr. Witten. Excuse me.

Mr. Clinger. Let him finish.

Mr. Witten. Mr. Chairman, it's hard for me to understand how that, the drafting of questions that someone might or might not use, might be part of an effort to obstruct the inquiry, because either the questions were asked and they produced answers or they were not asked. So since --

Ms. Olson. Well --

Mr. Witten. Excuse me.

Secondly, it does seem to me that if you are talking about questions that someone might use, you are bound to be talking about communications with the Members or their staff because otherwise there would be no opportunity for the Members or the staff to make a judgment about whether to use those questions or not. And that's what -- excuse me -- why I thought that we were within the area that had been carved out. It also seemed to me that the questioning was getting a little argumentative.

Mr. Clinger. Why don't you just object and we will move on.

Mr. Witten. Okay.

Ms. Olson. The Chairman has stated his basis, so if your objection is because you believe Jack Quinn had an agreement with the Chairman, I think you need to make the objection clear what it is, at this point.

Mr. Clinger. Your objection would be that you felt it was within the purview of the exception?

Mr. Witten. Yes, because I think it is inextricably intertwined with communications. Either it was an idle exercise or it involved communications with Members, and on that basis I would object. Thank you for letting me state that.

Ms. Olson. Just so the record is clear, that I am going to go on -- I had a large series of questions concerning White House participation in drafting briefing books and questions in anticipation of our hearings. That whole section is being moved on based upon your objection, and I would like the record to be clear that none of the following questions are going to be asked because of your objection.

Mr. Witten. Well, if you take them one by one, we might be able to answer some of them.

Ms. Olson. Sure. Okay.

BY MS. OLSON:

Q Did you or members of the White House Counsel's Office prepare any briefing books in anticipation of a hearing that involved the White House Travel Office employees?

Mr. Witten. You can answer that yes or no.

The Witness. Yes.

BY MS. OLSON:

Q Were those briefing books prepared for the purpose of the White House's information on the hearing or prepared to transmit information to the legislative branch?

Mr. Witten. Again, that seems to me to involve communications with Members, and my understanding was that was --

The Witness. The answer wouldn't --

Mr. Witten. Okay.

Ms. Olson. If you are waiving a privilege, you are going to have to answer all the questions.

Mr. Witten. An answer or privilege fight?

Ms. Olson. I would like an answer to all of them, but you can't pick and choose your question to answer and then claim privilege when the answers are derogatory. That's not legitimate, and as an attorney -- and I would assume you are an attorney -- I think you would agree with that.

The Witness. Excuse me?

Mr. Witten. I think that was an abusive comment. I would ask you to retract it.

Ms. Olson. Okay. Let's get the answer.

Mr. Witten. I think you are using bad faith at this point. You don't have to argue. Your job is to ask questions. Her job is to answer. My job is to state an objection, if there is one. Let's just do that.

Ms. Olson. I would just like to put on the record that if there is going to be a waiver of a privilege that's been asserted, then please I would like counsel to be on notice that if there's going to be a waiver occur, that it will be brought to the Chairman's attention.

The Witness. This doesn't involve a waiver.

Ms. Olson. Okay.

The Witness. The briefing books are prepared for internal use.

BY MS. OLSON:

Q Internal White House use?

A Yes.

Q Okay. And similarly, were any other materials prepared in anticipation of our hearings that were not for internal White House use?

A Yes.

Q Okay. What was that?

Mr. Witten. If the question requires you to talk about communications with Members or their staff, then our understanding is that the committee has agreed not to press on that issue, and you shouldn't answer.

The Witness. Certainly there were materials that we prepared for use with the press.

BY MS. OLSON:

Q During our hearing?

Mr. Witten. Let me --

BY MS. OLSON:

Q I am just qualifying. Is this during the hearing or is this generally for use of the press on issues? I wanted to limit it to the hearing, materials that were prepared in anticipation of our hearing.

A Well, now you are making me nervous about my answer to the prior question. Which hearing are you talking about? You had a few.

Q Well, I will choose the hearing that occurred with the fired seven Travel Office employees.

A Did we prepare information for the press related to the fired seven Travel Office employees? I don't think so.

Q So you don't have any information that there was anyone from your office passing out material to the press outside in the hallway of our hearing room?

A Not to my recollection.

Q Okay. Do you know if that occurred during the first hearing which involved the report writers of the various investigations?

Mr. Witten. Did the White House communicate with the press, is the question?

BY MS. OLSON:

Q No, it is not, did they communicate. Did they communicate during our hearing with the press? Obviously, the White House communicates with the press?

A You mean out in the hallway?

Q Or if not in the hallway, in a back room, during the course of our hearing.

A I am sure we did.

Q Okay. Do you know if that was Mr. Fabiani that was there doing that?

A No, I don't know.

Q Okay. The hearing that followed the Travel Office employees or the most recent hearing with the Secret Service, do you know if there were any materials that were prepared during that hearing that were released to the press by the White House?

A No.

Mr. Witten. No, you don't know, or no, they weren't?

The Witness. No, there weren't.

BY MS. OLSON:

Q So your belief is that the only hearing that you recall releasing material to the press during our hearing was the first hearing which involved the drafters of the seven -- or the drafters of the reports?

A No.

Q Can you just tell us any other press releases or press information that was distributed during our hearings?

A Well, your questions have been -- have varied. First, you said material that was prepared during the hearing. If what you are really getting at is did we ever distribute material to the press during --

Q At the location of our hearing?

A At the location of your hearing?

Q I just didn't want it to be in the hallway, because in case you weren't in a hallway, I wanted to cover stairwells. I wanted to cover front steps.

A Right. Right. Yes, we did distribute material related to the hearings during a hearing.

Q Okay.

A To the press.

Ms. Olson. Okay. I assume all questions that were prepared for the hearing is -- get a continuing objection.

Am I correct?

Mr. Witten. Well, I have --

Ms. Olson. Since I have covered a couple of the hearings, but not all of them, as to whether any questions were prepared in anticipation of the hearings.

Mr. Witten. Insofar as your questions relate to or involve communications with Members, yes, I will object.

Ms. Olson. I am not sure the questions will strike you that way, so I will go through each one.

BY MS. OLSON:

Q Did you prepare questions in anticipation of the hearing for the Travel Office employees? We have already gone through the first hearing, which I think did have an objection. The second hearing was the actual Travel Office employees.

A You have reviewed questions that we prepared in connection with that hearing, I believe, which would have been in the documents subject to a claim of Executive Privilege.

Q So the answer is, yes, that the White House has prepared questions in anticipation of the second hearing?

A Yes.

Q Okay. The other hearing by this committee involved prior administration White House Counsel's Office. Did the White House Counsel's Office prepare questions in anticipation of that hearing?

Mr. Witten. Again, your question is designed to be communicated to Members of Congress?

Ms. Olson. I am not asking if they did communicate. I am asking if they prepared in anticipation of that. The Members may have decided to use them or refused to allow the White House to prepare their questions, and I am making no assertion either way. I just want to know from the White House's point of view, were they preparing questions in anticipation of being used at our hearing?

Mr. Witten. I think that relates to either idle and irrelevant, or it relates to communications with Congress and it's beyond the scope.

BY MS. OLSON:

Q During the hearing of the White House Counsels from prior administrations, did the White House distribute any press information during the course of that hearing?

A I can't remember specifically, but it wouldn't surprise me if we did.

Q Do you recall if Mr. Fabiani was present during that hearing?

A During --

Q The White House Counsel of the prior administration hearing.

A I don't think he was.

Q Were you present during that hearing?

A In the hearing room?

Q No. Were you present in any room during that hearing?

A Yes. I didn't have an out-of-body experience.

Q Well, I mean within the Rayburn, obviously within our building. I am not asking if you were in the hearing room and I am not going to ask if you were sitting in the Minority office; I am just asking if you were present during the hearing?

A I had access to a TV that was broadcasting the hearing. How about that?

Q All right. I will move on to a whole new area. This is obviously not going to get resolved in this deposition.

Ms. Olson. I have a document which is Bates stamped numbered 29184. It's being marked as Deposition Exhibit No. 11.

[Sherburne Deposition Exhibit No. 11

was marked for identification.]

BY MS. OLSON:

Q These have been represented to us to be the handwriting of David Watkins. I ask if you have ever seen that?

[Pause.]

A It doesn't look familiar to me.

Q Okay. Did you -- it doesn't -- if it does not appear familiar, I will not refer specifically to it in the deposition, but I will ask you did you ever talk to David Watkins about his notes which became the subject of a hearing? And I am referring obviously to the soul-cleansing memo and the notes that accompanied that memo.

A No.

Q In some of Mr. Watkins' notes, he recounts conversations that he either had with the First Lady or that Mr. Thomason allegedly told him he had had with the First Lady. Did you have any discussions with Mr. Watkins about his alleged conversations with the First Lady concerning the Travel Office matter?

A No.

Q Did you ever have any conversations with the First Lady about her conversations -- about her conversations with anyone on the Travel Office matter?

A Yes.

Q Can you just tell us what those conversations were and what her responses were?

A No.

Mr. Witten. Excuse me. I think she is not permitted to testify on that subject.

Ms. Olson. Can you state your basis for the objection?

Which one? Is it Executive Privilege or a Member of Congress?

Mr. Witten. Come on.

Ms. Olson. I just need it clear. I need the basis.

In the opening, I asked if the basis for the objection would just be stated so we have a clear record for the Chairman to review after he has gotten a transcript.

Mr. Witten. The last time I looked, the First Lady was not a Member of Congress.

Ms. Olson. No, but I did not know if there was a conversation which might have included a Member of Congress, so I would just like the basis for it so we know what the objection goes to.

Mr. Witten. Okay. I will apologize, if you won't.

The basis for the objection is Executive Privilege.

BY MS. OLSON:

Q Okay.

Mr. Stroman. Excuse me. Can you reread that question again.

[The Reporter read back as requested.]

Ms. Olson. And "her" is referring to the First Lady.

Mr. Stroman. Okay.

Mr. Witten. Excuse me. Hold on. Hold on.

Can you read that question -- there may be a way to answer that.

Can you read that question back, please? And the one before it.

[The Reporter read back as requested.]

Mr. Witten. Okay. There has been a waiver of Executive Privilege, I understand, insofar as there were communications within the White House about the existence, discovery and production of the Watkins' memo. So if that's within the scope of her question and if you had any conversations with the First Lady about that, you could answer to that extent.

BY MS. OLSON:

Q Let's start with that.

A So the question is, have I ever had any discussions with the First Lady about the existence, production or discovery of the Watkins' memo?

Q For starters, yes.

A Yes, I have.

Q Can you please describe those conversations?

A I would have had a telephone conversation with the First Lady, I believe, on January 2nd, which I informed her of the existence of the Watkins' memo and we talked about, during that conversation, the production of the Watkins' memo. And then on January 3rd, in connection with her preparation for an interview with Newsweek we also would have discussed the fact that the Watkins' memo had been found as well as when it was -- when it would be produced.

Q And were these two conversations before the Watkins' memo was produced to the committee?

A Yes.

Q Okay. Let's take the first conversation on January 2nd. Can you just tell us what the First Lady responded when you told her that there was a Watkins' memo?

Mr. Witten. Okay. I am going to instruct you to limit your response to any comments the First Lady made relating to the existence, production or discovery of the Watkins' memo, because that's, as I understand it, the limit of the waiver.

The Witness. I can't remember the precise back and forth, who asked what or who said what. I know I informed her that we would be producing it. Whether she asked me when are we going to produce it, you know, and I answered, or I just told her, I can't remember. And I also would have told her that it was found among Patsy Thomasson's documents.

Again, I can't remember if she could have said how was it found or who found it, or something, and I could have answered that question. I can't remember how the conversation went precisely.

BY MS. OLSON:

Q Okay. Any other topics within the limitations stated that were discussed with the First Lady?

A Not that I recall.

Q Were there any other topics outside the limitation discussed with the First Lady? Obviously, there's an objection to content. I am just asking if they existed?

A Yes.

Q Okay.

Mr. Clinger. Let me ask, is the question of whether she discussed the accuracy within the scope of the Executive Privilege?

Mr. Witten. That is my understanding, Mr. Chairman.

Ms. Olson. No.

Mr. Witten. I don't work for the White House. I work for Jane. But my understanding is that there has been a waiver with regard to the -- of Executive Privilege with regard to the Watkins' memo.

Mr. Clinger. Right.

Mr. Witten. Insofar as there may have been conversations within the White House about the existence, discovery and production of the memo, with a cutoff date as of January 3rd, when the memo was produced, and so I think the answer to your question is if they discussed the content of the memo, that would not be a subject matter that has been waived by the White House.

Mr. Clinger. So that that question relating to her either confirmation or denial of Mr. Watkins' characterization would be subject to the Executive Privilege?

Mr. Witten. That's my understanding, yes, sir.

Mr. Clinger. Okay.

BY MS. OLSON:

Q On January 3rd, were there any conversations that you can describe in more detail that are within the parameters set out by your attorney and that are not Executive Privilege?

A With Mrs. Clinton?

Q Yes.

A No.

Q Okay. Have you had any discussions with Mrs. Clinton generally about the White House Travel Office matter, other than those you have described already in this deposition?

A Yes.

Q Okay. Can you describe those conversations?

A No.

Mr. Witten. Same objection.

Ms. Olson. Okay.

BY MS. OLSON:

Q Can you at least give the dates, as best you recall them, and how many conversations there have been? And this would be on in a social relationship if the Travel Office came up, as well as during business hours.

A I think probably the best way for me to answer that is that I have had several conversations with her over time on this subject, and to try and date them would be difficult. I am sure I had conversations with her at the time we were working on her responses to the Chairman's interrogatories, which -- and I can't even remember what season that was, much less what month.

Q Well, they were provided, I think, in January, but then were responded to a few months later.

Other than the interrogatories, were there other conversations that involved any aspects of the White House Travel Office matter?

A Yes.

Q Do you know if those -- without having obviously to give an exact date, do you know when those conversations occurred or have they occurred throughout your employ at the White House?

What I am trying to get at is some sort of flavor, some sort of idea if there are periodic, regular, happenstance conversations about matters.

A I would describe them as periodic, as issues come up or, you know, the subject of press attention or whatever, that might occasion a conversation with her on the subject of the Travel Office.

Q Did you have any discussions with her regarding the withholding of documents by the White House from this committee?

A You mean the privilege documents?

Q Withholding any documents?

Mr. Witten. You are not talking about the so-called Watkins' memo? This is a broader question?

BY MS. OLSON:

Q I have broadened it to the White House Travel Office matter, which includes beyond the Watkins' memo. I was just trying to identify areas of discussions, since you can't go into the content, and understanding there's already been an Executive Privilege claim, I was asking if you had had discussions with her concerning providing or withholding documents by this committee -- by the White House to this committee?

A If what you are asking is the withholding of documents or asserting an Executive Privilege claim?

Q That's a narrower subset. If you would like to start with that, that's fine.

A Well, I don't -- let me start with that. I don't remember having a conversation with her about any withholding of documents. We did talk about the Watkins' memo and when that would be produced.

Q Right.

A And I don't recall any other conversation about the withholding of documents.

Q Okay. In any other matter?

Mr. Witten. Not any other, but any.

The Witness. Right. That was the production.

BY MS. OLSON:

Q When document productions are made, does the First Lady or her staff review any of the document productions that are made?

A Heaven's, no.

Q Do you have any regular conversations about the document productions that are being made?

A With the First Lady?

Q Uh-huh.

A No.

Q You had said that you had had several conversations about the White House Travel Office matter. Have those conversations been throughout your tenure at the White House or have they centered on any particular dates or events?

A Well, I think I said that when an issue would surface or get particular press attention, that would likely be an occasion where we might discuss the Travel Office. So it would be periodic and under those types of circumstances.

Q Do you know -- can you give a number, if it's over 5 or under 5, or over 10 or under 10?

A Conversations with her about the Travel Office?

Q Travel Office matter, which would include Harry Thomason, would include Susan Thomases, any subpoenas that we have done of any individuals, either personal or White House subpoenas.

A It's difficult to give an estimate, because there may be times when I am talking to her about something else and this is raised in passing. So I am not sure I can estimate even.

Q Okay.

Mr. Witten. Let me interrupt.

When we started, you were good enough to tell us that you had another engagement at 6:00 and had to stop, and it's 5:00 now. I have been reflecting on that.

I am a little disappointed that you insisted on scheduling this deposition on a day when you knew you could not complete it, since Jane is a busy person and I have a life as well. I would urge you between now and 6:00 to try as hard as you can to complete this deposition.

Ms. Olson. Are you all available to go into the night tonight?

The Witness. I have to work.

Mr. Witten. Do you think you could finish?

Ms. Olson. The onus is being put on us now of bringing Ms. Sherburne back. I have a meeting with the Chairman at 6:00, which is why I asked to stop. But I can certainly discuss that with the Chairman.

I assumed Ms. Sherburne would not have an objection to breaking this up into another piece. We can go into the night.

A lot of times witnesses prefer a break. The only time we have really required witnesses to continue going is when we have flown someone in and they have to leave the next day. Otherwise, we have tried to accommodate schedules.

Mr. Witten. Without trying to pin you down, how late do you think we would have to go?

Ms. Olson. I have this stack of documents to go through. I have a chron to go through. And I have some other questions.

What I can do is try to narrow things down. Sometimes it helps after reviewing the first part of a deposition, you don't need to go through some materials because you get noes, and I can take out irrelevant things for another deposition date. We can also try to do it even in an evening or a weekend date or something to accommodate the schedules here.

Mr. Witten. Let me just consult.

Ms. Olson. Okay.

[Pause.]

Mr. Witten. We would prefer to keep going.

Ms. Olson. The Chairman has just excused me from the meeting so we can keep going.

Mr. Stroman. If I can make one comment?

Mr. Witten. Nobody asked you. I am sorry.

Mr. Stroman. Again, I am also just trying to get a sense of time. We have been here at this for 4 hours now. Do you have just a rough idea? Are we talking about another 2 hours, another 3 hours?

Ms. Olson. I have at least 3 hours.

Mr. Stroman. So 8:00?

Ms. Olson. I have at least 3 hours more. I have got document productions that span back to the beginning when Ms. Sherburne arrived. I have subpoenas from the Department of Justice. I have issues from memos that Ms. Sherburne has sent. She has been an integral part of the document production and the activities of the White House have all focused on Ms. Sherburne.

The Witness. Not a very good advertisement for a job like this.

Ms. Olson. I do have a lot of questions. I apologize. I can attempt to make them more precise at a later date.

Mr. Witten. The D'Amato committee ordered in Chinese food when we had to do this.

Ms. Bernstein. But they didn't pay for it.

Mr. Clinger. Good point.

Ms. Olson. There's already been a representation that they didn't pay for it.

Mr. Clinger. They didn't pay for it?

Ms. Bernstein. No.

Mr. Witten. Okay. Let's do our best.

Mr. Stroman. Okay. So we will shoot for around 8:00 maybe.

Mr. Witten. Can I make a phone call?

Ms. Olson. Of course.

All right. Let's take a break for a few minutes.

[Recess.]

Ms. Olson. We are back on the record, after a short break.

Mr. Witten. We don't have to wait for Gail.

BY MS. OLSON:

Q Although you had stated you had not seen Mr. Watkins' notes that are now Deposition Exhibit No. 11, there is a mention at the very top of a person named Bob Coy. Did you know a man named Bob Coy? Are you aware of him?

A No.

Q Do you know if Harry Thomason was looking into replacing the Secret Service in the residence with an outside detail?

A No.

Q Okay. On down in these notes that are Deposition Exhibit 11, there is a statement that says, "Treasury Department," and then, "2 agents talking, Bob Woodward." Do you know what that refers to?

A No.

Q And at the bottom of the page, there is a comment that says, "Charter Press. " And then the next line says, "be taking kickbacks." Did you ever have any discussions with anyone in the White House about allegations of kickbacks concerning the Travel Office?

A Not beyond what has been in the public domain in the various reports.

Q Okay. Did you have any conversations, other than what's in the reports, with any individuals concerning whether there were valid allegations of kickbacks and where they came from?

A No.

Q Did you ever talk to Harry Thomason or any of his attorneys about whether he was discussing possible kickbacks occurring in the Travel Office?

A Not that I recall.

Q Do you know if anyone else on your team had some -- had such conversations?

A Not that I recall.

Q Okay. And at the very bottom, it says, "ask for 5 percent kickback, conduit." Do you know anything about the figure in particular of a 5 percent kickback occurring from UltraAir?

A No.

Ms. Olson. I have a document which I will mark, although it predates you. It's from May 5th, 1993, and it is to James Farrell, who is with the National Security Council, Security Office, from William Kennedy, and it's concerning compartmented clearances for Craig Livingstone.

[Sherburne Deposition Exhibit No. 12

was marked for identification.]

BY MS. OLSON:

Q Have you ever seen that memorandum, other than reviewing it for a document production?

A No.

Q Have you ever been involved in any discussions about the security clearances of Craig Livingstone?

A Yes.

Q Can you just describe those conversations? First let's start with who they are with.

A Sally Paxton and Mike McCurry are the only two I can remember off the top of my head.

Q Okay. And can you just tell us what those conversations were about?

A They were about the timing of Mr. Livingstone's security clearance. And Chuck Easley, I had a conversation with.

Q Did this timing involve whether he had received his FBI background check at the time?

A At the time of what?

Q That he was being -- that they were requesting a compartmented clearance for Mr. Livingstone.

A No. He had received his FBI background check, I knew that.

Q By May of 1993?

A Yes, in March.

Q Do you know if it had been submitted to the Secret Service for final adjudication?

A No. I know -- no, I don't.

Q So by the fact that he had received it, you mean that the FBI had completed their investigation and sent the results to the White House, is that correct?

A No.

Q Can you describe what you meant by "he had received his background investigation"?

A What I had understood was that in March, his background investigation had been completed and that he had been approved for clearance as of sometime in March.

Q And do you know who you received that information from?

A I don't think the Secret Service adjudicates. I think it's the Counsel's Office that does, for someone like Livingstone. But I'm not sure. That's --

Q During our hearing, there was testimony that the Counsel's Office makes the final decision, but once they have decided to request a hard pass they do send it to the Secret Service for an adjudication. And our testimony at our hearing was that they review it and if they have an objection they won't issue a hard pass at that time. They will raise an objection.

A Right. I understand that. But adjudication is a term of art in this process and the Secret Service doesn't do the adjudication.

Q So your information is it all came from the White House Counsel's Office on Mr. Livingstone?

A Yeah, and what Mr. Kennedy did with the Secret Service in connection with Mr. Livingstone, I'm not familiar with.

Q Okay. Do you know if -- you said you believed that he had had his final clearance granted in March?

A No. I said a temporary clearance in March.

Q Can you explain what a temporary clearance is or what your understanding is?

A Well, as you know, the first White House passes were not issued until October of '93, and most of them, in fact, were issued in March of '94. And so he was -- you know, didn't have the formal permanent pass. I think he was actually in the first group of people that got permanent passes, but that wasn't until late September or early October, as I recall the dates.

And this is all not based on any -- my personal involvement in this. I wasn't there at the time. But it's based on information that I obtained, you know, since June 6th or June 4th, whenever, and the issue of Craig Livingstone and his background became of interest.

Q So the information you received was that he had some sort of temporary clearance by May 5th, 1993?

A Yes. Yes.

Q Okay. Can you explain what a temporary clearance is?

A What I understood was that he had been given a temporary pass-holder status; that he had -- that his background investigation had been completed and successfully adjudicated and he was awaiting clearance for -- or awaiting to receive a permanent pass, and that the waiting period -- you know, none of the passes were issued until September, October and that he was one of the first ones that got a pass.

Q Do you know what he was waiting for, why if he was adjudicated and approved there was a holdup, since the only other step is the Secret Service? Is it your information that it was the Secret Service?

A No, not at all. No one in the entire White House had a permanent pass until the same time Craig Livingstone got his permanent pass. And why there was a delay has been the subject of a massive GAO inquiry. It has been the subject of, you know -- I mean, I know you know this, but has been the subject of a tremendous amount of scrutiny and inquiry. It's not specific to Craig Livingstone, which I assume you know as well.

Q Well, I guess I wanted to ask who you received this information from that he had been adjudicated by, I assume, the Counsel's Office by March or April of 1993.

RPTS BRYAN

DCMN PARKER

[5:25 p.m.]

A I received the information from Sally Paxton, who I understood referred to documents that were maintained in the Office of Personnel Security.

Q Do you know what kind of documents showed -- obviously, the background investigation of Mr. Livingstone shows when it was done by the FBI. Do you know what kind of documents would show when Mr. Kennedy in the Counsel's Office agreed to allow him to have a security clearance and a pass and adjudicated his background for a permanent pass?

A No. But I'm sure you can formulate a request for such documents and when we regain access to that room, we will be happy to provide them to you.

Q Is that room still under seal from access?

A Yes.

Q I will follow this up with a letter, but if there are documents that show when a final adjudication is made on Mr. Livingstone's pass, I think it is already within a request by this committee.

A It very well could be. There is a lot of material that is within the request of the committee that we haven't been able to have access to in that room.

Q Okay. Do you know if Mr. Livingstone retained a compartmented clearance until his departure from the White House this year?

A Yes, he did.

Q As a matter of fact, just to be clear about it, I don't think he has been read out of that clearance at this time, although he no longer has access to the White House?

A He has been taken off the access list by the Secret Service?

Q He has been taken off the access list by the Secret Service?

You had mentioned earlier about some of the various lists that you got copies of and the different materials. One of the documents that we received from Mr. Marceca were some documents that were ordered or some background previous reports that were ordered on the National Security Council individuals. Can you tell us where those previous reports are located right now?

A No.

Q Okay. There are several other lists that --

Mr. Witten. Because you don't know, not because you are asserting privilege? The question was can you tell us?

BY MS. OLSON:

Q Do you have any knowledge of -- how about if I rephrase it. Do you have any knowledge of where those documents are located?

A No, I do not.

Q There were several other lists that Mr. Marceca's attorney turned over to us which subsequently became public in our hearing, and those lists included other previous reports that were ordered by him. Do you know -- do you have any knowledge of where those documents are, the previous reports that were ordered by him?

A Well, with respect to those documents and the NSC previous reports, I believe they would be retained either in the Office of Personnel Security or in room 563 of the old executive office building. And we have not had access to either of those rooms, and so haven't been able to confirm that they are in there or not. I don't know. I assume they are in either one of those two places.

Q Room 563 is the Records Management Office?

A That's correct.

Q And that's the place where Mr. Daley's previous report was archived; is that correct?

A That's correct.

Q Mr. Marceca also testified before us about documents that he put into a dead bin once he realized the people weren't at the White House. Do you have any knowledge of where those dead bin previous reports are?

A No.

Q Okay. The only documents that you all turned over were the ones that were from the Lisa Wetzel list that comprised the first two lists that came to light; is that correct?

A Turned over to the FBI?

Q To the FBI.

A No, that's not correct.

Q Can you describe what documents actually were turned over?

A That's in the June 6th transfer. The June 6 transfer included only the Lisa Wetzel list. Subsequent to that, Howard Shapiro sent me a list of 486 names that included the 330 that were on the Lisa Wetzel list and also had additional names of requests of people who apparently had been the subject of a request for a previous report during that same time period, and again, the names fell within an alphabet particular range of A to G O. But they were interspersed in the alphabet among the 330, if you follow me. So there are 486 total.

Q A to G O?

A A to G O.

Q Was this the list that Mr. Shapiro made public? I think he sent us a copy, too, if you know?

A Yes, I know. I think the Senate had it, too, so I assume you had it. He asked if we would take that list and he had put in bold type set the names of the people who had not been among the 330 that we returned and asked us to go through the remaining -- if I have my arithmetic right, it was 330, 340, something, to go through those and see if we could determine whether they had been improperly or mistakenly requested. So we went through a process there, and I responded to Howard by turning over an additional 77; is that what it was? Seventy seven, 76, I don't know, an additional number of files.

This is all documented in correspondence which you may have, too. And then we confirmed that 47, 47 were properly requested, and then there was a certain number, 76, 77 that were mistakenly requested, and then an additional, I think 17, that we haven't been able to determine.

Q And the FBI has that entire group or how many?

A Only the ones that were mistakenly requested.

Q Did they send back the ones that you informed them you believed were properly requested, or did you never send them to them?

A We never sent them over. The rest of them were dispersed between the Office of Personnel Security and room 563. They were in both places. They hadn't been so neatly collected by Lisa Wetzel in one place.

Q By dispersed, you mean they were alphabetically within all the other background files that are kept on every White House employee?

A I'm not sure the files are kept alphabetically. They may be in some other, in some other filing system. I don't know.

Q Do you know? Have you looked to see how Mr. Livingstone used to keep the current White House staff background investigation files?

A For White House staff?

Q For White House complex. I mean I don't want to just have White House staff.

A No, I haven't.

Q Okay. And so he has the 47. The 17, did you ever make an adjudication on those?

A No.

Q Are they contained in one of the sealed offices?

A Presumably.

Q That's the last place you know of them being?

A I don't -- I'm not sure that anyone ever looked at those files, so I don't know. We didn't -- I don't know.

Q Do you know if those were individuals from the GSA primarily that were on Mr. Shapiro's list?

A No. Mr. Shapiro's list, as I recall, was primarily White House staff.

Q And did you send -- he highlighted the list of names and then you sent the ones that you found out were not appropriately ordered?

A Sent the files back, yes, with the transmittal letter.

Q With the list?

A Describing what it was we were giving him.

Ms. Olson. For the record, I would just make a request to get that transmittal letter and that list that you sent to Mr. Shapiro, because I don't believe we do have that.

The Witness. Sure.

BY MS. OLSON:

Q Do you recall the date when the office was sealed, the White House personnel Security Office?

A Well, let's be careful about the word "seal." We have been down that road before, and there is a lot of different understandings of what that might mean. There was no putty, there was no tape.

Q Can you describe how it is under -- in a situation where you can't review files?

A There were three -- there were four spaces that were eventually secured. I can't give you the precise sequence, but the spaces were 563, just the records management area, which includes more than OPS material.

Q Right. It includes all of your other boxes and documents?

A Right. Which has made it difficult to respond to some of your other requests.

Q Such as Patsy Thomasson's files were in OPS, right?

A No. They were in the Federal Records Center, another line of inquiry, just add another half an hour to the deposition.

The Office of Personnel Security, which has an outer office, and an inner, and then there is a vault. So the combination was changed on the vault at some point and the lock was changed on the door that opens up into the whole suite, and then Craig Livingstone's office, which was room 98, and that was secured as well.

Q And what do you mean by secured?

A Well, the lock was -- the lock was changed and I believe only Chuck Easley had the key.

Q And I take it that when the combination was changed, only Chuck Easley had the combination, or do you know if anybody else has the combination to the vault?

A One of his assistants may, but I'm not sure.

Q Do you know if any documents from Office of Personnel Security were sent anywhere else since you mentioned ORM, were sent anywhere else other than in the 5th floor room of the OEOP and the vault?

A For storage purposes?

Q For any other purposes, yes, and primarily I would guess it would be storage.

A Well, I hesitate because there are documents that come through the Office of Personnel Security that may go to Presidential personnel, and then back, and I don't believe -- I don't know that process. That's a whole different process from the records that come in through that office for White House staff. So I can't be precise in my answer to your question. But as far as storage purposes, I'm not aware of any other place that the Office of Personnel Security has kept its records.

Q Okay. Do you know if the National Security Council Security Office requests previous reports for individuals that are on the National Security Council or if those all go through Craig Livingstone's office?

A I don't know.

Q Have you had any contact or discussions with that National Security Council Security Office?

A No.

Q I have some documents that are pretty much in a chronological order and I'm starting from earliest and going to later. I think sometimes that's easier. These are off the file matter and back into more of the Travel Office matter issue.

Ms. Olson. I have a June 30th memo to John Podesta from Mary Becks and I will mark it as Deposition Exhibit 13. This is dated June 30th, 1993, which obviously preceded you and is a memorandum about receiving the official personnel folders of the seven White House Travel Office personnel for Mr. Podesta's review.

[Sherburne Deposition Exhibit No. 13

was marked for identification.]

BY MS. OLSON:

Q Were you aware that at some point Mr. Podesta did receive the personnel folders of the White House Travel Office individuals?

A I think I had some general awareness of that from the course of reading all of the documents we have produced over time and the published reports.

Q Do you know if any of the personnel folders went to anyone in the White House Counsel's Office?

A No, I don't.

Q Have you ever had any discussions about Mr. Sloan receiving these documents?

A No.

Q Have you ever had any discussions about the retention of personnel folders of the seven Travel Office personnel in the Counsel's Office for any reason?

A No.

Ms. Olson. I have a July 31st set of notes that I will mark as Deposition Exhibit 14. It's July 31st notes. They were marked in our production, I believe, from the White House as CGE 24253 as coming from Patsy Thomasson's files. Under July 31st, the second thing that she has is, "talked to David Watkins about positive drug test."

[Sherburne Deposition Exhibit No. 14

was marked for identification.]

BY MS. OLSON:

Q Do you have any information or any knowledge about positive drug tests concerning David Watkins or that David Watkins would have been talked to about?

A No.

Q Are you aware of the drug program that was set up in 1993, the end of 1993 into 1994 for individuals to be randomly tested?

A Yes.

Q Do you know, was David Watkins administering that program in any way or had any involvement in that program?

A I don't know what his involvement was.

Q Okay. Can you just state your basis of knowledge about this test? Because it began obviously before you came to the White House. Have you had any involvement or participation in overseeing this program?

A No.

Mr. Stroman. I just wanted to ask the relevance of the question.

Ms. Olson. The relevance? Well, Mr. Watkins has something on his notes about positive drug tests. We know that Mr. Watkins -- through prior depositions there were other statements and allegations made against him. We know he did leave the White House and received a payment of \$3,000 a month. We don't know exactly why or what purpose that happened, but in light of his soul-cleansing memo, I think the circumstances of Mr. Watkins and whether or not he was administering a drug test or a part of a drug test is within the scope of this deposition -- this investigation.

Mr. Stroman. Whether he was administering a drug test? Can you repeat the question again?

Ms. Olson. There isn't a question outstanding.

Mr. Stroman. I thought there was. I apologize. I thought the question was, did you have knowledge of this drug testing program.

Ms. Olson. No. I was asking Ms. Sherburne if she had any knowledge.

Mr. Stroman. Right. But I'm saying what is the relevance about whether Ms. Sherburne knew of the drug testing program?

Ms. Olson. I assume it came after her and it is in relationship to this investigation.

Mr. Stroman. The drug testing program?

Ms. Olson. We had a Secret Service hearing last week.

Mr. Stroman. The hearing may have gone into great detail about the drug testing program, but I think the scope of the resolution establishing the depositions does not mention drug testing programs at all.

Ms. Olson. Is this an objection for the record?

Mr. Stroman. Yes, it is.

Ms. Olson. So noted. I will go on to the next thing.

I have a document I will mark as Deposition Exhibit Number 15. It's Bates stamped number CGE 37586. The only designation that we got is that it is from quote, "Counsel's Office."

BY MS. OLSON:

Q Do you know whose handwriting that is on this document? It is from a February 26, 1996, production.

A No, I don't.

Q There have been requests from this committee regarding an HT memo. In this document in the middle it says, "memo dash HT."

A Right. Where it says, "Jennifer O'Connor new" --

Q It looks like for Mac to call senior press?

A Presidential assistance.

Q "Rc: HT." Do you have any knowledge of what that means?

A No.

Q Do you know anything about an HT memo that was created at any time from the firing of the Travel Office employees until present?

Mr. Witten. I object, solely to point out that what this is is a "memo dash HT colon," close quote, and I don't know that that necessarily refers to an HT memo. I don't know if they are referring to what it says here or to something else you know about.

The Witness. It could be an assignment to Jennifer O'Connor to write a memo to Harry.

Mr. Witten. A memo that needs to be created, but not one that has been created.

Ms. Olson. I really don't want your testimony. I would rather have your client's testimony on my record, but if you have an objection, please state it. We have made numerous requests to the White House for an HT memo and this was a document which had some reference to a memo which had something to do with HT. It may not be the HT memo. I was just asking if she had any knowledge regarding an HT memo.

The Witness. Is that the memo that you thought Bill Kennedy saw or something, a 10 or 12-page memo? Yeah. I don't know. We searched high and low for something that fits that description and have never found anything and I don't know if this could relate to it or not.

Ms. Olson. Okay. And that obviously was my follow-up, that there had been a search and if anything had been found and withheld that was an HT memo.

I have a document that I will mark as Deposition Exhibit number 16.

[Sherburne Deposition Exhibit No. 16

was marked for identification.]

Ms. Olson. Can I get our exhibits back if you are done copying down material and numbers?

BY MS. OLSON:

Q It is an August 13, 1994, memo to Joel Klein from Joel Eggleston and it is concerning minority request for access to the documents. In this memo at the bottom paragraph it discusses the production of documents to GAO and that GAO would not be allowed to take the records off-site.

Do you know who developed this policy concerning production of documents for the GAO to review?

A Beyond what is stated on the face of the memo?

Q Uh-huh.

A No.

Q In addition, it was a recommendation that the minority did not -- the minority wanted to obtain access to the documents through the GAO. Do you know if there was a policy that was established to allow the minority to review documents, but not take notes of those documents during this period?

A No.

Q Did you have any discussions about previous policies that were set up for the minority of this committee back in August of 1994?

A No.

Ms. Olson. I have a document I will mark as Deposition Exhibit No. 17.

[Sherburne Deposition Exhibit No. 17

was marked for identification.]

BY MS. OLSON:

Q It is CGE 37669. It is just on note paper with "White House" at the top and it appears that it is to Beth from Cliff. Have you ever seen that before, other than just for production?

A It's not dated.

Q It discusses a date of 8-30 in the first paragraph.

A I'm sorry. What's the question?

Q Have you ever seen the document before, other than just production to this committee?

A No.

Q Did you have any discussions with anyone concerning the problem of producing Harry Thomason and Darnell Martens' documents to the Department of Justice prior to you coming on in 1995?

A Did I have any discussions about problems with producing documents?

Q Problems that were occurring between the White House and the Department of Justice lawyers concerning receipt of Harry Thomason's and Darnell Martens' documents.

A Before I came back to the White House in 1995? Is that what you said?

Q These started before you came back in 1995, and my question is just did you have any discussions with anyone concerning these problems.

A At any time? Yes.

Q Ultimately, there was a subpoena that was issued in September of 1994 concerning the receipt of the documents. Can you just describe what discussions you had with anyone regarding the issuance of a subpoena by the Department of Justice to the White House for documents?

A Do you have the subpoena there?

Q Yeah.

A When I came to the White House in January of 1995, at some point after that, I tried to gain an understanding of what documents had been produced to whom and what production since this issue has been investigated so many different times, and I was aware that a subpoena had been issued in the course of learning that and trying to understand the various productions that a subpoena had ultimately been issued in connection with the public integrity investigation and that the subpoena was limited to Harry Thomason's and Darnell Martens' records.

And I also learned, and I can't remember from whom, that the subpoena was issued as a result of conversations with Public Integrity about documents that Public Integrity hadn't felt had produced documents either quickly enough or completely enough.

Q Did you ever have any conversations with Neil Eggleston since he was, I believe, the individual who was in charge of production of all documents to the Department of Justice?

A I believe so.

Q And did he describe what occurred concerning the production of documents to the Department of Justice?

A Yes, I believe so.

Q And other than what you have just generally described, did he discuss his letter that he wrote on September 8th, 1994, to the Department of Justice? And I have the copy of it if you would like to look at it.

It's Bates stamped number CGE 10259, September 8th, 1994, letter to Stewart Goldberg from W. Neil Eggleston.

[Document tendered.]

A I'm sorry. What was your question?

Q Did he discuss that letter with you?

A No.

Q Did he ever tell you whether his resignation was a result of the problems with document production concerning Harry Thomason's and Darnell Martens' letters?

A No.

Q The memo which you reviewed, that is Deposition Exhibit No. 17, talks about -- he said that Bernie wanted to hold up until the week of August 30th on giving the FBI HT docs and on saying anything substantive to HT lawyers, re, his employment status.

Did Neil Eggleston ever have any discussion with you concerning Bernie Nussbaum's direction that they hold up turning over Harry Thomason documents?

A I don't think Neil Eggleston was working in the White House on August 30th. This would have been 1993, because that's when Bernie was there, and it's in the present tense, "I spoke to Bernie," so I'm assuming 8-30 refers to 8-30-93. Neil didn't work in the White House at that time and apart from that, no, I never had any discussions with him about this document.

Q Do you know what documents were being withheld back in August, August 30th of 1993?

A No. I have no idea.

Q There came a time where a group of documents concerning the ICAP project and Harry Thomason seeking contracts became public. Did you ever have any conversations with Neil Eggleston about those documents?

A Did I ever have any conversations with Neil Eggleston about the ICAP documents?

Q The ICAP documents and when they first appeared and when he turned them over.

A I don't remember any such conversations.

Q Do you know if the -- if Bernie Nussbaum knew about the ICAP documents back on August 30th of 1993?

A No, I don't.

Q The second paragraph of that memo to Beth says, "I'm counting on you and Todd to follow up with Roy Neel and get the ICAP memo launched."

Do you know what ICAP memo that they are referring to?

A No, I don't.

Q There subsequently was a memo which was sent over to individuals at OMB and over at GSA stating that they should not take any action on the contract. Did you have any discussions with anyone in the White House about that memo directing no

action be taken?

A Yes.

Q Can you describe those discussions.

Mr. Witten. Well, let's consult. Excuse us.

Ms. Olson. Sure.

[Counsel and witness conferring.]

The Witness. Could you, I'm sorry, repeat the question?

[The reporter read back as requested.]

Mr. Witten. Let's establish when they were. I don't think we are going to assert an objection.

The Witness. The discussions would have been sometime probably in the last year in the course of trying to understand what the ICAP issue was about. I don't remember with whom, but I do remember that the gist of the discussions was that there had been this ICAP idea floated and that it was essentially a bad idea, and that various people in the White House were trying to make sure that, in fact, it didn't go anywhere and that it was stopped, and I believe the memo did, in fact, stop it. That's the gist of what I recall.

BY MS. OLSON:

Q Did you ever have any conversations with Bruce Lindsey about his meetings with Darnell Martens concerning the ICAP project?

A I may have.

Q Do you recall what context you may have spoken to Mr. Lindsey about this?

A It would have just been trying to understand what this ICAP issue was.

Q After the 1994 documents were delivered to the White House under the subpoena, in July of 1993 Natalie Williams delivered some documents to Mr. Goldberg?

A 1993?

Q I am sorry, 1995, Natalie Williams delivered documents to Mr. Goldberg, which consisted of that handwritten note of Matt Moore and travel vouchers, as well as some other Travel Office records that recently came -- which recently came to our attention. The letter that she wrote to Mr. Goldberg is Bates stamp number CGE 10261. It is July 13, 1995.

Do you recall what events occurred that brought new documents to your attention at this date?

A This is in response to a request that Stewart Goldberg made for some additional records that he apparently hadn't, either hadn't received before or hadn't made before.

Q So it's your belief that it was a new request rather than a response to previous --

A Well, I don't know. It says, "pursuant to your oral request for documents I'm enclosing this letter with the following." So he apparently made a request, and I don't know -- I don't know.

Q Do you know if it was an oral request just reiterating their previous requests and subpoenas, or if it was an oral request for documents?

A I had the impression that it was a new request, but I am not certain.

Q On July 28th, 1995, which is, I believe, the following letter, which is Bates stamped No. 10264, there is a letter to Stewart Goldberg from Natalie Williams, which is producing Vince Foster Travel Office notebook pages. Can you explain what circumstances caused the new pages to be produced at this date to the Public Integrity Section.

Mr. Witten. The document, on its face, doesn't say anything about notebook pages. Maybe you know that to be a fact.

Ms. Olson. I'm sorry. I only have one copy of this, if I could look at it. It is from Mr. Foster's Travel Office file, which is his notebook.

Mr. Witten. Okay. Thanks.

The Witness. And the question was, what occasioned the production of this material to Stuart Goldberg?

BY MS. OLSON:

Q Well, the Vince Foster notebook became public --

A During that time period.

Q And there had been prior requests concerning certain matters of Vince Foster, and so I guess my question is, what event precipitated a production in July of 1995 of the notebook pages?

A Well, as you said, the entire Vince Foster Travel Office file had been made public around this time period. Portions of the file had already been produced to Public Integrity, the portions that were responsive to Public Integrity's subpoena. When the entire file became public, Stuart called and asked if he could have a copy and we said sure.

Q So it's your position that up until that time, everything had been produced from Mr. Foster's notebook that had been requested by Public Integrity?

A That's my understanding, yes.

Q And your belief is that Ms. Williams was producing Vince Foster notebook pages from a new request?

A I know that's the case. I talked to Stuart, who asked me for a copy of the complete Vince Foster Travel Office file that had been reported on in the press.

Q Did he state what their basis or what investigation they were asking for it under?

A I don't remember if he stated.

Q In August of 1995, additional documents were produced, and I believe there is an August 23rd, 1995, letter from Natalie Williams to Stuart Goldberg, which is CGE 10265. Do you recall any event that precipitated the production of these documents, or if this was a new request by the Department of Justice?

A As I recall, Stuart wanted to look at certain categories of documents that he thought we may have that he might be interested in, and as the transmittal letter says, he came over and reviewed documents in our offices and I have a vague recollection, which is consistent with what this letter says, that he tagged documents that he thought he might be interested in and we agreed to provide them.

Q Do you have a recollection of whether this was from a new request, or if he was reviewing documents that the White House had found from previous requests?

A I think it was a new request.

Q And finally, there is a November 6, 1995, letter which is from Natalie. It is CGE 10268, which is to Stuart Goldberg. It is not signed. But do you recall that letter, and can you tell us the circumstances?

A When was the trial, the Billy Dale trial?

Q It was October --

A Was it going on during this time period, November 6?

Q It may have been at a close or shortly closing.

A I think there were documents that had been discussed in the Washington Times. I remember one request from Stuart asking if we knew what documents were the subject of a Washington Times story, and I think we did, and he asked us if we had them, if we would provide them to him.

Q There were several documents that the Department of Justice has produced to us concerning their declamation memo on Harry Thomason, and there were several declamation memos prepared and ready to go, and the Department of Justice stated that new documents would come out or appear and they would have to reconsider those documents before the declamation memo was finally issued.

Did you have any discussions with anyone at the Department of Justice concerning the declamation memo on Harry Thomason?

A No.

Q Do you know if anyone on your staff or in the Counsel's Office had any discussions about that with the Department of Justice?

A No, and if they did, I believe I would be aware of it, and I'm not aware of it.

Q And can you just state why you believe if they had conversations with the Department of Justice you would be aware of it?

A Because they work under my supervision and that wasn't part of our task or mission to have any conversations whatsoever with the Department of Justice about any aspect of their inquiry into Harry Thomason or Billy Dale or Darnell Martens.

Q Did you send anyone from your team or are you aware of anybody being sent to the Billy Dale trial to take notes every day?

A Yes.

Q Was that done at your direction?

A Yes.

Q And was there a purpose for having someone go there and take notes, or did you have a purpose?

A To know what was going on.

Q Did they report their notes back to you after they were done?

A No.

Q Did they report in any fashion back to you or to anyone else that you know of?

A I believe this was an intern, an unpaid intern who did this who I believe reported back to Natalie Williams, and if Natalie thought there was anything significant that occurred she would let me know.

Q Other than responding to document requests, are you aware of any conversations with Department of Justice officials during the course of Mr. Daley's trial?

A No.

[Counsel conferring with witness.]

Ms. Olson. I'm going to show you a document I have marked as Deposition Exhibit Number 18. It is a September 23, 1994, memo to Chris Cerf from Gary Walters and the subject is the grand jury subpoena for documents.

[Sherburne Deposition Exhibit No. 18

was marked for identification.]

BY MS. OLSON:

Q In the memo, he is enclosing excerpts from the personal diary log of the Executive Residence concerning Mr. Harry Thomason.

Do you know if these excerpts were ever produced?

A To whom?

Q To Department of Justice.

A Do you have them?

Q No.

A No, I don't.

Q Have you ever had any conversations with anyone in the White House Counsel's Office about these -- the personal diary log of the Executive Residence concerning Harry Thomason?

A I may have.

Q Do you have any recollection of in what context?

A Well, it seems to me that the Senate special committee asked for records, or was it you guys? I can't remember. Someone over time has asked for records of Harry Thomason visits to the Executive Residence, which would have resulted in a conversation with Gary Walters about the diary entries, which is just, it is not a diary, it is just simply a chronology of the day and records, who goes and when they go in and who leaves and when they leave, and so I believe there was a specific request about Harry and I or someone working under my direction would have talked to Gary Walters about it.

Q Do you know if there are any other logs that record individuals that go up to the residence, other than the personal diary log of the Executive Residence?

A There are post logs, what are referred to as F-1 post logs.

Q Who maintains those logs?

A The Secret Service maintains it, and they sit on the ground floor of the residence and just keep a record of who goes up in the elevator.

Q And is that in addition to this other log that is kept by Mr. Walters?

A Yes.

Q Is there any way to go in and out of the residence without either going by and being recorded in a post log or in the Executive Residence diary that you know of?

A Sure.

Q Can you just describe what other methods there are where one wouldn't be recorded in those logs?

A Well, there are a number of different entrances and exits. Presumably, if there is an entrance, there is an exit. I'm getting

punchy here. And I also know that the usher log and the Secret Service log that is kept in these two places is not necessarily consistent or accurate. There are lots of times when you can go up into the residence and they don't record you going in and out. I think usually if you are on the log, you probably did go in, but if you're not there, that doesn't necessarily --

Q You might have?

A You might have, right. I have looked at these logs where they have people going in and never leaving.

Q We have seen the same thing. That's why I'm asking. If there are some people still there.

A Right. I don't think so.

Q Are these entrants and exists, and obviously I don't want to get into security issues with the Secret Service, but are they just the regular same entrants and exists and there is just no one posted there, or is it something that you would have to live there to know about it or could guests know about it and come up like a back staircase or something?

A I don't know how to answer that question.

Q Well, I guess what I'm asking is, there are people who are on the logs going in and never coming out.

A Right.

Q And I don't think they necessarily intended to go down an exit where they wouldn't be recorded, but I'm wondering if it's just a same sort of exit that there is just nobody recording with a log on it. Is it a normal exit that is used a lot?

A No. The normal exit that is used is the one where the Secret Service guy is sitting there with the log, and normally when you come out of the residence, there is the first floor of the residence that's got all the formal rooms, and then the second and third floors are the living quarters. And you can go on the first floor, that's where the public towers are.

I mean there are tons of people that go on the first floor without ever being recorded. But if you are going to go up to the second or third floor, generally you stop at the usher's office first, which is on the same floor as all of the public tour rooms, but, you know, it's obviously not on the public tour. You stop in the usher's office and then an usher will take you to your destination.

So if you're not a routine visitor, you're usually recorded. They do keep track of who is there, both in the usher's office and in the post log, the Secret Service post log. But whether somebody who is a frequent visitor would go out the front door, I'm sure people go out the front door. I'm sure people come down that staircase in the front and leave. I'm sure there is entertaining that they do where guests come in and go up a different set of stairways and go up the formal stairs and are never recorded on a post log.

Q Do you know if any of the logs record when the First Lady goes down and goes to her working office?

A The post log typically doesn't. The usher's log sometimes does, but I have also learned that that's not reliable.

Ms. Olson. Okay. I have a note pad which is Deposition Exhibit -- I will mark as Deposition Exhibit Number 19. It is CGE 30113, and it's just a note that doesn't have a date and it's to Marvin from Antonella Pianalto.

[Sherburne Deposition Exhibit No. 19

was marked for identification.]

BY MS. OLSON:

Q Can you tell us who Antonella Pianalto is, do you know?

A She used to work in the Office of Presidential Personnel.

Q One of the sentences, of the two sentences in this memo says that this is the only documentation we could find relating to Harry Thomason. This is a candidate that he was sponsoring. Did you know of any candidates that Harry Thomason was

sponsoring for Presidential appointment?

A No.

Q Were you aware of any judges that Mr. Thomason had recommended to the President to appoint to the bench?

A No.

Ms. Olson. Deposition Exhibit Number 20 is Bates stamped number 22926. It is an October 13th, 1994, memo for the file from Bill Kysella, K-Y-S-E-L-L-A, who was an intern, and it discusses that a person named Michael Huttner and this intern had searched the files of Vince Foster and found no documents responsive to the grand jury subpoena from Public Integrity.

[Sherburne Deposition Exhibit No. 20

was marked for identification.]

BY MS. OLSON:

Q Do you know if there was any other searches that were made of the files of Vince Foster other than the search by this intern?

A Ever?

Q Well, in response to any of the subpoenas that were outstanding by Public Integrity.

A No, I don't know.

Q Do you know who Michael Huttner is?

A No.

Q Do you know if he was also an intern?

A I don't know.

Q Did you have any discussions with anyone in the White House about having interns searching for Vince Foster documents, or the propriety of having an intern search for Vince Foster documents?

A No.

Mr. Witten. Some of the interns are very good.

Ms. Olson. I'll bet they are.

The Witness. You wouldn't get half the documents we produced to you if we weren't using interns.

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DCMN MAYER

Ms. Olson. I have a document that I will mark as Deposition Exhibit 21. It is CGE 38335. It's a memorandum to you, and it's dated August 17th, 1995, from Natalie Williams.

[Sherburne Deposition Exhibit No. 21

was marked for identification.]

BY MS. OLSON:

Q Do you recognize that document?

A Yes, I do.

Q Can you just describe what -- the title is, a "Committee Proposal," and then there are some redactions here for nonresponsive material. Can you just describe what committee proposal this is?

A I don't remember what "Committee Proposal" refers to. I believe that there probably was another heading here that was --

Q Redacted?

A -- redacted that shouldn't have been redacted and "Committee Proposal" probably should have been redacted. I honestly can't explain it.

I know that during this time period, I was in a remote area of Minnesota, and Natalie was sending me updates; and the way this is structured, and my vague recollection of how she was providing me reports suggests to me that there was probably another heading here that referred to the Public Integrity inquiry.

Q But you don't know what "Committee Proposal" has to do with the Public Integrity inquiry?

A No, I don't. I don't think it has anything to do with Public Integrity.

Q Inquiry? Okay.

I guess I will do a request on the record here also. If we could get -- I mean, since you have some recollection that you think maybe the redaction was a little off, if we could get a document that's redacted in a way --

[Witness' beeper sounded.]

A Sorry.

Q Do you need to make a call or anything for your pages?

A No. I will just keep going. They all know where I am.

Q In this --

Mr. Witten. That one said, should we send a toothbrush and pajamas?

Okay. Let's go.

BY MS. OLSON:

Q In this Deposition Exhibit No. 21, there is a discussion by Natalie to you that says that Public Integrity requested a privilege log for the EP documents. Is that executive privilege documents?

A That's how I understand it.

Q Okay. Can you just describe what kind of documents were being withheld from Public Integrity and if you reviewed those documents?

A Well, this is talking about the Travel Office file, the Foster Travel Office file, and you will recall -- I don't think you actually did this; I think Barbara Comstock did -- but the contents of the briefcase included other material besides the Travel Office material, and some of it related to executive orders and some of it related to vetting material that we regarded as subject to a claim of privilege. And so it was that material that she is talking about here.

This isn't any other material, other than that. And I believe he just wanted us to identify in a log what those documents -- there were three or four of them -- what they were. And she says that's what she did.

Q And the executive privilege was being claimed also, though, as to documents being requested by the Department of Justice?

A I think he wasn't sure -- I obviously wasn't a part of this discussion. I think he didn't know whether he needed to see them, and when Natalie described them, he asked to put them on a log. I don't think -- it certainly never came to a point where we were actually invoking a claim against another executive agency. I don't think we would have pursued that. But it was just an issue of, is this related at all to this inquiry?

Q Do you have any knowledge at all of any executive privilege log where a privilege was invoked against the Department of Justice not to turn over documents?

A Where executive privilege was actually invoked? No.

Mr. Witten. You are excluding Independent Counsel's Office from the department?

The Witness. Emphasis on the "Independent."

Ms. Olson. Based on the fact that I assume that is an objection, I will exclude it.

Mr. Witten. It's part of the Department of Justice, technically.

Let's proceed.

The Witness. Yes.

Ms. Olson. He is unconstitutional, if he is not.

Mr. Witten. Exactly. Right.

The Witness. But he is not "independent," if he is.

Ms. Olson. We will have to talk to Justice Rehnquist about that.

The Witness. I would like to.

BY MS. OLSON:

Q Other than the executive privilege log, are you aware of any privilege log? And I don't mean just a couple of documents, but a privilege log that was given to the Department of Justice, withholding documents from them.

A Well, you know, there's the one that we had discussions about that was created and provided, not in my tenure, and I am aware of that log that's been the subject of communications between us.

Q Okay. Since your tenure, have you withheld any documents on privilege with the Department of Justice, done any other privilege logs withholding documents from the time you started in January of '95?

A No.

Q And obviously I'm excluding the Independent Counsel from the Department of Justice at this point.

After she talks about the executive privilege documents, Natalie Williams also makes a statement that says, "Goldberg also requested copies of all," and "all" is underlined, "the interview notes I showed him."

Do you know if those were the interview notes from the White House Management Review?

A I don't remember.

Q And at the very bottom is a mention of the Billy Dale trial, and Mr. Yarowski wasn't certain whether it would delay the

hearings.

Do you know if that's referring to our October hearings?

A I assume so, yes.

Q In a May 11th, 1995 letter, which I will mark as Deposition Exhibit No. 22, Mr. Yarowski is signing a letter to Phil Larson, where he discusses procedures and conditions that will apply to a review of the White House Travel Office documents, and those procedures include that notes may be taken but whole documents or large portions of any document may not be transcribed and that no photocopying of any documents would be permitted nor would any document be allowed to be removed.

[Sherburne Deposition Exhibit No. 22

was marked for identification.]

BY MS. OLSON:

Q Did you participate in the development of this protocol?

A Yes.

Q Can you tell us the basis of the development of this protocol of the documents?

A I am not sure how to answer that.

There was a request to review the documents. The documents, even though they were in our custody, were kept in our custody and maintained at the request of the GAO. I'm not sure we even had access to the documents without the GAO, and so we were trying to work out an arrangement for the committee staff -- I think this is when Phil -- the letter is addressed to Phil Larson -- the committee staff would have access.

Q Is it your understanding that the GAO would not allow you to make a copy of the documents to produce them to the committee?

A I honestly don't remember. I don't remember what that discussion was.

Q Okay. I have a June 29th, 1995 to Chairman Clinger from Abner Mikva, which I will mark as Deposition Exhibit No. 23. In this letter, in the second paragraph, it is discussing security measures to be established for documents; and in the third paragraph, it discusses highly confidential and sensitive material, and it refers back to the Waco-related documents.

[Sherburne Deposition Exhibit No. 23

was marked for identification.]

BY MS. OLSON:

Q Were you involved in the protocols that were sent up for reviewing documents during the Waco hearing?

A I was consulted.

Q Do you know who established those protocols within the White House?

A I know that John Yarowski worked with Ab Mikva on it, but beyond that, I don't know.

Q Do you know who worked on establishing the initial protocols in June of '95 concerning this committee's review of documents in the White House?

A I did.

Q Okay. And was your basis the Waco document protocols?

A Well, by that time I had had experience with the Senate Whitewater Committee. We had this Waco experience. I had experience with the House Banking Committee. So I would say that my experience and basis was all -- was all of that.

Q Okay.

A Reading this letter reminds me that Cheryl Mills was involved in the development of those protocols, as well, for the Waco hearing.

Q Okay. On May 13th, 1995, Chairman Clinger wrote a letter to Abner Mikva concerning the Vince Foster Travel Office file. I will mark this as Deposition Exhibit No. 24. It is a July 13th letter where the Chairman discusses the fact that reporters had inspected the files of Mr. Foster and this committee had still not gotten these documents.

[Sherburne Deposition Exhibit No. 24

was marked for identification.]

BY MS. OLSON:

Q Did you have any discussions with Mr. Mikva or others about making the Vince Foster Travel Office files available to the press prior to delivery to the committee?

A At what time; before we made them available to the press?

Q Uh-huh.

A No.

Q Do you know whose decision that was?

A To make them available to the press?

Q Uh-huh.

A Mine.

Q Okay. Did you have any discussions with any individuals concerning that action -- in the White House, obviously, not the press?

A Yes, I am sure I did.

Q Do you know who you talked about this issue with?

A I would have discussed this with -- "this issue" being making this material available to the press or making it available to the press before the committee?

Q Well, it probably is better if we start with a broader -- about making it available to the press at this point in July.

Mr. Witten. So far it is only, with whom did you discuss it?

The Witness. Okay, at this point in July, I would have discussed it with my team, which would have been Fabiani, Miriam. Ira Fishman worked for me then, and I am -- I would have discussed it with Harold Ickes, and I am not sure who else. There may have been others, but those are the ones I recall.

BY MS. OLSON:

Q Okay. In the letter, the Chairman discusses that "the request was due to the committee on June 23rd, 1995, and as of July 13th we still had not received it."

Did you have any conversations with anyone about the fact that you were making these documents available to the press and to the public before any delivery to the committee, even though the request of the committee had been at least two, two-and-a-half weeks overdue?

A I think what happened here was that we had produced the file to the Whitewater Committee, so we had made it available in that context and, frankly, didn't recognize or focus on the fact that Government Reform had also requested the file. And as I recall, as soon as we got the request, we provided the file, although there may have been -- no. I believe as soon as we got the request, we provided the file.

Q Okay. When was the first time you learned about the existence of the Vince Foster Travel Office file?

A On --

Q And I have the chain of custody letters here if that will help you.

A It would have been the day of or the day after Fiske released his suicide report.

Q Okay. Can you just describe the circumstances under which it was brought to your attention?

A Fiske released his suicide report, and I was in a conversation with Lloyd Cutler in which he was remarking on the fact that Fiske seemed to be attributing --

Mr. Witten. Excuse me.

The Witness. This is waived.

Mr. Witten. Okay.

The Witness. Attributing the suicide to Foster's concerns about the Travel Office matter. And Lloyd remarked that one would expect to have found a Travel Office file in Foster's office, and he didn't remember having ever heard about one. And at some point, Neil Eggleston either joined the conversation, but I believe it was -- this may have all happened on the same day or the day after. And Neil said, well, there is a Vince Foster Travel Office file and described it and went and got it.

BY MS. OLSON:

Q I am going to go ahead and put in the record the chain of custody, the first chain of custody letter as Deposition Exhibit 25, which is an August 30 letter to Chairman Clinger, which talks about the chain of custody of the Travel Office documents from Abner Mikva.

[Sherburne Deposition Exhibit No. 25

was marked for identification.]

BY MS. OLSON:

Q And I believe in --

A Did you say this was the first one? This is the second one. There was a shorter one that came first, and then you complained about how it didn't answer all of your questions.

Q There is. I will make it Deposition Exhibit No. 26. It is a July 25th, 1995, letter to Chairman Clinger from Judge Mikva, which is cc'd to Cardiss Collins and Don Goldberg, which gives a chain of custody that says that they were in the Counsel's Office from the time of his death until they were provided to Ken Starr.

[Sherburne Deposition Exhibit No. 26

was marked for identification.]

BY MS. OLSON:

Q In the chain of custody letter that's marked as Deposition Exhibit No. 25, you do discuss the Fiske release of the suicide report in July and Mr. Cutler reviewing the file and placing it in a safe.

Is it your information or your knowledge that Mr. Cutler kept the Vince Foster Travel Office file in his safe until they were removed to be numbered and copied for production to Independent Counsel Ken Starr on April 5th, 1995?

A No, no. It says the documents remained in the safe until April '95.

Q Right. Is it your knowledge that they stayed in the safe that entire time?

A No. Actually, I think -- do you have the next letter? I think the next letter -- no, no. I am sorry. It's the preceding paragraph. Either -- at some point prior to the time of Nussbaum's departure from the White House in March the Foster Travel Office documents were moved to a file cabinet to the secretarial suite associated with the Counsel's Office. So when Neil retrieved the file that's where it was.

Q It was in --

A The Counsel's Office suite. It was not in a safe in Mr. Cutler's office.

Q Do you know when Mr. Cutler removed it from his safe to the file cabinet?

A No. It says here Nussbaum did that, either at some point prior to or around the time of his departure.

Q Okay.

Mr. Witten. Gail thinks there was a mismatch between the question and the answer. Can we just have them both read back.

[The reporter read back as requested.]

The Witness. As I understand it, the file was never in the safe while Lloyd was counsel; that it had been taken out of the safe and put in the file cabinet in the suite sometime before Lloyd became counsel.

BY MS. OLSON:

Q Okay. Maybe we should break a little bit and read this, because it has been a period of time. And it is something that I have been confused about and wanted to ask you because I know you helped put this together.

A Okay. Then what happened was that when Lloyd, you know, had this epiphany about the file and Neil retrieves it from the file cabinet and says, here it is, then at that point Lloyd puts it in Lloyd's safe. So there was a long period of time --

Q Where it is in the secretarial suite under "T" for "Travel"?

A Well, some place.

Mr. Witten. Barbara's question was, once it went into Lloyd's safe, did it go anywhere else before it went to the Independent Counsel?

The Witness. Okay. So I took us on this detour and I didn't have to. Okay. I'd better eat my muffin.

Mr. Witten. That's a reference to an actual muffin that's on the table here, for the record.

The Witness. I believe at one point the file was in Podesta's office.

BY MS. OLSON:

Q Okay. Do you know when that was? I mean, it obviously had to be --

A It would have been in that same time period right after it was discovered, or rediscovered.

Q Do you know why it went to Podesta's office?

A For his review.

Q Okay. Do you know if it was shown to anyone else during that period, other than the people that you have listed?

A During that period, right after -- in the July period?

Q Uh-huh.

A I know there was another letter that we sent to you, and I think it identified Marvin, and Chris Cerf as additional people. But I'm not sure if there was a third person that we believed had reviewed it. Maybe we just added another date that Neil had reviewed it.

Q I will make a document part of the record, which is a letter to Jane Sherburne from then Barbara K. Bracher, dated September 6th, 1995. That's Deposition Exhibit No. 27.

[Sherburne Deposition Exhibit No. 27

was marked for identification.]

BY MS. OLSON:

Q I would ask for further clarification.

A I think it was the response to this letter, where I identified Marvin Krislov and Chris Cerf as additional people who reviewed the document and, I think, added a July date.

Q I have a document which is a September 15th, 1995, letter to Barbara Bracher from Jane Sherburne, which may be the response, which I have made Deposition Exhibit No. 28, and that may be the response that you are talking about.

[Sherburne Deposition Exhibit No. 28

was marked for identification.]

BY MS. OLSON:

Q In these chain of custody documents, you do have John Podesta reviewing it in July of 1994. Do you know if he reviewed it at any other time?

A Not that I'm aware of.

Q Okay.

A Oh, wait a minute. He may have reviewed it like in July of 1995, when we made it public or at some point in that -- it seems to me there was another time period much later, a year later, that he may have reviewed it.

Q The review that you discuss in the September 15th Deposition Exhibit No. 28 by Marvin Krislov and Chris Cerf in September of '94, can you just describe what -- under what circumstances they were reviewing it in September of '94?

A I believe it was to confirm that all the responsive material to the Public Integrity subpoena had been provided.

Q Okay. And that would be the subpoena that the White House responded from the September 13th, 1994 Public Integrity, Department of Justice, subpoena?

A Right.

Q To your knowledge, since writing this chain of custody back in 1995, which went from August to September, have you learned that any other individuals reviewed the Travel Office file during this early period when it was first discovered and placed in the safe and reviewed by individuals that you have designated?

A No.

Q There is a series of letters that went back and forth between Chairman Clinger and Abner Mikva concerning documents that were initially being withheld that were classified by Mr. Mikva as subject to claims of privilege and -- which was on September 8th and 13th of 1995. Did you participate in development of those privilege logs? And I can make them part of the record if that would help so you can review them and see what I am talking about.

A Just show them to me.

Q This is Deposition Exhibit No. 29, which is a September 8th, 1995 letter, which is to Chairman Clinger by Abner Mikva; and Deposition 30 is a September 13th letter to me from you.

[Sherburne Deposition Exhibit No. 29

was marked for identification.]

[Sherburne Deposition Exhibit No. 30

was marked for identification.]

The Witness. We have been doing this a long time, Barbara. Do you have a question?

BY MS. OLSON:

Q I just was asking if you were involved in the process for distributing the documents that would be subject to the claim of executive privilege.

A Yes, I was.

Q Ultimately, Abner Mikva resigned, following several other documents and letters back and forth between the Chairman and him.

Do you have any knowledge of any basis for his resignation that would be connected to the production of those documents that were initially withheld as privilege?

A No.

Q Okay. Did you review any of these documents or any of the privilege logs with the First Lady during this period of time?

A No.

Q Do you know if the First Lady had any meetings with Abner Mikva concerning the production of these documents?

A The documents that are discussed in those two letters?

Q Well, the documents that were in the log that was produced in September subject to privilege. I guess it was the September 5th log of documents.

A I don't believe so, but to be sure I would probably have to look at the log.

Ms. Olson. Can we go down for a second?

[Discussion off the record.]

BY MS. OLSON:

Q We are back on the record.

You had asked to look at a copy of the privilege log. It's dated September 5th, 1995, and it is Bates stamp number CGE 2145 through 2159. Obviously, this is a working copy with a lot of handwriting, but at least you can see.

A This was to answer the question whether --

Q You had any conversations with the First Lady.

A Upon reviewing this log, I can answer with confidence that I did not discuss any document on here with the First Lady.

Q Were there any other documents that you recall discussing with the First Lady during this period?

A No.

Q Okay. There was a series of letters which went back and forth between White House Counsel Abner Mikva and the Chairman, as well as between you and committee staff, and I have marked them all, just for expediency.

Ms. Olson. Deposition Exhibit No. 31 is a September 6th, 1995 letter to Judge Mikva from Chairman Clinger.

[Sherburne Deposition Exhibit No. 31

was marked for identification.]

Ms. Olson. Deposition Exhibit No. 32 is a September 18th letter from Chairman Clinger to Abner Mikva.

[Sherburne Deposition Exhibit No. 32

was marked for identification.]

Ms. Olson. Deposition Exhibit No. 33 is a September 25th, 1995 letter from Jane Sherburne to Barbara Bracher.

[Sherburne Deposition Exhibit No. 33

was marked for identification.]

Ms. Olson. Deposition Exhibit No. 34 is an October 11th letter from Chairman Clinger to Abner Mikva.

[Sherburne Deposition Exhibit No. 34

was marked for identification.]

Ms. Olson. Deposition Exhibit No. 35 is an October 13th letter from Barbara Bracher to Jane Sherburne.

[Sherburne Deposition Exhibit No. 35

was marked for identification.]

Ms. Olson. Deposition Exhibit No. 36 is an October 23rd letter from Chairman Clinger to Judge Mikva.

[Sherburne Deposition Exhibit No. 36

was marked for identification.]

Ms. Olson. Deposition Exhibit No. 37 is a November 8th letter from Barbara Bracher to Jane Sherburne and Deposition Exhibit No. 38 is a November 13th letter from Barbara Bracher to Jane Sherburne.

[Sherburne Deposition Exhibit No. 37

was marked for identification.]

[Sherburne Deposition Exhibit No. 38

was marked for identification.]

BY MS. OLSON:

Q During this period, there was a lot of communication back and forth concerning the status of the documents that were the subject of the privilege log that you looked at. And following meetings with Chairman Clinger and Abner Mikva, there was an accommodation that was received where the documents were reviewed.

My question is: Did Abner Mikva's resignation have anything to do with any of the communications between the Chairman and him or the topic of production of these documents?

A No.

Q I have one final document that I brought up here and it's gone, so she is going to go get a copy.

While we are waiting, there is an April 8th, 1996 memo, which I will mark as Deposition Exhibit No. 39. It's Bates stamp number 47874, and it is to Jack Quinn and Kathy Wallman from Chris Cerf, and it's discussing the Personnel Security Office back in April of 1996.

[Sherburne Deposition Exhibit No. 39

was marked for identification.]

BY MS. OLSON:

Q Have you ever seen that memo before?

A Yes.

Q Can you -- when did you see that memo? Was it during the April '96 time period?

A No. It was in connection with producing materials in response to committee requests.

Q Was there any event or any occurrence during April of '96 that prompted a memo on the White House Personnel Security Office, that you know of?

A Yes.

Q Can you just describe what that was?

A Chris Cerf, who had been the Counsel Office lawyer responsible for supervision of the Office of Personnel Security, was leaving the White House to return to private practice, and so there was a discussion of who was going to take over his duties. Obviously, his departure would have occasioned the need for such a discussion.

Q Do you know if Chris Cerf took over from Beth Nolan in his supervision of that office?

A I believe that's right.

Q Okay. And do you know ultimately who took up Mr. Cerf's duties after his departure from the White House?

A Yes. David Fein. And I think he did it with the assistance of Trey Schroeder.

Q Have you had any contact from the FBI in the past week concerning documents or materials in their possession on Bernie Nussbaum?

Mr. Witten. Could I have that question read back, please?

Ms. Olson. I can probably more artfully state it.

Mr. Witten. That wasn't a problem.

BY MS. OLSON:

Q Has the FBI made any contact with you concerning documents in their possession about Bernie Nussbaum?

Mr. Witten. I assume this is within the description of the scope that you read at the beginning of the hearing, but it's not immediately apparent to me why it is. But I'm not objecting; I'm just wondering aloud.

Mr. Stroman. I may object. I don't believe, Barbara, that it is within the scope of the resolution.

Ms. Olson. Can you state your basis?

Mr. Stroman. Well, the basis is that it's within the last week, and I don't believe that's covered by the resolution, the time frame of the resolution.

Ms. Olson. I disagree. This has to do with the White House file issue, which is underneath the scope of our resolution. There isn't a cutoff time that's been given to questions we can ask.

Mr. Stroman. Within the file issue?

Ms. Olson. The FBI file issue, within the scope of the FBI file issue.

Mr. Stroman. Maybe I am just not following your question. Could you restate your question?

Ms. Olson. All I have asked is whether the FBI has contacted her in the last week concerning materials they have in their possession concerning Bernie Nussbaum.

Mr. Witten. I am not a Travel Office voluptuary, so it wasn't immediately apparent to me that that question related to the Travel Office. I guess if you say it does --

Ms. Olson. It does.

Mr. Witten. -- it does. So this is a -- a communication within the executive branch. Let me talk to the client.

[Discussion off the record.]

Mr. Witten. All right. Thank you.

Ms. Olson. Yes. Is there an objection?

Mr. Witten. No, not yet.

The Witness. Since the interest in the FBI file matter issue has arisen, I have had frequent communications with the FBI in the course of -- I mean, you know, we have talked about many of them, but in the course of responding to requests and determining the status of various requests, requests from the committee, as you know, related to White House records that the FBI might have; and so for -- so, yes, I have had conversations with the FBI.

BY MS. OLSON:

Q In the past week?

A Sure.

Q And in the past week, is it correct to state that the White House and the FBI have not been actively investigating the FBI file issue matter?

A They were --

Mr. Witten. Excuse me. She may or may not know what the FBI is doing is my objection to that question. But you can answer it to the extent you have knowledge about what you are doing and about what the FBI is doing.

BY MS. OLSON:

Q Is there an active investigation of the FBI file matter going on in the White House?

A No.

Q Has there been in the past week?

A No.

Q To your knowledge, has the FBI been actively investigating the FBI file matter in the past week?

A The communications that I have had with the FBI relate primarily to responding to requests for documents. We are also getting requests from Hatch's committee on the Senate side, and there have been a number of discussions about who wants what.

Ways and Means have asked for documents, and they sent their request to the FBI. I have had discussions with them about that, I believe in the last week.

RPTS BRYAN

DCMN KRISTOFFERSEN

[7:25 P.M.]

Q Other than discussions about documents, to your knowledge, has anyone in the FBI contacted the White House about the contents of any background investigation files?

A Yes.

Q And can you please describe who was contacted when?

A I was contacted sometime last week.

Q Do you recall if it was the day of our hearing or the day before our hearing with the Secret Service?

A I believe it was the day before.

Q And who contacted you?

A Tom Kelley.

Q And do you know -- were you contacted by anyone else besides Tom Kelley?

A No.

Q Do you know if Howard Shapiro contacted anyone at the White House concerning the contents of an FBI background investigation?

A Yes.

Q And who do you believe Mr. Shapiro contacted?

A Kathy Wallman.

Q Do you know if anybody else was contacted besides you and Kathy Wallman?

A No.

Q And in turn, who did you contact in the White House concerning this information that you received?

[Witness confers with counsel.]

Mr. Witten. We have had a colloquy, and you have defined the subject matter of this conversation so narrowly that we are beginning to worry about whether it invades -- it may be something subject to a claim of executive privilege, so we are going to go step by step and see how it goes here.

Ms. Olson. Can you just explain what you mean by -- maybe I can correct the problem. How have I defined the subject matter so narrowly?

Mr. Witten. The subject matter of conversations you are asking about, that has been defined so narrowly that it trembles on the brink of disclosing the substance, which so far you haven't done explicitly, and we are just --

Ms. Olson. And you believe that this is advice given to the President?

Mr. Witten. Well, I haven't asserted anything yet. All I have said was, we may be getting close to an issue that is subject to a claim of executive privilege, and if it is subject to such a claim, then this witness doesn't have authority to waive it. So let's just go one at a time and see where we get.

BY MS. OLSON:

Q Did you discuss this information with anyone else in the White House?

A Yes.

Q Who did you discuss it with?

A Well, I would have discussed it with my team, with Kathy Wallman, with Evelyn Lieberman, and Harold Ickes; perhaps others, but that would have been the core group.

Q Who on your team --

A And Jack Quinn as well.

Q Who on your team did you discuss it with?

A Certainly Fabiani, Sally Paxton, and John Yarowsky. Possibly others, but those would have been the primary ones.

Q And did these discussions occur on Tuesday after you had received your call from the FBI?

A They would have been Tuesday or Wednesday.

Q Okay. You mentioned Mr. Ickes. Do you know if you discussed it with Mack McLarty?

A No.

Q Do you know whether or not Harold Ickes discussed this with Mack McLarty?

A No.

Q Do you know if anyone has discussed this with Mrs. Clinton?

A Yes.

Q And has anyone discussed it with Mrs. Clinton?

A Yes.

Q And who is that that discussed it with her?

A I did.

Q And when did you discuss it with her?

A It would have been Tuesday or Wednesday.

Q Was anyone else present when you discussed this with Mrs. Clinton?

A No.

Q Have you had any discussions of this with anyone outside of the White House other than your attorney?

A Yes.

Q And who was that?

A David Cohen, Jim Fitzpatrick, Larry Pedowitz.

Q Jim Fitzpatrick who is representing Bernie Nussbaum?

A That's right. And I'm trying to remember if I spoke to Randy Turk about it. I may have.

Q Were you aware that Bernie Nussbaum was going to go into a grand jury appearance shortly after you had your conversations with his attorney?

A No.

Q Did his attorney inform you that his client was going to go be put before a grand jury?

Mr. Witten. Were you done with the question?

Ms. Olson. Yeah.

Mr. Witten. I think we are in an area that has -- as to which the White House has in the past asserted executive privilege, and I suppose I might again, so I think you shouldn't answer until you get some clarification.

BY MS. OLSON:

Q And can you tell us -- I mean, I would ask you to describe your conversation with the First Lady regarding this communication from the FBI.

Mr. Witten. We have the same problem.

Ms. Olson. Is this an executive privilege objection being raised?

The Witness. I don't have the authority to answer that question or waive the privilege.

BY MS. OLSON:

Q What privilege would the First Lady have for discussions about FBI information? I mean, is it executive privilege? is all I'm asking.

Mr. Witten. If it's anything, if the claim is asserted -- I can't assert a claim of privilege on behalf of the White House. I don't work for the White House. We are in an area as to which there might be an executive privilege, and I can't let my client do something she is not allowed to do.

So there may be no claim, and if there is a claim, it will be defined by the White House, and I suppose, speculating, that if there is such a claim, it will be a claim that comes under the rubric of executive privilege. I don't speak for the White House.

BY MS. OLSON:

Q When you spoke to Mr. Nussbaum's attorney, Mr. Fitzpatrick, did you tell him the contents of the information that was relayed to you from the FBI?

The Witness. Is that objectionable?

Mr. Witten. Well, if you will accept this modification of the question, I think we can get an answer. Was the subject matter of your conversation the same? I think that avoids the substance.

The Witness. The same as the subject matter of the conversation with the FBI?

Mr. Witten. Yes.

The Witness. Okay.

Mr. Witten. I don't know if Barbara will accept that modification, but I think it is a question that I would be comfortable with your answering.

The Witness. Do you modify the question that way?

Ms. Olson. I will adopt the modification. I will have follow-up, but I certainly will adopt the modification.

The Witness. Yes.

BY MS. OLSON:

Q Did you in any way communicate the contents of an FBI background file to attorneys that are representing outside individuals?

Mr. Witten. I think that's substance, and I am going to have to --

Ms. Olson. It's executive privilege?

Mr. Witten. I think it's inquiring into the -- the way you framed the question would, I think, require -- it gets into the substance of her conversation with the FBI, and so I think we just -- out of caution here, we are going to have to take a pass on this one and let the White House figure out what, if any, privilege it wants to assert.

BY MS. OLSON:

Q I just have a follow-up to ask you. Broadly, have you ever disclosed the contents of a confidential FBI raw file to any individuals outside of the White House?

A To Congress.

Q And which would that be, the Billy Dale file?

A That's correct.

Q Other than the Billy Dale file, have you ever disclosed the contents of an FBI background investigation file to any individuals outside of the White House?

Mr. Witten. The first time you asked that question, you talked about a raw file. You didn't say that the second time.

Ms. Olson. Well, I'll make it the information from the raw data and FBI background file.

The Witness. Not that I'm aware of.

BY MS. OLSON:

Q And that would include your communication from the FBI, the substance of your communication with the FBI?

A I don't know.

Q The last document I have, which I meant to get to earlier, but we have a June 21st, 1996, memorandum to the file from Trey, T-R-E-Y, Schroeder, S-C-H-R-O-E-D-E-R, and I'll mark it as Deposition Exhibit 31. I'll ask you if you have ever seen that document before, other than production to this committee. The Bates Stamp number is CGE 47939.

The document has been remarked as Deposition Exhibit No. 40.

[Sherburne Deposition Exhibit No. 40

was marked for identification.]

[Brief pause for document examination.]

The Witness. What was your question?

BY MS. OLSON:

Q I had asked if you had seen this memorandum before, other than during production to the committee.

A Well, it was created in the course of production, so I don't -- I saw it when we produced it.

Q At the very bottom of the first page there is a discussion about documents that Nelson Cunningham and Frank Reeder were seeking regarding recommendations that had been made at some point in the past involving the Personnel Security Office.

Do you know what documents Nelson Cunningham and Frank Reeder were seeking?

A No.

Q Have you had any conversations with Nelson Cunningham concerning the White House Personnel Security Office?

A I may have.

Q Can you -- do you have any recollection of what areas of discussion you might have had with Nelson Cunningham?

A I think I have discussed with him document production issues related to requests for documents, and I don't know -- I don't know that there was anything further than that.

Q Okay. In the letter, Mr. Cerf evidently told Mr. Fein that he had the background investigation file of Craig Livingstone. Do you know where Craig Livingstone's background investigation was kept during 1993?

A No.

Q Do you know where it was kept in 1994 or 1995?

A Well, I assume from this that it was -- that Mr. Cerf kept it during the period he was responsible for that.

Q Do you know at what point he received Mr. Livingstone's background investigation?

A No, I don't.

Q There is an issue that has come up concerning Mr. Marceca seeing the contents of his own background file in Craig Livingstone's office. Do you know why or for what purpose Craig Livingstone had Mr. Marceca's background file in September of 1995?

A I don't know that he did.

Q Okay. Were you aware of any Presidential appointment that was being sought by Mr. Marceca in the fall of 1994, spring of 1995?

A I have heard rumors about his efforts, and we are currently engaged in trying to respond to your document request for documents related to that question, and once I review the documents I may know more, but at the moment I don't.

Q Do you have any information about any of the documents that were responsive to requests by Nelson Cunningham and Frank Reeder mentioned in this memo?

A No.

Q Okay. In one of the letters that Mr. Livingstone had written to Abner Mikva asking for a raise, he stated that he had gotten a higher rating than the other security officer, which I assume it meant Mr. Easley.

Are you aware of Mr. Livingstone getting a higher rating or performance review than Mr. Easley?

A No.

Q In the statement that you gave on June 5th, 1996, you said that the Dale file had not been checked out from January of 1994 to December of 1994. Do you know if files could be copied? And I have your statement. This is the statement that you made regarding the FBI files.

A Could I take a look at it, please?

Q Sure.

Ms. Olson. I might as well mark it. Let me put it in as Deposition Exhibit 41. It is CGE 47998.

[Sherburne Deposition Exhibit No. 41

was marked for identification.]

[Brief pause for document examination.]

BY MS. OLSON:

Q You just made a statement that you believe that the Dale file was not checked out from January 1994 to December of 1994.

A Yes. What was the question?

Q My question is, do you know of any way that it can be reviewed or copied without being checked out?

A I believe that an authorized person from the Counsel's Office could go into the vault and stand there and review it without checking it out, but I'm not aware of any other -- any other person who wasn't an authorized person from the Counsel's Office who could just go in and look at it.

Q Do you know if there was a policy that was established that would prohibit someone from standing and reviewing any background investigation files that either worked in Mr. Livingstone's office or worked in the White House?

A Sure. You have read tons of them in the documents we've produced. People couldn't just wander in there and review files.

Q Is there stated White House policy regarding --

A You have read descriptions of how that office was run and who had access and who didn't, and there were restrictions imposed on who could walk in and look at the file. I couldn't walk in and look at a file.

Q And who imposed these restrictions, or who on a day-to-day basis made sure that these were being followed?

A Presumably the director of the office, Craig Livingstone.

Q Okay. Do you have the log that you have described in your possession, or is it currently in the secured room, in the vault?

A It is -- the log is in the room that's been secured at the request of the Independent Counsel.

Q Do you have any copies of it --

A No.

Q -- available at this time?

A No, not that I'm aware of.

Q You also stated in your statement that the Dale file had been removed on December 1st, 1994, to the Archives. Do you know the basis of that information? Was it from one of the document lists, or was it from an interview with Ms. Wetzl?

A In Deposition Exhibit 10, there is a reference box 1 that says, "Received in ORM by Terry Good on 12-1-94."

Q And that's on the page with the lists?

A That's right.

Q Which is box 1?

A That's right. The boxes were marked "1 of 1," "1 of 2," "1 of 3."

Q And do you believe that they were all turned in on the same date that's marked on box 1?

A I think I was just told this. I don't know how -- because I don't think I saw this until June 6th, and I made this statement on --

Mr. Witten. When you say "this," you are referring to Exhibit 10?

The Witness. Exhibit 10, right.

BY MS. OLSON:

Q Do you know who told you that?

Mr. Witten. And when you say you were told this, you were pointing to the last paragraph of the first page of "Exhibit 41".

The Witness. That's right.

Mr. Witten. I want the record to know what you were talking about.

BY MS. OLSON:

Q Do you recall who might have told you that the Dale file was not removed, or was removed on December 1st, 1994, to Archives?

A Either -- it was either one of three people: Sally Paxton, Craig Livingstone, or Terry Good.

Q And similarly, you say that you -- it wasn't retrieved until May 21st, 1996?

A That would have been by reference to the log kept in the Office of Personnel Security.

Q Okay, which is the log that we were just discussing?

A Correct.

Ms. Olson. That is all my questions. If you have any, Mr. Stroman.

Mr. Stroman. Just two very quick questions.

Mr. Witten. Excuse me just a moment.

Mr. Stroman. Yeah, sure.

BY MR. STROMAN:

Q Very quickly, are you aware of any laws or regulations governing the White House Counsel's Office communications with Congress or the press?

A No.

Ms. Olson. Does this include Privacy Act?

BY MR. STROMAN:

Q Are you aware of any laws or regulations which would have governed past administrations' White House Counsel's Office communications with the press or Congress?

A No, I'm not. And I'm not aware of -- indeed, it would be surprising if there would be any sort of law or regulation that would restrict a -- or somehow interfere with or discourage communications between two branches of government.

Ms. Olson. Well, I think the question also included the press. I mean, I just wanted to clarify, because obviously Congress is a branch of government, but the press is not a branch of government.

Mr. Stroman. That's the only question I have. Thank you.

[Whereupon, at 7:50 p.m., the deposition was concluded.]