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THE ELECTRONIC RECORDS PRESERVATION AT THE WHITE HOUSE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

FEBRUARY 26, 2008

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THE ELECTRONIC RECORDS PRESERVATION AT THE WHITE HOUSE

TUESDAY, FEBRUARY 26, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2157, Rayburn House Office Building, Hon. Henry A. Waxman (chairman of the committee) presiding.

Present: Representative Waxman, Towns, Cummings, Kucinich, Davis of Illinois, Tierney, Clay, Watson, Yarmuth, Norton, Sarbanes, Welch, Davis of Virginia, Burton, Mica, Platts, Duncan, Issa, Foxx, and Bilbray.

Staff present: Phil Schiliro, chief of staff; Phil Barnett, staff director and chief counsel; Kristin Amerling, general counsel; Karen Lightfoot, communications director and senior policy advisor; David Rapallo, chief investigative counsel; John Williams, deputy chief investigative counsel; Michael Gordon, senior investigative counsel; Earley Green, chief clerk; Teresa Coufal, assistant clerk; Caren Auchman, press assistant; Kerry Gutknecht and William Ragland, staff assistants; Larry Halloran, minority staff director; Jennifer Safavian, minority chief counsel for oversight and investigations; Keith Ausbrook, minority general counsel; Steve Castor and Ashley Callen, minority counsels; Patrick Lyden, minority parliamentarian and member services coordinator; Brian McNicoll, minority communications director; Benjamin Chance, minority clerk; and Ali Ahmad, minority deputy press secretary.

Chairman WAXMAN. Good morning. The committee will please come to order.

Today's hearing focuses on whether President Bush and the White House are complying with the Presidential Records Act.

The Presidential Records Act was enacted in 1978 to ensure that White House records are preserved for history and are owned by the American people. It requires the President to preserve the records that document the activities, deliberations, decisions, and policies of the White House.

The emergence and remarkable surge in popularity of e-mail has presented problems in complying with the act. As members of this committee know, President Clinton experienced these problems. In 1994, he established the Automated Records Management System to archive Presidential records, including e-mails. But the system had technical flaws. For a period of time, it would not preserve e-mails sent by officials whose name began with the letter D.

Well, in 2000, Dan Burton, who was then Chair of this committee, alleged that the Clinton administration deliberately lost and withheld e-mails from Congress. Mr. Burton held five hearings on that issue and forced the White House to spend over $11 million to reconstruct 200,000 e-mails.

In the end, the overblown charges of wrongdoing were proven false. The lost e-mails turned out to be the result of a few technical glitches, not any intentional acts.

The silver lining to the committee's investigation, though, was that the problems in the Automatic Records Management System were addressed. When President Clinton left office and President Bush came into office, the White House had in place a system for archiving White House e-mails that complied with the Presidential Records Act.

That is what makes the actions of the Bush administration so inexplicable.

President Bush's White House kept the Automatic Records Management System in 2001. But in September 2002, for reasons that we have never found an adequate explanation, the Bush administration White House decided to replace the Automatic Records Management System.

In its place, the White House adopted a system that one of its own experts described as "primitive" and carried a high risk that "data would be lost." The system also had serious security flaws. Until the problem was corrected in 2005, all officials in the White House had access to the archive system and the ability to delete or alter existing information.

The White House's own analysis of its system identified over 700 days in which e-mail records seem either impossibly low or completely nonexistent. This 2005 analysis was prepared by a team of 15 White House officials and contractors.

And these are not the only missing e-mails from the White House. We also know that over 80 White House officials, including some of the most senior officials in the White House, routinely used e-mail accounts at the Republican National Committee. The RNC didn't preserve e-mails for over 50 of these officials and has few e-mails for any White House officials prior to 2006.

The result is a potentially enormous gap in the historical record. Karl Rove, the President's closest political advisor, was a prolific user of his RNC e-mail account. Yet, the RNC preserved virtually none of his e-mails before 2004. The result is that we may never know what he wrote about the buildup to the Iraq war.

In recent weeks, the White House has launched an all-out attack on its own analysis of the missing e-mails. One White House spokesman tried to claim that there were no missing e-mails after all. Another senior White House official said she had "serious reservations" about the accuracy of the White House's previous work and that she had "so far been unable to replicate its results or to affirm the correctness of the assumptions underlying it."

While many of us have grown used to the White House attacking congressional or independent study that conflicts with President Bush's policies, this is the first time I can remember the White House using those same tactics on itself. And it is remarkable.

But that is not all. The White House is also refusing to cooperate with the National Archives. For almost a year, the nonpartisan National Archives has been urging the Bush White House to assess the problem of missing e-mails and to take "whatever action may be necessary to restore any missing e-mails."

The lack of cooperation became so severe that, last May, the Archivist himself wrote to the White House Counsel, Fred Fielding, to urge "utmost dispatch" in addressing the missing e-mails.

Yet in September 2007, the Archive's General Counsel drafted a memo summarizing the White House's decision to ignore the request of the Archivist. He wrote: "We still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. Our repeated requests have gone unheeded. Of most importance, we still know virtually nothing about the status of the alleged missing White House e-mails."

The Archives also asked the White House to start recovering official e-mails that the Republican National Committee deleted pursuant to its policy of regularly purging e-mails from its servers. These repeated requests have also been rebuffed. In fact, the RNC has informed our committee that it has no intention of trying to restore the missing White House e-mails from backup tapes containing past RNC e-mail records.

My staff has prepared an extensive memorandum that summarizes what we have learned through our investigation into the missing White House e-mails so far, and I ask that this memorandum and the documents it cites be made part of the hearing record.

I also——

Mr. ISSA. Mr. Chairman, I object. Reserving the right to object.

Chairman WAXMAN. The gentleman is recognized on his reservation.

Mr. ISSA. Mr. Chairman, apparently, the memo cites an interrogatory from a gentleman, Mr. McDevitt, and I object because those interrogatories appear to have been essentially adopted in lieu of testimony because they appear to support the majority. And, by definition, if they are allowed to come into the record, what we are effectively doing is preventing the minority from having an opportunity to openly challenge what seem to be, to us, inconsistent and self-serving statements.

The fact is that we would like to have a clear hearing and a clear understanding. We want to have all parties that may have something to say not only say it, but be open to reasonable cross-examination.

Chairman WAXMAN. If the gentleman would permit, let me give you a clear understanding of what happened. The White House objected to our doing an interview with this person. They suggested we do a set of interrogatories. We proceeded on a bipartisan basis at the staff level to do exactly that. We now seek to make this information public.

I know that the Republicans now would say, well, we would like to have an interview or deposition, but we followed the rules. And that is what we are seeking today, is to disclose what we have so far in following the rules.

If the gentleman objects, he objects, and we will have to have a vote for the committee at some point during the hearing. But, as I understand, Mr. Davis does not object. I will yield to him if he does, but——

Mr. DAVIS OF VIRGINIA. Well, what we do object to is putting the interrogatories in their entirety into the record, for several reasons, and our staffs have talked about this. Just as we do with all investigations, all non-White House employees involved have been required to sit for transcribed interviews or deposition, but Mr. McDevitt was not. The White House's concerns were no different for his testimony than for other witnesses that were put under that, but somehow the majority was most accommodating to Mr. McDevitt.

We were wondering whether Mr. McDevitt was able to avoid an on-the-record interview because he supplied a version of the story that pleased the majority that was critical of the White House, and that was our concern. The White House's concerns were no different for his testimony than for other witnesses.

From 2002 to 2006, Mr. McDevitt was responsible for managing the White House's e-mail archiving system. In his opinion, 400-plus days of White House e-mails went missing. This sensational charge is not supported by the evidence that we have gathered. Though the course of the investigation——

Chairman WAXMAN. Mr. Davis.

Mr. DAVIS OF VIRGINIA. Yes.

Chairman WAXMAN. Mr. Davis, let me interrupt you.

Mr. DAVIS OF VIRGINIA. Sure.

Chairman WAXMAN. And I am going to give you a full opportunity to debate this question, but I want to respond and then we will get further along with this.

Mr. DAVIS OF VIRGINIA. Sure.

Chairman WAXMAN. If there is objection, there is objection. We won't include it in the record at this point, but we will on a vote of the committee.

Evidently, the Republicans are unhappy that Mr. McDevitt, who worked at the White House, gave testimony they didn't like. But we followed the rules that the White House set out, and the Republicans were happy for us to follow those rules. And now that they read the testimony, they would like to impeach the fellow from the White House who said things that they didn't like.

Mr. DAVIS OF VIRGINIA. Well, he is no longer at the White House.

Chairman WAXMAN. Pardon?

Mr. DAVIS OF VIRGINIA. He is no longer there.

Chairman WAXMAN. He is no longer at the White House.

Mr. DAVIS OF VIRGINIA. That is correct. In fact——

Chairman WAXMAN. But the White House did not want him to sit for a deposition, and that is why we did what we did. Ms. Payton did not have an interview, as the Republicans are asking that we should have had for Mr. McDevitt.

But the Chair will move on and declare that this will not be part of the record by unanimous consent, and we will renew the debate and action by the committee at an appropriate time on a motion to make this part of the record.

Mr. ISSA. Mr. Chairman, point of inquiry.

Chairman WAXMAN. The gentleman will state his point of inquiry.

Mr. ISSA. Does that mean that you are withdrawing your unanimous consent at this time?

Chairman WAXMAN. I will withdraw my unanimous consent. I am withdrawing my unanimous consent request just as it pertains to the interrogatories for Mr. McDevitt.

Mr. ISSA. So you are now moving that sans the references to interrogatories, the rest will go forward?

Mr. DAVIS OF VIRGINIA. Which is normal committee practice. I mean, generally——

Chairman WAXMAN. Is there objection?

Mr. ISSA. Mr. Chairman, I will dispense——

Ms. WATSON. Can you finish your statement, Mr. Chairman?

Chairman WAXMAN. Yes?

Ms. WATSON. Can you finish your statement and then——

Chairman WAXMAN. I finished my statement. We are going to put in the information except for the interrogatories.

Mr. ISSA. Mr. Chairman, concluding my time, because we were all speaking, I guess, on my time——

Chairman WAXMAN. Is there an objection?

Mr. ISSA. Mr. Chairman, reserving. I would only like to clarify that the minority did not sign off, so it was not a bipartisan procedure.

Chairman WAXMAN. That is not a proper reservation. Either you are for letting this go on the record as Mr. Davis has suggested we do, as ordinary committee activities——

Mr. ISSA. Without reference.

Chairman WAXMAN [continuing]. Without reference to the interrogatories, or you agree to it. Give us your—you have a reservation. Give us your withholding of unanimous consent request or agreement to the unanimous consent request.

Mr. ISSA. Without that, I agree.

Chairman WAXMAN. Then that will be part of the record.

Now I would like to continue with my opening statement.

We have this extensive memorandum that summarizes what we have learned through our investigation into the missing White House e-mails, and I also urge members of the public to review this memorandum carefully. E-mail archiving by its nature is a complex and technical subject. The memorandum provides a guide to what we have learned from our interviews of White House officials and our review of over 20,000 pages of internal White House and Archives documents. That is now in this record.

I am determined not to make the same mistakes some of my Republican colleagues made 8 years ago. I don't want to jump to any conclusions or make any sensational allegations of wrongdoing without any evidence.

At the same time, the White House's actions make absolutely no sense. There is an old saying—if it ain't broke, don't fix it—but that is exactly what the Bush White House did to the automated record system. It had a system that archived its e-mails and it intentionally dismantled an effective system and replaced it with a primitive alternative that just didn't work.

It initiated its own study of missing e-mails in 2005 and now derisively attacks its own work as incompetent and grossly inaccurate.

It has continually resisted not just the efforts of this committee, but also those of the National Archives, which has the responsibility to carry out the Presidential Records Act.

Well, none of this makes any sense, which is why we are holding this hearing today and why this hearing is so important.

So I look forward to what our witnesses have to say so that we can finally start making progress on this important open Government issue.

[The prepared statement of Chairman Henry A. Waxman and supplemental hearing information follow:]

Opening Statement of Rep. Henry A. Waxman
Committee on Oversight and Government Reform
Electronic Records Preservation at the White House
February 26, 2008

Good morning. Today's hearing focuses on whether President Bush and the White House are complying with the Presidential Records Act.

The Presidential Records Act was enacted in 1978 to ensure that White House records are preserved for history and are owned by the American people. It requires the President to preserve the records that document the "activities, deliberations, decisions, and policies" of the White House.

The emergence and remarkable surge in popularity of e-mail has presented problems in complying with the Act. As members of this Committee know, President Clinton experienced these problems. In 1994, he established the Automated Records Management System to archive presidential records, including e-mails. But the system had technical flaws. For a period of time it would not preserve e-mails sent by officials whose name began with the letter "D."

In 2000, Dan Burton, who was then Chair of this Committee, alleged that the Clinton Administration deliberately lost and withheld e-mails from Congress. Mr. Burton held five hearings on that issue and forced the White House to spend over $11 million to reconstruct 200,000 e-mails.

In the end, the overblown charges of wrongdoing were proven false. The lost e-mails turned out to be the result of a few technical glitches, not any intentional acts.

The silver lining to the Committee's investigation, though, was that the problems in the Automatic Records Management System were addressed. When President Clinton left office and President Bush came into office, the White House had in place a system for archiving White House e-mails that complied with the Presidential Records Act.

That's what makes the actions of the Bush Administration so inexplicable.

President Bush's White House kept the Automatic Records Management System in 2001. But in September 2002, for reasons that have never been adequately explained, the Bush White House decided to replace the Automatic Records Management System.

In its place, the White House adopted a system that one of its own experts described as "primitive" and carried a high risk that "data would be lost." The system also had serious security flaws. Until the problem was corrected in 2005, all officials in the White House had access to the archive system and the ability to delete or alter existing information.

The White House's own analysis of its system identified over 700 days in which e-mail records seem either impossibly low or completely nonexistent. This 2005 analysis was prepared by a team of 15 White House officials and contractors.

And these are not the only missing White House e-mails. We also know that over 80 White House officials — including some of the most senior officials in the White House — routinely used e-mail accounts at the Republican National Committee. The RNC didn't preserve e-mails for over 50 of these officials and has few e-mails for any White House officials prior to 2006.

The result is a potentially enormous gap in the historical record. Karl Rove, the President's closest political advisor, was a prolific user of his RNC e-mail account. Yet the RNC preserved virtually none of his e-mails from before 2004. The result is that we may never know what he wrote about the build-up to the Iraq war.

In recent weeks, the White House has launched an all-out attack on its own analysis of the missing e-mails. One White House spokesman tried to claim there were no missing e-mails after all. Another senior White House official said she had "serious reservations" about the accuracy of the White House's previous work and that she had "so far been unable to replicate its results or to affirm the correctness of the assumptions underlying it."

Many of us have grown used to the White House attacking any congressional or independent study that conflicts with President Bush's policies. This is the first time I can remember the White House using those same tactics on itself. It is remarkable.

But that's not all. The White House is also refusing to cooperate with the National Archives. For almost a year the nonpartisan National Archives has been urging the Bush White House to assess the problem of missing e-mails and to take "whatever action may be necessary to restore any missing emails."

The lack of cooperation became so severe that last May, the Archivist himself wrote to the White House Counsel, Fred Fielding, to urge "utmost dispatch" in addressing the missing e-mails.

Yet in September 2007, the Archive's General Counsel drafted a memo summarizing the White House's decision to ignore the request of the Archivist. He wrote:

> we still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. … [O]ur repeated requests … have gone unheeded. … Of most importance, we still know virtually nothing about the status of the alleged missing White House emails.

The Archives also asked the White House to start recovering official e-mails that the Republican National Committee deleted pursuant to its policy of regularly purging e-mails from its servers. These repeated requests have also been rebuffed. In fact, the RNC has informed our Committee that it has no intention of trying to restore the missing White House e-mails from backup tapes containing past RNC e-mail records.

My staff has prepared an extensive memorandum that summarizes what we have learned through our investigation into the missing White House e-mails. I ask that this memorandum and the documents it cites be made part of the hearing record.

I also urge members and the public to review this memorandum carefully. E-mail archiving by its nature is a complex and technical subject. The memorandum provides a guide to what we have learned from our interviews of White House officials and our review of over 20,000 pages of internal White House and Archives documents.

I am determined not to make the same mistakes some of my Republican colleagues made eight years ago. I don't want to jump to any conclusions or make sensational allegations of wrongdoing without any evidence.

At the same time, the White House's actions make absolutely no sense. There's an old saying — if it ain't broke, don't fix it — but that's exactly what the Bush White House did to the automated record system. It intentionally dismantled an effective system and replaced it with a primitive alternative that just didn't work.

It initiated its own study of missing e-mails in 2005 and now derisively attacks its own work as incompetent and grossly inaccurate.

It has continually resisted not just the efforts of this Committee, but also those of the National Archives, which has the responsibility to carry out the Presidential Records Act.

None of this makes any sense, which is why today's hearing is so important.

I look forward to hearing from our witnesses and to finally start making progress on this important open-government issue.

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MEMORANDUM

February 26, 2008

To: Members of the Committee on Oversight and Government Reform

Fr: Democratic Committee Staff

Re: Supplemental Information for Full Committee Hearing on White House E-Mails

On Tuesday, February 26, 2008, at 10:00 a.m., in room 2154 of the Rayburn House Office Building, the full Committee will hold a hearing entitled "Electronic Records Preservation at the White House." This memo provides supplemental information for members regarding the status of the Committee's investigation into the loss of official e-mail.

EXECUTIVE SUMMARY

The Committee has been investigating White House compliance with the Presidential Records Act. In preparation for this hearing, the Committee received more than 20,000 pages of internal e-mails and other documents from the White House and the National Archives and Records Administration. The Committee also interviewed or received written answers to questions from six current or former officials in the White House responsible for preserving White House records.

The documents and interviews raise serious questions about the White House's compliance with the Presidential Records Act, which requires the White House to preserve e-mails documenting the "activities, deliberations, decisions, and policies" of the President. The information the Committee has received shows:

- **The White House has not had a reliable system for preserving White House e-mails since 2002, when the White House made the decision to stop using the Automatic Records Management System (ARMS) used by the Clinton White House.** Steven McDevitt, an official in the White House Office of the Chief Information Officer from September 2002 through October 2006, informed the Committee that during his time at the White House, "the process by which email was being collected and retained was primitive and the risk that data would be lost was high." As early as January 2004, the

National Archives warned the White House that it was "operating at risk by not capturing and storing messages outside of the email system." An internal White House "discussion document" from October 2005 states: "There is operational risk in current email storage management processes. Lost or misplaced archives may result in an inability to meet statutory deadlines."

- **Until mid-2005, the system that the White House used for preserving e-mails had serious security flaws.** According to Mr. McDevitt, "In mid-2005 ... a critical security issue was identified and corrected. During this period it was discovered that the file servers and the file directories used to store the retained email ... were accessible by everyone on the EOP network." Mr. McDevitt informed the Committee that the "potential impact" of this security flaw was that there was "[n]o verification that data retained has not been modified."

- **The White House has refused to cooperate with efforts by the National Archives to ensure the preservation of White House e-mails.** On May 1, 2007, the Archivist of the United States, Allen Weinstein, wrote White House Counsel Fred Fielding that "it is essential that the White House move with the utmost dispatch both in assessing any problems that may exist with preserving emails ... and in taking whatever action may be necessary to restore any missing emails." On May 6, 2007, a senior official in the National Archives wrote the Director of the White House Office of Administration to "request that you ... determine whether instances of alienation of Federal records actually occurred and then notify us of your findings." These requests and multiple similar requests were ignored. According to a September 5, 2007, memorandum to Dr. Weinstein from the General Counsel of the Archives:

  > we still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. ... [O]ur repeated requests ... have gone unheeded. ... Of most importance, we still know virtually nothing about the status of the alleged missing White House e-mails.

- **The process of recovering missing e-mails from RNC servers and White House back-up tapes has not begun.** Beginning in April 2007, the Archives urged the White House to start recovering missing White House e-mails stored on back-up tapes maintained by the Republican National Committee (RNC) and the White House. In his May 1, 2007, letter, the Archivist advised Mr. Fielding that such "a 'restoration' project can easily take more than one year to complete." Despite repeated requests from the Archives, these efforts have not yet begun. Moreover, the RNC has informed the Committee that it has no intention of trying to restore missing White House e-mails.

At this point, the full extent of the missing White House e-mails cannot be determined. There appear to be two main sources of missing e-mails. First, over 80 White House officials, including many of the most senior officials in the White House, regularly used RNC e-mail accounts. The RNC, however, has preserved no e-mails for over 50 of these officials and has saved few e-mails for the other officials from before fall 2006.

Second, an analysis of the White House e-mail system in 2005 identified over 700 days in which a component of the Executive Office of the President had an unusually low number of e-mails preserved on White House servers, including 473 days in which a component had no

preserved e-mails. According to the analysis, there are 12 days of no e-mails for the President's immediate office and 16 days of no e-mails for the Vice President's office. The 2005 analysis was prepared by a team of 15 White House officials and contractor personnel supervised by Mr. McDevitt.

The White House is now disputing the accuracy of the 2005 analysis. In briefings with Committee staff, the White House has asserted that it has located at least some e-mails for each of the no-e-mail days for the White House Office as well as for five of the 16 no-e-mail days for the Office of the Vice President. The White House, however, has refused to share many other details with the Committee. At a meeting with the White House in October 2007, the Archives expressed doubts about the reliability of the new analysis being prepared by the White House. According to the notes of this meeting:

> We expressed great concern that the process was moving so slowly, and that we were very skeptical that the report results from the new tool could completely eliminate the possibility of messages missing from the collections system. We pointed out that some type of restoration project would inevitably be necessary if significant doubt remained that messages had not been collected, and that they should begin planning for such a project by requesting funding for the current FY.

The difficulties the White House encountered in recovering e-mails for Special Counsel Patrick Fitzgerald also undermine its claim that the journaling system was adequate. According to documents provided and shown to the Committee, the journaling archive system contained no e-mails from the Office of the Vice President for important dates: September 30, 2003, to October 6, 2003. In an effort to recover the e-mails, the White House restored backup tapes for these days. These backup tapes also contained no journaled e-mails or .pst files for those dates for the Office of the Vice President. The only e-mails that could be recovered and provided to the Special Counsel were e-mails that the White House was able to restore from the personal e-mail accounts of officials in the Vice President's office.

The Committee's investigation into the extent of the missing White House e-mails has been complicated by a lack of cooperation from the White House. The Committee requested documents from the White House on December 20, 2007. Since that time, the White House has produced only a small number of documents, including no documents from either of the White House hearing witnesses, Theresa Payton, Chief Information Officer, and Alan Swendiman, Director of the Office of Administration. The White House also has withheld an unknown number of documents without any claim of executive privilege. In addition, the White House directed the National Archives to withhold various documents relating to White House actions, for which the Committee issued a subpoena.

I. REQUIREMENTS OF THE PRESIDENTIAL RECORDS ACT

The Presidential Records Act was passed in 1978 in the aftermath of Watergate. The Act makes clear that the President's records belong to the American public, not to the President or his advisors. The Act requires the President to:

> take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records.[1]

The Act also gives important powers and responsibilities to the National Archives and Records Administration, which is headed by the Archivist of the United States, Allen Weinstein. The Archivist's primary responsibility arises at the end of a president's term of office, when he is to "assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."[2]

In addition, the Archivist has limited authority over the preservation of presidential records during a President's term. Although the Act gives the President full authority over the management of records during his term, the President is required to obtain the views of the Archivist prior to disposing of any "Presidential records that no longer have administrative, historical, or evidentiary value." The Archivist does not have the authority under the Act to prevent the disposal of these records. He may, however, consult with Congress and require the President to submit a disposal schedule to the appropriate congressional committees 60 days prior to the proposed disposal.[3]

II. THE INADEQUATE WHITE HOUSE E-MAIL ARCHIVING SYSTEM

Interviews and documents reviewed by the Committee show that the White House abandoned its e-mail archiving system in 2002 and relied instead on a temporary, ad hoc, manual system. These interviews and documents also show that top White House officials were warned repeatedly by their own technical staff and by the National Archives that operating without an archiving system posed serious dangers, such as the risk of data loss, the risk of tampering, and the inability to verify that systems were working properly. Despite these warnings, the White House aborted efforts to put in place a new e-mail archiving system.

According to Theresa Payton, the White House's current Chief Information Officer, most White House employees used the Lotus Notes e-mail system when the Bush Administration took office in January 2001. E-mails from this system were archived through the Automatic Records Management System (ARMS), which had been in place since the previous administration. In 2002, however, the White House decided to switch (or "migrate") from the Lotus Notes e-mail system to the Microsoft Exchange e-mail system. This migration started in 2002 and was completed in 2004.[4]

According to Ms. Payton, when the White House migrated to its new e-mail system, it abandoned the ARMS archiving system. Instead, the White House began an ad hoc process called "journaling." Under this process, a White House staffer or contractor would collect from a "journal" e-mail folder in the Microsoft Exchange system copies of e-mails sent and received by White House employees. After retrieving copies of these e-mails, the White House staffer or

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[1] 44 U.S.C. § 2203.

[2] 44 U.S.C. § 2203.

[3] 44 U.S.C. § 2203.

[4] Briefing from Theresa Payton to Staff, House Committee on Oversight and Government Reform (Oct. 10, 2007).

contractor would then manually name and save them as ".pst" files on various White House servers.[5]

The new system for preserving White House e-mails had serious flaws. In one e-mail, an Archives official wrote: "I refer to it as a 'message collection system' even though we all understand that it hardly qualifies as a 'system' by the usual IT definition."[6] Carlos Solari, who was the Chief Information Officer for the White House at the time, described the journaling process as a "temporary" solution, and as a "short-term situation" that was not considered by the White House as a "a good long-term situation."[7]

Steven McDevitt, a senior official in the White House Office of the Chief Information Officer from September 2002 through October 2006, provided the Committee an extensive description of the problems with the White House system:

> There was a great deal of concern about proceeding with the migration to Outlook/Exchange without having an adequate email records management solution in place. ... There were four types of risk that were discussed on a number of occasions within management ranks ... :
>
> Incomplete Data — The process by which email was being collected and retained was primitive and the risk that data would be lost was high. ...
>
> Data Reconciliation — ... There is no way to guarantee that all records are retained in their complete and unmodified state. ...
>
> Public Perception — Given the issues that occurred during the prior administration, it should warrant extra caution on the part of the EOP before making any changes to the email retention process. Additional system problems would create a public perception that the EOP was unwilling or unable [to] retain records that were required under current law. ...
>
> User Accountability — The approach of simply storing email message in .pst files provides no mechanism or audit trail that tracks changes to data files or the activities performed by users or system administrators.[8]

According to Mr. McDevitt, he brought his concerns to the attention of senior officials at the White House, including "White House Counsel Harriet Miers and members of her staff."[9]

A. Risk of Data Loss

The documents received by the Committee show that the White House was repeatedly warned that its system for preserving e-mails was inadequate. An early warning occurred in

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[5] *Id.*

[6] E-mail from Sam Watkins to Theresa Payton (Nov. 6, 2007) (NARA Bates No. 001634 to 001635).

[7] Interview of Carlos Solari by Staff, Committee on Oversight and Government Reform (Feb. 7, 2008).

[8] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 1, at 7).

[9] *Id.* (Attachment 2, at 7).

January 2004 from the staff of the National Archives. According to a summary of a January 6, 2004, meeting between White House and Archives staff:

> EOP has been converting from Lotus Notes to Microsoft Xchange over the past two years. ... **Messages in Xchange are NOT being captured in ARMS or any other system external to Xchange. ... The NARA team emphasized that EOP was operating at risk by not capturing and storing messages outside the email system**."[10]

These risks were reiterated in an internal White House "discussion document" from October 2005. According to this document:

> There is operational risk in current email storage management processes. Lost or misplaced email archives may result in an inability to meet statutory requirements. ... Standard operating procedures for email management do not exist. Automated tools that support the email archive process are not robust. The current version ... is prone to failure. ... Searches of email in response to statutory requirements may not be complete, creating legal and political risk.[11]

A November 14, 2005, memorandum from Mr. McDevitt to John Straub, the Acting Chief Information Officer and the Director of the Office of Administration, similarly warned of the "potential loss of emails" and an "inability to meet statutory requirements."[12] According to the memorandum:

> The current email archive process depends on manual operations and monitoring, standard operating procedures do not exist, automated tools that support the email archive process are not robust, and there is no dedicated archive storage location.[13]

B. <u>Risk of Tampering</u>

White House officials were also warned that the ad hoc system they relied on in place of an archiving system subjected White House records to tampering. According to Mr. McDevitt, one of the risks he discussed with senior management within the Office of the Chief Information Office and the Office of Administration was "user accountability." Mr. McDevitt wrote the Committee:

> The integrity of the data could be called into question because it was not possible to ensure that inappropriate action, either intentional or unintentional, could not occur. ... The potential impact: No verification that data retained has not been modified or what activities have been performed by system users or administrators.[14]

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[10] National Archives and Records Administration, *Summary of Jan. 6, 2004, meeting with EOP re ECRMS at Archives II* (undated) (NARA Bates No. 000643 to 000644) (emphasis in original).

[11] *Email Archive Process Risk Mitigations: Discussion Document* (Oct. 25, 2005). In his responses to the Committee, Mr. McDevitt stated that he believed he "was involved in the creation of this document but do not recall the specific purpose of the presentation." Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 12).

[12] Memorandum for John Straub from Steven McDevitt, MS Exchange Electronic Mail Archival Process Standard Operating Procedures (Nov. 14, 2005) (HOGR6OA-010532 to 010533).

[13] *Id.*

[14] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 1, at 7).

In his answers to questions from the Committee, Mr. McDevitt also revealed that in 2005, "a critical security issue was identified and corrected."[15] According to Mr. McDevitt: "the file servers and the file directories used to store the retained email .pst files were accessible by everyone on the EOP network."[16] He explained that this security breach would have allowed any White House official to review the e-mails of any other White House official without being detected.[17]

C. Inability to Verify System Functionality

White House officials were also warned of a host of problems associated with the inability to verify that the e-mail system was working properly. For example, Mr. McDevitt explained that "files were scattered across various servers on the EOP network" and that "[t]here was no consistently applied naming convention for the component .pst files."[18] Mr. McDevitt also warned that without a "mechanism to reconcile against what was originally retained by the system," it was impossible to be sure "that all records are retained in their complete and unmodified state."[19]

D. Aborted Efforts at New Archiving System

According to interviews and documents reviewed by the Committee, the White House has aborted efforts to put in place a new e-mail archiving system over the past six years.

In 2002 and 2003, White House officials tried to modify the previous e-mail archiving system, ARMS, to work with the new e-mail system, Microsoft Exchange. White House officials told Committee staff that they attempted to develop a program to "interface" between the two, but they ultimately determined it was not technically feasible.[20]

In 2003, the White House began working on a new e-mail archiving system called the Electronic Communications Records Management System (ECRMS). The White House awarded Booz Allen Hamilton a contract to begin designing a system in 2003 and awarded Unisys a task order under an existing contract to test and implement the system. During his interview with Committee staff, Carlos Solari, the Chief Information Officer during this time, stated that the ECRMS was of "high importance."[21]

Mr. McDevitt, the program manager responsible for developing the system, described the extensive planning and testing that went into the project. He stated that the project started with an "initial draft of the Concept of Operations" in 2002, which was "reviewed and approved by

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[15] *Id.* (Attachment 1, at 9).

[16] *Id.* (Attachment 1, at 9).

[17] Telephone conversation between Steven McDevitt and Staff, House Committee on Oversight and Government Reform (Feb. 24, 2008).

[18] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 1).

[19] *Id.* (Attachment 1, at 7).

[20] Briefing from Theresa Payton to Staff, House Committee on Oversight and Government Reform (Oct. 10, 2007).

[21] Interview of Carlos Solari by Staff, Committee on Oversight and Government Reform (Feb. 7, 2008).

OA Counsel, White House Office of Records Management and White House Counsel" early the next year.[22] Following that review, the White House developed a statement of work to "complete a detailed systems requirements specification, evaluate commercial off the shelf products and propose solutions that meet the government requirements."[23] Booz Allen Hamilton was awarded this contract and began its work in late 2003. According to Mr. McDevitt, in the spring of 2004, the contractor completed its work and recommended a combination of two commercial off-the-shelf products to serve as the ECRMS system.

According to Mr. McDevitt, this design was presented to the White House Counsel, the White House Office of Records Management, and counsel in the Office of Administration "for their concurrence" in the spring of 2004. With Unisys serving as the contractor for the implementation phase, the White House undertook "[s]ystem configuration, testing and tuning" through 2005. In early 2006, standard operating procedures were developed. In March 2006, the White House Counsel, the White House Office of Records Management, and OA counsel were briefed on the system, and in July of 2006, they were briefed "on the search and retrieval capabilities of the ECRMS solution." Mr. McDevitt stated that the project was "ready to go live" on August 21, 2006.[24]

Despite this extensive testing and preparation, the White House never implemented ECRMS. According to documents obtained by the Committee, the current Chief Information Officer, Theresa Payton, aborted the project in the fall of 2006. The Committee has obtained notes from an October 11, 2007, meeting between Ms. Payton and officials from the National Archives stating that Ms. Payton rejected the system because "[t]he system would require 18 months to ingest the existing backlog of messages in the Microsoft Xchange system" and "[t]he system offered users no option to distinguish between Presidential records and political or personal materials."[25]

Officials from the National Archives expressed concern with Ms. Payton's decision to abort the ECRMS archiving system. According to notes from the meeting with Ms. Payton, the Archives staff "had participated in the development of requirements for ECRMS."[26] The Archives staff observed that "the decision to drop the requirement to distinguish between Presidential and personal/political messages was made by OA counsel early in the development of ECRMS."[27] With respect to Ms. Payton's argument regarding the time required to ingest the existing backlog of messages, the National Archives staff responded that the process "would still have left time to complete before transition."[28]

When told that ECRMS had never been implemented, Carlos Solari, Mr. Payton's predecessor as Chief Information Officer, expressed surprise. Mr. Solari stated that he

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[22] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 10).

[23] *Id.*

[24] *Id.* (Attachment 2, at 10-11).

[25] National Archives and Records Administration, *Record of Meeting: 10/11/2007, 2:00-3:30 p.m., OA Conference Room, G Street NE Offices* (Undated) (NARA Bates No. 001628 to 001631).

[26] *Id.*

[27] *Id.*

[28] *Id.*

"absolutely" believed that the system would be implemented. He said he thought the "system got finished" and was "puzzled" as to why ECRMS had been rejected.[29]

Mr. McDevitt left the White House in October 2006.[30] He explained that one reason for his decision to leave the White House was the decision by Ms. Payton to abort the ECRMS system.[31]

Although this decision to abort the ECRMS e-mail archiving system was made in 2006, to date the White House has failed to put in place any other archiving system. According to Theresa Payton, the White House has under development a new system using a commercial off the shelf product.[32] As of the date of this memo, the Committee has not been informed that the system has been implemented.

III. LACK OF COOPERATION WITH THE ARCHIVES

Documents obtained by the Committee show that despite multiple efforts by the National Archives to gather information about the loss of White House e-mails, White House officials denied that any problems existed, delayed providing requested information, and failed to respond to inquiries. One Archives official wrote in an October 2007 e-mail:

> The Office of Administration, the component of EOP through whom we are attempting to gain detailed technical information, has been extremely guarded in their responses, and all communication has been conducted under a patina of legal caution. Whenever we solicit specific technical information, they reply for the most part that they are still in the process of conducting inventories.[33]

Over the course of the last two years, two distinct but related problems regarding White House e-mail became public. First, in February 2006, press accounts reported that the White House failed to properly archive e-mails to or from certain components in the White House. Second, in March 2007, the Oversight Committee revealed that White House officials used e-mail accounts controlled by the Republican National Committee, which had a policy of deleting e-mails after 30 days. In both cases, the National Archives sought information from the White House without success.

The following is a chronology of attempts by the Archives to understand the extent of the missing White House e-mails and related developments:

> **February 2, 2006:** News accounts reported that the Special Counsel investigating the outing of CIA agent Valerie Plame Wilson discovered gaps in the process by which the

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[29] Interview of Carlos Solari by Staff, Committee on Oversight and Government Reform (Feb. 7, 2008).

[30] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 1, at 1).

[31] Telephone conversation between Steven McDevitt and Staff, House Committee on Oversight and Government Reform (Feb. 24, 2008).

[32] Briefing from Theresa Payton to Staff, House Committee on Oversight and Government Reform (Oct. 10, 2007).

[33] E-mail from Robert Spangler to David Kepley (Oct. 1, 2007) (NARA Bates No. 001785).

White House archived its e-mails.[34] In response to these reports, two officials from the National Archives spoke to Jenny Brosnahan in White House Counsel's office. The Archives officials told Ms. Brosnahan that if presidential records were destroyed, "they should let the archivist know because under the PRA they are supposed to inform the Archivist before any disposal of record."[35]

February 6, 2006: Counsel for the White House Office of Administration spoke to the General Counsel of the National Archives. The OA Counsel told the Archives Counsel that the White House "believed that the emails existed and could be accounted for."[36] This does not appear to have been an accurate assertion. As discussed in part III, an internal White House analysis in 2005 had shown that there were hundreds of days in which e-mails appeared to be missing from components of the Executive Office of the President.

February 6, 2007: Officials from the National Archives met with officials from the White House's office of the Chief Information Officer to "discuss NARA's need for knowledge of OA electronic email and other electronic systems managed by OA."[37] According to the chronology of White House meetings developed by Archives staff, at this meeting, the White House officials gave "no indication that there is a problem with any missing emails."[38]

March 26, 2007: The Oversight Committee sent letters to the RNC and the Bush-Cheney '04 campaign requesting information about the use of political e-mail accounts by White House officials and directing these organizations to halt any deletions of these e-mails.[39] The next day, the General Counsel for the Archives informed Archives staff that the Archives "will contact the White House Counsel's Office to discuss further."[40]

April 12, 2007: The General Counsel of the National Archives wrote to Chris Oprison, a White House Associate Counsel:

> Chris, following up on our conversation several weeks ago about White House emails, we appreciate, as noted in the press, that your office is taking steps to investigate whether PRA records were created or received on non-White House email systems, and if so, to take all measures to recover and preserve them. As you know, under Section 2203 of the PRA, the President may not dispose of

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[34] *See, e.g., White House Fails To Archive E-Mail; Issue in CIA Leak Case,* New York Sun (Feb. 2, 2006).

[35] E-mail from Nancy Smith to Sharon Fawcett (Feb. 2, 2006) (NARA Bates No. 001507).

[36] National Archives and Records Administration, *Chronology of White House Meetings* (NARA Bates No. 01637 to 01641).

[37] *Id.*

[38] *Id.*

[39] Letter from Rep. Henry A. Waxman to Mike Duncan, Chairman, Republican National Committee (Mar. 26, 2007); Letter from Rep. Henry A. Waxman to Marc Racicot, Former Chairman, Bush Cheney '04 (Mar. 26, 2007).

[40] E-mail from Gary Stern to Jason Baron et al. (Mar. 27, 2007) (NARA Bates No. 001531 to 001532).

> Presidential records without first obtaining the written views of the Archivist. It has also been normal practice for the White House to inform NARA of any unauthorized destruction of Presidential records.[41]

April 13, 2007: A nonprofit group called Citizens for Responsibility and Ethics in Washington (CREW) released a report alleging that after conducting an inventory in 2005, the White House found hundreds of days with no e-mail sent from or received by various White House components.[42] Asked about these allegations that day, White House Press Secretary Dana Perino stated that she "wouldn't rule out that there were a potential 5 million emails lost."[43] It was only after the release of the CREW report that the White House acknowledged to the Archives that e-mails could be missing from its servers.

April 25, 2007: The White House Counsel met with "key members of NARA's senior staff" to update them on "current issues relating to White House emails."[44] At the meeting, the National Archives requested a copy of the spreadsheet associated with the 2005 analysis of potential e-mail losses.[45] The Archives staff also advised the White House that "it is essential that you begin an email restoration project from the backup tapes as soon as possible."[46]

May 1, 2007: The Archivist, Allen Weinstein, wrote a letter to the White House Counsel, Fred Fielding, about the missing White House e-mails. In the letter, Dr. Weinstein wrote:

> We believe it is essential that the White House move with the utmost dispatch both in assessing any problems that may exist with preserving emails on the Executive Office of the President email system, and in taking whatever action may be necessary to restore any missing emails. NARA has gone through three Presidential transitions involving the transfer of electronic records and, in each of these transitions, we experienced some problems with this issue. Based on this previous experience and similar problems experienced by prior Administrations, a 'restoration' project can easily take more than one year to complete.
>
> ... [I]t is extremely important that NARA staff begin meeting as soon as possible with relevant staff of the Office of Administration (OA). In order to ensure a successful migration of both presidential and federal electronic records to NARA, we need to acquire a clear knowledge of the current White House electronic

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[41] E-mail from Gary Stern to Chris Oprison (Apr. 12, 2007) (NARA Bates No. 001540).

[42] Citizens for Responsibility and Ethics in Washington, *Without a Trace* (Apr. 2007); *see also White House: Millions of E-Mails May Be Missing,* CNN (Apr. 13, 2007).

[43] The White House, *Press Gaggle by Dana Perino and Dr. Ali Al-Dabbagh, Spokesman for the Government of Iraq* (Apr. 13, 2007).

[44] Letter from Allen Weinstein to Fred Fielding (May 1, 2007) (NARA Bates No. 001428 to 001429).

[45] Memorandum from Gary Stern to Allen Weinstein, Bush 43 Transition, et al. (Sept. 5, 2007) (NARA Bates No. 001626 to 001627). *See also* Letter from Allen Weinstein to Fred Fielding (May 1, 2007) (NARA Bates No. 001428 to 001429) (indicating that the Fred Fielding attended an April 25, 2007, meeting with Archives staff).

[46] E-mail from Gary Stern to Emmet Flood and Christopher Oprison (June 20, 2007) (NARA Bates No. 001624).

> systems and the current plans of OA for … restoration of any non-archived emails.[47]

May 6, 2007: Paul Wester, the director of the Modern Records Programs at the National Archives, wrote to Alan Swendiman, the director of the White House Office of Administration, "concerning the possible loss of Federal records of the federal agency components of the EOP that are required to be maintained on the White House email system."[48] Mr. Wester wrote: "We request that you look into this matter to determine whether instances of alienation of Federal records actually occurred and then notify us of your findings."[49]

May 21, 2007: The General Counsel of the National Archives and other Archives officials met with Chris Oprison, an Associate White House Counsel, and several other senior White House officials to "get a briefing … on the status of the problem relating to alleged missing White House emails."[50] According to notes summarizing the meeting:

> Chris Oprison explained that they believe the problem relates to gaps in emails on the EOP system from late 2003 to late 2005, but they could not assure that the problem does not extend beyond that timeframe, and even into the present. They first became aware of the issue of gaps in emails, i.e., not being properly archived, in 2005. …
>
> Within the next month they are going to complete an audit of the PST files to determine the full extent of the problem. But they also stated that they expect to have an action plan ready by the end of the summer. We asked that they brief us when the audit is complete, and not wait for the action plan.
>
> We asked if they could give us any more specifics on what they know so far: e.g., volume of missing email; whether it is particular to specific "buckets" representing particular EOP offices; does it involve both federal and presidential emails? They said they could not at this point answer any of these questions.[51]

The meeting also discussed the problem of the missing RNC e-mails. The White House officials assured the Archives staff that this problem was being addressed and the e-mails would be captured in a "separate restoration effort":

> We then asked about the RNC email issue. They are working with the RNC and looking at this issue. They stated that the RNC server is now fixed so that this will not happen again, and that the RNC has the old servers. They are exploring how they will capture the Presidential record emails. … This will be a separate restoration effort from the EOP email restoration.[52]

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[47] Letter from Allen Weinstein to Fred Fielding (May 1, 2007) (NARA Bates No. 001429 to 001429).
[48] Letter from Paul M. Wester, Director, Modern Records Programs, National Archives and Records Administration, to Alan Swendiman, Director, Office of Administration, Executive Office of the President (May 6, 2007) (NARA Bates No. 000430).
[49] *Id.*
[50] E-mail from Gary Stern to Allen Weinstein (May 23, 2007) (NARA Bates No. 001620 to 001622).
[51] *Id.*
[52] *Id.*

June 20, 2007: The General Counsel for the Archives wrote to the White House Counsel's office asking for an "email update." In that e-mail, he wrote: "you have stated that emails appear to be missing from the White House from the time period of late 2003 through late 2005, although you have not been able to provide any estimate of how many emails are actually missing." He reminded the Counsel's office that "on May 21, we were informed that the OA CIO audit of the missing email situation should be completed in about 4 weeks." He stated that it is "imperative" that the Archives be updated on the progress of the investigation into both these e-mail losses and White House progress into planning for a recovery of presidential records from the RNC.[53] The e-mail renewed the Archives' request that the White House commence restoration of missing e-mails from the backup tapes.

June 29, 2007: In an e-mail summarizing a meeting with the new General and Deputy Counsel of the White House Office of Administration, the General Counsel of the Archives writes:

> We did note that during the last two years NARA had experienced a notable drop off in open communication and interaction with OA. We also touched on the issue of the missing White House email. ... [T]hey still have not completed their review ... and therefore still had nothing concrete to report to us.[54]

September 5, 2007: The General Counsel of the National Archives sent a memorandum to the Archivist about the status of the missing White House e-mails and the "Bush 43 Transition." According to the memorandum:

> We ... had a further opportunity to discuss the email and transition related issues that we have discussed on numerous occasions, including when you, I, and others met with Fred Fielding in late April and in your letter to Fielding of May 1, 2007. Despite a number of very positive meetings and discussions since then, ... we still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. Even our simple and rather mundane request that the White House provide us with formal authorization to begin move planning ... has lain dormant for months.
>
> More significantly, our repeated requests to begin office-by-office meetings to scope out and inventory the volume, formats, and sensitivities of the PRA records that will be transferred to the National Archives has gone unheeded. ...
>
> Of most importance, we still know virtually nothing about the status of the alleged missing White House emails. We have not received a written response to our May 5, 2007, letter regarding alleged missing Federal record emails. And as we stressed to the White House last spring, it is vital that any needed backup

[53] E-mail from Gary Stern to Emmet Flood and Christopher Oprison (June 20, 2007) (NARA Bates No. 001624).

[54] E-mail from Gary Stern to Jason Baron et al. (June 29, 2007) (NARA Bates No. 001625)

> restoration project begin as soon as possible, in order that it be completed before the end of the Administration.[55]

October 10, 2007: Michael Kurtz, the Assistant Archivist for Records Services, wrote to all White House offices that create federal records to request that they "look into whether any electronic mail records of your agency maintained on the White House email system were lost or alienated, as has been widely reported."[56]

October 11, 2007: A meeting was held with staff from the National Archives and the White House Chief Information Officer, Theresa Payton. According to a record of this meeting prepared by the Archives, the White House informed the National Archives that its analysis of the missing e-mail problem had been delayed and there would be "no results before the end of November at the earliest." According to the Archives' meeting record:

> We expressed great concern that the process was moving so slowly, and that we were very skeptical that the report results from the new tool could completely eliminate the possibility of messages missing from the collections system. We pointed out that some type of restoration project would inevitably be necessary if significant doubt remained that messages had not been collected, and that they should begin planning for such a project by requesting funding for the current FY.[57]

October 15, 2007: The General Counsel for the Archives updated the Archivist on the unsuccessful attempts by the Archives to review the "2005 OA Report/Chart ... on problems with White House email system."[58] According to the General Counsel:

> We have repeatedly asked to see this report, and have been ignored, or, more recently, told it is hard to comprehend and of little value. White House has shown copies to House Oversight Committee and DOJ.[59]

October 22, 2007: Sam Watkins, a member of the Archives staff who attended the October 11, 2007, meeting with the White House wrote to Theresa Payton renewing his request for an opportunity to view the 2005 analysis:

> We are certainly willing to participate in the analysis of the data related to the "missing emails," but we are still trying to figure out how we can help without an

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[55] Memorandum from Gary Stern to Allen Weinstein, Bush 43 Transition, et al. (Sept. 5, 2007) (NARA Bates No. 001626 to 001627).

[56] Letter from Michael J. Kurtz, Assistant Archivist for Records Services, to John Walters, Director of National Drug Control Policy (Oct. 10, 2007) (NARA Bates No. 001807 to 001808).

[57] National Archives and Records Administration, Record of Meeting (Oct. 11, 2007) (NARA Bates No. 001628 to 001630).

[58] E-mail from Gary Stern to Donna Gold and Allen Weinstein (Oct. 15, 2007) (NARA Bates No. 001631 to 001633).

[59] *Id.*

understanding of what the "2005 report" says. Obviously, the report must give some indication that there was a problem, or we would not be in this situation.[60]

October 31, 2007: The National Archives staff were finally "afforded a brief opportunity to view a paper copy" of the spreadsheet prepared in 2005 listing hundreds of days of missing White House e-mail. They were not permitted to retain a copy.[61]

IV. EXTENT OF THE MISSING E-MAILS

At this point, it is not possible to quantify the extent of the missing White House e-mails, but it appears that the problem is significant and has two separate components: (1) White House e-mails sent using RNC e-mail accounts that were destroyed by the RNC, and (2) White House e-mails sent using official White House e-mail accounts that were not archived. The White House's own analysis from 2005 identified over 700 days when there were either no e-mails for a component of the Executive Office of the President or significantly fewer e-mails than predicted in the White House archive system.

In recent meetings, the White House has disputed the extent of the e-mails missing from the White House servers. However, documents that the White House provided and showed to Committee staff for review show that the archive system did not preserve e-mails from the Office of the Vice President that were sought by Special Counsel Patrick Fitzgerald.

A. White House E-Mails Missing from RNC Accounts

In June 2007, the majority staff of the Oversight Committee issued an interim report of an investigation into the use of RNC e-mail accounts by White House officials.[62] This report found that more than 88 White House officials had e-mail accounts maintained by the RNC or the Bush Cheney '04 campaign, and many officials used these political accounts extensively. White House officials with RNC e-mail accounts included senior White House personnel, such as Karl Rove, the former Senior Advisor to the President; Andrew Card, the former White House Chief of Staff; and several directors of the White House Office of Political Affairs. In some cases, White House personnel used RNC accounts almost exclusively, thus circumventing the official government e-mail system.[63]

The RNC deleted most of these e-mails pursuant to a "document retention" policy under which e-mails more than 30 days old were deleted. One indication of the scale of the loss of White House e-mail is the fact that the RNC has retained no e-mail messages for 51 of the 88

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[60] E-mail from Sam Watkins to Theresa Payton (Oct. 19, 2007) (NARA Bates No. 001795).

[61] E-mail from Sam Watkins, National Archives and Records Administration, to Theresa Payton (Nov. 6, 2007) (NARA Bates No. 001634 to 001635).

[62] More information regarding the Committee's investigation is available in a report prepared by Majority Staff, *Interim Report: Investigation of Possible Presidential Records Act Violations* (June 2007) (online at http://oversight.house.gov/documents/20070618105243.pdf).

[63] Interview of Scott Jennings by Staff, Committee on Oversight and Government Reform (Oct. 9, 2007).

White House officials with RNC e-mail accounts. Moreover, even for White House officials for whom the RNC has e-mail records, these records appear to be incomplete. Of the 37 officials for whom the RNC has retained e-mails, only 15 have any e-mail records that date from before 2006.[64]

The case of Mr. Rove provides an example of the extent of the missing e-mail. The RNC preserved only 130 e-mails sent by Mr. Rove prior to November 2003, and it preserved no e-mails sent to Mr. Rove during President Bush's first term. For the period that the RNC does have records, however, Mr. Rove was a prolific user of his RNC e-mail account. In 2007, Mr. Rove frequently sent more than 100 e-mails per day and received over 200 e-mails.[65]

There is also evidence that many of the e-mails sent through RNC e-mail accounts involved official government business. In total, the RNC preserved 140,216 e-mails sent or received by Karl Rove; over half of these e-mails (75,374) were sent to or received from individuals using official ".gov" e-mail accounts. Of the 674,367 White House e-mails preserved by the RNC, 240,922 (36%) were sent to or received from government e-mail accounts. In response to requests by the Committee, federal agencies provided partial inventories of White House e-mails sent to the agencies through RNC e-mail accounts. These e-mails involved official appointments, federal grants, and other official business.[66]

There does not appear to be any active process for recovering the deleted RNC e-mails. At a briefing in May 2007, the RNC provided Committee staff with an accounting of the various systems on which e-mail might be saved. In addition to e-mails saved on active RNC servers and individuals' computers and blackberry devices, the RNC has retained a number of back-up tapes. Several of these tapes contain data from early 2007, and an additional two boxes of back-up tapes contain data from earlier periods.[67] However, the RNC has not undertaken any effort to recover records from these tapes. The White House has also made no efforts to obtain the back-up tapes from the RNC or recover data from them.[68]

B. White House E-Mails Missing From White House Accounts

Congress, the National Archives, and the public first learned about a potentially large loss of White House e-mails from White House servers in April 2007, when CREW released a report describing the potential e-mail loss.[69] The White House, however, had known about this problem for several years. Officials told Committee staff at an October 2007 briefing that the White House first discovered a problem in August or September of 2005. This discovery led to a

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[64] Majority Staff, Committee on Oversight and Government Reform, *Interim Report: Investigation of Possible Presidential Records Act Violations* (June 2007).

[65] *Id.*

[66] *Id.*

[67] Briefing by Rob Kelner and Eric Friedberg for Staff, Committee on Oversight and Government Reform (May 11, 2007).

[68] Telephone conversation between Rob Kelner and Majority Staff, Committee on Oversight and Government Reform (Feb. 25, 2008).

[69] Citizens for Responsibility and Ethics in Washington, *Without a Trace* (Apr. 2007); *see also White House: Millions of E-Mails May Be Missing*, CNN (Apr. 14, 2007).

broader analysis of the .pst file storage process led by Steven McDevitt, a senior official in the White House Office of the Chief Information Officer.[70]

According to Mr. McDevitt, he led a team in analyzing what he believes to have been "over 5,000 .pst files" to determine what data was preserved in each file and whether any data was missing.[71] This analysis found over 700 days with low or no e-mail for any one of 12 components of the White House between January 2003 and August 2005.

According to a copy of a spreadsheet provided to this Committee by the White House, there were 473 days during this period in which a component of the EOP had no e-mails preserved on the servers, as well as 229 in which a component had an unusually low number of e-mails preserved on the servers.[72] The spreadsheet shows 12 days of missing e-mail for the White House Office, 16 for the Office of the Vice President, and 103 days for the Council of Economic Advisers.[73]

According to Mr. McDevitt, more than a dozen people were involved with this analysis, and the results were independently validated.[74] John Straub, the Director of the Office of Administration at this time, told Committee staff that he oversaw the effort. Mr. Straub told Committee staff that he was "consumed by this" issue of what he called "misplaced files" and worked closely with Mr. McDevitt to locate the missing e-mails.[75] Documents that were shown to Committee staff yesterday indicate that the White House Counsel's office was aware of these issues and met frequently with Mr. McDevitt's team. For example, on November 21, 2005, Mr. McDevitt sent "the current version of the Exchange Message Analysis Spreadsheet" to Associate White House Counsel Bob Hoyt. On December 5, 2005, Mr. Straub met with the White House Counsel's office and Joe Hagin, Deputy White House Chief of Staff, regarding "issues that have arisen with the e-mail system." Both Mr. McDevitt and Mr. Straub told the Committee that they briefed White House Counsel Harriet Miers regarding their analysis.[76]

Since reports of the missing e-mails became public in April 2007, Committee staff have received several briefings from the White House. On May 29, 2007, Keith Roberts, the Deputy General Counsel of the Office of Administration, told Committee staff that the days of low and no e-mail found in the 2005 analysis were from the time period when .pst files were created manually. He stated that human error or generator or electrical problems could have led to these missing days. He said, however, that the 2005 analysis had been a quick examination of the problem, and that the White House was conducting a more comprehensive analysis.[77] Around

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[70] Briefing by Theresa Payton for Staff, Committee on Oversight and Government Reform (Oct. 10, 2007).

[71] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, page 3).

[72] *EOP Exchange Environment — All Components: Summary — Messages Per Day* (Feb. 6, 2006) (HOGR6OA-000002-C to 000024-C).

[73] *Id.*

[74] Letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 4 and 6).

[75] Interview of John Straub by Staff, Committee on Oversight and Government Reform (Feb. 15, 2008).

[76] Interview of John Straub by Staff, Committee on Oversight and Government Reform (Feb. 15, 2008); letter from Steven McDevitt to Rep. Henry A. Waxman (Feb. 21, 2008) (Attachment 2, at 7).

[77] Briefing by Keith Roberts and Emmet Flood for Staff, Committee on Oversight and Government Reform (May 29, 2007).

the same time, Mr. Roberts briefed officials at the National Archives and told them that the new analysis would be completed within the next month.[78]

In October 2007, Committee staff were briefed again by White House officials. At this briefing, staff were told that the Office of the Chief Information Officer had tried to recreate the findings from the 2005 analysis and was unable to do so.[79] Committee staff have been briefed twice since that time. In these briefings, current White House CIO Theresa Payton explained that the White House is using a new tool for conducting the analysis of e-mails and has found approximately 100 .pst files with names that do not match their contents.[80]

On February 22, 2008, Theresa Payton shared some preliminary findings from this new analysis. According to Ms. Payton, the new analysis had identified 23 million more e-mails for this period than the 2005 analysis. She also told Committee staff that her office had found e-mails for some of the days identified in the 2005 analysis as having no e-mails preserved. Although she could not quantify how many e-mails were found for these days, she said that some e-mails had been found for all of the missing days for the White House Office, the Office of Policy Development, and the Office of Management and Budget. Similarly, some e-mails had been found for five of the 16 missing days for the Office of the Vice President. However, she stressed that these findings are preliminary and that the analysis will not be completed until sometime in March.[81]

Although the current effort may uncover some e-mails that were not included in the 2006 analysis, other documents provided to the Committee by the White House indicate that there have been serious problems using the archiving system to recover White House e-mails. One of these documents, dated January 20, 2006, describes efforts by the Office of the Chief Information Officer to "recover Office of Vice President email from the target period of September 30, 2003 to October 6, 2003."[82]

According to this document, even after restoring backup tapes, the White House team was unable to find any journal files or .pst files for the Vice President's office during this period. The team's first effort involved restoring from the backup tape "the file servers that were used to store .pst filed during the target period." This search uncovered "no messages ... that filled the gap." The team next restored from the backup tape the "server that contained the journal mailboxes for the target period." According to the document, the "journal mailboxes were examined and no messages for the target period were present in the journal mailbox."[83] The

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[78] E-mail from Gary Stern to Allen Weinstein (May 23, 2007) (NARA Bates No. 001620 to 1622).

[79] Briefing by Theresa Payton, William Reynolds, Emmet Flood and Elizabeth Medaglia for Staff, Committee on Oversight and Government Reform (Oct. 17, 2007).

[80] Telephone briefing by Theresa Payton and Emmet Flood for Staff, Committee on Oversight and Government Reform (Feb. 14, 2008); Telephone briefing by Theresa Payton and Emmet Flood for Staff, Committee on Oversight and Government Reform (Feb. 22, 2008).

[81] Telephone briefing by Theresa Payton and Emmet Flood for Staff, Committee on Oversight and Government Reform (Feb. 22, 2008).

[82] E-mail from Susan Crippen to Steven McDevitt and Jaime Borrego (Jan. 23, 2006) (HOGR6OA-010581 to 010584).

[83] *Id.*

team then restored from the backup tape the personal mailboxes of officials in the Vice President's office and recovered messages from 70 individual users.[84]

According to a document dated just four days later that was shown to Committee staff, but not provided to them, the White House team recovered 17,956 e-mails from these individual mailboxes on the backup tape and used these as their basis to search for e-mails responsive to the Special Counsel's request. A restoration of personal mailboxes from a backup tape does not recover any e-mails deleted by the user before the backup tape was made. The fact that the White House could not find .pst files or journal files on backup tapes from this time period raises questions about the likelihood that these files will be found during the current search.

Although the Archives has repeatedly urged the White House to commence restoring e-mails from its backup tapes, the White House has refused to start this process. The only restoration of e-mails from backup tapes that has occurred is the restoration of the e-mails responsive to Mr. Fitzgerald's request.

V. LACK OF COOPERATION WITH THE COMMITTEE

The Committee's investigation into the extent of the missing White House e-mails has been complicated by a lack of cooperation from the White House. On December 20, 2007, the Committee issued document requests to the National Archives and the White House Counsel on issues related to e-mail preservation, the development of e-mail archiving systems, and preparation for the 2009 transition.

More than two months after the Committee made its request, the White House appears to have produced only a small percentage of the documents that it believes to be responsive to the request. In addition, the White House is withholding, without an assertion of Executive Privilege, an unknown number of documents that are described as being deliberative. Just yesterday, the White House made accommodations for Committee staff to review some percentage of those withheld documents. However, there are more that have not been shown to Committee staff.

In addition, the White House directed the National Archives to withhold a range of documents that contained White House equities. The National Archives was unwilling to release these documents to the Committee without White House approval. As a result, the Committee was forced to issue a subpoena to the Archives on February 20, 2008, to obtain the documents.

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[84] *Id.*

Chairman WAXMAN. The Chair would now like to recognize Mr. Davis for his opening statement.

Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman.

Let me say at the front I think the committee is entitled to the e-mails, and we want to work with you to get them, absent some showing of privilege, which they have not come forward with yet because they can't seem to find them. So I don't think there is any disagreement on our wanting to be able to get to that; it is the characterizations which we differ in our opinion.

Just to dwell on Mr. McDevitt for a minute and why we feel as passionate as we do about this, from 2002 to 2006, he was responsible for managing the White House's e-mail archiving system. In his opinion, 400-plus days of White House e-mails went missing, but this sensational charge is not supported by the evidence that we have gathered. Through the course of this investigation, we have learned that many of these so-called missing e-mails were simply misfiled.

On Tuesday of last week, the majority issued a set of 47 interrogatories to Mr. McDevitt and, 3 days later, he has replied with 25 pages of responses, a very quick turnaround, indeed, unless he had been supplied with the questions ahead of time. His robust response is based on dated information, since he left the White House approximately 18 months ago. A lot of facts about these so-called missing e-mails have changed, and continue to change.

Our staff has really not had the opportunity to examine Mr. McDevitt on the record under oath and, consequently, his interrogatory responses, if entered into the record as is, would remain unchallenged, and that is not appropriate.

We spoke with Mr. McDevitt on Sunday afternoon. He remains unusually passionate about his time at the White House Office of Administration. We can't understand his reluctance to be interviewed on the record or why he wasn't compelled, yesterday, for testimony on the record.

You have been very accommodating to this witness. Our staff has made it clear to your staff we wanted to examine him on the record.

His views on the situation, in my judgment, is colored by his apparent personal investment in various technology decisions that he made, and many of these were ultimately rejected. Without the opportunity to test Mr. McDevitt's views on the record, we remain skeptical of the content of his interrogatory responses, and we think the committee should as well.

The preservation of essential records, though, is a Government-wide responsibility and a growing challenge with so much more of the public's business done today using electronic media rather than paper. The massive proliferation of digital records confronts each branch of Government with complex and potentially costly questions about which records to keep, how long to keep them, and how best to store and index them for retrieval.

But it appears today's hearing may be less about preserving records and more about resurrecting this claim that the White House lost millions of official e-mails. It is a charge that is based on a discredited internal report conveniently leaked to the media. Information gathered since then has forced administration critics to

back away from the politically charged allegation and acknowledge the less sensational but far more probative technical realities that are at work here.

Regarding the capabilities of the White House's information technology infrastructure, the facts are not all in yet, and in that respect this hearing would be viewed as premature. But we do know this much: During the White House migration from Lotus Notes to a Microsoft e-mail system in 2002, some archive files may have been mislabeled, making them difficult to find using routine search protocols.

A preliminary study in 2005 using these old protocols seemed to show 473 days of which no e-mails were sent at all. The White House has been very open with our staff about the technical flaws in that early search and they have devoted substantial technological resources to solving the e-mail glitch.

One of our witnesses today, White House Chief Information Officer Theresa Payton, is leading that effort. Last Friday, she briefed the committee staff that the 473-day gap has been reduced to 202. So a substantial portion of the missing e-mails appear not to be missing at all, just filed in the wrong digital drawer. The restoration recovery process continues and should continue.

But the committee's voracious appetite for White House e-mails raises another issue worth discussing today: the boundaries between legitimate oversight and counterproductive intrusion into the operations of a co-equal branch of Government.

Any frustration at the White House's inability to instantaneously produce every conceivable stream of electrons has to be tempered by both the legal rights and prerogatives of the Executive and by the technical realities of modern Government recordkeeping.

The Presidential Records Act does not require the White House to keep every paper or electronic document generated in the course of daily business. The law requires Presidential records to constitute adequate documentation of official deliberations and decisions.

I expect we will hear today that the White House is well aware of its obligations under the Presidential Records Act and other laws, and cognizant of the duty to preserve and provide adequate Presidential records for the National Archives.

In terms of the scope of the oversight, we should keep in mind the power of inquiry, when used injudiciously, can become the power to distract or to disrupt those trying to execute the laws that we write.

Remember where all this started: an investigation of a GSA administrator. From there we moved to a far broader inquiry into the Hatch Act compliance at cabinet departments and a subpoena to the Republican National Committee for e-mails from the White House. From that inquiry we came to this hearing to discuss e-mails about e-mails.

At some point this risks becoming investigation for its own sake or for the sake of private plaintiffs looking to use the committee to conduct non-judicial discovery in pending lawsuits against the Government. Nor is it the best use of our time and resources to attempt to micro-manage executive branch activities, like the next

White House transition, based on groundless suspicions or incomplete investigations into missing e-mails.

Nevertheless, our witnesses can help us understand the intricacies and challenges of electronic records preservation. We welcome their testimony this morning, and I want to repeat, I think, as, institutionally, the legislative branch does have the right to pursue these and to get these e-mails, Mr. Chairman.

Thank you very much.

[The prepared statement of Hon. Tom Davis follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

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Statement of Rep. Tom Davis
Ranking Republican Member
Committee on Oversight and Government Reform Committee
"Electronic Records Preservation at the White House"
Tuesday, February 26, 2008

Thank you, Mr. Chairman. Preservation of essential records is a government-wide responsibility, and a growing challenge with so much more of the public's business done today using electronic media rather than paper. The massive proliferation of digital records confronts each branch of government with complex and potentially costly questions about which records to keep, how long to keep them and how best to store and index them for retrieval.

But it appears today's hearing may be less about preserving records and more about resurrecting the spurious claim the White House "lost millions of official e-mails." It's a charge based on a discredited internal report conveniently leaked to the media. Information gathered since then has forced administration critics to back away from the politically-charged allegation and acknowledge the less sensational but far more probative technical realities at work here.

Regarding the capabilities of the White House's information technology infrastructure, the facts are not all in yet - and in that respect this hearing seems premature – but this much we know:

During White House migration from Lotus Notes to a Microsoft e-mail system in 2002, some archive files may have been mislabeled, making them difficult to find using routine search protocols. A preliminary study in 2005 using those old protocols seemed to show 473 days on which no e-mails were sent at all. The White House has been very open with our staff about the technical flaws in that early search, and they have devoted substantial technical resources to solving the e-mail glitch. One of our witnesses today, White House Chief Information Officer Theresa Payton is leading that effort. Last Friday, Ms. Payton briefed Committee staff that the 473 day gap has been reduced to 202. So a substantial portion of the so-called "missing" e-mails appear not to be missing at all, just filed in the wrong digital drawer. The restoration and recovery process continues.

But the Committee's voracious appetite for White House e-mails raises another issue worth discussing today: the boundaries between legitimate oversight and counterproductive intrusion into the operations of a co-equal branch of government. Any frustration at the White House's inability to instantaneously produce every conceivable stream of electrons has to be tempered by both the legal rights and prerogatives of the executive and by the technical realities of modern government record-keeping.

The Presidential Records Act does not require the White House to keep every paper or electronic document generated in the course of daily business. The law requires presidential records to constitute adequate documentation of official deliberations and decisions. I expect we'll hear today that the White House is well aware of its obligations under the Presidential Records Act and other laws, and cognizant of the duty to preserve and provide required presidential records to the National Archives.

And, in terms of the scope of our oversight, we should keep in mind the power of inquiry, when used injudiciously, can become the power to distract or disrupt those trying to execute the laws we write here. Remember where all this started: an investigation of the GSA Administrator. From there, we moved to a far broader inquiry into Hatch Act compliance at cabinet departments and a subpoena to the Republican National Committee for e-mails to the White House. From that inquiry, we come to this hearing to discuss e-mails about e-mails. At some point, this risks becoming investigation for its own sake, or for the sake of private plaintiffs looking to use the Committee to conduct non-judicial discovery in pending lawsuits against the government.

Nor is it the best use of our time and resources to attempt to micromanage executive branch activities, like the next White House transition, based on groundless suspicions or incomplete investigations into "missing" e-mails.

Nevertheless, our witnesses can help us understand the intricacies and challenges of electronic records preservation, and we welcome their testimony this morning.

Chairman WAXMAN. Thank you very much, Mr. Davis.

Before we recognize our witnesses, we are going to have a private discussion and set a time for a debate and a vote on adding the interrogatories to the record, but I just want to give clarification of what had transpired.

On January 30th, the committee wrote to Mr. McDevitt asking him to come in for an interview. He was responsive and immediately scheduled an interview for Monday, February 11th. The White House then contacted Mr. McDevitt and instructed him not to discuss with the committee broad areas relevant to our investigation, including "any deliberative discussions involving the participation of OCIO management."

So Mr. McDevitt e-mailed us and he said, based on the direction of the White House, "there is practically nothing that I am authorized to discuss with the Committee." As a result, given these limitations placed on us by the White House counsel, he said he would have to decline our request for an interview. So both sides requested this interview.

Over the next week, minority and majority staff discussed the committee's interest in obtaining information from Mr. McDevitt, and on February 14th our staffs jointly agreed to send Mr. McDevitt questions in writing, allowing him to share his responses with the White House counsel. So together our staffs sent him questions. He responded in writing to those questions. The White House had a chance to review his answers and they cleared them without any redactions.

Now, after we got the answers from Mr. McDevitt, his responses this past weekend, the minority staff indicated they wanted to speak with Mr. McDevitt in person. Nevertheless, even at this late date, our staff went to great lengths to accommodate the minority. After they read his written reports, they didn't feel comfortable with it. So, on Sunday night, minority and majority staff jointly called Mr. McDevitt to see if he would be willing to come in for an interview or deposition. He stated he still had the same concerns about the White House instructions. However, he went on to answer questions from the minority, the Republicans, for an hour and a half, answering every single question they had.

Despite this second opportunity to question Mr. McDevitt, the minority now says it is somehow unfair to use any information provided by Mr. McDevitt because they didn't get an opportunity to question him. Well, they had an opportunity 2 weeks ago. They got another opportunity on Sunday night, which they fully exhausted.

It seems to me if the minority has a beef with anyone, it should be the White House Counsel's Office, since they are the ones who told Mr. McDevitt he wasn't allowed to speak with us in the first place.

Mr. DAVIS OF VIRGINIA. Mr. Chairman, let me just quickly——

Chairman WAXMAN. Yes.

Mr. DAVIS OF VIRGINIA. We will talk about this and we will find an accommodation, but let me just say that there were six other witnesses that were subject to the same White House ground rules, and they were brought in for on-the-record interviews and cross-examination. Mr. McDevitt was the only one who was accommodation, we believe, because he fit the story you wanted to tell. And

we think that there is another side to that and we would like that opportunity. I don't care what the White House Counsel's Office says on this. We are speaking to this as a review committee.

But we can have this discussion down the road and try to reach an accommodation, and hopefully we can move ahead with our witnesses.

Chairman WAXMAN. But I might point out that the other witnesses agreed to come in. Mr. McDevitt refused to come in for an interview. And he did that because the White House told him there was nothing he could say to us in an interview. So we proceeded in the way that seemed fit.

I know that now that the minority has looked at what he has to say, they would like to see if they can impeach him, because they don't like what he had to say.

Mr. DAVIS OF VIRGINIA. Well, there are inconsistencies with what he said because he has been gone for 18 months.

Chairman WAXMAN. Well, let's get the witnesses here today on record and we can ask them questions about what Mr. McDevitt had to say and probe into this whole thing further. But the reality is that there are a lot of e-mails—which is the primary way people send communications to each other—from high officials in the White House that cannot be located, and that, as I understand it, is not just what we are saying, what Mr. McDevitt has said, but the Archives as well.

And from the Archives we are pleased to have Dr. Allen Weinstein. He is the ninth Archivist of the United States and leads the National Archives and Records Administration.

We also have Gary M. Stern, the General Counsel for the National Archives and Records Administration.

Sharon Fawcett is the Assistant Archivist for Presidential Libraries at the National Archives and Records Administration.

Alan R. Swendiman is the director of White House Office of Administration.

And Theresa Payton is the Chief Information Officer at the White House Office of Administration.

We are pleased to welcome all of you.

Mr. DAVIS OF VIRGINIA. Mr. Chairman, can I just make one point? We join with you in wanting to get all the e-mails and not giving up. I just want to make that clear. This is not an effort to stop the disclosure of these. We want to get at these. We really object to the characterization of how this came. I would think much of this is technical and hopefully this hearing will be able to bring both sides an opportunity to bring that out. Thank you.

Chairman WAXMAN. Well, I hope so, because I think, on a bipartisan basis, we want to find out where those e-mails are and get them. I don't know what characterization you object to, because I have been very careful not to make any characterization, unlike the situation we had in this committee in the 1990's.

Ladies and gentlemen, it is the policy of this committee that all witnesses that testify before us testify under oath, so I would like to ask you, if you would, to please rise and raise your right hands.

[Witnesses sworn.]

Chairman WAXMAN. Thank you.

The record will indicate that each of the witnesses answered in the affirmative.

Dr. Weinstein, why don't we start with you?

All of you have sent prepared statements, or those of you who have sent prepared statements. I want to assure you that they will be in the record in full. We would like to ask, if you would, to try to limit the oral presentation to 5 minutes. You will have a clock that will be indicated on the table. Green, then after 4 minutes there will be a yellow; and then after 5 minutes is complete it will turn red. If you are not finished by that po int, we would like to ask you to summarize the last part of your testimony.

Mr. WEINSTEIN. Can I ask you before I start, Mr. Chairman?

Chairman WAXMAN. Yes.

Mr. WEINSTEIN. I will be making the only opening statement for the Archives. I gather my two colleagues from the White House will both make statements. Does that mean I get 10 minutes?

Chairman WAXMAN. Well, go ahead and take whatever time you need. Under those circumstances, it seems reasonable.

Mr. WEINSTEIN. Thank you.

STATEMENTS OF ALLEN WEINSTEIN, ARCHIVIST OF THE UNITED STATES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, ACCOMPANIED BY GARY M. STERN, GENERAL COUNSEL, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, AND SHARON FAWCETT, ASSISTANT ARCHIVIST FOR PRESIDENTIAL LIBRARIES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION; ALAN R. SWENDIMAN, DIRECTOR, OFFICE OF ADMINISTRATION, THE WHITE HOUSE; AND THERESA PAYTON, CHIEF INFORMATION OFFICER, OFFICE OF ADMINISTRATION, THE WHITE HOUSE

STATEMENT OF ALLEN WEINSTEIN

Mr. WEINSTEIN. Good morning, Chairman Waxman, Ranking Member Davis, and members of the Committee on Oversight and Government Reform. Thank you for calling this hearing and for your continued attention to the management, protection and preservation of Government information.

The National Archives General Counsel Gary Stern, Assistant Archivist for Presidential Libraries Sharon Fawcett accompany me this morning and will be available to assist me in responding to questions from the committee.

I am pleased to appear before you today to discuss the work of the National Archives and Records Administration [NARA], in managing Presidential papers at the time of transition from one President's administration to the next. I will summarize my remarks and ask that my full statement be included in the record.

Let me begin by discussing preparation for the transition in January 2009 of the Presidential records of the George W. Bush administration to the National Archives. National Archives has a long and successful history of moving Presidential records and gifts from the White House to the custody of the Archives for ultimate deposit in the Presidential library. We have done this work under the exigent circumstances of current departure, as in the case of Presidents Kennedy and Nixon; the foreshortened notice of one-term ad-

ministrations, such as George H.W. Bush; and the more predictable pace afforded by a two-term President, for example, William Jefferson Clinton.

The National Archives begins preparing for an eventual move from the first day of an administration. However, as you might imagine, Mr. Chairman, most of the actual work takes place in the last year of a President's term. We work closely with the White House Counsel's Office, the White House Office of Records Management, the National Security Council, the White House Photo Office, the Office of Administration, and other appropriate White House offices in accounting for all Presidential records—textual, electronic, and audio-visual—and in arranging for their physical transfer to the National Archives.

We also work with the White House Gift Unit in inventorying and packing the thousands of foreign and domestic gifts that will be included in the holdings of the Presidential library and museum. Traditionally, the Department of Defense also supports the National Archives in packing and transporting the records from Washington the library site.

Beginning in the summer of 2007, National Archives staff attended several preliminary meetings with White House staff to discuss the transition process. In late fall, Archives staff began to meet with IT staff from the Office of Administration to discuss the transfer of electronic records. Archives staff has also met with the staff of the National Security Council regarding its classified electronic records, which are maintained separately from the systems managed by the Office of Administration. We expect that transition meetings will continue on a regular basis and look forward to working with White House staff in ensuring a smooth move of the massive amount of records.

The National Archives has leased a temporary facility in the Dallas, TX area that will serve as the archival repository for these records until the George W. Bush Presidential Library is completed. We have already begun to hire and train archival staff, along with a museum registrar, who will take charge of the records and gifts as they arrive. We expect to continue the hiring of full staff when we receive our fiscal year 2009 appropriation.

Now I would like to turn to your question on the National Archives' actions concerning the possibility of missing White House e-mails. The Presidential Records Act [PRA], does not give the Archivist the authority—formal or oversight authority—over how an incumbent President performs his records management responsibilities, but, rather, vests records management authority entirely and exclusively with the incumbent President. Nevertheless, throughout the course of an administration, when we are invited to do so, both I and my staff try to provide our best guidance and advice on matters affecting White House records management.

When we read the press reports in April 2007 that the White House had apparently acknowledged that a large number of e-mails might be missing from the Executive Offices of the President, the EOP system, we immediately began to enquire about this matter with White House staff. The National Archives made similar inquiries in 2006 upon learning of press reports that Special Council Patrick Fitzgerald had reported on e-mail archiving problems with

the Office of the Vice President's records. Some time later in April 2007, White House staff told us that a chart prepared in 2005 indicated that there might be some missing e-mails, but that no one within the Executive Office of the President [EOP], had been able to validate the chart's results. My staff was further informed that efforts would be made to corroborate whether any e-mails were actually missing.

In addition, because the EOP mail system contains records governed under both the Presidential Records Act and the Federal Records Act [FRA], on May 6, 2007, I sent a standard letter to the Director of the White House Office of Administration requesting a report on the allegations of unauthorized destruction of Federal records. This letter has been provided to the committee.

To this day, I have not received a written reply to the May 6, 2007 letter. We have been diligent in requesting periodic updates on the status of the White House review of these allegations and the possibility of missing Federal and Presidential e-mails. The White House has responded regularly, if inconclusively, that its review is still continuing.

Further, we have made our views clear, both to the White House and to this committee, that in the event e-mails are determined to be missing, it is the responsibility of the White House to locate and restore all the e-mails, probably from the backup tapes, and that such a project needs to begin as soon as possible. The National Archives has also emphasized that supplemental congressional funding to the White House will almost certainly be necessary for such a restoration effort.

A similar situation occurred, as you mentioned, Mr. Chairman, near the end of the Clinton administration with its Automated Records Management System [ARMS], and the Office of Administration of the White House took full responsibility at that time in restoring an estimated 2 million e-mails. Because of the problems that occurred with the ARMS system during the Clinton administration, the National Archives recommended to the incoming George W. Bush administration that it replace ARMS with a new electronic records management application for its e-mails as soon as possible.

The Bush 43 White House expressed interest and invited the National Archives to work with the Office of Administration in developing the requirements for a new system. The National Archives staff worked with the Office of Administration from late 2001 until the summer of 2004 on what came to be known as the proposed Electronic Communications Records Management System [ECRMS]. The National Archives staff reviewed deliverables and documentation produced as part of this system design effort, with our primary concern being to facilitate the transfer of these electronic records at the end of the administration.

In the fall of 2006, the National Archives learned that the Office of Administration had decided not to implement ECRMS. In early 2007, the National Archives began meetings with the Office of Administration to discuss how the Office proposed to manage Executive Office of the President e-mails in anticipation of the upcoming transition. The National Archives was not informed about the possibility of missing e-mails at this time.

Mr. Chairman, this concludes my testimony. Thank you for your attention. I am happy to answer any questions that may remain.

[The prepared statement of Mr. Weinstein follows:]

Testimony of Allen Weinstein

Archivist of the United States

Before the

House Committee on Oversight and Government Reform

February 26, 2008

Good morning Chairman Waxman, Ranking Member Davis, and members of the Committee on Oversight and Government Reform. Thank you for calling this hearing, and for your continued attention to the management and preservation of government information.

I am pleased to appear before you today to discuss the work of the National Archives and Records Administration in managing Presidential papers at the time of a transition from one President to the next. I will summarize my remarks and ask that my full statement be included in the record.

Let me begin by discussing our preparation for the transition of the Presidential records of the George W. Bush administration to the National Archives in January 2009. the National Archives has a long and successful history of moving the President's records and gifts from the White House to the custody of the National Archives for ultimate deposit in a Presidential Library. We've done this work under the exigent circumstances of a sudden departure (as per Presidents Kennedy and Nixon), the foreshortened necessity of a one-term President, and the more predictable pace afforded by a two-term President.

The National Archives begins preparing for the eventual move from the first day of an Administration; however, most of the work takes place in the last year of the

President's second term. We work closely with the White House Counsel's Office, the White House Office of Records Management, the National Security Council, the White House Photo Office, the Office of Administration, and other appropriate White House offices in accounting for all Presidential records – textual, electronic, and audio-visual – and arranging for their physical transfer to the National Archives. We also work with the White House Gift Unit in inventorying and packing the thousands of foreign and domestic presidential gifts that will also be included in the holdings of the presidential library and museum. Traditionally, the Department of Defense supports the National Archives in packing and transporting the records from Washington to the library site.

Beginning in the summer of 2007, the National Archives attended several preliminary meetings with White House staff to discuss the transition process. In late fall, Archives staff began to meet with IT staff from the Office of Administration to discuss the transfer of electronic records. (Archives staff has also met with staff of the National Security Council regarding their classified electronic records, which are maintained separately from the systems managed by the Office of Administration.) We expect that transition meetings will continue on a regular basis and look forward to working with White House staff in ensuring a smooth transition of what will be a massive amount of records.

The National Archives has leased a temporary presidential materials facility in the Dallas, Texas area that will serve as our archival repository for these records until the Presidential Library is completed. We have already begun to hire and train archival staff, along with a museum registrar, who will take charge of the records and gifts as they

arrive. We expect to continue the hiring of a full staff when we receive our FY 2009 appropriation.

Now I would like to turn to your question regarding the National Archives's actions concerning the possibility of missing Executive Office of the President (EOP) emails. The Presidential Records Act (PRA), 44 U.S.C. §§ 2201-2207, gives the Archivist no regulatory or formal oversight authority over how an incumbent President performs his records management responsibilities, but rather vests records management authority entirely and exclusively with the incumbent President. Nevertheless, throughout the course of an Administration, both I and my staff endeavor to provide our best guidance and advice on matters affecting White House records management when we are invited to do so.

When we read the press reports in April 2007 that the White House had acknowledged that a large number of emails might be missing from the EOP system, we immediately began to ask the White House about this matter. (The National Archives made similar inquiries in 2006 upon our learning of press reports that Special Counsel Patrick Fitzgerald had reported on email archiving problems with Office of the Vice President's records.) Some time later in April 2007, White House staff told us that a chart prepared in 2005 indicated that there might be some emails from the EOP system that had not properly been archived, but that no one within the EOP had been able to validate the chart's results. My staff was further informed that efforts would be taken to corroborate whether or not any emails were actually missing.

In addition, because the EOP email system contains records governed under both the Presidential Records Act and Federal Records Act (FRA), on May 6, 2007, the

National Archives sent a standard letter, pursuant to 44 U.S.C. § 2906 and 36 C.F.R. § 1228.104, to the Director of the Office of Administration requesting a report on the allegations of unauthorized destruction of Federal records. (This letter has been provided to the Committee.) While we have not received a written reply to the May 6 letter, we have been diligent in requesting an update on the status of the White House's review of these allegations and the possibility of missing Federal and Presidential emails. The White House has responded regularly that its review is still continuing.

Furthermore, we have made our views clear, both to the White House and to this Committee, that, in the event emails are determined to be missing, it would be the responsibility of the White House to locate and restore all the emails, probably from the backup tapes, and that such a project needs to begin as soon as possible.

A similar situation occurred near the end of the Clinton Administration, with its Automated Records Management System (ARMS), and the Office of Administration took full responsibility in restoring an estimated two million emails. (In April 2001, the General Accounting Office issued a report on the Clinton Administration's Management of Executive Office of the President's E-Mail System. Report No. GAO-01-446.)

Because of the problems that occurred with the ARMS system during the Clinton Administration, the National Archives recommended to the incoming George W. Bush Administration that it replace ARMS with a new electronic records management application for its emails as soon as possible. The Bush 43 White House expressed interest, and invited the National Archives to work with the Office of Administration in developing the requirements for a new system. The National Archives staff worked with the Office of Administration from late 2001 until the summer of 2004 on what came to be

known as the proposed Electronic Communications Records Management System (ECRMS). The National Archives staff reviewed deliverables and documentation produced as part of the system design effort, with our primary concern being to facilitate the transfer of these electronic records at the end of the administration. In the fall of 2006, the National Archives learned that the Office of Administration had decided not to implement ECRMS. In February 2007, the National Archives began meetings with the Office of Administration to discuss how it proposed to manage EOP emails in anticipation of the upcoming transition. The National Archives was not informed about the possibility of missing emails at this time.

The Committee has also asked the National Archives about policies on preserving backup tapes. Under longstanding federal records management guidance to the government at large, the National Archives encourages the recycling of backup tapes as short-term, temporary records, provided that an agency is not under a special preservation hold imposed by a lawsuit or investigation, and so long as any federal records residing on the backups have been appropriately preserved elsewhere either in paper or electronic form. See, e.g., General Records Schedule 24, Item 4; General Records Schedule 20, Item 8. The recycling of backup tapes for the EOP email system, as managed by the Office of Administration, has been specifically governed by a 1995 FRA records disposition schedule. (SF 115, Job No. N1-429-95-2.) Item 8 establishes that the backup tapes are temporary federal records, with the following disposition:

> Daily Backup Tapes. Delete when set of weekly backup tapes has been created without error.
>
> Weekly Backup Tapes. Delete when 90 days old.

The National Archives understands that the Office of Administration stopped recycling its backup tapes in October 2003 for reasons unrelated to the problem of missing emails, and has been maintaining them ever since. While we do not have very much information regarding the matter of missing emails, we certainly support the suspension of recycling of backup tapes pending a determination by the EOP as to the true state of facts concerning this situation.

Mr. Chairman, this concludes my testimony. Thank you for your attention, and I am happy to answer any questions that may remain.

Chairman WAXMAN. Thank you very much, Mr. Weinstein. I assume Mr. Stern and Ms. Fawcett are here to answer questions that we may have.

Mr. WEINSTEIN. Of course.

Chairman WAXMAN. Ms. Payton, let's hear from you next. Or would you prefer Mr. Swendiman to go next? There is a button on the base of the mic. Be sure it is pushed in and close enough to you to pick it all up.

STATEMENT OF ALAN R. SWENDIMAN

Mr. SWENDIMAN. Good morning, Mr. Chairman, Ranking Member Davis, and members of the House Committee on Oversight and Government Reform. I am Alan Swendiman and I currently serve as Special Assistant to the President and Director of the Office of Administration. Thank you for inviting me to participate in this hearing. Accompanying me is Theresa Payton, who is the Chief Information Officer for the Office of Administration.

I am pleased to appear before you today on the subjects of e-mail records keeping practices at the Executive Office of the President during this administration and the status of Presidential transition planning in relation to records of this administration. I will summarize these remarks and ask that my full statement be included in the record.

I have served as Director of the Office of Administration since November 27, 2006. OA's mission is to provide common administrative and support services to the EOP.

The Office of the Chief Information Office is one of the operating units of OA. Among its important functions, OCIO is responsible for providing all EOP components with unified enterprise services. Certain of the subjects that the committee may ask today are within the purview of the OCIO, and Ms. Payton may speak to them. I will direct my remarks principally to OA's efforts on the important subject of Presidential transition planning.

Presidential records are the property of the U.S. Government and OA takes very seriously its responsibilities for the transfer of records to the National Archives. These responsibilities derive in significant measure from the Presidential Records Act and the effective fulfillment of these responsibilities is important to the continuity of the presidency as an institution and for the Bush presidency, and we are focused on making this transition process as smooth and cooperative as possible.

Toward that end, transition-related meetings between NARA and White House began in approximately the summer of 2007. At that time, NARA noted and welcomed what it described as EOP's early engagement on transition and Presidential records issues. Since that first meeting, there have been at least eight meetings with NARA and numerous internal meetings. For example, NARA has met with the OA Offices of the Chief Financial Officer, the Chief Facilities Management Officer, and the Chief Operating Officer to receive records-related functional and operational briefings and to ask questions. NARA and OA are committed to continuing to meet, and, in fact, the next meeting is this Friday, February 29th. Through these meetings, NARA will learn about the dozens and

dozens of computer applications at the EOP that may have records subject to PRA which will need to be transferred to NARA.

Now, the upcoming Presidential transition is going to be a complex one, involving new technologies and new people. These complexities are heightened by the existing cyber threats, of which this committee is undoubtedly aware, and cyber security considerations impact, among other things, the way we are able to safely transfer records to NARA.

This will be the first transition in which OA, as an entity, has been subject to the PRA, and OA is fully engaged in that process. We have already seen issues arise as to whether certain materials are records or non-records under the PRA. One particular challenge facing the institution is the necessity of identifying and making available in some form records that will be needed for the 44th President and his or her staff. Financial records, procurement records, leases, blueprints and other property records, security records, and personnel records are just a few of those kinds of records.

From this summary, we trust that the committee can see that a lot of predicate work has begun and is ongoing. We have approximately 11 months remaining to work on this transition, and we are committed to making sure that all the Presidential records that we have transferred to NARA are transferred at the end of this administration.

As a final matter, I understand that the committee has enquired about whether EOP e-mails may not have been properly preserved between 2003 and 2005, and the potential implications on transition should it be determined that such e-mails are missing. The potential discovery of this issue and the immediate response to it, of course, predated my service as OA Director. The OA staff, including Ms. Payton, can discuss this issue in more detail. But what I can say is this. I am proud of the work that they have been doing and continue to do under the leadership of Ms. Payton in order to determine whether any such e-mails are missing. It is a complex process, one that takes time to do right and one that we have not taken lightly.

Mr. Chairman, this concludes my statement. Thank you for your attention, members of the committee, and I would be pleased to answer any questions.

[The prepared statement of Mr. Swendiman follows:]

Testimony of Alan R. Swendiman

Special Assistant to the President and Director, Office of Administration

Before the

House Committee on Oversight and Government Reform

February 26, 2008

Good morning Chairman Waxman, Ranking Member Davis, and members of the House Committee on Oversight and Government Reform. I am Alan Swendiman and I currently serve as Special Assistant to the President and Director, Office of Administration (OA). Thank you for inviting me to participate in this hearing. Accompanying me this morning is Theresa Payton, Chief Information Officer of the Office of Administration.

I am pleased to appear before you today on the subjects of email records keeping practices at the Executive Office of the President (EOP) during this Administration, and the status of Presidential Transition planning in relation to records of this Administration. I will summarize these remarks, and ask that my full statement be included in the record.

I have served as Special Assistant to the President and Director, Office of Administration since November 27, 2006. OA was created by Reorganization Plan No. 1 of 1977 and was formally established by Executive Order 12028 on December 12, 1977. OA's mission is to provide common administrative and support services to the EOP.

The Office of the Chief Information Officer (OCIO) is one of the operating units of OA. Among its important functions, OCIO is responsible for providing all EOP components with unified enterprise services such as production support, application development and support, office automation, email, disaster recovery back-up information, Continuity of Operations (COOP) support, and internet/intranet capabilities. It also provides coordination of compliance

programs for Federal Records, and is charged with protecting and safeguarding the complex, sensitive but unclassified EOP network (including the infrastructure, web sites, remote access, and data). Certain of the subjects that the Committee has asked OA to address today are within the purview of the OCIO, and Ms. Payton may speak to them.

I will direct my remarks principally to OA's efforts on the important subject of Presidential Transition planning. Presidential records are the property of the United States and OA takes very seriously its responsibilities for the transfer of records to the National Archives and Records Administration (NARA) at the end of this Administration. These responsibilities derive in significant measure from the Presidential Records Act (PRA) and effective fulfillment of these responsibilities is important to the continuity of the presidency as an institution, and for the Bush Presidency and Library. We are focused on making this transition process as smooth and cooperative as possible. We are working to anticipate and resolve issues as they are identified. In these efforts, we are working closely with NARA and the White House Office of Records Management. We have held a number of meetings with NARA representatives, and have ongoing communications with technical and legal representatives of NARA, including NARA's General Counsel. We know that NARA is eager to have the transition process completed. OA is likewise dedicated to ensuring a full and effective transition is accomplished in a timely manner.

Toward that end, transition-related meetings between NARA and the White House began approximately in the summer of 2007. NARA noted and welcomed what it described as the EOP's early engagement on transition and Presidential records issues. Since that first meeting, there have been at least 8 meetings with NARA, and numerous internal meetings to plan and prepare. For example, to date NARA has met with representatives of OA's Office of the Chief

Financial Officer, Office of the Chief Operating Officer, and Office of the Chief Facilities Management Officer, to receive records-related functional and operational briefings and to ask questions. NARA and OA have committed to meeting regularly to complete the transition-related reviews that are currently under way, and to address any transition-related issues as they arise. Through these meetings, NARA will learn about the dozens of computer applications at the EOP that may have records subject to the PRA which will need to be transferred to NARA at the end of this Administration. Most of these applications are currently being used at the EOP; a relative few are purely legacy systems that, while they may house Presidential records, are not presently operational. NARA will also be surveying physical records as part of these meetings.

Internally to OA, our General Counsel has provided oral briefings and written guidelines to the entire OA staff on compliance with the PRA. In addition, guidance and assistance has been and is being provided by the White House Office of Records Management. OA's General Counsel receives and responds to questions from OA personnel, consulting with NARA as appropriate.

It must be acknowledged that the upcoming Presidential transition will be complex, involving new technologies and new people. These complexities are heightened by the existing cyber threats, of which this Committee is undoubtedly keenly aware. During this Administration alone, OA has seen a tremendous increase in risk from cyber-threats to the EOP Network. As a result, we cannot be too careful in protecting the security of EOP information and systems. These cyber security considerations impact, among other things, the way we are able safely to transfer records to NARA.

This will be OA's first transition as an entity whose records are subject to the PRA. OA is fully engaged with NARA in this process. We have already seen issues arising as to whether

certain materials are "records" or "non-records" under the PRA and we are dedicated to resolving these issues. One particular challenge facing the institution is the necessity of identifying, and making available in some form, records that will be needed by the forty-forth President and his or her staff. In order to satisfy its administrative services and support mission, which continues across administrations, it will be necessary to identify and then determine the correct handling of Presidential records that will need to be available across the EOP on January 20, 2009, in order to support the initial and continuing operations of the new Administration. Financial records, procurement records, leases, blueprints and other property records, security records, and personnel records are just a few of the kinds of documents that may need to be readily available to the new Administration.

As the Committee is aware, a significant portion of Presidential records are stored electronically. We are working with NARA to devise the means by which electronic records, including email records, will be transferred to NARA. As part of the transition planning, NARA is seeking an estimate of the size of the electronic records to be transferred, and we are working to provide that estimate. In addition, we are working to estimate the volume of hardcopy records to be transferred to NARA. These estimates will assist NARA to have adequate storage space for the records and other materials it will receive.

From this summary, we trust the Committee can see that a lot of predicate work has begun, and is ongoing. We have approximately 11 months remaining to work on this transition. We are committed to making sure that all the Presidential records that we have are transferred to NARA at the end of this Administration.

As a final matter, I understand that the Committee has inquired about whether EOP emails may not have been properly preserved between 2003 and 2005 and the potential

implications on transition should it be determined that any such emails are missing. The discovery of a potential issue, and the immediate response to it, of course, pre-date my service as OA Director. The staff of the OCIO, including Ms. Payton, can discuss this issue in more detail, but I will say this: I am proud of the work they have been doing and continue to do under the leadership of Ms. Payton in order to determine whether any such emails have been lost. It is a complex process, one that takes time to do right, and one that we have not taken lightly.

Mr. Chairman, this concludes my statement. Thank you for your attention, and I would be pleased to answer any questions.

Chairman WAXMAN. Thank you very much, Mr. Swendiman.

Ms. Payton, do you have a statement as well?

Ms. PAYTON. Yes.

STATEMENT OF THERESA PAYTON

Ms. PAYTON. Good morning, Chairman Waxman, Ranking Member Davis, and members of the committee. Alan did touch a little bit on the OCI role, so I would like to talk to you a little bit about some of the services we offer.

I am Theresa Payton, and I am the Chief Information Officer in the Office of Administration Executive Office of the President. I have been in this role since mid-May 2006, and it has been an honor and a pleasure to serve.

Some of the services that we provide to the EOP, as Alan mentioned, are to the 12 components that comprise the Executive Office of the President. There are over 3,000 customers in those 12 components and some of the services that we provide to them include, but aren't limited to: office automation; intranet support; 24 by 7 production support, should they need it; desktop support; we do continuity of operation support; disaster recovery backup information; and we are also responsible for the e-mail messaging system for the sensitive but unclassified part of the EOP network; and we are also responsible for the records keeping of all of those e-mails and making sure we have a successful transition to NARA at the end of the Presidential transition.

I did provide a detailed written testimony that I understand from you, Chairman Waxman, will be in the record, so I just want to give a few summary comments before I turn it over for questions.

I wanted to focus on the work primarily that we have been doing from late 2006 up until today and give you a little bit of explanation about the leadership determination of the people that I work for, as well as the people that work for me in the Office of the Chief Information Officer.

We have undertaken three tracks since late 2006 until today. The first track involves people and process; the second track involves improving the current technology we have in place; and then the third track is what we are calling the longer view. So this is about getting a more comprehensive technology platform in place for archiving records keeping, as well as legal searches.

Under people and process, I will just give you a couple examples of some of the things we have been able to accomplish. First of all, we recognized we have a slim staff, you know, we are a small but mighty team supporting the 3,000 customers. We have roughly 55 Federal employees and roughly 60 contractors to support these 3,000 customers. We took a look at the resource allocation and the manpower stacked up against records keeping versus the other parts of the operation and the mission that we serve, and in 2006 we had roughly the equivalent of 10 of our 115 employees, from a manpower perspective, dedicated to records keeping. We have ramped that up. We looked at our mission. We have slimmed down some of the services we provide in some other parts of the mission and we ramped that up in 2007. We had the equivalent of manpower of about 22 people out of the 115 focused on records keeping and we have ramped that up a little bit more for 2008, and we are

currently running at about 23.5. So that is an example of some of the people investments.

From a process improvement standpoint, we put in place some improved processes while we are on the current technology we are, and to make sure that on a go-forward basis we are accounting for all of the information. So one example of an improvement that we put in place last year is our weekly report. So the messaging team does daily work. If they have any technology glitches, they note those in a log. Then there is a second team who does a QA of the work they are doing to make sure that the messages that went into the Microsoft Journal that were then automatically moved through a software program that we have into Microsoft Personal Storage Tables [PSTs], a second group takes a look at that work and also, if they note any technology glitches, notes that in the log.

On a weekly basis an executive summary report is produced for myself and for our Office of Administration General Counsel, and this provides transparency that wasn't available before on a weekly basis about any technology glitches that may have occurred, the mediating steps that needed to be taken or still need to be taken, and then a weekly report as to where they are in their progress.

This has provided a couple different tools for us to use, the first being the transparency, and knowing, if there is a glitch, the people need to be focused on fixing that. The second is it actually gives us historical information so, from a go-forward perspective, if somebody is looking back and trying to look for e-mail records on certain dates, they actually have a place they can go look, a comprehensive place that tells them what occurred, what components, and what was done to mitigate that risk. The other is a learning tool for the team. So we are in the process of rolling out what is known—and the Government is adopting it—Six Sigma, where you look for opportunities to reduce defects. And by doing this weekly report, we are collecting statistics so they can look backward on trends and look for opportunities to reduce future defects. So that is an example of a process improvement.

One of the areas you are probably going to be the most interested in, though, is going to be the technology improvements we have made on our existing technology. As I mentioned before—and I can go into more detail during the questions—we have e-mail that goes into the Journal, the Microsoft Journal. It is automatically moved through a program that we have in place since 2005 into the PST archive for records keeping, and what we have been doing is actually re-baselining that entire inventory of the records. We felt like we had to do this. We found some different technology glitches in some of some tools that had been wonderful workhorses for EOP, but as we were trying to do the analysis to try and figure out what was going on with the problem days and we were having problems replicating some and some were replicating, we felt it in the best interest to upgrade and update some of those tools and implement those tools around the records keeping inventory and statistical analysis process.

We are in the early phase. We actually have three phases we are implementing for this. We are in the early phase of that process, where we have just started to get some early results. They have not had a quality assurance check on them, so the results are very

preliminary and they are not conclusive. Some of the promising trends that we have been seeing is we have identified more e-mails for that exact time period that was looked at in 2005 than was previously identified. We have been able to identify and locate e-mails with an exchange for days that were previously red. There are, in this phase one, some days that still show as red. That is where phase two is going to come in. From a phase two perspective, we will be looking at the message level. And I can get into more detail on that during the Q&A, but in phase two it is our desire and our hope to eliminate all or most of the red days and low volume days by being able to read the information down at a more granular level.

When we get through a QA process in phase one and phase two, we will be sitting down with NARA to talk through our findings, where we still have anomalies, if we have any, and when we finish phase two we will sit down with NARA, and if there are any anomalies remaining, that is where we will have the conversation around a records restore, most likely looking at our disaster recovery backup tapes.

The OCIO staff is incredibly dedicated. They are working very hard on this effort. Everyone on the team wants a successful NARA transition. We want to make sure we get all of the e-mail records over to NARA at transition.

Thank you. And I would be glad to take any questions.

[The prepared statement of Ms. Payton follows:]

Testimony of Theresa Payton

Chief Information Officer, Office of Administration

Before the

House Committee on Oversight and Government Reform

February 26, 2008

Good morning Chairman Waxman, Ranking Member Davis, and members of the Committee on Oversight and Government Reform. I am Theresa Payton and I am the current Chief Information Officer (CIO) in the Office of Administration (OA) at the Executive Office of the President (EOP). I have been in this role since May 2006. I am glad to be here today to discuss the status of the White House efforts to preserve emails. I will summarize my remarks and ask that my full statement be included in the record.

Let me begin by saying that the Executive Office of the President is committed to maintaining a thorough and reliable archiving process for Presidential and Federal records. We believe that we have such a process currently in place. Work is underway to improve that process significantly and we fully expect such improvements to be implemented before the end of this Administration. We are also committed to having a robust and reliable system to quickly recover from any disasters that may affect the EOP network. We are confident that our disaster recovery system meets industry standards and has been responsibly managed. Before I discuss the EOP archiving process and disaster recovery system and address what I believe are the Committee's concerns regarding these activities, I would like to provide some background on my office and on the EOP email systems used by this Administration.

The Office of the Chief Information Officer (OCIO) provides around-the-clock technological support for all EOP components. OCIO provides components with services such as production support, application development and support, intranet and office automation, email, disaster recovery services, support for Continuity of Operations (COOP), Enterprise Architecture, Information Assurance, Federal Records Management, and technology assistance to the White House Office of Records Management. As part of this support, OCIO manages the email accounts for the sensitive but unclassified network at the EOP for over 3000 customers.

I have had numerous conversations with my staff and have reviewed OCIO documents pre-dating my arrival in May 2006. The portions of my written testimony relating to matters occurring before my arrival derive principally from those sources. It appears that the current Administration used Lotus Notes as its email platform at the beginning of the first term. By 2002, the decision was made to replace Lotus Notes with Microsoft Exchange. The transition from Notes mail to Exchange mail occurred over a two year period from 2002 through 2004.

From the start of the current Administration, the EOP has had a process for archiving email sent from or received by the EOP network. This archiving process has evolved over time as new technologies emerged and industry practices evolved. When Lotus Notes was the email platform, the archiving process relied on the ARMS system. ARMS was launched in 1994. At a general level, if a customer received email from outside of the EOP network (a non-EOP account), ARMS would archive the email during a scan of the customer's email account. If a customer sent or received email inside the EOP network using Lotus Notes, a copy of the email was sent to ARMS for archiving.

During the transition from Notes email to Exchange mail, the OCIO attempted to create a system to allow ARMS to serve the same archiving function for Exchange as it had for Lotus

Notes. This project, called EIS, was eventually abandoned due to various technical and system performance reasons. ARMS was a custom-designed application, and I understand that it was discovered that it just could not be effectively integrated with Microsoft Exchange—despite the best efforts of OCIO.

In place of ARMS, the OCIO developed an archiving process that used the journaling function inherent in Microsoft Exchange. Under that process, and in very general terms, whenever email is sent or received by an EOP Exchange customer, a copy of that email is automatically created and stored on a journal to which customers should not have access. Journaled emails are then archived on a separate server in what is referred to as a Personal Storage Table or "PST" file. This process today separates archived email by respective EOP component to facilitate preservation under the Federal Records Act or the Presidential Records Act.

We are aware that the Committee has expressed concerns about allegations that EOP emails were not properly archived between 2003 and 2005. I am aware of a chart created by OCIO staff in late 2005 to early 2006 that identifies dates and EOP components for which email counts were thought to be low or non-existent during the 2003-2005 time period. Since that time, the OCIO staff came to have reservations about the tool used to collect the data in the chart. OCIO thus hired a contractor to perform a comprehensive re-inventory of existing archived messages by component and date. This re-inventory effort is nearly complete. OCIO has also begun an analysis of potential anomalies. Once both the re-inventory and analysis are complete, we will have a separate team do a quality assurance review to confirm the accuracy of the results. This process of re-inventory, analysis, and quality assurance is complex, labor intensive, and time-consuming. At this stage, OCIO does not know if any emails were not properly preserved

in the archiving process. Once we complete our review, we will share the results with NARA. If there are any anomalies that cannot be resolved, we will work with NARA to discuss the details of a recovery effort and may seek additional help to ensure that the requirements of both the Presidential Records Act and the Federal Records Act are met during the transition of this Administration.

The EOP has continued to seek ways to improve the archiving process through new technology and updated procedures. For example, beginning in 2005, the OCIO undertook an internal review of record keeping procedures. OCIO made changes to and documented additional standard operating procedures as our internal review revealed areas where we could improve both the accuracy and performance of our archiving process.

After the transition to Microsoft Exchange, the EOP also considered implementing a hardware and software system called ECRMS (Electronic Communications Records Management System) in order to improve and expand the existing message archiving process already in place. However, in late 2006, after consulting staff in OCIO, I determined that ECRMS required additional investments and modifications if it was to fulfill the EOP's requirements for records management and archiving. While testing the process of loading email records into the ECRMS system, the team also found performance issues. For several reasons, including the need for additional modifications, the identified performance issues, and projected costs, the deployment of ECRMS was cancelled. Some of the hardware, software, and technical expertise gathered during the project were then used by OCIO for other projects.

The EOP is currently in the process of deploying Documentum™ and its platform extensions for records management, a DoD-approved system that meets NARA guidelines and will meet the EOP's requirements for records management and archiving. The Documentum™

system is widely used in the Federal Government and we expect will be less costly to implement than other systems considered, including ECRMS. We conducted a technology pilot in late 2007 to confirm that the technology will meet EOP requirements and we believe that the deployment of the Documentum™ system will meet the EOP's records management and archiving needs for the foreseeable future and will address many, if not all, of the alleged concerns raised about the current archiving process.

In addition to the archiving process to preserve emails, the EOP has had a disaster recovery system in place since the start of the Administration to backup our network for protection in the event of a catastrophe or system failure. The EOP Network has been and continues to be regularly backed up onto disaster recovery backup tapes as part of the EOP's disaster recovery system.

From April 2001 to October 2003, in accordance with industry standards and best practices, OCIO used a "Grandfather-Father-Son" approach to backups where three generations of full disaster recovery tapes were kept offsite. Under this approach, whenever a new generation of backups was created, the oldest set of tapes was available to be recycled.

We understand concerns have been raised that the recycling of backup tapes from 2001 to 2003 may have resulted in the loss of EOP emails. Let me be clear: whether or not disaster recovery tapes were recycled would not affect whether emails were preserved by the archiving process. The archiving process and disaster recovery system are separate functions with different purposes. The disaster recovery system is not the system designed to preserve and archive email communications. The disaster recovery tapes would, however, contain email information on the EOP system at the time of a backup, in addition to a backup copy of the email archives, as well as much other information. Therefore, in the event that an email was not

preserved by the archiving process, it may, nonetheless, be available on the disaster recovery tapes.

In September or early October 2003, OA ceased its practice of recycling disaster recovery tapes. OA continues to preserve its disaster recovery tapes to the present day. Since October of 2003, the OCIO has stored its backup tapes in a secured vault that meets the storage guidelines provided by the tape manufacturer and NARA. Of course, the EOP also continues to preserve emails through its normal archiving process, as it has since the start of the Administration.

In closing, I would like to reiterate that the OCIO is committed to maintaining a thorough and reliable archiving process for Presidential and Federal email records. We fully intend to complete our analysis of the archiving process, address any and all identified anomalies, and deploy the Documentum™ system as the EOP's email archiving and records-keeping solution for the foreseeable future. We look forward to continuing our partnership with NARA to ensure the EOP's Presidential and Federal email records are properly preserved throughout this and any future Administration and transitioned to NARA as appropriate.

Thank you. I will be glad to answer your questions.

Chairman WAXMAN. Thank you very much.

By bipartisan agreement on the committee, the chairman will control 15 minutes of questioning and then Mr. Davis will control 15 minutes on his side. So I will start off the questions.

Mr. Weinstein, I want to ask you some questions first. This hearing is about the White House compliance with an important open Government law, the Presidential Records Act. This act requires the President to ensure that his activities, deliberations, decisions, and policies are adequately documented. The act makes clear that a President's records belong to the American people, not to the President or his advisors or the Republican Party. As the Archivist, how important do you think the Presidential Records Act is?

Mr. WEINSTEIN. It is incredibly important, Mr. Chairman, and I think all of us agree. Whatever our politics are, we are all in agreement on that point.

Chairman WAXMAN. It is important because this preserves the records not only for history, but for the next administration.

Mr. WEINSTEIN. The records belong to the American people, and that best preserves it, yes.

Chairman WAXMAN. Thank you. Now, over the last year, serious questions have been raised about the White House compliance with this Presidential Records Act. We have learned about two violations of the act that appear to be serious. One involves the extensive use of Republican National Committee e-mail accounts by White House staff and the other involves the failure to archive e-mails sent through the official White House e-mail system. I want to start out by asking you about the use of these RNC e-mail accounts to conduct official White House business.

This committee first started asking questions about the use of RNC e-mails last March. As we investigated, we learned three facts: one, many senior White House officials, including Karl Rove and Andrew Card, had RNC e-mail accounts; two, these officials made heavy use of these accounts, including for official purposes, such as communicating about Federal appointments and policies; and, three, the RNC preserved almost none of these e-mails from President Bush's first term and only some of the e-mails from his second term.

Dr. Weinstein, the documents that we have seen reveal that the Archives was concerned about these RNC missing e-mails as well. Can you explain why?

Mr. WEINSTEIN. Well, I wish I had all the facts at this stage in the game, Mr. Chairman, to——

Chairman WAXMAN. Can you speak up?

Mr. WEINSTEIN. I wish I had all the facts at this point to discuss this issue, but the fact is that it has been our understanding that the White House has been working with the RNC to try to restore PRA e-mails that were created.

Chairman WAXMAN. Well, perhaps they are or they are not; we are going to get into that. But how concerned are you that we may not have the RNC e-mails from senior White House staff?

Mr. WEINSTEIN. Well, Mr. Chairman, I am concerned about the problems that we might have with any group of records, including these. I want the fullest, I think the American people want the fullest possible account of any administration.

Chairman WAXMAN. Karl Rove was a key advisor to the President. We also know he was an extensive user of the RNC account. Mr. Rove is reported to have sent and received "about 95 percent" of his e-mails through his RNC account. His secretary, Susan Ralston, confirmed for the committee that Mr. Rove used his RNC account extensively.

When we asked the RNC what kinds of records they had, they told us they had virtually no e-mails from Mr. Rove before November 2003. They had virtually none of his e-mails for 2001, 2002, and most of 2003. Well, these years were in many years the defining years for the Bush administration; they include the critical months when President Bush was making the case for war in Iraq.

Are you concerned about the loss of Mr. Rove's e-mails for these years, Mr. Weinstein?

Mr. WEINSTEIN. Mr. Chairman, I am concerned about the loss of e-mails that are White House e-mails, no matter what the system they are involved in. I am concerned about maintaining the fullest possible Presidential records. I should add, perhaps, that in listening to Ms. Payton's testimony, we are still awaiting the completion at the White House of this process.

Chairman WAXMAN. We are too, but I want to ask you about these RNC e-mails first, before we get into that.

Mr. WEINSTEIN. Before we go any further, though, my counsel has dealt with this issue to a very great extent. I would ask Gary Stern if he would like to add anything.

Chairman WAXMAN. Mr. Stern.

Mr. STERN. Yes. As we have discussed with the committee staff and with the White House, our view is Presidential records exist and must be preserved whatever system they are used on. So to the extent they were used on a non-White House system, it is still the responsibility of the White House to preserve them. We understand that, also, White House officials create non-Presidential records, and then, for those records, it would be appropriate to use a non-White House system like the RNC system for non-Presidential records involving political campaign and all.

Chairman WAXMAN. Well, we know Mr. Rove used most of his e-mails, whatever the subject, on RNC accounts. So if we have a deletion of Mr. Rove's RNC e-mail as the rule for the White House, not the exception, we don't know what he had to say. In fact, the committee learned that the RNC retained no e-mail messages for all of 51 of the 88 White House officials with RNC e-mail accounts. We don't know whether they were personal, political, or official Government. The records appear to be woefully incomplete for the remaining 37 officials. For example, the RNC retained e-mails from before 2006 for only 14. So we had 51 of the 88 White House officials using e-mail accounts and the records are incomplete except for 14 of these officials.

Mr. Stern or Dr. Weinstein, you and others at the National Archives have made repeated inquiries to the White House about this problem and the White House appeared to tell you it was taking all this very seriously. I want to read some notes from a May 21, 2007 meeting.

Your staff asked what steps the White House was taking to restore these e-mails and here is what your staff said they were told,

"We then asked about the RNC e-mail issue. They, the White House, are working with the RNC and looking at this issue. They are exploring how they will try to capture the Presidential record e-mails. This will be a separate restoration effort from the EOP e-mail restoration."

Dr. Weinstein, can you tell us what the current status is of the recovery effort? Specifically, has the White House taken steps to restore RNC backup tapes?

Mr. WEINSTEIN. Well, I hate to say this, Mr. Chairman, but I am afraid that is a question that is going to have to be asked to Ms. Payton and Mr. Swendiman simply because we have not been given that information. We were told by her testimony that the process is nearly complete, which is a phrase that she used.

Chairman WAXMAN. You have been told by the White House that the process is nearly complete to get the RNC e-mails?

Mr. WEINSTEIN. It is in Ms. Payton's testimony.

Chairman WAXMAN. Mr. Stern, do you want to respond to that?

Mr. STERN. On the RNC system, we have enquired periodically and we were under the impression they were still working with the RNC and some effort would be undertaken to recover whatever could be recovered from either backup tapes or from laptops, individual hard drives. We heard today that maybe the RNC is not doing that, and that would be a concern and a problem and disappointment. If it is a funding issue, that is where Congress would potentially need to come in and say if there are Government records there, they——

Chairman WAXMAN. So you were relying on the White House telling you that they are going to make sure they get all the records, including from the RNC.

Mr. STERN. That is correct, which is their responsibility.

Chairman WAXMAN. Yes. And I can understand why you would think that they should be the one doing it. But we talked to the RNC yesterday and they told us that the White House has taken no steps to obtain backup tapes. The White House hasn't begun any type of restoration effort and the tapes haven't been touched. I am sure you are concerned about that, is that correct?

Mr. WEINSTEIN. More than concerned about that, Mr. Chairman. Obviously, if that is the case, this should be looked into as soon as this hearing is over.

Chairman WAXMAN. Well, Ms. Payton and Mr. Swendiman, I would like to get your perspective. The White House told the Archives last May that it was exploring a restoration of RNC e-mail, but when we checked, the RNC told us the White House never even obtained the RNC's backup tapes. Why isn't the White House following through to recover and preserve these records?

Ms. PAYTON. Chairman Waxman, since you mentioned me first, I will go first. I have responsibility for the Executive Office of the President network and e-mails, so I am, unfortunately, unqualified to talk to you about the RNC restore; I am not part of that process. If, at some point, there were——

Chairman WAXMAN. You are not part of the process to get the RNC e-mails?

Ms. PAYTON. No, sir, I am not. No, sir, I am not.

Chairman WAXMAN. OK, well, maybe Mr. Swendiman is part of that process.

Mr. SWENDIMAN. As part of the Office of Administration, Mr. Chairman, we have responsibility for the official but sensitive EOP network. We can't control what individuals do on their own.

Chairman WAXMAN. But you have the responsibility for all the officials working at the White House to get their e-mail records, and if they use some other e-mail system, aren't you responsible to gather that information under the Presidential Records Act?

Mr. SWENDIMAN. Well, I am advised, Mr. Chairman, that Counsel's Office has taken steps with regard to that. The letters have gone out to former White House employees with regards to use of RNC laptops that——

Chairman WAXMAN. Letters telling them not to do it in the future or to get the information from the past?

Mr. SWENDIMAN. Mr. Chairman, I don't know the exact substance of the letter, I simply have been advised that step has been taken.

Chairman WAXMAN. Will you get that information, what steps have been taken, what letters have been sent?

Mr. SWENDIMAN. I will consult with counsel, yes, sir.

Chairman WAXMAN. Well, I am sure we asked the counsel for this information.

The White House e-mails that the RNC deleted are the core types of communications that the Presidential Records Act is supposed to preserve; they are the candid communications of the President's most senior advisors. The White House may not want these e-mails disclosed, the White House may be worried that the true record of how the White House led the Nation to war in Iraq will be embarrassing, but that is not a legitimate reason for your failure to recover the deleted e-mails. I think it is tremendously important that we get those Republican National Committee e-mails, and I assume, Mr. Weinstein, that you agree, the RNC has a box of backup tapes.

Are they being searched, Mr. Swendiman?

Mr. SWENDIMAN. Mr. Chairman, is what being searched?

Chairman WAXMAN. The box of backup tapes at the RNC.

Mr. SWENDIMAN. I don't know. All I can tell you, Mr. Chairman, is that among the steps that I am advised are being taken is, first of all, I mentioned the letter——

Chairman WAXMAN. Pull the mic and be sure it is on. Our Members are having trouble hearing you.

Mr. SWENDIMAN. The second is that there have been contractual efforts with regards to forensic and recovery. I cannot, at this time, tell you the status with regard to that.

Chairman WAXMAN. Well, this is what this hearing is all about and that is why you were invited to come. We were told that the White House has not even asked for them. Is that a problem, if the White House hasn't even asked for them?

They assured you, Dr. Weinstein and Mr. Stern, that they are going to take care of it and they are going to get this information.

Mr. WEINSTEIN. Mr. Chairman, I can only promise you one thing, that you and Ranking Member Davis and members of this committee will have my best information on this by the end of the week.

I am going to make some inquiries as soon as this hearing is over and hope that we can get to the heart of the matter.

Chairman WAXMAN. Well, we——

Mr. WEINSTEIN. I don't have an answer for you now.

Chairman WAXMAN. Well, you don't have the answers because the White House assured you they were getting it and it looks like, from what we hear, they haven't done anything.

Dr. Weinstein, you wrote to Fred Fielding, the White House Counsel, about this issue on May 1, 2007.

Mr. WEINSTEIN. Yes, sir.

Chairman WAXMAN. Particularly the archiving in the White House system itself. You wrote: "We believe that it is essential that the White House move with the utmost dispatch both in assessing any problems that may exist with preserving e-mails on the Executive Office of the President system and in taking whatever action may be necessary to restore any missing e-mails." After you wrote this letter, your staff made several attempts to learn more. These weren't successful.

Now I want to read from a memo that Mr. Stern wrote to you on September 5, 2007. Now we are talking about the official White House e-mail system. And Mr. Stern wrote: "We still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. More significantly, our repeated requests to begin office-by-office meetings to scope out and inventory the volume, formats, and sensitivities of the PRA records that will be transferred to the National Archives has gone unheeded. Of most importance, we still know virtually nothing about the status of the alleged missing White House e-mails. We have not received a written response to our May 5, 2007 letter regarding alleged missing Federal record e-mails. As we stressed to the White House last spring, it is vital that any needed backup restoration project begin as soon as possible in order that it be completed before the end of the Administration."

Dr. Weinstein, what was your reaction when Mr. Stern informed you that the White House had still provided virtually no information about a potentially large loss of Presidential records? And how would you describe the situation now? Do you all the information you need to assess the extent of this problem?

Mr. WEINSTEIN. In response to your first question, Mr. Chairman, I am obviously not happy about that situation. I would like an answer and I would like to move forward on this process. In connection with what the situation is today, I think we have a very sensitized group of people to this issue, but we don't have the results yet. So that is why I ask you for a few more days to see whether I can get some results for you.

Chairman WAXMAN. Well, we will certainly, without objection, hold the record open for you to give us any further information, and I am sure you will get further questions about this. But Congress doesn't have all the information we need. We still don't know what the White House is going to recover, whether they are going to recover the missing White House e-mails that the RNC deleted, and every week we seem to get a different story from the White House about whether the White House's own e-mail archives are

complete. I think it is important we get those RNC e-mails and we get the White House e-mails from their own operating system, and without that this administration is not complying with the Presidential Records Act.

I want to recognize Mr. Davis for 15 minutes.

Mr. DAVIS OF VIRGINIA. Thank you. Let me just say that these people are not responsible for the RNC e-mails. They have a separate corporate culture over there, isn't that correct, in terms of when they move them?

Mr. SWENDIMAN. That is correct.

Mr. DAVIS OF VIRGINIA. And you are not into that loop particularly. The other thing that troubles me about this is the fact that when you have the committee asking the RNC to recover e-mails that they may or may not have, that is a huge expense to the National Committee. My feeling is—and we need to look at this in the future—when you have congresses of different parties going after political committees, that is taking a lot of money out of the system for congressional investigations that could go other places, and I think if Congress really wants to pursue this, we ought to look at an appropriation or something, and not have it come out of their coffers. It has been hundreds of thousands, at a minimum, that I know that it has cost the RNC in this particular case.

Let me ask some questions.

Ms. Payton, we have backup tapes for all of this, don't we?

Ms. PAYTON. Excuse me?

Mr. DAVIS OF VIRGINIA. All the e-mails, are there backup tapes?

Ms. PAYTON. We have disaster recovery backup tapes, primarily——

Mr. DAVIS OF VIRGINIA. What is the difference between a disaster recovery backup tape and a backup tape?

Ms. PAYTON. Sure. Let me try and explain it. From a disaster recovery standpoint, which is what our backup tapes are, what you do is you actually take a picture of what all of the servers, the applications——

Mr. DAVIS OF VIRGINIA. Well, backup tape covers everything that happened.

Ms. PAYTON. Yes, sir.

Mr. DAVIS OF VIRGINIA. It may be for disaster recovery, but are there backups for all of these missing e-mails?

Ms. PAYTON. We believe we should have backups based on our first pass analysis, which is not complete and has not been QAed yet.

Mr. DAVIS OF VIRGINIA. But, in all likelihood, there are backups for everything.

Ms. PAYTON. Yes, sir.

Mr. DAVIS OF VIRGINIA. So there is nothing really missing here, it is recoverable.

Ms. PAYTON. We won't know until we finish the analysis, but we feel very confident that we will be able to use the disaster recovery backup tapes if we need to. At the end of phase two of our analysis, if we still have anomalies——

Mr. DAVIS OF VIRGINIA. So the committee should be able to get this, if they want it, one way or the other, is that——

Ms. PAYTON. Yes, sir.

Mr. DAVIS OF VIRGINIA. OK. I mean, I think that is important to get out here. Now, it is expensive going through the disaster recovery backup tapes to retrieve that, is it not?

Ms. PAYTON. Yes.

Mr. DAVIS OF VIRGINIA. Can you describe the cost to me?

Ms. PAYTON. The team actually put together an algorithm based on having to do this before, and basically the algorithm—and it is a very rough approximation, but if you have one component 1 day that needs to be restored from a disaster recovery backup tape, we have estimated it would cost around $50,000 for one component 1 day. So if you have three components on one single day, that would be three times 50,000, which would be 150,000.

Mr. DAVIS OF VIRGINIA. Well, can you give me a ballpark number if we had to go to the backup? Assume for a minute we can't recover the originals of this. To get what the committee wanted to, if we had to go to backup, can you give me a ballpark?

Ms. PAYTON. There is also servers that would have to be purchased because you wouldn't want to do the backup on servers you already have, so we said it would be about $500,000 for the servers. And I believe—and I am working off of memory here—but I believe we had said if we restored every single day from the original analysis, it was going to be somewhere in the ballpark of $15 million or more.

Mr. DAVIS OF VIRGINIA. OK. But it is recoverable. In your judgment, by the time you have looked at all of this, one way or the other, these haven't been doctored or hidden; it is recoverable.

Ms. PAYTON. Yes, it should be recoverable.

Mr. DAVIS OF VIRGINIA. At a cost.

Ms. PAYTON. The caveat I give is you don't know what you don't know until you get into the technology. So sometimes you don't know if there might be a flaw in a tape and some of those other things. But based on what we know right now, it should be recoverable.

Mr. DAVIS OF VIRGINIA. OK, thank you very much.

Mr. Issa, do you want to——

Mr. ISSA. Thank you. I thank the gentleman for yielding.

Mr. Chairman, I would ask, since I understand we are going to accept additional information at the end of this hearing, that the back-and-forth correspondence with Mr. Steven McDevitt related to the White House guidance and his further guidance be included in the record.

Chairman WAXMAN. Without objection, that will be the order.

Mr. ISSA. Thank you, Mr. Chairman.

[The information referred to follows:]

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JIM JORDAN, OHIO

January 30, 2008

Mr. Steven McDevitt
43425 Sperrin Court
Ashburn, VA 20147

Dear Mr. McDevitt:

The Committee on Oversight and Government Reform is investigating whether the Executive Office of the President has complied with federal laws requiring the preservation of presidential and federal records, including allegations that a large number of electronic messages from several components of the White House may not have been properly saved.

As part of the Committee's investigation, we request your appearance at a transcribed interview with Committee staff during the week of February 4, 2008, in Room 2157 of the Rayburn House Office Building.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. If you have questions about this request, please contact Anna Laitin or John Williams of the Committee staff at (202) 225-5420.

Sincerely,

Henry A. Waxman

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
WASHINGTON, D.C. 20503

January 31, 2008

Sent Via Fax

Mr. Steven McDevitt
43425 Sperrin Court
Ashburn, VA 20147

Dear Mr. McDevitt:

We understand that the staff of the House of Representatives Committee on Oversight and Government Reform has contacted you about participating in a transcribed interview with committee staff during the week of February 4, 2008. It appears from the subject matter of the January 30, 2008 letter to you from that committee that there are significant Office of Administration interests in the subject of your interview, which the letter articulates as "whether the Executive Office of the President has complied with federal laws requiring the preservation of presidential and federal records, including allegations that a large number of electronic messages from several components of the White House may not have been properly saved."

The Office of Administration (OA) has an institutional interest in statements made by a former OA employee about his service as an OA employee, including his involvement in matters internal to OA operations. Although the scope of the committee's inquiry is not completely clear, it appears reasonable to expect that committee staff intends to question you about matters in which there may be significant executive branch interests. Appropriate steps may be needed to address that possibility.

Please telephone me, at 202-395-1268, immediately to discuss this matter. If you are represented by personal counsel, please ask your personal counsel to contact me immediately.

Thank you for your consideration in this matter.

Sincerely,

M. Elizabeth Medaglia

M. Elizabeth Medaglia
General Counsel

Gmail

Steven McDevitt <steven.mcdevitt@gmail.com>

Follow-up to Friday Discussion

Steven McDevitt <steven.mcdevitt@gmail.com> **Mon, Feb 4, 2008 at 9:33 AM**
To: mmedaglia@oa.eop.gov
Cc: steven.mcdevitt@gmail.com

February 4, 2008

Sent Via Email to mmedaglia@oa.eop.gov

M. Elizabeth Medaglia
General Counsel
Executive Office of the President
Office of Administration
1800 G Street, NW
Washington, DC 20503

Dear Ms. Medaglia:

Having again reviewed your letter of January 31, 2008 and after our telephone discussion on February 1, 2008, I am still concerned and confused about your statement that the EOP and OA "institutional interested" need to be addressed, and that "appropriate steps may be needed." The telephone discussion did not provide me with specific issues about which you are concerned.

Recognizing the urgent nature of these proceedings, I would like clarity and / or definitive responses on the following issues:

1. Are there specific boundaries across which I am not authorized to discuss internal EOP and or OA activities with the Committee?

2. What, if any, are the specific concerns does the EOP and / or OA has regarding my interview with the committee?

3. Since the interview is regarding the activities that occurred during my employment with the EOP and since the Committee staff has informed me that it would not be appropriate for White House or Office of Administration Counsel to be present during this interview, I am requesting that the Office of Administration provide me with independent legal representation for these proceedings.

4. In sections C.10 and C.11 of the declaration of Ms. Theresa Payton from January 15, 2008 she refers to a "former employee." Am I the "former employee" to which she is referring?

Given the serious nature of this investigation and the short timeframe in which I need to respond to the Committee, please respond as quickly as possible. I recognize the importance of the principle of the separation of powers and the need for the Executive Branch to act independently and without encroachment from Congress.

Please feel free to contact me anytime at 703-888-6531 or via email at steven.mcdevitt@gmail.com. Thank you for your time and attention in this matter.

Sincerely,
Steven McDevitt

February 7, 2008

By FAX to: 202-456-6279 (Mr. Fielding)
202-456-5440 (Mr. Flood)
202-456-7921 (Ms. Medaglia)

By Email to: mmedaglia@oa.eop.gov

Fred Fielding
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Emmet Flood
Special Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

M. Elizabeth Medaglia
General Counsel
Executive Office of the President
Office of Administration
1800 G Street, NW
Washington, DC 20503

Dear Ms. Medaglia and Messrs. Fielding and Flood:

It has been nearly a week since I received your correspondence indicating that you have concerns regarding the request for an interview that I received from the House Committee on Oversight and Government Reform regarding the preservation of presidential and federal records. Since receiving your letter, I have made number of attempts to obtain clarification about your concerns and what appropriate steps may be needed to support your institutional interest. I have corresponded or discussed the issues raised in the letter with Ms. Medaglia on at least three occasions. I was informed that I would receive clarification or resolution regarding these issues and I have yet to receive any response from either the Office of Administration General Counsel or White House Counsel.

From your letter of January 31, 2008, one can infer that there exist certain restrictions and limitations on the subject areas about which a former employee may discuss with the Committee. If this is the case, please provide explicit guidance to me about the scope and nature of these restrictions and limitation. I am very concerned about your statements regarding your "institutional interest" and that "appropriate steps may be needed."

The following specific issues were provided to the Office of Administration General Counsel on February 4, 2008. For your convenience I have again listed them here:

1. Are there specific boundaries across which I am not authorized to discuss internal EOP and / or OA activities with the Committee?

2. What, if any, are the specific concerns that the EOP and / or OA has regarding my interview with the committee?

3. Since the interview is regarding the activities that occurred during my employment with the EOP and since the Committee staff has informed me that it would not be appropriate for White House or Office of Administration Counsel to be present during this interview, I am requesting that the Office of Administration provide me with independent legal representation for these proceedings.

4. In sections C.10 and C.11 of the declaration of Ms. Theresa Payton from January 15, 2008 she refers to a "former employee." Am I the "former employee" to which she is referring?

Given the serious nature of this investigation and the short timeframe in which I need to respond to the Committee, I am requesting that you respond to the issues by Friday, February 8, 2008. For your convenience, I have included copies of the previous correspondence. If these issues are not resolved, I will have to inform Committee staff about this situation.

Please feel free to contact me via email at steven.mcdevitt@gmail.com or via telephone anytime at 703-888-6531. Thank you for your time and attention in this matter.

Sincerely,

Steven McDevitt

THE WHITE HOUSE

WASHINGTON

February 8, 2008

Dear Mr. McDevitt:

Thank you for your letter of yesterday's date and for your email message to Elizabeth Medaglia, Office of Administration General Counsel, dated February 4, 2008.

I appreciate your reaching out with questions relating to the House Oversight and Government Reform Committee's invitation to provide a transcribed interview on the subject of "preservation of presidential and federal records, including allegations that a large number of electronic messages from several components of the White House may not have been properly saved." Letter from Chairman Henry A. Waxman to Steven McDevitt dated January 30, 3008. Here are my responses on certain questions posed in your communications:

1. Are there specific boundaries across which I am not authorized to discuss internal EOP and/or OA activities with the Committee? Given the variety of potential questions and the many ways in which questions might be asked, it is not easy to specify a precise boundary in advance of an interview. That is why government counsel, representing governmental interests, should be present at such an interview. No interviewee should be placed in the position of having to draw that line while simultaneously trying to answer staff questions. It's not fair.

With that said, let me do my best to answer your question: You are not authorized to discuss the content of (i) deliberative discussions involving the participation of OCIO management personnel; (ii) deliberative discussions, if any, in which OA counsel participated; (iii) or deliberative discussions, if any, in which lawyers from the White House Counsel's Office or other White House management personnel may have participated (collectively "potentially protected information"). Although we would expect committee staff to respect its own scope limitation in this matter, the same considerations apply if you are asked questions falling outside the scope of the Chairman's January 30 letter. If there is any question in your mind whether a question would call for potentially protected information, you are not authorized to answer it, and we therefore ask that you not answer at that time. The appropriate process in that context is to consult with White House or OA Counsel about how such questions might be answered so as to accommodate legitimate committee oversight needs in a manner consistent with executive branch institutional interests.

2. What, if any, are the specific concerns . . . the EOP and/or OA have regarding my interview with the committee? The Office of Administration encourages you to cooperate with the committee on all factual inquiries falling within the scope of its legitimate oversight interest. Although we are concerned that sensitive network information not be publicly disclosed, committee staff has previously assured the White House that they will safeguard such information. Accordingly, although OA is concerned about the handling of any information that could increase the risk of vulnerability to the EOP Network (for example, we would not like to see such information disclosed to the press or otherwise made publicly available), the sensitive

character of your factual knowledge should not present a barrier to your answering appropriate interview questions.

In addition, as your email notes, the present situation may implicate the principle of separation of powers and there is at least some potential for encroachment on that principle in this setting. Our concern in that regard is one that your communications suggest you yourself may share: that in the absence of appropriate government counsel, you will find it difficult or impossible to assess whether staff questions call for potentially protected information. As a consequence, there is a concern that you will inadvertently disclose information you are not authorized to disclose. That concern is heightened by your indication that you have been informed by committee staff that neither White House nor OA Counsel may be present at your interview. In our view, the exclusion of government counsel would be improper for the reasons I have identified.

3. *Request for Representation.* Because committee staff has told you that it would not be appropriate for White House or OA Counsel to be present at your interview, you have requested "independent legal representation." As noted above, the Administration position is that government counsel should be present to protect governmental interests at issue in your interview. Let me note also that, to the extent your interests coincide with the interests of the Office of Administration, the presence of government counsel representing government interests ought to be sufficient.

It may be that you believe your interests differ from those of the OA and the White House, and for that reason you are seeking personal counsel to represent you in your individual capacity. (In that circumstance, any government counsel attending your interview as counsel for OA or the White House could not represent your personal interests.) I understand you to be requesting either (i) personal representation of you by a government lawyer or (ii) government payment/subsidization of a private lawyer who would represent you in your personal capacity at the interview. My understanding is that the Department of Justice generally does not provide individual capacity representation for congressional proceedings, although it may do so when individual capacity representation is already being provided to an individual in the course of related individual capacity litigation. Neither the White House nor the Office of Administration has a practice of providing private counsel to employees for the purpose of representing them in their individual capacity.

Thank you for your inquiry. Please contact me at if you think it necessary to discuss this matter further.

Sincerely,

Emmet T. Flood

Emmet T. Flood
Special Counsel to the President

cc: M. Elizabeth Medaglia
General Counsel, Office of Administration

February 13, 2008

By FAX to 202-456-5440

Mr. Emmet Flood
Special Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. Flood:

Thank you for your letter of February 8, 2008 regarding my questions related to the House Oversight and Government Reform Committee and their invitation to me for a transcribed interview on the subject of "preservation o Presidential and federal records."

To summarize your perspective and your response to my questions, you have stated that I am not authorized to discuss with the Committee anything related to deliberative discussions involving the participation of OCIO management, the deliberative discussions in which OA Counsel participated, and the deliberative discussions in which lawyers from the White House Counsel's Office or White House management participated. Given that during my tenure at the EOP, I was the Director of Architecture and Engineering, a member of OA / OCIO management, and given that nearly all discussions related to the preservations of records involved OCIO management, Office of Administration Management, Office of Administration Counsel, White House Counsel and White House Management, the natural conclusion to your restrictions would be that there is practically nothing that I am authorized to discuss with the Committee.

Also, since I am not an attorney and since I do not have legal representation in these matters, it is my desire that I not put myself in the position where I have to make legal judgments about what is within the scope of allowable information that can be shared with the Committee. Because of this complex of restrictions and the risk of erroneous legal judgments, I have respectfully declined the request by the Committee for an interview. I expressed to them a willingness to participate in this process, when and if White House Counsel and the Committee can agree to the parameters for a reasonable interview process.

I realize that there are many complex issues related to this topic. I would be happy to sit down with you to provide you with the details and insight into the WHO / OA / OCIO decision making process related to email records management from 2002 to 2006. Please feel free to contact me via email at steven.mcdevitt@gmail.com or via telephone anytime at 703-888-6531. Thank you for your time and attention in this matter.

Sincerely,

Steven McDevitt

Mr. DAVIS OF VIRGINIA. Would the gentleman yield for one more?

Mr. ISSA. Of course. Take your time.

Mr. DAVIS OF VIRGINIA. Let me just make one other comment on White House versus RNC, because this is a long-term problem I think this committee needs to wrestle with if we are going to be successful.

You have a political operation in the White House, and you do politics and you do governance at the same time. To be able to use Government systems to do political e-mails would really not be consistent with the Hatch Act and everything else. Is that everybody's understanding? Mr. Stern?

Mr. STERN. Well, that is correct, and with the Presidential Records Act. The Presidential Records Act itself requires that White House officials separate Presidential records from what are called personal records, which include political records. So they are supposed to keep them separate and generally not use Government systems for non-Governmental business.

Mr. DAVIS OF VIRGINIA. I think what we need to do, we can't reinvent the past, but, going forward, we should—one thing this committee could do is we could is we could outline some guidelines in the future for how you keep those records, saving them and the like. I think that may be helpful. I mean, the fact that you had different servers and computers keeping these things in itself is compliant with the law.

Mr. STERN. Yes, the notion of having a separate computer to do political work in the White House makes sense; you just shouldn't be doing your official work on that computer.

Mr. DAVIS OF VIRGINIA. Right. And that would mean that for the political parties, now all the e-mails wouldn't have gone—I mean, if it was an RNC or a DNC computer that you were keeping there, maybe we ought to put out guidelines for preservation of records, which currently don't exist. Would that be a recommendation that might come out of here that could be helpful in going forward?

Mr. STERN. I would think so. And that is the kind of thing that—you know, the White House Counsel issues records management guidance for all White House employees that they should be doing and I think did do, in fact. There is guidance to that effect at some level, I believe, by the White House.

Mr. DAVIS OF VIRGINIA. But this is—I mean, e-mail, this is fairly new, this has evolved over the last decade, and it may be appropriate, Mr. Waxman, at the right time, at least going forward, that we put out some hard and fast rules.

Mr. Weinstein, do you have any thoughts on that?

Mr. WEINSTEIN. I am in total agreement with that, Mr. Davis. One of the points I would like to make is about the cost of this. Apparently, this process of restoring e-mails from the Clinton years cost about $12 million and took about 2 years to achieve, so these are not cost-free issues.

Mr. DAVIS OF VIRGINIA. I got you. Thank you.

OK, Mr. Issa.

Mr. ISSA. Thank you.

Sort of finishing up with Mr. McDevitt, my understanding from staff is that the call that was made, they were prohibited from asking certain probative questions, one of them clearly would be is Mr.

McDevitt working with CREW in private litigation. Certainly, that would be a fair question if he were here before us today. Another one would be, you know, were the interrogatories that he submitted the result of back and forth work with the majority. Certainly, I would like to know that. Last, I might note for the panel before us that Mr. McDevitt, a Federal employee at FEMA, chose—even though he is a past White House employee—chose to use his g-mail account to correspond back and forth with us as to whether or not he could give testimony.

And I think, Mr. Stern, I will start with you, if you don't mind.

Is it appropriate to use g-mail when you are a Federal employee and a committee of Congress is asking you questions? Or would that have been something that he should have done on his FEMA account, since he is a Federal employee, and he was contacted in the ordinary course of previous Federal employment?

Mr. STERN. Well, ultimately, like we have said, whether something constitutes official Government business and therefore a Government record has to preserved on whatever system you use it on. People do use their home e-mail accounts if they are working from home and don't have access to the Government account. So the fact of mere use of a private account for Government business is not prohibited, it just needs to be preserved according to whatever Government recordkeeping laws apply.

Mr. ISSA. OK.

Mr. STERN. But g-mail is not something where you can easily catch the archive on it.

Mr. ISSA. Dr. Weinstein, are you keeping all of the YouTube stuff that is up on the President? Are you keeping all the other activities, the things that show up on the internet for President Bush and his administration? Are you capturing that? Because certainly it is part of the total internet, but not part of Ms. Payton's normal capturing.

Mr. WEINSTEIN. What specifically, are you referring to?

Mr. ISSA. Well, if the chairman thinks that he should have Karl Rove's every thinking, including correspondence with the wife or a girlfriend or an old buddy because it was done at the RNC and not official work, toward this voyeur, peeping tom thing that you are entitled to everything, the question is, are you capturing everything or, in fact, are you leaving a huge amount that is out there not there. Are you capturing every utterance of the President, no matter where he is, for example?

Mr. WEINSTEIN. Congressman, I think you know the answer to that question.

Mr. ISSA. I do, and, unfortunately, the only time I have is the time to say that this committee was supposed to be looking into the failure to keep 200 days—it continues to shrink—worth of e-mail, but it is very clear that it is Karl Rove's nonofficial activities that, for example, were related to fundraising or other activities, maybe strategizing how the Republicans in the House could have kept the majority rather than become part of the minority, which, I suspect, Karl Rove did at the RNC. He probably did that, and would his successor in a Democrat administration.

So my question is, if Karl Rove over at the RNC chose to decide that, let's say talking about fundraising, or talking about

strategizing how to maintain a majority in the House or the Senate, if he did something on an e-mail, would that be appropriate for you to gather at the time, Mr. Weinstein? You're shaking your head no, so I assume that you have an answer to that, that is not appropriate, right?

Mr. STERN. The Presidential Records Act pretty clearly defines what is a Presidential record and what is not a Presidential record, and says activities by officials for purely political purposes, campaigns, reelection of the President are non-records and should not be maintained by the Government system and not—they do not come to the National Archives as Presidential records. So it is entirely appropriate to conduct that business on a separate system.

I think the issue is always, was there are also official Presidential records on that system. That is what we would be interested in getting at.

Mr. ISSA. Well, but is there any evidence that any of you have that there is official Government Presidential records there? Or are we simply going on a fishing expedition at $40,000 or $50,000 dollars a month of campaign funds at the RNC because we have the power of subpoena? And we will forget the second half of that for a moment.

Do any of you know of any official deliberative, required under law, not nice to have but required under law, that was done at the RNC? Obviously, from the Government to the RNC you have already got, you will capture that. We are talking about use of other servers and other e-mails not related to the Government. Do any of you know of a single document, because this committee doesn't, a single document that should have been in the archives but, in fact, was done at the RNC?

Mr. WEINSTEIN. Two points. First of all, it is hard to know anything before we have some information.

Mr. ISSA. OK. Now, that is the whole point. We are not entitled——

Chairman WAXMAN. The gentleman's time——

Mr. ISSA. No, no, but—Mr. Chairman, this is my time, if you don't mind. You have used plenty of time that is not allocated time under the committee rules.

I need to be as simplistic as possible because we have limited time. If you know of any, you say yes; if you do not know of any, you say no. I understand that there might be some there that we do not know, but there might be some on YouTube.

The President may have had a conversation, a deliberative conversation, well, at a fundraiser. He may have done that, but it is not being captured by you today, nor is there a burden under law to go get it to see, is there? You have no mandate to go peeping tom into every piece of correspondence that people say is private in order to determine whether it might be public.

Mr. WEINSTEIN. Of course not.

Mr. ISSA. OK. So, I mean, it is important for today because Ms. Payton, I think, has very important information for us, that there will be a certain amount of days of re-imaging servers with the images you captured as the typical backup you do. It is much faster, obviously, to capture an image than to do a sequential backup.

You captured images. If you are lucky, you capture one and you get 80 days' worth of back, or 30 days worth of back e-mails; if you are not lucky, you may have to go day after day after day to capture them. And I appreciate the fact that sometimes those images are not 100 percent perfect. You might not be able to restore a server, and that may be lost, and it may be millions of dollars.

But the committee's legitimate reason for calling this today, as I understand, is not the RNC; it is whether or not you can capture that and what it will cost. And I think you have given us a great answer that if all we care about is Dr. Weinstein's ability to get the legitimate archives that we know should be available to the history of America, you are going to be able to provide that in all likelihood, all or virtually all.

So now I get back to the same thing in the remaining time, and I will ask each of you, do any of you know of something that was wrongly use outside official channels by Karl Rove? Because it is clear the chairman, a little bit like Dan Burton, who I disagreed with some of what he did in the 1990's, but he is clearly wanting to know what Karl Rove said or did even if Karl Rove did not deliver it as official work. And the question is, do any of you know of any misconduct by Karl Rove using the RNC to circumvent what would otherwise be official legitimate activities covered under the Records Act? Do any of you know of that, yes or no, please?

Mr. WEINSTEIN. Yes or no?

Mr. ISSA. Yes or no. I mean, do you know or do you not know? You do not know.

Mr. WEINSTEIN. I would say that the question itself is both above and below my pay grade. [Laughter.]

Mr. ISSA. Mr. Chairman, I will take that as a no, and thank you.

Chairman WAXMAN. I would take it as more than a no.

For the record, the White House has a responsibility of preserving all of the e-mails. And if some of the e-mails are at the Republican National Committee, the White House has a responsibility to get them, but only those that relate to Federal work, Government activities.

And when we know that, for the record, that there are 51 of the 88 White House officials who had RNC e-mail accounts, and then we do not know what has happened to 37 of those 51, and before 2006 only 14 of these officials had the e-mails even retained at all and that Karl Rove, for example, used 99 percent of his time on RNC e-mails, one would assume he was doing some Government work. But we do not know unless we see the e-mails. And if we do not see thee-mails, we do not know.

Mr. ISSA. Mr. Chairman, do you presume that we have a right to look into private people's lives simply because——

Chairman WAXMAN. Absolutely not.

Mr. ISSA [continuing]. There might be something there?

Chairman WAXMAN. Absolutely not. But the White House has an obligation to have the official business of the White House on e-mails that are preserved. And they need to be preserved whether they are on one account or another.

Mr. ISSA. Mr. Chairman, I truly agree with you on that, and that is why we have been cooperating as a minority. But I would hope that we would ask the White House just as what I asked here, are

there any records that are covered under official deliberation in the Records Act that have been conducted under any non-Government service by any individuals and ask them to answer that.

Chairman WAXMAN. Mr. Swendiman, that is a good question. Are there Government activities that are handled on an RNC e-mail account when we have so many employees of the highest level in the White House with no official records of their e-mails, and we know that they use their RNC accounts for everything that they send on e-mails?

Mr. SWENDIMAN. Well, much of the things that you have talked about, Mr. Chairman, preceded my coming to the position of Director of the Office of Administration.

Chairman WAXMAN. Oh. Well, then, it's improper for us to ask you. But you are here representing the White House? Let me go on to Members who are waiting for their opportunity to ask questions.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

As I listened to that discussion, I just happened to have in my hand a report that says Investigation of Possible Presidential Records Act violations. And information in the report indicates that White House officials used their RNC e-mail accounts to conduct official business. So I am not sure that we have to speculate about that. I think that we actually have the information that has been under investigation and, actually, is written in a report. So I think we can move on.

But let me move on to my questions of Dr. Weinstein. As I understand the White House e-mail problem, this all began in 2002 when the White House decided to move its staff from the Lotus Notes e-mail system to the Microsoft Exchange e-mail system. But when the White House switched away from the old e-mail system, it also abandoned the archiving system that went with it.

The archiving system was called the Automatic Records Management System [ARMS], and had been used since the Clinton administration. The problem was that instead of putting in place a new archiving system, the White House began an ad hoc process called journaling. And under this process, a White House staffer or contractor would collect copies of e-mails and manually save them on various White House servers.

The committee interviewed Carlos Solari, who was Ms. Payton's predecessor, as the White House Chief Information Officer, and he told us that this journaling process was "a temporary" and "short-term" solution that was not considered a "good long-term solution."

Dr. Weinstein, your own staff had a similar reaction. In an e-mail sent last November, Sam Watkins with the Archives said that the archiving system used by the White House "hardly qualifies as a system" by the usual IT definition.

My question is, do you agree with this ad hoc journaling process was not an ideal e-mail archiving system?

Mr. WEINSTEIN. Congressman, may I first compliment you on a very brief distilled analysis of the systems, which I am afraid I could not match. So we will start with the fact that I am a very low-tech person, I have only been at the Archives for 3 years. But I think the judgment of that system will have to be made by col-

leagues who have watched this over—unfortunately, I am not even sure that Mr. Watkins is here. Is he here?

So we will listen to my counsel on that one.

Mr. DAVIS OF ILLINOIS. So you would not say that this is an ideal——

Mr. WEINSTEIN. Well, I think when one has to change any system completely, or one decides to change any system completely, you are going to run into not simply the normal obstacles but that wonderful historical—I am a historian by profession—and the law of unintended consequences is the only major historical law which I know, which is——

Chairman WAXMAN. Dr. Weinstein, we're having a hard time hearing you. Pull it right up to——

Mr. WEINSTEIN [continuing]. Which is absolutely infallible for historians which is a law of unintended consequences. I am sure there were some in the change from one system to another, but perhaps Mr. Stern knows of some specifics here.

Mr. DAVIS OF ILLINOIS. Well, let me ask you, Mr. Stern, on responsive, do you have any concerns about the adequacy of the White House archiving system?

Mr. STERN. I think, and as the documents we provided to committee reflect, it had been our understanding that the journaling function was meant to be temporary stop-gap until they put in a new formal records management application which we had spent some time working with them during the first term of the President, and which we still had hoped and expected they would put in a new formal system.

So I think, as the quote you indicated, or you quoted from, indicates that it is our view that the journaling function is not the ideal solution.

Mr. DAVIS OF ILLINOIS. And it has been used for 6 years, so I would want to ask Dr. Weinstein, do you have any concerns——

Mr. WEINSTEIN. Correct.

Mr. DAVIS OF ILLINOIS [continuing]. About how long this system has been used, or the White House has continued to rely upon a nonproductive system?

Mr. WEINSTEIN. Congressman, in fairness to the White House, what I would like to see is the results of what my colleague here, Ms. Payton, is doing. You indicated that your process is coming to a conclusion, so I would like to hear the results of what Mr. Swendiman and his colleagues have come up with, and it seems to me to be unfair to judge that system before we have seen it in operation. And this is, literally, the first time it can be seen in full operation.

Mr. DAVIS OF ILLINOIS. Well, let me ask Ms. Payton how she would respond to that, or if she has any concerns about it.

Ms. PAYTON. If your question, Mr. Davis—I just want to make sure I understand the question you are asking me—is around—is it an ideal solution?

Mr. DAVIS OF ILLINOIS. We used it—I mean, the White House has continued to use it pretty much knowing that it was not yielding the kind of results that you would want to have it yield.

Ms. PAYTON. I think this is a very complex challenge. It is not as simple to say this is the right software produce and this is the wrong software product.

What I have been able to gather from the people who have been here prior to my arrival, as well as some of the documents that I have read, is best efforts have been made to actually do a more comprehensive solution, but once the products had run through their paces through some of the unique and demanding requirements that EOP has, they have to do both Presidential Records and Federal Records Act management. They have to separate things out by components, and they have to be able to record key statistics so that they can do searches.

And it appears that each time those products were run through the paces, they were left wanting. So that has been the challenge.

So part of what we have been doing in knowing that we want a more comprehensive solution—this is not the solution that we want to live on for the rest of the time that we are on exchange, barring whatever the next platform is that comes out for e-mail, we know that we want to move to a newer platform. However, in the meantime, you have to make do with what you have and make sure the processes around it are tight, make sure that people are trained, and as much as you can improve the technology around it to make sure the processes capture any potential problems that may happen.

A comprehensive solution still does not account for, if you have four processes around a comprehensive solution, if it breaks, you are still going to have challenges. I think we have seen that in the industry. And I am not going to, you know, mention by name some of the large companies that have had challenges with this that do have more comprehensive solutions.

So I hope I am answering your question, Mr. Davis. Would it be what my staff and I would have picked if we could have had the ideal world, probably not. But it is the solution we have, and our focus is on making sure it is accurate, reliable, stable, and has good processes around it until we can get on a more comprehensive solution.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Chairman WAXMAN. The gentleman's time has expired.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. Sixteen years is, I think, Mr. Chairman, you have been on the committee longer, I am sure you have, but I have been on 16 years. It is interesting how what comes around sort of goes around.

Here with this discussion reminded me of, with the Clinton administration, and the missing FBI files, and those were not e-mails, those were FBI files. Remember Craig Livingstone, and I think Mrs. Clinton was in the middle of that one, too. But it is interesting how it sort of just all comes around full circle. Now, we are looking for some e-mails.

And this raises an interesting question, because we have gone from like hard FBI files and documents to the electronic era. I had a good discussion with the librarian of Congress because the same thing is happening with Congress. You used to have all these great, well, the archivist has an incredible collection of hard copies. I

think it is just one of the most fabulous things I have ever seen is to go into the Archives. And you do a, generally, a magnificent job of preserving those documents. But we are entering a new era in trying to sort out sort of the rules of how you preserve electronic communications.

Ms. Payton, this Steven McDevitt that has made some allegations, part of the reason that he was upset was that, I had heard that there was a difference in technology he wanted to implement. Are you aware of that as far as recording e-mails and preserving them?

Ms. PAYTON. Did you——

Mr. MICA. Are you aware of that, Dr. Weinstein?

Mr. WEINSTEIN. Well, obviously, in an ideal world, which is, you know, Congressman, is the world we live in, it would be best if all concerned had a very high comfort level with the technology they were using. I am not privy to the specific arguments involved with technological debate over what to do at the White House in this regard. I am at the National Archives.

Mr. MICA. Well, is there a difference of opinion as to how the records were kept, do you know?

Mr. WEINSTEIN. I am not sure that there was. Did you have a difference of opinion?

Mr. MICA. Well, if there was not, we would have one protocol, and everything would, things would be saved. And, obviously, some things are missing that Mr. Waxman would like to find.

Mr. WEINSTEIN. But at the staff level, it seems to me that one of the things that keeps the system working is a remarkable amount of civility back and forth, normally, between the staffs in terms of getting basic things done.

Mr. MICA. But, you know, the high regard I have for the Archives. Mr. Stern, I think you were involved in the Sandy Berger issue, and I asked that we find out about the missing papers.

Now, Sandy Berger had top secret classified documents he was charged by President Clinton to report to the 9/11 Commission, and he had access to and misplaced top secret documents. Is that not correct, Mr. Stern?

Mr. STERN. He had access. He had clearance. I mean, I could answer your question, if you would like. It seems that is, obviously, a separate topic from what this hearing is about.

Mr. MICA. No, but you are charged, it is just like I am going to ask Ms. Payton about the Clinton records, you are charged with keeping Presidential records. The Clinton records, is there not a hold on some of those being released now for the Clinton Library?

Ms. Payton, is that correct?

Ms. PAYTON. My understanding is they are NARA, sort of in a kind of a temporary area until all of them are——

Mr. MICA. So we cannot get access to Presidential records from that administration, and then the Archives, which does its best in preserving them, particularly a new mode of communications which is electronic, we take top-secret hard documents that were stuffed, according to Mr. Lester's e-mail, which I would like to make part of the record, Mr. Chairman.

Chairman WAXMAN. We will accept it for review and not make it part of the record.

Mr. MICA. OK, but it refers to his e-mail as to how those documents were preserved, and I guess they were stuffed in Sandy Berger's socks.

Mr. MICA. Is that what you understand, Mr. Stern?

Mr. STERN. There's been a lot of review and investigation by lots of folks about what Mr. Berger did.

Mr. MICA. But there are e-mails that say one thing, and then the IG Report says another thing. And I want them to be made part of the record.

Chairman WAXMAN. The gentleman's time has expired. The Chair will not admit that in the record. That has nothing to do with this hearing.

Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman, I want to address my remarks to Ms. Payton. And Ms. Payton, to comply with the Presidential Records Act, an e-mail archiving system has to ensure that it captures all pertinent e-mail, but it also has to prevent people who are unauthorized from tampering with or deleting e-mail, would you not agree?

Ms. PAYTON. Yes, ma'am. Yes, absolutely.

Ms. WATSON. And the committee has been informed that in 2005 the White House was warned that not only its system was at risk of data loss but also that it was vulnerable to tampering. And Mr. McDevitt, who worked for you at the White House, correct? He did work for you?

Ms. PAYTON. Yes. I started mid-May 2006.

Ms. WATSON. He informed the committee that there is no way to guarantee that all records are retained in their complete and unmodified state. And he said the approach of simply storing e-mail messages in PST files provide no mechanism or audit trail that tracks changes to day the files. According to him, the integrity of the data could be called into question because it was not possible to ensure that inappropriate action, either intentional or unintentional, could not occur. So this does not necessarily mean that someone tampered with White House documents, but it does mean there is no way to know if someone did.

Let me then address this to Dr. Weinstein. Does this raise a concern for you that there could be tampering?

Mr. WEINSTEIN. Congresswoman, anything of this kind raises concerns for me and any possibility of tampering in any fashion. Because of an unfortunate employee——

Ms. WATSON. I know, but are you concerned about that?

Mr. WEINSTEIN. Am I concerned about this specific issue that you raise?

Ms. WATSON. That the data could be tampered with.

Mr. WEINSTEIN. I would like to see some of the material, if I may that——

Ms. WATSON. I cannot hear you, sir.

Mr. WEINSTEIN. I would like to read through some of the material that you have in front of you so that I can judge for myself.

Ms. WATSON. No. Give me a yes or no.

Mr. WEINSTEIN. Yes, I am most concerned. Yes.

Ms. WATSON. Yes is your answer?

Mr. WEINSTEIN. Yes was my answer.

Ms. WATSON. Yes, it is just a simple question, OK.

Mr. McDevitt also raised another concern, and this one is even more serious. He stated that there was a critical security issue in this system that was not identified and corrected until 2005. And he said this: "During this period it was discovered that the file servers and the file directories used to store the retained e-mail PST files were accessible by everyone on the EOP network."

Now, Ms. Payton, the Executive Office of the President has several thousand people, and your former employee, Mr. McDevitt, is saying that until 2005 any of them could access these e-mail files. They could delete files, they could modify files, or read the files of other officials. Is that correct?

Ms. PAYTON. Ms. Watson, since that precedes me, I am going to go off of information based on conversations with my staff, and in asking and trying to understand the e-mail situation so we have the right course of action and the right people matched to it, that has not been brought up.

I mean, at some point in time I can certainly go back and ask them about that. That has not been brought up, nor is that typical——

Ms. WATSON. Let me stop you.

Ms. PAYTON. Yes, ma'am.

Ms. WATSON. Are you saying to me that it has not been brought up that these files could be deleted or tampered with? That there was a system-wide access by 3,000 customers to the servers that are in the data center.

It would appear to me that if you had a system in place so it could be accessed by 3,000 people or unofficial personnel, and it could be changed, you mean to say that there was no concern or discussion? Is that what I am to hear?

Ms. PAYTON. I have not been made aware that at some point in time that these servers were open to just anybody.

Ms. WATSON. So, as I understand it, and please correct me, you had a system in place in the White House for several years in which anyone could have gone in and deleted files without a trace?

Ms. PAYTON. Ma'am, I do not know that to be true. I have not been told that.

Chairman WAXMAN. The gentlelady's time has expired.

Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. Let me just ask that again. I think maybe you just answered this, you do realize, of course, you are under oath. Do you have any knowledge of any kind that any person has ever tampered with or deleted any of these files?

Ms. PAYTON. I have no knowledge of anybody going out there and intentionally deleting files that should not be deleted.

Mr. DUNCAN. All right.

Ms. PAYTON. Again we are referring to a time period before my time, but I have not had an employee come to me and say this is something that needs to be researched and that anything has happened. So I do not know what to do with that statement.

Mr. DUNCAN. So you have no knowledge of anybody purposely trying to hide or delete something from this committee or from any Government investigator?

Ms. PAYTON. That is correct. There is only one exception that is allowed as far as any kind of delete, and that has to go through a very specific process. That is only in the event that information from the classified network is found on the unclassified network. That is the only time that a delete is allowed to happen, and that is managed through very tight process.

Mr. DUNCAN. Mr. Swendiman, let me ask you, or Ms. Payton either one, how many times has your staff or either of you or your staff briefed Oversight Committee staff, and can you tell us how many letters of inquiry you have received from the committee?

Mr. SWENDIMAN. I briefed the Oversight staff once very recently in terms of being responsive to the committee. We have certainly in hand the chairman's letter, and we have been producing the documents that were requested. That has consumed approximately, given the last check of about February 8th, about 1,500 hours of time from the OA staff to do that, and that's staff across the board; that is not just the OCIO's office, but it is the Chief Financial Officer, the Chief Operating Officer, the Procurement Division, and so forth.

Mr. DUNCAN. That is really what I was getting at, is some idea about how much staff time, or how many hours or how much, has been devoted to trying to find this information. Do either of you have any idea about how many documents or interviews have been submitted? How many pages of documents of pages have come here to the committee in regard to this investigation?

Mr. SWENDIMAN. Right now I think the estimate that I have been given is that approximately 15,000 pages of documents have bene produced to the committee, and approximately another 15,000 have been shown to the committee.

Mr. DUNCAN. So 1,500 hours and 15,000 pages.

Mr. SWENDIMAN. Approximately, sir.

Ms. PAYTON. Mr. Duncan, since you have addressed it to both of us?

Mr. DUNCAN. Sure.

Ms. PAYTON. Allen covered the OA portion which would cover my area. But in addition to that you had asked the question about briefings, and I have provided, if I remember correctly, it has been four briefings, two in person, two via telephone on this topic to committee staff.

Mr. DUNCAN. All right. Thank you very much.

Chairman WAXMAN. Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. Ms. Payton, I would like to ask you about some e-mails that were missing from Vice President Cheney's office that were related to CIA Agent Valerie Plame Wilson. Before I get to any questions, let me see if I have the chronology right, and I know you will correct me if I am wrong on that.

I understand that first your office produced a chart in 2005 that showed 473 days with no e-mail sent to or from certain components of the White House in the Microsoft Exchange System.

For the Vice President's office, there were days during the week of October 1, 2003, with no e-mail, and that was apparently of interest to Special Counsel Patrick Fitzgerald, who requested those documents during the period. My understanding is that when the

inventory was done in 2005, nobody at the White House could locate those e-mails in the PST files that were stored in the servers.

And now, as far as I know in 2008, the White House still hasn't located those e-mails in the PST files in the White House servers. So after not finding the e-mails there, the White House went to backup tapes and ultimately recovered the e-mails for those days. These were provided to the Special Counsel.

Is that pretty accurate so far?

Ms. PAYTON. Yes.

Mr. TIERNEY. So my first question, I guess, is what happened to the files that were supposed to be on the White House servers?

Ms. PAYTON. Well, we have not finished our analysis, Mr. Tierney. We still have, roughly, 17 million e-mails as we are going through this first pass that we have not attributed to a component, and in our phase two we will have enhanced technology which will allow us to read those messages at a lower level and attribute those to a component.

Mr. TIERNEY. But so far, I mean, this is a long period of time that has transpired now. You haven't found them, and now you went to a pretty serious effort in trying to respond to Special Counsel Patrick Fitzgerald, I would assume, and found none of them on the servers and had to go to the backup. Right?

Ms. PAYTON. Yes, that is correct.

Mr. TIERNEY. Let me ask you about the backup tapes, then. They are supposed to, as far as I know, copy everything on the White House servers, right?

Ms. PAYTON. They are disaster recovery backup tapes, so they actually take a picture of how things look in the data center at that day.

Mr. TIERNEY. Right.

Ms. PAYTON. So it is a picture of the server, the applications on it, and then any data associated with the applications.

Mr. TIERNEY. So it should copy the journals, the PST files, and everybody's individual mailboxes.

Ms. PAYTON. Yes.

Mr. TIERNEY. Now, we got a document showing that when the White House restored the backup tapes for the Vice President's office, there were no journal files, there were no PST files containing e-mails for the days that Mr. Fitgerald was interested in. So not only were they missing from the servers, they were missing from the backup tapes as well.

Can you explain that to us?

Ms. PAYTON. Because this predates me, I do not know all the details of that particular restorer. I do know that they——

Mr. TIERNEY. Well, does it mean that there were no journal files of the time the backup tape was made?

Ms. PAYTON. I am not sure. What I do know is that 70 mailboxes were restored and 17,000 e-mails, but I don't know all the details of that particular restoring process.

Mr. TIERNEY. Well, I would assume, you know, the problem with just having the mailboxes of individual officials of the Vice President's office is, it is my understanding, is that if somebody deletes an e-mail on the same day that they receive it, it is gone. It is not

stored or whatever. We will never know what was on there, so no historical record of that.

So I am looking at this, and what—I will be an expert—it looks that there is a lot of unanswered questions here about the e-mails that were missing from the Vice President's office.

Ms. PAYTON. Mr. Tierney, if I might, we still have PST files that we have not been able to associate with a component. I am assuming that was the same case back in 2005, but I do not know that for sure. They contain 17 million e-mails. Once we go through phase two, it is our hope and our assumption that we are going to be able to find e-mails that were properly archived, but they are just not associated with a component at this point in time.

Mr. TIERNEY. Well, I hope you will forgive me for being a little bit skeptical, because a lot of time has come and gone on this.

Ms. PAYTON. I understand.

Mr. TIERNEY. The servers did not have it. It looks like the backup certainly, at least to date, has not had it despite fairly extensive efforts to recapture that. You know, you want us to rely on this system to believe that, you know, this is something that is reliable, and I just do not see that at this point in time, and it is disconcerting.

I mean, all the other questions what we have seen here today about the RNC being, deleting tapes and everything disappearing, and these are critical periods of time where the historical records should be accurate and should be complete. In the amount of time that it has taken to review all of these things and still come up with non-answers is disturbing.

So I yield back, Mr. Chairman. Thank you.

Chairman WAXMAN. Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

Mr. Stern, I had the privilege of having a discussion with Mary Nichols, who previously was at EPA and now over at Air Resources Board, about an issue that is raised here, and that is the California waiver, and the hearing and the process on that.

In fact, I have noticed that a group that has called themselves Citizens for Responsible Ethics in Washington [CREW], has filed a lawsuit pertaining to the latest lack of a waiver for California pertaining to greenhouse gases. So, sir, do you know if they have filed a lawsuit pertaining to the mandate to use ethanol in California that California tried to get a waiver for from the Clinton administration and was blocked by that administration? Do you know if they filed anything?

Mr. STERN. I am sorry. I am with the National Archives. I am not familiar with that EPA issue.

Mr. BILBRAY. OK, I appreciate that.

Mr. Chairman, I just don't know if that group was involved in any litigation pertaining to the other waiver, but I am interested in this, and, Mr. Weinstein, do we have the possibility, if we wanted to followup on this other waiver, to get into the records of the Clinton administration about what was done and why they would not issue a waiver to California Air Resources Board when we requested it for over 8 years?

Chairman WAXMAN. I think it would depend, Congressman, on whether those records had already been totally processed for release.

Mr. STERN. Yes, under the Presidential Records Act, the Congress, through committee or subcommittee, can make what we call a Special Access Request for records of a former President. So if we got a formal request from the committee for Presidential records of the Clinton administration, then we would respond to that, search for those records, see if we have them at the Clinton Library, and respond to the committee. So there is a formal process through the PRA to do that.

Mr. WEINSTEIN. But that would have to be the chairman of the committee responding.

Mr. BILBRAY. The chairman of the committee would have to request that?

Mr. STERN. That is correct.

Mr. BILBRAY. OK. Because it is an ongoing problem that Chairman Waxman knows we are concerned about the environmental impact of the ethanol/methanol mandate. We have gotten the methanol off, but we still have a mandate on ethanol, and why the administration, previous administration, kept telling us that they were going to pull the mandate, it never did; and what meetings and communications they had with industry representatives who were representing those who were profiteering off of this mandate as opposed to where we go.

So that is obvious. Now the concern is what kind of contacts the Republican administration that followed made, specifically to greenhouse gas issues.

Mr. Chairman, at this time I would like to yield my remaining time to the gentleman from Florida.

Mr. MICA. Ms. Payton, you joined the Office of Administration in mid-2006, so all the missing e-mail issues occurred, exclusively, before your tenure began, is that correct?

Ms. PAYTON. Yes. I mean that is correct.

Mr. MICA. And were you around when these things took place, too?

Mr. SWENDIMAN. No.

Mr. MICA. You were not?

Mr. SWENDIMAN. No, my tenure began November 27th of——

Mr. MICA. And so have sort of a little game being played. This Steven McDevitt, he worked for you? Did he leave on good terms, or was there some dispute? He is sort of the accuser here bringing up that they could have had a system that would have better, that would have preserved things, and some things may be missing, they may not. But he has raised these questions, right?

Ms. PAYTON. He did, initially, report directly to me, and then once I got a Deputy Director, he reported to the Deputy Director. Steve——

Mr. MICA. There had to be some disagreement. I mean, were you aware that, I mean, now he is making these charges that you all didn't handle this right.

Ms. PAYTON. He was very passionate about the ECRMS platform that was going to go to pilot, and the pilot had to keep being delayed. And he was——

Mr. MICA. So there was a disagreement on how these records would be preserved?

Ms. PAYTON. We actually did not make the decision around ECRMS until after he left.

Mr. MICA. OK. An important question, Mr. Chairman. One of the things I passed after the Clinton fiasco was the White House had to live under all the laws the rest of us did. I think Mr. Ehlers and I passed that after we went through years of seeing the disorganization at the White House and non-compliance with law under the Clinton administration.

Do we need to change the law? Is there something—because again we have new technology that we are trying to capture history. Let's go right now the line. Tell me if you think the law is adequate or something we need to change.

Chairman WAXMAN. The gentleman's time has expired, but if any Members wish to answer his question.

Mr. MICA. I don't think——

Chairman WAXMAN. If any witnesses wish to answer his question.

Mr. SWENDIMAN. I think with regard to the law or rules on technology, I need to defer to somebody who is an expert in IT and has a technological background.

Ms. PAYTON. As far as the law goes, I cannot legally comment on whether or not the law should be changed, but the fact that more communication that used to happen in the hallway and used to happen on the telephone now happens on e-mail. So e-mail volumes are driving up, and it is now, you know, it is also a very casual form of communication as well as a very official form of communication.

So we do have some work to do, both on the user side as well as on the technology side to understand the new protocols around managing, preserving it properly, managing it, planning for that type of volume, because it is only going to increase.

Did I get at the heart of your question, sir?

Chairman WAXMAN. Well, the question was, do you recommend a new law. You are not recommending a new law. Let's go on, if anybody wants to answer his question, directly, let's do that, because other Members are waiting to ask their questions.

And the gentleman's time has expired.

Mr. Weinstein.

Mr. WEINSTEIN. Mr. Chairman, as you know, I am an historian by profession, and I am afraid I am unable to respond to that question. Certainly not without you and the Honorable Member agreeing on a particular thing. When there is consensus in this body, then that is the moment that probably the law should move forward. I will stop there.

Chairman WAXMAN. OK. Anybody else want to respond?

If not, Mr. Yarmuth.

Mr. YARMUTH. Thank you, Mr. Chairman. I am going to ask a question that is based on a conversation I had several years ago, before I ever dreamed of getting into politics, when I was a journalist. I actually had forgotten about this conversation, but I was reminded of it when all of these disappearing e-mails, when the story of them arose.

A woman told me, this was back in 2004, 2005, that she had a blood relative who worked for a private contractor somewhere in a remote area from D.C., I don't remember whether it was Virginia or Maryland. And that every 6 weeks or so he came, his company came to the White House and took computers and hard drives back to a remote location where he was many stories underground. I am not exactly clear on which term she used, whether she said cleaned or scrubbed the hard drives of those computers.

I am very honest to say, she implied a nefarious motive. I as a journalist wasn't quite sure, and I understand the danger of hearsay stories like that. I wouldn't even ask the question except for the connection to missing data. So my question is to Mr. Swendiman and Ms. Payton, are you aware of any activity or procedure that resembles the activity that I just described?

Mr. SWENDIMAN. Sir, I am aware of none.

Ms. PAYTON. I can't comment on that time period, but I can comment currently. There are, as employees depart, if we want to be able to re-use their equipment, we actually take the files and store them on a shared drive. Then if we want to re-use their equipment, we would need to wipe their drive, so that we are not buying a new PC and then you can't use it any more, every time you have a new person.

So from a current standpoint, that is a practice that we are using. I don't know if that answers your question.

Mr. YARMUTH. Well, it may.

Let me ask another one, though. Are you aware of any contract with a non-Governmental entity that involves handling of White House computer information?

Ms. PAYTON. We have——

Mr. YARMUTH. Other than the one you may have just described.

Ms. PAYTON. We have 60 contractors on staff who help us with our messaging, who also help us with our PC tech support. So contractors would be touching computers. This process that she is mentioning, I am not sure I am aware of.

Mr. YARMUTH. OK. And so you don't, well, OK, I will leave it at that. But let me ask a question, you mentioned one issue with regard to deleting information that might be classified, and you described it as being subject to a very tight process. I think those were your words. How can we as a committee, how can the Congress, how can the American people be confident in what that process is and that there is any accountability for it? Or are we relying totally on the White House's assurance that it is a tight process that only deals with classified information?

Ms. PAYTON. I am not exactly sure how to answer your question. I mean——

Mr. YARMUTH. Would you be willing to, for instance, describe the tight process that you use?

Ms. PAYTON. Sure. I can definitely walk you through that.

I am sorry, I just got guidance that because we are talking about classified, I can't talk about the details of classified in this setting. So I will just tell you organizationally, we have an Office of Security Emergency Preparedness. If they are notified, they notify us, we get our direction and we follow our direction.

Mr. YARMUTH. OK. Doesn't sound like a very tight process, but I will let you characterize that.

I want to ask you now about the ECRMS program. You made the decision to cancel that program after what was described to the committee by Mr. McDevitt as a pretty extensive 3-year process in which a lot of different people made a decision that this was the system that was desirable to implement. You made that decision and you have given in your written testimony some reasons for it.

You gave, apparently, in a meeting with Mr. Stern's staff, you gave some slightly different reasons. I would like to ask Mr. Stern, did you think and did your staff think that Ms. Payton's reasons for canceling the ECRMS program were legitimate and were compelling?

Mr. STERN. I am really not in a position to answer that. We defer to them. And it is the White House's responsibility to make the records management decisions. We certainly, as we have said before, hoped and expected they would have a formal records management system in place. We thought that ECRMS was going to be it. So we were disappointed that they didn't use ECRMS and would hope that they still try to get one in place even now, if they can.

Mr. YARMUTH. My time is up, Mr. Chairman, I yield back. Thank you.

Chairman WAXMAN. Thank you very much. Mr. Welch.

Mr. WELCH. Thank you, Mr. Chairman. I want to thank all the witnesses. I want to focus on the recovery of some of the e-mails and what efforts have been made to do that. I don't really want to focus on motives or what we can prove when we don't have the documentation to draw any realistic conclusions.

Mr. Stern, the Presidential Records Act of course requires that official business be available and then stored in the repository of the National Archives, correct?

Mr. STERN. Correct.

Mr. WELCH. And it is your responsibility to see that is done?

Mr. STERN. Correct, to ensure that all the Presidential records in the White House are transferred to our custody.

Mr. WELCH. Right. And whether an official action involving White House business is done in a White House e-mail account or an RNC account or g-mail account or AOL account, if it is official business it belongs in the Archives, correct?

Mr. STERN. Ultimately, at the end of the administration, it should be preserved as a Presidential record and then transferred to us.

Mr. WELCH. And we know that about 88 White House officials, in fact, used a non-White House mail account to do some official business, for whatever reason, correct?

Mr. STERN. I guess. I am not familiar with the details of that. It is my understanding that there was at least some belief, even by the White House, that there could be official business done on the RNC system.

Mr. WELCH. And you have made specific inquires from the White House about having them obtain from the RNC the e-mails that relate to official White House business, correct?

Mr. STERN. Yes, we asked them to do that.

Mr. WELCH. You asked them to do that in May 2007?

Mr. STERN. I believe so.

Mr. WELCH. What did they do as a result of that request?

Mr. STERN. We don't know specifically. They said they were attempting to do that, and we have inquired periodically and we don't know anything specific except that we though they were still continuing in that effort.

Mr. WELCH. Since you made the request in May 2007 for the White House to gather up its e-mails that were used on the RNC account, are you aware of any specific, concrete step that the White House has taken to comply with that request?

Mr. STERN. No.

Mr. WELCH. Do they have a legal duty to provide official communication records to the Archives?

Mr. STERN. At the end of the administration, yes.

Mr. WELCH. Ms. Payton, are you aware of any specific and concrete step that the White House has taken to comply with the request by Mr. Stern on behalf of the National Archives to obtain these e-mails?

Ms. PAYTON. Mr. Welch, because that is in a separate technology team that reports up through RNC, I am not involved in that.

Mr. WELCH. So the answer is it is not your job, so you don't know?

Ms. PAYTON. That is correct, sir.

Mr. WELCH. Mr. Swendiman, how about you?

Mr. SWENDIMAN. The Office of Administration is responsible for the official, sensitive but official EOP network. It is not——

Mr. WELCH. So it is not your job, either?

Mr. SWENDIMAN. It is not.

Mr. WELCH. All right. So nobody here can speak for the White House and explain to Mr. Stern why they haven't done what they told Mr. Stern they would do, namely, make those communications subject to the Presidential Records Act available to the National Archives? You don't know?

Mr. SWENDIMAN. Well, I think I have tried to explain this as I understand it, sir, as to what steps I have been told have been undertaken.

Mr. WELCH. Well, no, I want to know, well, no steps. Is he misinformed?

Mr. SWENDIMAN. I am not privy to the communications Mr. Stern has had with——

Mr. WELCH. Well, let me ask you this. Apparently, some of these may be gone forever, we don't know. But there are two boxes of backup tapes at the RNC, we are told. Mr. Stern, are you aware of any effort to make those backup, those tapes in those two boxes available to the National Archives?

Mr. STERN. They wouldn't make those available to us. If they were going to do a recovery effort, they would either do it themselves and then search through recovered e-mails for official e-mails, or they would let somebody through the White House do that.

Mr. WELCH. Ms. Payton, are you aware of any recovery effort that has been made with respect to those two boxes?

Ms. PAYTON. No.

Mr. WELCH. Mr. Swendiman, are you aware of any steps that have been taken to recover the e-mails that are contained in those two boxes?

Mr. SWENDIMAN. Sir, I can't speak to the two boxes. What I can——

Mr. WELCH. So you do not know?

Mr. SWENDIMAN. I do not know specifically as to those two boxes.

Mr. WELCH. So there is no dispute, either on the part of the White House folks or the National Archives folks, that any e-mails, whether it's on an RNC account or a White House account, that may be in those two boxes, and this goes back to the 2001, 2002 when major decisions in this country were being made, including the decision to go to war in Iraq, there's no question that anything that relates to official White House business is subject to the Presidential Records Act? Mr. Swendiman, do you agree with that?

Mr. SWENDIMAN. Could you repeat the question, sir?

Mr. WELCH. Any document, e-mail that relates to White House business is subject to the Presidential Records Act, correct?

Mr. SWENDIMAN. Any document that involves official business that involves the constitutional, the statutory, ceremonial activities of the President or the immediate White House staff is subject to the Presidential Records Act.

Mr. WELCH. Right, we are reciting the law, we are all in agreement. It is the compliance with the law question that we have. I understand it is not your job. So I don't want to be asking you to do somebody else's job, you have your hands full.

I guess I will come back to you, Mr. Stern, I am close to the end of my time. What if anything can you do in order that the National Archives have possession of the official communications that may be there, or what can you do to make certain that the National Archives can see that whatever reasonable steps can be taken to recover that which is available is done, so that the Presidential Records Act is complied with?

Mr. STERN. Under the PRA, we have no direct authority. All we can do is ask them for and acquire. And then we also can report to the Congress. Obviously, the Congress is aware of this issue, so I think the PRA envisions that it is up to the Congress when dealing with Presidential records to communicate and work directly with the White House on——

Mr. WELCH. So here is where we are, just to sum up. You have asked and gotten no reply. You don't know and somebody else does, but they are not here.

Thank you very much. I yield the balance of my time.

Chairman WAXMAN. The gentleman's time has expired. Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Payton, one of the White House officials who we contacted in preparing for today's hearing was Steven McDevitt, who worked for you. We asked him whether there was any concern about abandoning the e-mail archiving system and relying on this ad hoc journaling process. He said there was great concern. Let me show you an excerpt from page 7 of his answers to the committee. He stated: "There was a great deal of concern about proceeding with the migration of Outlook Exchange without having an adequate e-mail records management solution in place."

Mr. McDevitt described in detail the risks that were discussed within the White House on numerous occasions. One of the major concerns was the risk of data loss. He said this: "The process by which e-mail was being collected and retained was primitive, and the risk that data would be lost was high. The potential impact is that the system does not contain all required data."

Ms. Payton, what are your views? Do you agree with your staff that the archive system was inadequate and risked losing data?

Ms. PAYTON. The challenge about his statement is it does predate me. And this is also his technology professional opinion. In talking with the staff on our go-forward basis, we have improved the people, process and technology with what we have to live with until we can get to a more comprehensive solution. Back at that time, even if you had a more comprehensive solution in place, if you don't have the right processes to make sure it is running right, you can still end up with the same result. That is why we want to get to the bottom of our analysis and figure out if we still have any resulting anomalies and then make a decision around doing a restore. But to be able to comment specifically on things that predated me, I am unable.

Mr. CLAY. But look, it wasn't just the internal White House staff that raised the red flag about the archive system. The committee has obtained notes from a meeting on January 6, 2004 between staff from the Archives and the White House. According to these notes, Archive staff were also raising these very same concerns with the White House. And the notes describe how the Archive staff learned that the White House was converting from Lotus Notes to Microsoft Exchange e-mail. Then in bold face, the note says this: "Messages in Exchange are not being captured in ARMS or any other system external to Exchange. The NARA team emphasized that EOP was operating at risk by not capturing and storing messages outside the e-mail system."

What were the best efforts that the White House put forward when they did not heed their own warning?

Ms. PAYTON. Mr. Clay, I don't know if I have time to, I would like to, if you would allow me, to actually walk through sort of where an e-mail travels in the system.

Mr. CLAY. No, we don't have time for that, but I will say this, in your previous testimony you mentioned how much it is going to cost to retrieve these e-mails.

Ms. PAYTON. Right.

Mr. CLAY. Well, you know, all of that is taxpayer dollars. And it is such a cavalier attitude that it may be $50,000 1 day, $150,000 the next. But where does the care come in for taxpayers' money?

Ms. PAYTON. That is part of why we want to do the analysis first, so we can have a very targeted list. If there are any anomalies at the end of the work we are doing, we have a very targeted list for the restore. So by having less days to restore, we will save money as far as the restore that needs to be done.

Mr. CLAY. And then no one there heeded their own warnings. What was all of that about? Nobody said, wait a minute, maybe we need to listen to Archives. Or maybe we need to listen to our own staff. And nobody heeded those warnings. What is all of that?

Ms. PAYTON. I wasn't there, sir, so I don't know.

Mr. CLAY. Dr. Weinstein, do you agree that the White House process was primitive and that there was a high risk of data loss?

Mr. WEINSTEIN. If that is what my staff decided after looking at this process, I would have to agree that there were some problems. What the nature of those problems were, I think even Ms. Payton and Mr. Swendiman would agree that they were working on a new platform and they didn't have all the answers.

But I do want to make one point to you, Congressman, on this issue of who cares about the taxpayer. And it is crucially important, particularly for the cultural institutions in the country, such as the National Archives, Library of Congress, others, to be very sensitive to the fact that we can lose the support of the American taxpayer very quickly.

Congressman Welch, in his questions, had raised one question with Mr. Stern, my colleague here. Basically, one slight correction, I signed that letter, I drafted the final version of that letter. So if the Congressman has any interest in learning who has been trying to get the Republican National Committee or whomever to return whatever materials they may have, I will take responsibility for that.

Chairman WAXMAN. Please speak up. We can't hear you.

Mr. WEINSTEIN. We have not responded, we have not asked that question lately. We asked for the return of this last year, we periodically question people. I guess we have to be a bit stronger in our questioning, in our requests.

Mr. CLAY. But, look, Doctor——

Mr. WEINSTEIN. I will have that information to the chairman by the end of this week.

Mr. CLAY. But Doctor, excuse me, it seems like everyone was warning the White House about the risks of data loss. And the White House's own technical people were warning them, and your team in the Archives also warned them. Yet they continued with the migration and they continued to rely on this ad hoc process from 2002 until today.

What troubles me is that these are e-mails documenting how the Bush administration was making decisions. They are official Presidential documents that the White House is required by law to save and turn over to the National Archives. They belong not to George Bush, but to the American people. But the White House seems to have ignored numerous warnings from people inside and outside the White House about its flawed approach. Do you have similar concerns?

Mr. WEINSTEIN. More than anything else, I want whatever materials may be in other locations like the Republican National Committee or any other location, if they are official White House documents, they belong with the White House, they belong with the Archives or in preparation for coming to the National Archives. My main concern here is with the future of my institution, National Archives.

Chairman WAXMAN. The gentleman's time is expired.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Ms. Payton, I would like to reconcile your sworn statements with what the committee has since learned, and perhaps you can help

us. On January 15, 2008, you filed a sworn declaration in U.S. District Court here regarding the loss of White House e-mail. In that declaration you criticized the chart produced in 2005, showing hundreds of days with no White House e-mail. And here I am going to quote what you said in the sworn declaration. "I am aware of a chart created by a former employee within the OCIO," Office of Chief Information Office.

Now, that of course, anyone reading that declaration, would believe that a single member created, staff person created this chart perhaps indeed almost on his own. But the committee in fact obtained documents showing that your office created a 15 person what you call message storage team to work on this problem. This team documented its actions in very painstaking detail and reported frequently to the director of administration and White House counsel.

Ms. Payton, I ask you, why didn't you mention this team of White House officials in your sworn declaration?

Ms. PAYTON. Ms. Norton, one of the things that I have mentioned before is that because this is prior to my arrival, I put the information together based on what my team has told me as well as——

Ms. NORTON. You are unaware, are you testifying here that you were unaware of this team?

Ms. PAYTON. No, I am explaining to you is based on what the team has told me, as well as information I had, there was a group of people who put data together. But as far as——

Ms. NORTON. I am asking you, were you unaware of the message storage team who worked on this problem?

Ms. PAYTON. Ma'am, all I know is that they put data together. They did not work on the chart. And that is how it was presented to me.

Ms. NORTON. Later in your declaration, and here I am quoting you again, you said "The OCIO has reviewed the chart and has so far been unable to replicate its results or affirm the correctness of the assumptions underlying it." We got a quite different account from Steven McDevitt, he is the former White House employee who worked on this project. This is what he said: "Extensive testing was performed at that time to ensure that the tools and the tabulation process was performed correctly. An independent verification and validation also was performed by a different set of contractors to ensure that this analysis process was completed correctly and that the data was correctly analyzed and accurately represented."

Ms. Payton, why didn't you mention this testing by the independent contractors?

Ms. PAYTON. I am not aware of that testing.

Ms. NORTON. You still are not aware of that testing?

Ms. PAYTON. I am aware that Steve has made those statements. We have a team that does IV&V. When I asked my staff about the chart and the validity of the chart, one of the things they said to me is, as far as they could tell, it had not gone through an extensive IV&V process.

Ms. NORTON. And so no one made you aware—this is an amazing testimony given the position you were in and the post you held.

Now, in your declaration again, it is a sworn declaration, you stated that there was a "lack of supporting documentation." For

somebody who said she didn't know anything, you certainly had something to say in your sworn declaration. Lack of supporting documentation. But Mr. McDevitt told us that the chart itself was just a summary. He said the complete analysis was 250 pages in length, it included the complete background data and trend analysis. Why didn't you mention, Ms. Payton, the 250 page supporting document in your sworn declaration?

Ms. PAYTON. That document had not been made aware to me. I know that we produced a lot of documents in response to this. So that document must not have been on the radar of my team to inform me.

Ms. NORTON. My goodness, I don't know how you did your job. You seem to have known nothing about it.

Ms. Payton, in your declaration you stated that you have serious reservations about the reliability of the chart. Well, it would appear that the easiest way to get information about the chart was to talk to the person who put it together, one of those of course is Mr. McDevitt. In fact, this is exactly what the Archives recommended to you. On November 6, 2007, Sam Watkins from the Archives sent you this e-mail, and I am quoting from it, Ms. Payton, "It would be useful for someone to contact the original author-requesters of the chart to ask questions about its nature and meaning, the methodology used to produce it, the shortcomings you have noted, and whether they prepared any additional or related documentation." But when we talked to Mr. McDevitt, he told us that throughout the entire process, you never contacted him once, even though he worked directly for you in 2006, while you were there. Why did you not contact him, Ms. Payton?

Chairman WAXMAN. The gentlelady's time has expired, but please answer the question.

Ms. PAYTON. At that point in time, when we were doing that analysis, we had already found flaws with the tool. So talking with Steve at that point, he probably was not aware that those flaws with the tool that was used existed.

Ms. NORTON. I didn't ask you that. I said why hadn't you spoken directly to Mr. McDevitt?

Ms. PAYTON. After he left the EOP?

Ms. NORTON. Directly with him in 2006 while you were there, Ms. Payton.

Ms. PAYTON. He reported to me directly for a short time, then he reported to the Deputy Director. I am not sure I understand the question.

Ms. NORTON. Ms. Payton, look, I think the credibility problems you present are patent here. If you did not know, then you apparently tried not to know, even when the Archives told you that someone who was working for you could in fact tell you and again——

Ms. PAYTON. Steve and I had multiple conversations about records and——

Ms. NORTON. Why didn't you ask him any of the questions I have just run down? If he had all this information, why didn't you inquire?

Chairman WAXMAN. The gentlelady's time has expired.

Mr. Davis.

Mr. DAVIS OF VIRGINIA. I think the time has expired and we need to move on.

Chairman WAXMAN. I think that question will have to stand as a rhetorical question unless you have anything further you want to add, Ms. Payton.

Ms. PAYTON. No, that is fine.

Chairman WAXMAN. Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. Thank you to the witnesses. I just want to preface my question by saying that, I am trying to imagine people watching this, just sort of ordinary folk watching this hearing. I have to believe that they would find it completely implausible that this number of e-mails, this number of days of e-mail traffic would just disappear by accident. And I mean to imply what I am implying.

But let me ask you, Ms. Payton, are you familiar, and I know you weren't there at the time the White House decided to abandon the ARMS system that was in place. But you are an IT person and you kind of know this arena. Have you become familiar with what that ARMS system did? Do you have any understanding of what the structure of it was and how it worked at all?

Ms. PAYTON. I have a general understanding, because it exists today. It still houses the Notes records. It was built in 1994, and it was built actually for a system that preceded Notes Mail. It had to be heavily customized so that it could interpret Notes Mail and be able to actually store it in ARMS for record keeping.

Mr. SARBANES. Did you ever find yourself over the last year or two saying, gosh, I wish they hadn't abandoned that system back in whenever it was, beginning of the term, because things would have been a lot easier, we would have been able to collect things in a much more deliberate fashion? Did you ever find yourself saying that kind of thing?

Ms. PAYTON. Obviously it would be nice. I try not to second guess people that I walk in behind.

Mr. SARBANES. It would have been terrific to have had that system in place. It seemed to be working extremely well. It is inexplicable that the White House would choose to move away from that and toward this other system. If I was somebody, if I were somebody who wanted to get around the system, that wanted to delete e-mails, make the record of my communications disappear, the system that the White House moved to would be an easier system to accomplish that, would you not agree, compared to what had existed before? It certainly seems that way from the testimony.

Ms. PAYTON. Actually, Mr. Sarbanes, it is a little bit more complicated. Because when an e-mail comes in through Exchange, it automatically gets copied over to a journal. So for example, if you were at the EOP and you were in the Office of Administration, and let's say I was in OMB, if I e-mailed you, automatically a copy will go into the Microsoft Exchange Journal underneath OMB and then when you get your copy, it goes into the Exchange Journal as well, underneath OA. Plus, it is also in your in basket and my sent.

Then when we do the PST archive, your record that is in the OA journal moves over to the OA PSTs, the personal storage tables which is also another Microsoft product. Then my e-mail, which was under OMB in the OMB journal, would move over to the——

Mr. SARBANES. Well, my, from reading——

Ms. PAYTON. So there are lots of different places that e-mail would be.

Mr. SARBANES. Well, lots of different places also where human intervention could alter the recording of the information, it seems to me. But let me move away from you. I do want to applaud you for all the things you are trying to do now, but it strikes me as building a wonderful barn and painting it a wonderful color of red and meanwhile, the cow is out the barn and in a pasture somewhere, given what has happened.

I just wanted to ask the folks from the Archives, if 10 is where you want to be now in the transition, on a scale of 1 to 10, anticipating that we are coming to the end of the term, where would you say we are, from your assessment, on a scale of 1 to 10?

Mr. WEINSTEIN. Let me answer that two ways. I will say that we will be a 10 by January 20, 2009. We will be a 10.

Mr. SARBANES. Where are you now?

Mr. WEINSTEIN. Somewhere in between. I won't give it a number. But we have a way to go, but we will get there.

Mr. SARBANES. I applaud your confidence and I hope it is well-founded, because we don't want these records to be lost.

The last question I have, because I am running out of time is, we have talked about these backup tapes, disaster recovery tapes, very appropo term in this context, because the loss of these e-mails strikes me as a disaster. So it makes sense that they would be called disaster recovery tapes.

My question is this: who has possession of those? In other words, if we get to January of next year and the recovery process isn't finished, but there is still out there material from which you can conduct the recovery, where does that material go? Who has possession of that? Does the Archives take possession of whatever the apparatus is from which the recovery can be conducted?

Mr. WEINSTEIN. I am going to let our expert on recovery tapes deal with that one.

Mr. STERN. I can describe what happened in the Clinton administration, because they did have to undergo a tape restoration project that started during the administration and was not finished on January 20, 2001. And the Office of Administration continued to be responsible for that project. They rented an offsite facility up in Maryland. But the legal custody of the records and in fact those backup tapes did transfer to us. So the tapes became ours on January 20th, the records became ours. But the work was still done by OA through a contractor that we then coordinated with and helped supervise. But they still did the work. So if the same situation arose here and a recovery effort starts and is not completed, I assume it will be the same case. The tapes will become our legal property, but still need to be worked on by OA until it is complete.

Mr. WEINSTEIN. I have to stress, Congressman, that the financial responsibility for correcting the situation is the White House's, not NARA's. It is the White House's.

Mr. SARBANES. Thank you, Mr. Chairman. I hope that supervision by NARA is good come post-January. Thank you.

Chairman WAXMAN. Thank you, Mr. Sarbanes. Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman. I would like to yield time to the ranking member, Mr. Davis.

Mr. DAVIS OF VIRGINIA. Thank you.

Ms. Payton, several of the witnesses we have spoken to have said that as far as they knew, Special Counsel Fitzgerald was satisfied with the results that he received from searches performed by the White House IT employees. And none of the witnesses was aware of any plot to obstruct any Department of Justice investigation. We asked former CIO Carlos Solari about whether Special Counsel Patrick Fitzgerald was satisfied with the White House production, and this is what he had to say: "As far as I know, now, obviously I didn't have any first-hand knowledge with him, but through the attorneys on the White House side who were dealing with that, yes, otherwise, we would still be busy at it answering questions, or there would have been questions come back to us that say, we don't have the confidence you are providing us with everything we have asked for. But that wasn't the case at all."

David McCrosky reiterated the same point regarding the Plame electronics searches on at least three occasions during his interview when he said they, the DOJ, "were always asking for more. To my knowledge, the whole time I was there, we always had everything they asked for. In fact, I am certain of it. The only thing I know is that there were no tapes missing. I do know that, and that everything DOJ wanted, we gave them while I was there." McCrosky continued, "in everything that they, the DOJ, asked us, we, which was the White House IT office, gave them. And all the feedback that I ever got was, thank you, this is a ton of stuff, we appreciate it. Now, of course, maybe it takes a long time to realize that there is a big gap in dates. Maybe that is what he is referring to. We were very concerned to do this right and make sure that he got everything that the DOJ had asked for."

John Straub, who was a former director of OA, said of the searches, "in nine times out of ten, it did not end up being that something was missing. It ended up being that we weren't doing the search properly or the system wasn't gathering the right information, or you were searching across two systems, and it would find hits in one system and wouldn't find it in another. Then you go back and refine the search terms and it found the same things. It wasn't because there were documents missing."

Tim Campen, the former CIO on the Hill at the White House and Director of OA had the following conversation with the staff. "Do you recall any concerns during that time, the whole time that you were at the White House, these searches weren't producing all of the documents that were out there on any given subject?" His answer, "I remember that always, we always asked ourselves that, are we finding everything. I would ask that question and have debates about it, discussions about it, about the technical parameters of the searchers and of the accuracy of the billion searches that had to be created. The general answer was yes, researching everything we can, and we think we have constructed the right kind of searches. By the look of the volume of e-mails we are getting, we are doing something right, because we are producing an awful lot of this."

Later Mr. Campen, when asked by the staff, "so you are not aware of any evil right-wing plan to obstruct the Justice Department investigation," he replied "no, no." And specifically, with regard to Fitzgerald, Mr. Campen said "no, I was always admonished and directed by White House counsel that this was a serious and full effort. We were always told that through the spirit of this, we are complying with this."

Ms. Payton, I know you weren't at the White House during these searches. But are these statements consistent with the documentation you have reviewed in the course of your duties?

Ms. PAYTON. It is consistent with the documentation, as well as conversations with the current staff. I have asked them if they know of any searches we did not satisfy, and other than the one which we eventually satisfied, the Fitzgerald one, they said they knew of none. So that is consistent.

Mr. DAVIS OF VIRGINIA. Earlier when we discussed, certainly with the backups, we have every reason to believe at this point that we will be able to get the documents we seek, isn't that correct?

Ms. PAYTON. Yes, sir.

Mr. DAVIS OF VIRGINIA. Let me ask Mr. Stern, is it true that at least on two occasions, Sandy Berger had access to original, uninventoried, uncopied documents that he could have removed from the Archives without detection?

Mr. STERN. I believe yes, he did have access to original documents.

Mr. DAVIS OF VIRGINIA. So we have problems with records preservation at the National Archives, too.

Ms. Payton, could you walk us through the process that you and your team are undertaking to inventory all the White House e-mail for each specific day?

Ms. PAYTON. Sure. And I mentioned some of that in my opening remarks, and I'll just kind of briefly go over the beginning part of it and then give you more detail, because I didn't go through all the details.

From a technology perspective, we have three phases that we are undertaking. We are in the midst of phase one right now. That phase is where we introduced the new technology, where we can actually read through the personal storage tables that are on the archive, and we can actually read through, read the name of the PST and from an inventory perspective, associate the e-mails that are in that PST with the components and the dates.

We are also undertaking some research to look at weekends and holidays that may have low volume or zero days, because there may have been maintenance going on on the weekends. The way that would work, and this is standard pretty much for exchange, is if you took mail servers out of rotation to do maintenance on them for the weekend, what would happen is your mail would be held. So if it was being serviced Friday night and Saturday and it didn't come back online until Sunday, you don't receive it until Sunday.

Well, the old tool, as well as the new tool, have a limitation where they could only track the received date. So it could look like you have some messages "missing," and you need the opportunity

to be able to actually read it at the message level to see the sent and the received date. So that process is underway.

We are also looking at the network operations logs to see if there is any documentation around outages as well. And then when we finish that phase one, we will go through a QA process and share that with NARA to make sure they are comfortable with our methodology and our findings. Again, since we haven't gone through the QA process, I am hesitant to give a lot of details around our findings. But I can give you some trends. We have identified roughly, somewhere in 10 million or more e-mails than were identified as part of the 2005 analysis, using the older tools. Those were the best tools they had at the time, good work horses. I am not sure the team knew at that time that those tools had those limitations.

In addition, we have been able to work through the whole entire inventory, not just for the time period in question, because we are concerned about Presidential transition, we are doing from day one of exchange all the way through now and will continue to do that. We have also identified, I think I mentioned it earlier——

Chairman WAXMAN. Ms. Payton, the time has expired.

Ms. PAYTON. Yes, sir. I am sorry. There are two more phases.

Mr. DAVIS OF VIRGINIA. If you could put this back into writing, I think it would save the committee's time. But I want to get it on the record, Mr. Chairman.

Chairman WAXMAN. I understand.

Ms. PAYTON. Yes, because there are two more phases, and the third phase is actually sitting down with NARA to go over any remaining anomalies.

Chairman WAXMAN. My problem is after you are finished with your phases, you will probably be out of office. Because this is going to take a lot of time. The fact of the matter is, a lot of the staffers mentioned by Mr. Davis in his comments left the White House before you decided to abort the archiving system in 2006 that had been under development for 3 years, and after you made that decision, the White House failed to put an archiving system in place.

To date, the White House still has not installed a new system. The bottom line is that from 2002 to 2008, the White House has not had an adequate, functioning e-mail archiving system in place. And now you have three or four phases to try to correct the problem that has been created.

I will be happy to have you go on, if that is what Mr. Platts wants. Well, Mr. Platts is not here any longer, but his time has expired.

Mr. Davis, what do you wish to do? You asked the question. May she submit an answer?

Mr. DAVIS OF VIRGINIA. Yes, you can submit it for the record. But I think the point is that this is a lengthy process, this is a complicated, lengthy process and it just doesn't jump out at you. This is not like a Google search.

Ms. PAYTON. Correct.

Mr. DAVIS OF VIRGINIA. And we have backups in this case that we can always get. We can get the records if they don't get it by a certain time.

Ms. PAYTON. And Mr. Davis, our early findings indicate that if we had done a restore based on the older analysis that had been done, we would have restored days that we have.

Mr. DAVIS OF VIRGINIA. Let me ask you, you are not trying to run out the clock on the committee, are you?

Ms. PAYTON. No, sir. We want to transition, the OCIO team is very focused and dedicated on this. I speak for them, I speak for myself, we are very energized about getting to the bottom of this and transitioning the records over to NARA. This is something we want to get done.

Chairman WAXMAN. The record can speak for itself, because a long time has already gone by without getting this information. The Archives is concerned about it, Congress is concerned about it, and you may not be intending to run out the clock, but I do think you are aware that you don't have too much time before this administration goes out of office.

Ms. PAYTON. Yes.

Chairman WAXMAN. Mr. Cummings, do you want to ask some questions?

Mr. CUMMINGS. Yes, I do.

Chairman WAXMAN. Before you begin, we have one item of business to complete. Maybe we can do it quickly. That is the motion to include in the record the interrogatories by Mr. McDevitt, we had a bit of a debate earlier, Mr. Davis, do you want to say anything more about that?

Mr. DAVIS OF VIRGINIA. I will yield to Mr. Issa, but I just want to note that this, your witness that you are relying so much of your report on was given, I think, an accord that has not been given to other witnesses that request much of the same thing. We did not have a chance to cross examine, and we think it would be a different record were that allowed. We just want to put that on the record.

Chairman WAXMAN. Mr. Issa.

Mr. ISSA. Recognizing I still have 5 minutes of my own time, but look, you are going to put this in the record, Mr. Chairman. But it sets a bad precedent to take an unsworn series of statements that we can't even ask the witness whether or not those were his own statements or not. Perhaps in fact they were essentially preagreed answers that quite frankly might be further fleshed out for accuracy if we had this opportunity.

If the gentleman were not still a full-time Federal employee, and for some reason was truly resisting, I would have a different attitude. But we bring people in front of this committee at their own expense often, this would be somebody who would be paid by the Federal Government to be sitting there today. I really believe that we are doing an injustice to the long-term well-being of this committee on a bipartisan basis by doing this today.

Chairman WAXMAN. I would like to respond to you, I am concerned about this committee and long-term considerations. As a result, when we asked Mr. McDevitt to come in for an interview, and he refused, we had a discussion on a bipartisan staff basis what to do. Because we could have subpoenaed him to come in and answer questions. Instead, both sides said, let's send him interrogatories, and even let the White House review the interrogatories. On that

basis, he was sent interrogatories, Republican and Democratic staff had input into those interrogatories. When the Republican staff saw the answers to the interrogatories, we suddenly got this complaint, well, we didn't get a chance to cross-examine him, this is not fair, on and on and on.

I just think that we operated in good faith. We ought to include the answer to the interrogatories in the record. And the reason that Mr. McDevitt didn't want to come in in the first place is because the White House put such strong restrictions on what he could say that he didn't feel he could even say what he needed to say in a deposition. That is how all this came about.

So I would ask the Members to support the motion to allow the interrogatories to be a part of the record. Are we ready for the vote?

All those in favor of the motion, say aye.

[Chorus of ayes.]

Chairman WAXMAN. Opposed, no.

[Chorus of noes.]

Chairman WAXMAN. The ayes appear to have it.

Mr. ISSA. Mr. Chairman, reserving the right to question the quorum, I would just like the record to recognize that although you have said this was bipartisan, from this particular Member's viewpoint, and from the staff that I am communicating with, we believe that it has not been and that this is a form of sandbagging, to deliver it. Recognizing we don't have the votes, I would not assert the quorum, but recognizing that this is not with the support of any Republicans.

Chairman WAXMAN. Well, I accept that, and let me say that I am going to talk further to both staffs, because we tried to accommodate the Republican staff throughout this whole process. We even had the Republicans talk to Mr. McDevitt for an hour and a half, asking him any questions they wanted on Sunday night. So we have tried to be accommodating.

You are saying to me that your staff on the Republican side does not feel that is accurate. I am going to pursue that with Mr. Davis, because we are not trying to sandbag anybody. I am not going to apologize to anybody, because I don't feel that we have. But I want to talk to staffs with Mr. Davis after the hearing is over, because I want these things not to be partisan, but to get the facts out.

Mr. DAVIS OF VIRGINIA. Let me say to my friend, we have some EPA witnesses we hope you will give the same accounting to that you gave to this gentleman. Thank you.

Chairman WAXMAN. The vote has occurred and the Chair has heard the majority in the affirmative. The Chair then calls the motion approved by the committee, and the interrogatories will be made part of the record.

[The information referred to follows:]

February 21, 2008

By Email

Honorable Henry A. Waxman
Chairman
U.S. House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

I am writing you in response to your request for answers to specific questions relevant to the Committee's investigation relating to whether the Executive Office of the President has complied with federal laws requiring the preservation of preservation and federal records.

I have provided my responses to your questions to Mr. Emmet Flood, Special Counsel to the President and to M. Elizabeth Medaglia, Office of Administration General Counsel. In recent weeks they have expressed to me their concerns about potential disclosures of deliberative discussions involving the participation of Office of the Chief Information Officer management, Office of Administration General Counsel; White House Counsel's Office and White House management. To address these concerns, I have provided my responses to them for their review. They have committed to me that they will review and identify any responses or other specific information that they wish to be redacted from my response prior to submission to the Committee. Any items they choose to redact should be addressed to them.

I realize that there are many complex issues related to this topic. If you or your staff have any additional questions, please feel free to contact me via email at [redacted] or via telephone anytime at [redacted]. Thank you for your time and attention in this matter.

Sincerely,

Steven McDevitt

Responses from Steven McDevitt (Part 1 of 2)
February 21, 2008

General Background

1. During what time period did you work at the White House?

I was employed in the Office of the Chief Information Officer (OCIO) in the Office of Administration (OA) in the Executive Office of the President (EOP) from September 2002 through October 2006.

2. What position or positions did you hold at the White House? To whom did you report?

From September 2002 through July 2003, I was an Information Technology Specialist – Project Manager (GS-2210-14) in the Concepts, Requirements and Systems Engineering Directorate (CR&SE) in the OCIO. During this period I reported to Mr. Layton Clay, the Director of CR&SE.

In July 2003, the OCIO was reorganized and the Architecture and Engineering (A&E) Directorate was created. I was promoted to the position of Director of the A&E as a Supervisor Information Technology Specialist (GS-2210-15).

From July, 2003 through January 2005, I reported to Mr. Carlos Solari, the Chief Information Officer (CIO).

From January 2005 through May 2006, I reported to Mr. John Straub, the Director of the Office of Administration and acting CIO.

From May 2006 through the end of my tenure in the OCIO, I reported to Ms. Theresa Payton.

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3. What were your primary job responsibilities? If they changed over time, please describe your responsibilities over time.

As an Information Technology Specialist – Project Manager (GS-2210-14), from September 2002 through July 2003, I was responsible for managing various systems development and systems implementation projects. During this period, the majority of my efforts were focused on the implementation of a new records management system for the White House Office of Records Management. The primary purpose of this system was to manage the paper records and document of the President and his staff.

During this time, I was also assign to begin the process of implementing an electronic records management system to manage the email and other electronic communications records throughout the EOP.

When I was promoted to the new position of Director of A&E my areas of responsibility increased significantly. The primary responsibilities of A&E includes:

- Systems Engineering and Integration – Responsible for the development and implementation of numerous custom developed applications and the implementation of commercial-off-the-shelf (COTS) based solutions.
- Business Applications Support – Provided day-to-day management and support for a wide variety of applications that supported the mission of the components of the EOP. There were approximately sixty-five applications that support the critical business needs of the EOP.
- Website Management and Support – The primary focus of this support was for whitehouse.gov. This included a team of web content management staff, web designers and technology specialists. Support for other websites was also provided. Including omb.gov, results.gov, wmd.gov and other White House related sites.
- Enterprise Architecture – A&E was responsible for the development and maintenance of the Enterprise Architecture (EA) of the EOP.

4. Did you have any staff who reported to you? If so, please describe the size and role of your staff.

As Director of A&E, I had between 8 and 13 staff reporting to me. The staff was a mix of project manager, technical specialists, enterprise architect and web specialists. All were Information Technology Specialists or Supervisory Information Technology Specialists (GS-2210) grades 9 through 15.

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5. There were various contractors that worked with staff in the Office of the Chief Information Officer. Which contractors did you work with, and what was their role?

The contractors that supported the mission of A&E included:

- Boeing – Enterprise architecture support for the development and maintenance of the EOP EA.
- Booz Allen Hamilton – Was awarded the contract for the implementation of the White House Office of Records Management, records Management system (RMS). They were also awarded the contract for the initial requirements analysis and solution selection for the Electronic Communications Records Management System (ECRMS)
- Lockheed-Martin – Support the for IntranetQuorum system used by the Office of Correspondence.
- MZM – Provided support for the implementation systems related to the email infrastructure.
- Systems Management and Engineering Inc. – Enterprise architecture support for the development and maintenance of the EOP EA.
- TKC Communications – Provided systems engineering and technical assistance support on a wide variety of systems development and systems implementation projects.
- Unisys – Provided systems analysis and systems implementation support. These were specific tasks under the larger multi-year information technology support contract that provided enterprise-wide services to the EOP. Unisys was tasked with the implementation and integration of the ECRMS system.

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E-mail Systems and Archiving

6. The Committee understands that, at some point in 2002, the White House began a migration of e-mail systems, switching from Lotus Notes to a Microsoft Exchange system. Do you know when the decision was made to make this migration? What was the rationale for the change? When did the migration begin and when was it completed?

There were multiple reasons for the desire to migrate from Notes to Exchange.

- Senior White House staff had a desire to migrate to Microsoft Outlook and Exchange because that is what they were used to on the campaign.
- The Outlook platform was widely used in commercial enterprises and provided better integration with the Microsoft Office suite of applications that was the standard within the EOP.
- Also, there were a number of features of Outlook that were not available in the Notes Mail environment.

The project to evaluate the migration to Outlook / Exchange began prior to the beginning of my employment with the EOP in 2002.

The migration for part of the Office of Administration occurred as early as September 2002. The reason I know this for certain is that when I began my employment, I was not provided a Notes Mail account, I was provided an Outlook/Exchange account.

7. Was there any particular order dictating how the migration proceeded? Was the migration done component by component or on a more individual basis?

With about two thousand people to migrate from Notes to Exchange, there was a formal process that was put in place to support the migration. As a general rule, the migration was done on a component by component basis with groups of individuals migrated at a time. The migration needed to be coordinated with the management of each component as it impacted email of each user.

I personally had no direct operational responsibility for this process. Detailed plans were created to support this migration. The OCIO should have detailed documentation on when each user or groups of users were migrated.

Those responsible for the planning and execution of the migration included Bruce O'Dell, the Deputy CIO during this period, Bart Hill, the Director of Information Systems & Technology and the OCIO email support team that provided operational support for the email systems.

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8. With the Lotus Notes e-mail system, the White House used an archiving system known as ARMS to preserve e-mails sent and received by White House staff. Are you familiar with this system? Were you aware of any concerns about the adequacy of the ARMS program? If so, please describe those concerns.

I was not involved in the implementation of the ARMS system as it was implemented in 1994, prior to my employment with the EOP. My knowledge of the ARMS system was the result of the analysis that I performed in 2002 as part of the project to implement a long-term solution to support the email records management of the EOP.

The ARMS system is really a set of systems that were developed in 1994 to meet a court mandated need to preserve E-mail records. At the time these systems were implemented, no commercial-off-the-shelf (COTS) system to support email records management existed in the marketplace.

The ARMS system was implemented using the staff, contractors, resources and technologies that were present-at-hand within the EOP at that time. The system used simple operating system utilities for the data management, access, search and retrieval of data and the file system for the storage and access control of the data.

During the Clinton administration there were a number of significant problems with ARMS and the associated supporting systems. These problems or anomalies (Mail 2, Letter D and Multi-Host) resulted in situations where E-mail was not appropriately archived by ARMS. These issues were corrected and various project were completed to recover the email that was not archived. The GAO has produced reports documenting these issues and the resolution and corrective actions that were taken.

During my analysis of the ARMS system, a number of operational and non-functional risks and limitations were identified. These were documented in the Concept of Operations (CONOPS) document that I created in 2002. This document was reviewed by OCIO staff, OA Records Management, OA Counsel, the White House Office of Records Management and White House Counsel. This document was the basis for the project to implement a COTS solution to support the email records management of the EOP.

To reduce or eliminate these risks, the ECRMS CONOPS outlined the need to implement a system that utilized current commercially trusted technologies to support the email records management needs of the EOP.

It is also important to note that by 2002 there were a number of COTS products that provided effective email records management solution that were designed to support seamless integration with the Microsoft Exchange platform.

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9. What was your role in planning how e-mails would be archived and preserved in the new system? Who else was involved with this and what were their roles?

My role was to lead the effort to perform the analysis, selection a solution and implement the solution to support the effective records management of EOP emails. This project is referred to in various documents and presentations as ECRMS. For a period of time, the project had the name EARS. These two names refer to the same project.

In 2002, there were two other projects that This project began in late 2002 when it was recognized that the first two attempts to use the ARMS system to support the Microsoft Exchange environment could not be the long term solution to support the records management of EOP emails.

Prior to the initiation of the ECRMS project there were two attempts to continue to use the ARMS solution.

The first project was an attempt to modify Windows XP and Microsoft Outlook interface to support integration with ARMS. There were numerous technical issues that prevented this approach from being successful. The OCIO should have documentation on this project.

The second project was an attempt to use an email integration solution to manage and archive email messages using the ARMS environment. The approach was to use Legato EmailXtender solution to provide a mechanism for all Outlook / Exchange E-mails to be managed in ARMS. The project was abandoned as the poor performance of the solution prevented it from supporting day-to-day email message volume requirements.

I believe that Mr. Howard Sparks was responsible for both of these projects.

10. How were e-mails sent to and from Microsoft Exchange accounts archived and preserved? Please describe the various steps involved and the individuals responsible for each step, including the process through which e-mails stored in journals were saved in .pst files.

I was not directly involved in the management decision to proceed with the implementation of Outlook / Exchange. I also did not have any operational responsibility for the archiving of email in either the Notes or Exchange environments.

The initial email retention process involved a manual process of copying messages from the Exchange journals to .pst files for storage and retention. This process was to be performed on a regular basis.

At some point, this process was partially automated using a utility designed for this purpose. The Mail Attender utility was used to automatically copy email message from the journals to the .pst files on a regular basis.

The details regarding the standard operating procedures should be obtained from the IS&T Directorate within the OCIO.

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11. As the migration took place, did you have any concerns about how e-mails were being archived and preserved under Microsoft Exchange? What were those concerns? Did you express them to anyone? When did you do this and with whom did you share your concerns?

There was a great deal of concern about proceeding with the migration to Outlook / Exchange without having an adequate email records management solution in place. By early 2003, an entire year had been spent trying to identify a solution that would support the email records management requirements of the EOP. There were four types of risk that were discussed on a number of occasions within the management ranks of the OCIO and OA. This risks included:

- Incomplete Data – The process by which email was being collected and retained was primitive and the risk that data would be lost was high. In addition to this being a manual process, the risk was compounded by the fact that there was no mechanism to reconcile the messages that were retained in the .pst files and the messages that had been processed by the Exchange system. The potential impact: The system does not contain all required data.

- Data Reconciliation – The use of .pst files for warehousing email records does not provide a mechanism to reconcile against what was originally retained by the system. This is there is no way to guarantee that all records are retained in their complete and unmodified state. The potential impact: It cannot be demonstrated that the data in the system is complete.

- Public Perception – Given the issues that occurred during the prior administration, it should warrant extra caution on the part of the EOP before making any changes to the email retention process. Additional system problems would create a public perception that the EOP was unwilling or unable retain records that were required under current law. The potential impact: Increase scrutiny of the EOP and significant additional expense to correct any problems that might occur.

- User Accountability – The approach of simply storing email message in .pst files provides no mechanism or audit trail that tracks changes to data files or the activities performed by users or system administrators. The integrity of the data could be called into question because it was not possible to ensure the inappropriate action, either intentional or unintentional, could not occur. Or, if they did occur, the actions would be logged and the user who performed those actions could be identified. The potential impact: No verification that data retained has not been modified or what activities have been performed by system users or administrators.

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In early 2003, prior to the large scale rollout of Exchange, these concerns we often discussed within the management ranks of the OCIO and OA. People involved in these discussion include Tim Campen (OA Director), Carlos Solari (CIO), Bruce O'Dell (Deputy CIO), Bart Hill (IS&T Director), Jaime Borrego (Information Assurance (IA) Director) and myself.

The reason for my involvement in these discussions was that I was leading the effort to identify and implement the long-term email records management solution.

12. Under this Exchange system, were you aware of any avenues through which e-mail archiving could have been circumvented? If so, please describe those avenues as well as any steps you or others took to prevent the loss of e-mails.

Only those email messages sent and received using the EOP Outlook / Exchange and EOP Lotus Notes environments would be included in the EOP email retention process. Other avenues of electronic messaging included:

- Email message sent and received using non-EOP mobile devices (cell phones and PDA's) would not be retained within the EOP records.
- The use of non-EOP mobile devices to access other email service providers such as Hotmail, Gmail or Yahoo. These messages would not be retained with the EOP records.
- Peer-to-Peer Messaging, such as PIN-to-PIN Blackberry messages would not be retained within the set of EOP records.
- Use of non-EOP email sites from EOP computers, such as those hosted by political or other organizations. These records would not be retained within the set of EOP records.

The EOP Information Assurance Policy addressed each of these issues. Current OCIO employees should be able to address these questions.

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13. During your time at the White House, was there every any system put in place to audit or verify that e-mails were archived and preserved correctly? If so, when was this system put in place? Who was in charge of this audit and verification?

After the implementation of Microsoft Exchange in 2002 and 2003, and after the migration of users from Notes to Exchange began, there was no automatic audit system that was implemented to ensure that emails were archived and preserved.

It was also discovered in October of 2005 that there was no manual periodic accounting or reporting process.

After the issue of potential missing email was identified in October 2005, one of the corrective actions was to implement a standardized formal daily procedure to ensure that the daily process to copy email messages from the Exchange journals to .pst files occurred without error and was completed as defined by the standard operating procedure.

At the time, this process was conducted on a daily basis by staff that independent of the email operational support team. The results of this process would provide the basis of an audit trail that could be used to validate the number, size and number of messages retained in the inventory of .pst files.

14. Who had access to the servers that held the archived Exchange e-mails? Did these servers have any extra security protections? Would these files ever be opened or modified — for example in a search for records? Who would have had access? Were there any protections to prevent them from being modified or deleted — either intentionally or accidentally?

I had not operational responsibility for the email retention process and I do not know the answers to these questions.

Staff from the IS&T Directorate had operational responsibility for the EOP email systems and the email retention processes.

In mid-2005, prior to the discovery of the potential email issues, a critical security issue was identified and corrected. During this period it was discovered that the file servers and the file directories used to store the retained email .pst files were accessible by everyone on the EOP network.

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15. Was there any policy that prevented White House staff from accessing external e-mail accounts on their official White House computers? Was this policy applied universally?

In 2002 and 2003 the EOP Information Assurance Policy was drafted, reviewed and approved. The policy was approved by each component within the EOP.

The purpose of the policy was to address the wide array of information security and information assurance requirements of the EOP.

Relating to email, this policy specifically prohibited the following:

- Use of non-EOP email environments was prohibited because it would not provide a means for supporting records management requirements.
- Use of encrypted email was prohibited because there was no facility to manage records retention of encrypted email.
- Use of peer-to-peer messaging was prohibited.
- The use of instance messaging environments was prohibited.

Questions and information requests on the applications of this policy should be addressed by current OCIO staff.

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Responses from Steven McDevitt (Part 2 of 2)
February 21, 2008

Potential Losses of E-mails

16. The Committee understands that, at some point in the fall of 2005, concerns arose at the White House that some e-mails may not have been properly archived. According to an e-mail exchange between you and Susan Crippen at the White House, it appears that those concerns may have first been raised on October 11, 2005. What precipitated these discussions about message storage issues? What was your role in these discussions, and who else was involved?

Actually, I believe that I and some members of the OCIO management team suspected there were issues and we discussed these issues within the OCIO management meetings a week or so prior October 11, 2005.

It was reported by the email support team to the OCIO management team that there were some issues related to the processing of the Exchange journals and creation of .pst files for each EOP component. At the time it appeared that because of server / application reconfiguration errors that occurred in August 2005, all EOP email for most of August and September were retained as OA email. It did not appear that any email was missing or not retained, but rather it appeared that all EOP email was retained in a single set of OA .pst files and not the .pst files associated with each component. It was also reported that they email support team attempted to take corrective action to correct the issues, but where unable to fix the problem and separate out the email into their respective components.

This precipitated a series of discussion within OCIO management and staff about how the .pst files were managed and inventoried. It became clear that these files were not being effectively managed.

Some of the issues that became known include:

- The EOP email retention .pst files were scattered across various servers on the EOP network.
- There was no complete inventory of all .pst files
- The processing of the Exchange journals to create the .pst files did not always complete during the normal processing cycle.
- There was no separation of duties or audit controls in place to ensure that the processing of these was being performed on a consistent basis.
- There was no well documented process
- There was no consistently applied naming convention for the component .pst files.
- There was no daily review to ensure that all processing was completed correctly. This point was emphasized by the fact that over a month had gone by before it was discovered that there was a problem in August and September 2005.

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17. The White House informed Committee staff that these message storage issues may have been first discovered during a search for documents that found several weeks of e-mails for certain White House components had been stored in the wrong files. Does this match your recollection? What was the circumstance of this search, what was found to have been misfiled, and how was the issue resolved?

Yes this does match my recollection. During my tenure in the OCIO, I was never directly responsible for performing email searches. I do not know about the circumstance of this particular search.

I do not believe that these misfiled email messages were ever separated out back to their associated components. The current OCIO staff should be able to answer this question.

18. At some point, the White House appears to have expanded its search for misfiled e-mails. At this point, the Committee staff understands that you undertook an analysis of e-mails preserved from the Microsoft Exchange environment breaking down the analysis by each of 12 components of the White House. When and why did this process begin? Who worked with you on the process? How did you conduct the analysis?

The process originated when it became apparent in October 2005 that OCIO staff and contractors were not effectively managing the .pst files used to retain the email records for the EOP. This set of issues was brought to the fore by the .pst file management problems that occurred in August and September of that year.

The initial set of actions was simply to organize and inventory the .pst files used for EOP email records retention and to put in place a formal process to manage these files. The primary issue was the .pst files were scattered across various servers on the EOP network. To the best of my recollection, these series of events included:

- Performed a search all servers on the EOP network for all .pst files to identify and locate all .pst files in the EOP environment
- Collect a data set that contains all relevant information about these files (Name, location, size, creation date, etc.)
- Create a secure and organized server environment in which these files could be stored.
- Copy all .pst files to this new secure and organized location
- Verify and validate that all actions to copy these files completed successfully.
- Create an inventory of all .pst files and verify all the information.

These activities were performed by a team of OCIO staff and contractors. Each step of the process was discussed and documented. The team met on a daily basis to plan activities and to report on actions that had been completed.

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In addition to this .pst file analysis, the team also began the development formal daily verification process that would support the effective management of these files and the process that created them.

While this process was taking place, I began to notice a few anomalies with these files. These included:

- .pst files that contained no data. The file size was zero bytes.
- Inconsistent naming of files that made it difficult to determine the associated component and date to which the file was associated.
- Obvious gaps in the date ranges represented in filenames of the file. As an example, one file may have been named "OA May 1-5" and another file "OA May 8-10" but there appears to be no file that represented May 6 and 7. This is just an illustrative example.
- There was a wide disparity of frequency of how often .pst files were created for each component.
- There was a wide disparity in size of files that represented similar periods of time.

Because of these issues and because there was no way to effectively determine what data was retained in each file, the team took on the task of performing an additional level of analysis.

If my recollection is correct, at that time there were over 5,000 .pst files with an average size of approximately 2 Gigabytes. Since each of these files contained messages one or more days and since it was not possible to determine what days were included in any given file, we needed to determine a method to perform this analysis. Prior to this effort, Microsoft had provided the EOP with a custom software application for performing searches on .pst files. This tool was commonly referred to as the "FindIt" tool.

Microsoft was contacted and was tasked to modify the FindIt tool so that it included the additional functionality of providing a message count for each day represented in a given .pst file. This process was performed on each .pst file in the inventory and the data was aggregated into a single data set. This is the data set that provided the basis for the analysis.

It took a couple week to perform the analysis on the thousands of .pst files. When the data was tabulated it became clear that a problem existed because there were days for which no email was retained. Extensive testing was performed at that time to ensure that the tools and the tabulation processed was performed correctly. An independent verification and validation was also perform by a different set of contractors to ensure that this analysis process was completed correctly and that the data was correctly analyzed and the accurately represented.

In addition to there being hundreds of days for which specific components had no email retained, there were a number of days for which it was clear that the number of emails retained was lower than expected.

There was a formal analysis to determine if the number of days for which the number of retained EOP emails was lower than what one would expect based on the email volume trends. The analysis determined that there was a clean pattern of email volumes. This analysis accounted for

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working days and non-working days (weekends and federal holidays). A multi-week moving average model was employed in various version of the analysis to account for normal fluctuations of normal email volume. Depending on the assumptions made in the analysis, the team identified hundreds of days for which the volume of email was inexplicably low.

Those who worked on this team are listed in response to question 19.

19. The White House provided the Committee with a 23 page color chart titled, "EOP Exchange Environment — All Components," with the subtitle, "Summary — Messages per Day." It lists the total days with zero messages and low messages for 12 components of the White House, as well as the actual message count for each of these components for the period from January 1, 2003 to August 10, 2005. The copy provided to the Committee is dated Feb. 6, 2006, at 4:13 p.m. Were you involved in the creation of this chart? If so, what was your role? Who else was involved in the development and production of the chart?

I was responsible for leading the team that created this chart. The chart to which you refer was the result of many weeks of analysis that involved over a dozen people. I was responsible for designing the chart and had a leading role in the definition and execution of the analysis.

To the best of my recollection, those involved in this effort, in addition to myself, included:

EOP Employees - Jaime Borrego (Acting IS&T Director), William Reynolds (Deputy Director, Information Assurance), Vic Bernson (OA General Counsel), Keith Roberts (Deputy OA Counsel), Howard Sparks (IS&T), Sue Crippen (IS&T), Bryan Reese (IS&T), Stephen Warshauer (IS&T), Keith Regatts (A&E), Aimee Felker (Director OA Records Management), Shaffers Rawlings (EOP Records Management)

Contractors - [redacted] (Unisys), [redacted] (Unisys), [redacted] (SRA) and various contractors whose names I cannot recall from Microsoft and SRA.

20. Was this the final version of the chart? If not, when was the last version of the chart created?

I reviewed the chart provided to the Committee and I am not able to determine if the version provided is the final version. There were many version of this analysis. Each version was identified with a unique version number. Different version of the analysis included different assumption about date ranges and thresholds.

I do not recall the exact number of versions of this analysis, but I believe it was between 12 and 20. What can be said is that what was provided to the Committee is just the analysis summary report, not the complete analysis.

The complete analysis was approximately 250 pages in length. It included the complete background data and trend analysis.

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21. Please describe the steps you and others took to perform the analysis required for the production of this chart. What types of files did you search? Where did you look for these files? Did you face any challenges related to files being misnamed, too large, corrupted, or having other such problems?

In addition to the response to question 18.

During the process to organize and inventory the .pst files, there were a small number of files that appeared to be corrupted. Additional analysis was performed on these files. I do not recall the specific outcome of these analysis, but the data in there files were not for the periods for which data was missing.

22. Each of the 12 components has a different start date on the chart and a different end date. Can you explain why this is?

Each component has a different start date because components were migrated from Notes to Exchange over a several month period.

The OCIO should have detailed list of users and the schedule of when users and components were migrated.

23. Was this chart the only result of your analysis of messages from the EOP Exchange environment? If not, did you produce any other briefing materials or documents that explained your methodology or findings? What were those documents?

There were numerous documents, PowerPoint presentations and other memoranda that described the analysis that was performed, the actions taken to correct the process and the recommendations to improve the processing of .pst files. The team documented the details of each action taken to clean up and correct the identified issues.

There must be thousands of email messages between the team members that describe the actions of the team, the completion of specific tasks, analysis of issues and to provide status to OCIO management, OA Counsel and OA management.

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24. Did you or anyone with whom you worked, ever estimate the number of e-mails that might be missing? What was that estimate?

Yes, there were a series of estimates based on various assumptions. On the low end, there were about 470 days (as reported by the Committee) days with missing email for individuals component in the EOP. If other assumptions were taken into account, that number increased to over 1,000 days of missing email. This is because of days for which Exchange was used prior to January 2003 and some issues that may be been associated with the emails retained during the August and September 2005 timeframe.

I do not recall the exact number of estimated missing email, but I believe it was greater than 1,000,000. This estimate did not include the days for which the number of retained emails was a statistically low number compared to the predicted number of email that should have been retained for a particular day.

The statistical prediction was based on a six-week moving average that separated working days from non-working days. Non-working days included weekend and federal holidays and days that traditionally have a low number of messages. An example of this type of day is the Friday after Thanksgiving. The use of a six week moving average also accounted for the natural seasonal fluctuations in email volume. An example of low volume are weeks during the month of August when the President is on vacation. Also, using this moving average allowed for accounting for spikes in email volume as a result of world events.

25. Did anyone verify the findings of your analysis? If so, who performed that verification and when did it occur? What did the verification find?

During this analysis process, a high level of formality and review was performed on every step of the process. The team performing the analysis met daily and in some cases multiple times per day. Each activity was documented either in meeting notes or in emails distributed to the entire team.

As stated in a previous response, an independent verification and validation was performed by a separate set of contractors who were not members of the team that was performing the analysis effort.

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26. To whom did you present the results of your analysis? When did the presentation or presentations occur? Please describe in general what you told these individuals in these briefings and what materials you used.

The results of this analysis, both in preliminary and final form were presented on various occasions to OA management and OA counsel. I do not have any specific dates on when these meetings occurred, but they did occur often throughout the period of October 2005 through February 2006.

Outside of OA, there were other meetings with the purpose of presenting these issues to White House Management and White House Counsel and their staff.

The summary chart or other charts similar to it were used in the discussion along with other PowerPoint presentation that presented the critical facts and recommendations. The briefing described the problem and presented various option to prevent the issues from recurring and to correct the problems that had occurred.

27. The Committee understands that you and John Straub met with White House Counsel Harriet Miers to discuss issues related to e-mail preservation. Did you discuss your analysis at this meeting? Please describe when this meeting occurred, the agenda for the meeting, and your recollection of what was discussed.

I participated in a number of meetings in December 2005 and January and February 2006. Some of these meetings included White House Counsel Harriet Miers and members of her staff. These meetings also included other White House management and OA Counsel staff.

Given the nature of these discussions, I will defer to the current White House staff to characterize these meetings.

28. To your knowledge, were other presentations of the findings made when you were not in attendance? Who made those presentations? To whom did that person present the findings?

I would assume that other presentations of the findings of the email analysis team were made when I was not present. However, I cannot recall any specific details about any such presentations.

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29. Was any analysis conducted to determine how e-mail files could have been lost? If so, who took the lead on that, and what was the determination?

From October 2005 through August 2006, no analysis was conducted to determine the cause of these issues. No direction was given by OA management to undertake such an analysis.

The primary focus of the team addressing these issues was to create a proper inventory of ,pst files, analyze these files to determine if issues related to email retention existed.

30. Did the White House ever inform the National Archives of the results of your analysis? If so, when was this done? If not, did you or any others recommend that this be done?

During my employment with the EOP, I do not recall if anyone at NARA was informed about these issues.

Sometime during the Summer of 2006, I was directed by the CIO that I was not allowed to discuss the potential email retention issues and the analysis that was performed by OCIO with the NARA staff. I was to inform any NARA staff who contacted me about these issues to direct all inquires about email records management to White House Counsel and White House Records Management.

During my employment at the EOP, I worked closely with NARA staff on a number of issues related to records management. I had established good working relationships with them. I received a number of inquiries from them and in each case I redirected their inquires to the White House. I was very clear to them that I was directed not to share information with them.

Efforts to Develop New Archiving Systems

31. It appears that the White House took several steps toward developing a new system for archiving and managing e-mails during the Bush Administration, including a contract for Legato to build an Exchange Interface System that would enable the ARMS system to archive and manage Exchange e-mails. Were you involved in or aware of this contract? If so, what was your role in the preparation and oversight of the contract?

I was not directly involved in the contract or the management of the work associated with the creation of the Exchange Interface using the Legato EmailXtender product. This project was managed by Mr. Howard Sparks. I was involved in the evaluation of the solution that was implemented. Once the solution was created and was being tested it became clear that the system would not meet the performance requirements necessary to support the daily volume of email processed by the EOP. In early 2003, this project was abandoned.

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32. What do you understand to be the results of this contract? Was the Exchange-ARMS interface ever implemented? Why or why not?

It is my recollection that the interface was never fully implemented. The testing of the initial capability indicated that it would not meet the performance requirements necessary to support the normal daily email volume of the EOP.

The failure of this approach (the use of EmailXtender to move email message into ARMS) created the situation where if the migration from Notes to Exchange were to proceed, there would be not automatic email records management functionality. In spite of this situation, White House and OA management made the decision to proceed with the migration.

In order to meet basic records management requirements, White House and OA management also made the decision to retain all email messages processed through the EOP Exchange environment, using the Exchange journaling capability and copying message to .pst files for storage.

33. It also appears that the White House took steps to develop a new electronic archiving system known as the Electronic Communications Records Management System, or ECRMS. Were you involved in or aware of this contract? If so, what was your role?

34. When was the concept for ECRMS first developed? Who led the effort to plan for and design the system? If contractors were involved, please describe which contractors worked on the effort, when they became involved, and what their role was.

35. It also appears that the Office of Administration prepared a Statement of Work for an E-mail Archive Retrieval System. A draft Statement of Work, dated September 21, 2004, notes that, "the primary goal of this engagement is to provide EOP staff with a solution that allows them to archive, manage, search and retrieve E-mail they may want to store and preserve on a long-term basis." EARS is described as being related to ECRMS. You are listed as the author of this draft. Was a contract issued for EARS? If so, to whom was it granted, what was the time frame of the contract, and was the project implemented?

[Combined response to questions 33, 34 and 35]

It was recognized by OA and CIO management in 2002 that the EOP needed a long term solution for email records management. I was assigned the initial project management role in 2002. In July 2003, the project was managed by various staff in the A&E Directorate.

Because of the issues related to email records management that had occurred in the past, a high level of scrutiny and caution was applied to this project. This involved additional periods of review of various work products. These reviews include White House and OA Counsel, White House Office of Records Management and OA Records Management.

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My recollection of some of the specific dates may be off. The rough chronology for the ECRMS implementation is as follows:

- November – December 2002 – The initial draft of the Concept of Operations (CONOPS) for the ECRMS system was completed.
- December 2002 through May 2003 – The ECRMS CONOPS was reviewed and approved by OA Counsel, White House Office of records Management and White House Counsel.
- April / May 2003 – The Statement of Work for the initial phase of the project was drafted and the procurement process began. The scope of this effort was to complete a detailed systems requirements specification, evaluate commercial-off-the-shelf products and propose solutions that meet the government requirements. The government would then select the solution that provided best fit to the EOP environment and the contractor would complete and delivery the design for the implementation of that solution.
- September 2003 – Vendor proposals were received and evaluated and a selection was made. Booz Allen Hamilton was awarded the contract for Phase 1 of ECRMS.
- November / December 2003 – Initial phase of the ECRMS project began.
- December 2003 – May(?) 2004 – Requirements analysis was completed by the contractor. COTS solutions were evaluated against those requirements. A recommendation was made by the vendor and the Government selected a the solution. The design for the implementation of the solution was created by the contract and delivered. The solution selected was a combination of two COTS products, MDY FileSurf and KVS Enterprise Vault
- April – May(?) 2004 – The solution design was presented to OA Counsel, White House Records Management and White House Counsel for their concurrence.
- June – September(?) 2004 – ECRMS Phase 2, the systems implementation began. It was decided that the current Unisys contract could be used to support the installation and configuration of the system. The procurement and installation of the hardware and software also occurred during this time.
- November 2, 2004 – Final configuration and completion of the File Plan used to archive records was drafted.
- January 2005 – October 2005 – System configuration, testing and tuning. Testing with large email volumes to ensure that system performance would satisfy the requirements. A number of issues were identified and the vendors corrected and testing continued.
- October 2005 – February 2006 – ECRMS project impacted as the contractor staff was supporting the clean up of the .pst file issues.
- January 2006 – March 2006 – Large volume testing continued. The ECRMS standard operating procedures were drafted and provided to staff for review and comment. Large scale testing was being performed using .pst files that contained OA email messages.

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- March 2006 - White House Counsel, White House Office of Records Management and OA Counsel provided a detailed briefing on the solution.
- July 2007 - White House Counsel, White House Office of Records Management and OA Counsel provided a detailed briefing on the search and retrieval capabilities of the ECRMS solution.
- August 21, 2006 – ECRMS ready to go live.

36. Was ECRMS ever implemented? What was the status of ECRMS when you left the White House? Was there ever a pilot program to test the ECRMS system? What is your understanding of why it was not implemented? Who made the decision not to implement this system?

The ECRMS system was ready to be implemented. The hardware and software was procured, installed and configured. Extensive testing was performed in 2005 and 2006. This testing was performed to ensure that the system would work as designed and to ensure that it would support the performance requirements necessary to support the daily volume of EOP email.

When I left the OCIO in August 2006, the system was ready to be used. The only remaining tasks were to obtain approval from the OA Director and the CIO.

37. The White House also provided the Committee with documents indicating that you recommended changes to the e-mail archival process in November 2005. In what appears to be a draft memorandum from you to John Straub, dated November 14, 2005, you recommend the adoption of Standard Operating Procedures for e-mail archiving as well as "system monitoring of the archive process" in the interim. You also recommend a "long term risk mitigation plan" involving the adoption of ECRMS. Did you provide such a memorandum to John Straub? Why did you make these recommendations at this time? Were your recommendations approved? What is your understanding of why these recommendations were or were not approved?

It is my recollection that these recommendation were provided to the OA Director. I made these recommendation because of the various situations that had occurred over the prior three years with respect to the management of EOP email records. I felt that the procedures needed to be formalized and I also felt that if the appropriate resources were applied to the implementation of ECRMS, the project could be completed in a timely manner and could provide a good solution that would prevent the reoccurrence of these issues.

I do not recall the final disposition of these recommendations.

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38. A briefing document from October 2005 discusses the "operational risk in current email storage management processes." This document expresses concern that the current e-mail management systems may not meet the statutory requirements for document preservation and proposes several "risk mitigation" steps. Were you involved in the creation of this document? If so, please describe the purpose of the document, the individual or individuals who prepared it, and to whom it was presented.

If my recollection is correct, I was involved in the creation of this presentation but I do not recall the specific purpose of this presentation.

I do not recall to whom it was presented.

39. How was e-mail archived and preserved when you left the White House?

When I left my employment with the EOP, the semi-automated process of daily processing of Exchange journal files using the Mail Attender utility was being performed. The daily manual process of validating that the .pst creation process completed successfully was being performed and the status was being reported to the OA Records Manager on a weekly(?) basis.

40. What was the role of the National Archives in the process of planning for and developing new systems for archiving e-mail? Did officials with the Office of Administration or the EOP consult with officials at the Archives?

The staff from the National Archives and Records Administration (NARA) were briefed a number of times in 2003, 2004 and 2005 about the approach for email records management.

Searches of E-mails in Response to Investigative Requests

41. Were you ever involved in, or aware of, searches for e-mails in response to investigative requests? When? What was the subject matter? The most well known investigative request was for documents relating to the leak of the identity of CIA agent Valerie Plame. Were you involved in a search for documents responsive to this request? If so, what was your role?

During my tenure at the EOP, I did not have any operational responsibility for the performance of email searches.

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42. How did searches vary for e-mails saved in the ARMS system and for those sent and received through Exchange? For e-mails saved on Exchange, did the Office of the CIO search files preserved on servers, on disaster recovery tapes, or elsewhere? What was the basis for that decision?

During my tenure at the EOP, I did not have any operational responsibility for the performance of email searches.

The OCIO has specific search procedures that describe how searches are to be performed in both the ARMS environment and using the .pst files used for email retention. In both cases, the primary storage of these data set in on file servers in the EOP environment.

Searches are perform against these files.

43. Do you recall any concerns that the searches were not picking up all of the responsive e-mails? Or did you hear that the searches ever revealed errors in the way e-mails were preserved? If so, how did you respond?

The use of primitive search tools, both in the ARMS search and the search of the .pst files, was raised on a number of occasions. The tools that were used were both slow and primitive compared to current off-the-shelf search technologies.

Each time a search was performed it consumed an enormous number of staff and contractor resources to set-up and perform the search.

The fact that both the ARMS and .pst file search processes did not search the email attachments was raised on a number of occasions. At the time I believed that this was a short-lived problem as the ECRMS solution would provided fast and effective full search capabilities, including the search of attachments.

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44. At some point in late 2005 or early 2006, it appears that the White House alerted Special Prosecutor Patrick Fitzgerald that some e-mails may not have been provided to the prosecutor in response to his investigation. According to a January 23, 2006, letter from Mr. Fitzgerald to attorney representing former aide to the Vice President, Lewis Libby: "In an abundance of caution, we advise you that we have learned that not all email of the Office of the Vice President and the Executive Office of the President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system." According to court filings, the White House produced 250 pages of e-mails from the Office of Vice President to the Special Prosecutor in February 2006. When were you first made aware that not all e-mail responsive to the Special Prosecutor's investigation was preserved through the normal archiving process? Why weren't these pages included in the original document production? How were you made aware of this? What steps did the White House take to restore these e-mails? Where did these 250 pages of e-mails come from?

During the period in October through December 2005, when the .pst file organization and analysis was occurring, it became known that some of the periods for which not email was present in the retained .pst files were the same periods for which Special Prosecutor Patrick Fitzgerald had subpoenaed the White House for emails related to his investigation.

Most critical were a set of days in early October 2003 where it appears that all email for the Office of the Vice President was missing. A detailed plan was developed to attempt to recover the email for this period.

This plan was prepared by the OCIO staff and presented to White House Counsel. I do not recall the specific details of this plan. A number of the activities identified in the plan were undertaken and to the best of my recollection, the email from the period in question was never recovered.

I worked with OA Counsel and White House Counsel on efforts to provide an explanation to the Special Prosecutor. This included providing a briefing to the Special Prosecutor's staff on this subject.

There was a parallel effort to attempt to recover all email from this period. The results of this effort were the 250 pages of email. However, I was not directly involved in this process and am unable to provide any details relating to the 250 pages of email.

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45. The Committee was provided with an e-mail exchange between you and Susan Crippen, with copies to Jaime Borrego and William Reynolds that attached an "Exchange MST Activity Plan" dated November 28, 2005 and updated on January 20, 2006. The attached plan states: "The following outlines the planned activities to recover Office of Vice President e-mail from the target period of September 30, 2003 to October 6, 2003." Was this search relevant to the Special Prosecutor's investigation? Why was this period targeted? What was the role of each of the individuals on this e-mail with regard to the activity plan?

Yes, the attempt to recover these email was in response to the search associated with the Special Prosecutor's investigation.

The period was targeted because it was among the set of date which were of interest to the Special Prosecutor.

The individuals involved represented the OCIO management staff that was in place at that time. Susan Crippen was the Deputy Director of Information Systems and Technology, Jaime Borrego was the acting Director of Information Systems and Technology and the Director of Information Assurance, William Reynolds was the Deputy Director of Information Assurance and I was the Director of Architecture and Engineering. All the individuals identified were involved in both the activities to correct the .pst file management problems and with the activities associated with attempts to recover missing emails to support the response to the subpoena from the Special Prosecutor.

Disaster Recovery Tapes

46. According to the White House, until October 2003, the EOP disaster recovery back-up tapes were recycled and were not preserved. Were you involved in this decision? To your knowledge, who was involved in this decision? Did anyone ever express any concerns to you about the decision to recycle all of the tapes? If so, what were the concerns and who expressed them to you? Did you have any concerns about this recycling of tapes? If so, please explain.

During my tenure at the EOP, I did not have any operational responsibility for the management of backup tapes nor was I involved in decisions related to the recycling of backup tapes.

47. The White House has also told Committee staff that this recycling was temporarily stopped several times — in February 2002, July 2002, and September 2003 — before it was permanently stopped in October 2003. Do you know why these stops occurred, and why they were temporary? Were these stop-recycle orders related to discovery that searches of the .pst folders were not producing all of the documents relevant to the search request?

During my tenure at the EOP, I did not have any operational responsibility for the management of backup tapes.

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Chairman WAXMAN. Mr. Cummings, you are now recognized for your 5 minutes.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. Stern, I would like to ask you about your perspective on the White House's effort to get to the bottom of the problem of the missing e-mail. The White House has known about this problem since 2005, from the time that Archives first learned about it, you repeatedly tried to get information from the White House, is that correct?

Mr. STERN. Yes.

Mr. CUMMINGS. Unfortunately the Archives wants to know, just like we do, what caused this problem and big it is, and what the White House plans to do about it. Is that an accurate statement?

Mr. STERN. Yes.

Mr. CUMMINGS. The problem is, each time the Archives asks for an explanation, the White House promises that they have almost finished diagnosing the problem. I call it paralysis by diagnosis. The White House says, just give us a little more time, and we will tell you the results of our review. But when the deadline arrives, the White House kicks the can farther down the road.

For example, in 2007, you met with the White House officials to discuss the missing e-mails. The White House said they would tell you the full extent of the problem in 1 month. They didn't give you the details in June, did they?

Mr. STERN. No.

Mr. CUMMINGS. And at the end of June, the White House said they would get you your results by the end of the summer. They didn't give you their results at the end of the summer, did they?

Mr. STERN. No.

Mr. CUMMINGS. In October, going further down this road, the White House said they would have the results in 6 weeks. They didn't give you the results in November, did they?

Mr. STERN. No.

Mr. CUMMINGS. In fact, your own staff recognized the obvious pattern. I just want to read from a summary your staff prepared of a meeting between Archives and the White House staff on October 11, 2007. I want you to pay close attention to this, Ms. Payton, since you said that you all were not running out the clock. Well, I call it rope-a-doping. And it states this. This is the statement. "We should note that this process was supposed to be completed by the end of June, then the end of September and the end of October in our previous briefings. They are now saying that it will take about 6 weeks of work to have any results."

Now, Mr. Stern, it is now February 2008. Matter of fact, we are getting ready to go into March, and the White House still has not provided you those results, have they?

Mr. STERN. No.

Mr. CUMMINGS. Ms. Payton, it is your turn. The White House has known about this e-mail archiving problem for almost 2½ years. Yet despite repeated inquiries from Archives and this committee, you still have not even produced a current inventory of the White House e-mails, is that correct?

Ms. PAYTON. We——

Mr. CUMMINGS. Have you produced an inventory?

Ms. PAYTON. We have one that has not been through a quality assurance process yet for us to share with NARA.

Mr. CUMMINGS. So it hasn't been, in other words, it has been created but nobody has seen it beyond——

Ms. PAYTON. We need to go through a quality assurance process before we share the results.

Mr. CUMMINGS. And when is that quality assurance process supposed to be completed? Do you have any idea?

Ms. PAYTON. First, we need to finish all the work in phase one. So we have a preliminary inventory, we are still doing some work in phase one. Then we will be doing our quality assurance analysis. Our target, because the team and I sat down and went over this, this has been a much more complex process, and if NARA will remember, when we sat down in the summer, the team very optimistically said we wanted it to be done by this timeframe and estimated that it would be. It has proved to be a lot more complex for a variety of reasons. So it has taken us longer, because we are taking a lot of care, and it is bigger than we thought it was going to be.

Mr. CUMMINGS. Well, certainly we want you to take care.

Ms. PAYTON. The team and I sat down and we talked about our timeframe as to when we would sit down with NARA and have completed phase one and phase two. We are targeting the summer that we would actually sit down with them, we would have completed phase one, phase two and have all the remaining, if there are any anomalies left around low volume days or zero days, we would go over that with them.

Mr. CUMMINGS. And what does summer mean? Give me a date.

Ms. PAYTON. In the June, July timeframe.

Mr. CUMMINGS. All right.

Ms. PAYTON. So the first phase, as we complete it and QA it, we are going to sit down and go over with NARA. The second phase, it will be the same thing, we will do a QA, go over it with NARA and then we will sit down and talk about if any remaining anomalies exist, what type of recovery effort needs to be done.

Mr. CUMMINGS. I just want you to clear up one thing real quick. You said in your opening statement that after phase two of your study, if you found e-mails were missing, you would consult with Archives and restore from backup tapes. Can you confirm that this will be done before the end of this administration?

Ms. PAYTON. I cannot confirm that, and I have read the GAO report which has said that the previous administration, it took longer than the administration. We hope with newer technology, but I just don't know the size of the recovery effort to give you an estimate to tell you whether or not it will be completed.

Mr. CUMMINGS. We need a sense of urgency here.

Ms. PAYTON. We absolutely have it, sir.

Mr. CUMMINGS. We do?

Ms. PAYTON. Yes.

Mr. CUMMINGS. Oh.

Chairman WAXMAN. Will the gentleman yield to me?

Mr. CUMMINGS. Yes.

Chairman WAXMAN. Over a year ago you got a letter from Dr. Weinstein, saying you have to get going with this thing, it is going

to take a lot of time. So you have the possibility of going to the backup tapes and all of that. But he said it is going to take at least a year for you to get all this information. And still, we will have nothing on the RNC tapes where there are backups in boxes. So I just must tell you that I find it hard to believe that you have any real sense of urgency when a whole year has been frittered away.

Ms. PAYTON. We have not frittered it away. We really have improved the overall inventory process, and it is something that will benefit future administrations, as well as if we had undertaken a recovery effort prior to doing this work. We may have recovered days we didn't need to, as well as we might not have recovered days we might need to.

Chairman WAXMAN. Well, this all remains to be seen, but I appreciate your position.

Mr. Issa, you were recognized to pursue questions, but it was under the 15 minutes and Mr. Davis asked, so you are entitled to 5 minutes and I will recognize you for that purpose.

Mr. ISSA. Thank you, Mr. Chairman.

I am going to followup where the chairman left off. Mr. McDevitt is not here, and that is unfortunate, because there are things that I am confused about, and Ms. Payton, I am hoping you can straighten it out for us. He was the chief information officer while he was at the White House, is that right?

Ms. PAYTON. Excuse me?

Mr. ISSA. Mr. McDevitt was employed by the Office of the Chief Information Officer and his primary responsibility was to manage the electronic records systems of the White House, is that right?

Ms. PAYTON. He was to manage the new archiving platform, that is correct.

Mr. ISSA. But essentially, he was the guy that used the tool that wouldn't see any e-mail box that had more than 32,000 e-mails in it, right? So the tool that failed was his tool that he used earlier, is that right?

Ms. PAYTON. I don't believe that tool reported up through Steve. But I am not sure.

Mr. ISSA. But at the time that tool was in use, it was a flawed tool, and that was more than 18 months ago. So when he said, for example, that there are 400 days of lost information, that is wrong, because he has been gone for 18 months and doesn't know. When he says that e-mails could be deleted, he apparently doesn't know that there is a tracking log in the Microsoft operating system, so he doesn't know that you can't delete with impunity, that it is trackable.

He obviously doesn't know that the tool that you used earlier was flawed and the tool you are using now is at least better. We will never know if it is flawed until a later generation. But it catches many of the lost documents that the previous tool didn't. Is that roughly correct?

Ms. PAYTON. That is roughly correct, yes.

Mr. ISSA. I want to hit a couple of other points. And I don't want to delve too much into software, but I think it is fair that we recognize that software moves on and that archiving in the digital age is not as easy as it might seem to the public, and hopefully this hearing is good for the public to understand.

The Clinton administration used Lotus Notes, right?

Ms. PAYTON. Yes.

Mr. ISSA. Lotus Notes no longer exists, right? It is no longer supported.

Ms. PAYTON. It is no longer supported. Some groups may still use it, but it is no longer supported.

Mr. ISSA. I wouldn't want to do business with somebody still using Lotus Notes or still using wooden wagon wheels. If I understand correctly, though, certainly I checked with the House of Representatives, we can no longer support it for Members who want to stay on it. I assume that the robust tool you are now using to go through and recapture the PSTs deconflict the fact that PSTs often have multiple PSTs and you don't want to have 40,000 copies of the same e-mail, so you have to take care of the duplicates. Those tools didn't exist for Lotus Notes, in all likelihood, because it was on its way out by the time the Clinton administration was on its way out, is that roughly correct?

Ms. PAYTON. My understanding is that the way, because they have a limited de-dupe process for ARMS, and it had to be built. That is my understanding.

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REPUBLICAN POLICY COMMITTEE

March 10, 2008

Full Committee Hearing on Electronic Records Preservation at the White House on Tuesday, February 26, 2008

For the Record

Mr. Chairman, during my questioning of Ms. Payton during the hearing, I made a statement that incorrectly implied that IBM's Lotus Notes software was no longer sold or supported in the marketplace. During the hearing, my staff spoke with the House Information Resources office about use of the Lotus Notes program in Congressional offices, and discovered that Lotus Notes is no longer supported for use by Members or Congressional staff.

After the hearing, I had the opportunity to speak with Ed Brill, who is the IBM Business Unit Executive for Lotus Notes, and was pleased to learn that Lotus Notes continues to maintain a substantial presence in the marketplace. In fact, Lotus Notes currently has 46,000 customers, and IBM continues to aggressively develop and market Lotus Notes.

I appreciate the opportunity to correct the record.

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Mr. ISSA. OK. So here we have a situation where the Clinton administration is on a platform that has to be phased out. Simply, they lost the war of who is going to supply e-mails. A period of time goes on in which yes, we are dealing, to Dr. Weinstein's concern, with getting good archives, but we are also dealing with the fact that I can't play my Beta Max tapes any more, either, and I can't seem to find anybody who has a Beta Max player any more. And in a matter of a couple of years, it is going to be hard for me to play my high definition DVDs that were on the platform that now is being phased out.

This is one of the challenges that I gather, for Dr. Weinstein, that you face that is going to be difficult for you as an archivist going into the future, no matter who is in the White House and no matter how hard they try, is that correct?

Mr. WEINSTEIN. Yes, sir.

Mr. ISSA. OK. So certainly, the House of Representatives needs to begin making sure you are funded, and that is part of what we do in oversight, fund it to deal with ever-evolving technologies where archiving isn't just putting them away, it is being able to retrieve it, is that right?

Mr. WEINSTEIN. And to migrate where necessary.

Mr. ISSA. OK. I am deeply disappointed, Mr. Chairman, that we do have a split in our otherwise bipartisan effort to deal with the archiving and preservation of our Nation's records, and particularly the office of the President. I am sorry that as of today, Mr. McDevitt is not made available to us. I would hope that in spite of the vote that occurred that you would reconsider and allow for us to bring up some of these points with a gentleman who I believe is at least misguided as to the tools, capability and ongoing work by the White House as to the White House's responsibility.

Last but not least, Mr. Chairman, I think what you are doing is going to prove in retrospect to be shameful as to the RNC, that in fact, if we have no reason to believe that private correspondence done outside of the White House is inappropriate and are not willing to do so up front, we should not have members of the White House administration here in order to ask them questions about the RNC that is not within their purview.

Chairman WAXMAN. The gentleman's time has expired. I want to recognize the last questioner, I believe.

But we have a lot of evidence that the RNC e-mails involve Government responsibility, because a good number of the e-mails from Karl Rove's account were to Government agencies. We asked the RNC for the number of dot gov e-mails from his e-mail site. And we saw that a good number of them were done.

You want to assume otherwise. I am not surprised at the partisanship. I have come to expect it. But I would hope that something like this would not engender the partisanship that we have seen. The Republicans are attacking Mr. McDevitt, who worked at the Republican White House, you are attacking everybody else and you don't believe the truth about the RNC e-mails. Well, we will be glad to show you the documentation that we have, but we have a vote on, so I want Mr. Burton to have his full 5 minutes, and he is recognized at this time.

Mr. BURTON. Thank you, Mr. Chairman. I yield to my colleague.

Mr. ISSA. And I will only use one of his minutes, but Mr. Chairman, although you spoke on time that doesn't exist under the rules of this committee, I do want to continue working on a bipartisan basis. This White House will close up and we will be looking to preserve all the records that fall within the act. Today, I am afraid we did not move further toward it. Candidly, Mr. Chairman, constantly asking about Karl Rove, Karl Rove, Karl Rove, who clearly had a reason to be involved in many things which would have been inappropriate begs the question of whether or not we have any real evidence other than "we didn't find e-mail traffic at the White House, therefore they must have been doing Government work on private sites."

Mr. Chairman, I have to tell you, I have little doubt that if we asked for the staff members of this committee on both sides of the aisle to provide to us all of their outside information that we would in fact learn a great deal. Mr. Chairman, we don't have that right within this committee, and we should not try to create it.

I yield back to the gentleman.

Mr. BURTON. Mr. Chairman, we have a vote on. I yield my time.

Chairman WAXMAN. Thank you. I just want to make a closing comment and will afford the other side an opportunity for a closing comment.

The Congress is not required under any law to keep our e-mails the way the White House has had that requirement under the Presidential Records Act. I think it is appropriate and I hope all Members of Congress would think it is appropriate that law be adhered to, whether it is this White House or any other White House.

I must say, what I have learned today, which is, this hearing is about this Presidential Records Act, I am quite disturbed. We have been asking questions about what happened to these White House e-mails that were sent through the RNC e-mail accounts, including messages sent by key advisors to the President during decisive periods of the administration. We have established there are two boxes of backup tapes stored at the RNC. These backup tapes may contain the missing e-mails. Dr. Weinstein, the archivist, has said that it is essential that these records be restored.

Yet we have learned there appears there is no effort, no effort to recover the missing RNC e-mails. And the only e-mails that we want are those that relate to Government business. All the evidence we have received says that these e-mails are a vital part of the historical record of this White House. Yet the White House has not asked the RNC to reconstruct the backup tapes, and it has not asked for the backup tapes so they could reconstruct them themselves.

The effect is that the historical record will have major holes. This may save the White House from embarrassment, but it is an enormous disservice to the American people for the historical record. While there has been more effort to recover the missing e-mails from the White House, I am glad to hear that Ms. Payton has been working hard to recover these e-mails, and I am glad she has found e-mails that were previously missing. But in this area, too, I continue to have grave concerns.

There is a certain way to recover the missing e-mails; that is to restore the backup tapes. The Archives have been asking the White

House to do this for nearly a year, but the White House won't do this. The result is that it is impossible to have confidence in what the White House is doing. We know from the Plame case that the only way the White House could recover key e-mails was using the backup tapes. But the White House is resisting this practical step.

It is important to remember what this hearing is about. It is not about Sandy Berger, it is not about a California waiver, it is not about whether Clinton did it or didn't do whatever. It is important to know that this hearing is about getting a complete record of what happened inside the Bush White House. This will never occur unless the White House recovers the deleted RNC e-mails. But we learned today that this is not happening. It is a major disappointment and I think a clear violation of the law.

Mr. Davis is not here.

Mr. ISSA. He left me to close, Mr. Chairman.

Chairman WAXMAN. OK, the gentleman is recognized.

Mr. ISSA. Mr. Chairman, I want to close in the most positive and bipartisan way possible, because I believe that there was a great deal of good done here. I think we learned as a committee that the statute requires adequate, according to the Archivist, records. We learned from Dr. Weinstein that in fact, we are going to, even though we are not at a 10 day that regularly, at the end of an administration, that there is this going from a 2 or a 3 up to a 10 in the gaining of records and that there was a high confidence that we would get to that 10 by the inauguration of the next President.

I personally have no doubt that Ms. Payton or a successor will be in fact still employed on those last few things that may need to be done in a digital age. But I am also pleased to see the skill and the understanding, although expressed in phase, clearly that there is a process necessary to deliver all the information that is required by the Archivist and requested by this Congress, and that we will get there, but we will get there as close to or below the $15 million fee that we could spend if we simply threw everything at it.

So while I share with the chairman a disappointment that weeks, months and even a year can go by in this process, I certainly will hope very much that we all understand that it can take that long to get this information, and that this is not something that is devious, at least as far as I can see, that in fact, Ms. Payton, in good faith, is working toward that and she has the confidence of the Archivist that progress is being made. I think that is what we can take away from this hearing on a bipartisan basis. I yield back.

Chairman WAXMAN. That concludes our business for today. I thank all the witnesses for your very generous time here with us. The committee stands adjourned.

[Whereupon, at 1:15 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority: 202/225-5051
Minority: 202/225-5074

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Full Committee Hearing on "Electronic Records Preservation at the White House"

Tuesday, February 26, 2008 at 10:00 a.m. in 2154 RHOB

REPUBLICAN STAFF BRIEFING MEMORANDUM

This hearing reflects several unfortunate trends in the Committee majority's oversight practices. First, the premise of this hearing perpetuates a habit of overstating and distorting limited evidence to leap to spurious, if newsworthy, conclusions. ("White House Study Found 473 Days of E-Mail Gone"). See also, State Department Inspector General (unsupported claims of close White House and senior State Department ties based primarily on a "hunch" and a "perception, right or wrong") and Medicare Part D (unsupported claims of high administrative costs -- comparing administrative costs as a percentage of high cost doctors and hospitals with relatively low cost prescription drugs).

Second, it is another hearing that could be helpful to plaintiffs in pending litigation. Lawsuits are pending seeking to compel the White House to comply with the Presidential Records Act. (See also, Blackwater and California Waiver hearings/investigations.)

Finally, broad, poorly focused oversight can become so intrusive as to impede the functions of the executive branch. The Committee has sought broad categories of documents and information from the White House on a number of topics (Abramoff, Tillman, political briefing) and now seeks e-mails about emails so that we can be sure, at least in part, that we are getting all the emails. At some point, seeking access to such broadly described categories of executive branch records ceases to be oversight and crosses the line into gratuitous intrusion and needless conflict with a coordinate branch of government.

Brief Introduction to Technology Infrastructure at the White House

The technology infrastructure at the White House is managed by the Office of the Chief Information Officer (CIO) which is part of the Office of Administration (OA). In 1994, the White House began using a system called the automated record management system, referred to as ARMS, for record-keeping and archiving of electronic mail messages (emails). This system was compatible with Lotus Notes, the email system in

use at the White House at the time. Between 2002 and 2004 the CIO engaged in a slow and lengthy migration to Microsoft Exchange (Exchange). Messages generated by users of Exchange were archived in a different manner, using personal storage table files (PST). Although the CIO sought to use ARMS with Exchange, at some point, it became apparent that ARMS was not compatible with Microsoft Exchange.[1]

In addition to the archiving system, the White House has maintained disaster recovery back-up tapes (DRBT) since October 2003. Beginning in April 2001, after approval and according to industry best practices the White House began recycling DRBT.[2] However, out of an abundance of caution, and at the behest of counsel the CIO halted the recycling of DRBT in October 2003. It was out of an abundance of caution because the emails were already being saved on an archiving system. It is important to point out that the archiving system which uses PST files and the DRBT have two wholly distinct purposes, but if necessary, the DRBT can be used to recover potentially missing emails.

The So Called "Missing Emails"

As early as the first part of 2006, media reports brought to light the potential for emails missing from the White House computer archives.[3] Special Counsel Patrick Fitzgerald sent a letter to I. Lewis "Scooter" Libby's defense team noting among other things "not all e-mail of the Office of Vice President and the Executive Office of the President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system,"[4] in connection with his investigation into the leak of Valerie Plame Wilson's identity. **However, the Committee has no evidence that Special Counsel Fitzgerald's subpoenas and inquiries were not satisfied or that emails were intentionally destroyed.**[5]

More recently the issue of potentially missing emails and more broadly the issue of the electronic record archiving system employed by the White House have come up in lawsuits filed in September 2007 by Citizens for Responsibility and Ethics in Washington

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[1] Theresa Payton, Chief Information Officer [hereinafter CIO], The White House, Briefing to Staff of H. Comm. on Oversight and Gov't Reform [hereinafter the Committee] (Feb 6, 2008).
[2] In addition to it being industry best practice, it also reduces costs to recycle disaster recovery back-up tapes [hereinafter DRBT]. It can cost anywhere between $60,000-$120,000 a month to save the DRBT.
[3] Joel Seidman and Norah O'Donnell, With House E-Mails Missing in CIA Case, MSNBC, Feb. 2, 2006, http://www.msnbc.msn.com/id/11150000/print/1/displaymode/1098/
[4] Letter from Spec. Counsel Patrick J. Fitzgerald, Office of the Spec. Counsel, to William Jeffress, Esq., Theodore V. Wells, Esq., Joseph A. Tate, Esq., (Jan. 23, 2006).
[5] Transcribed Interview of David McCrosky [hereinafter McCrosky Interview] (Feb. 7, 2008); Transcribed Interview of Carlos Solari [hereinafter Solari Interview] (Feb. 7, 2008); Transcribed Interview of Tim Campen (Feb. 14, 2008); Transcribed Interview of John Straub (Feb. 15, 2008); (all witnesses are former White House IT employees).

(CREW) and the National Security Archive (NSA).[6] The Minority is concerned this investigation and hearing is a partisan attempt to bolster the plaintiffs' cases.

These issues are not new to the presidency. During the Clinton Administration this Committee held hearings on whether emails pertinent to the Lewinsky investigation had been intentionally destroyed.[7] The Clinton-era inquiry involved allegations that White House staff were participating in a cover-up to destroy potentially incriminating emails. Here, there is no such evidence or allegation.

In 2001, the then-Government Accounting Office (GAO) concluded that during the Clinton Administration "e-mail system malfunctions and management weaknesses prevented archiving of some e-mail records for EOP components, including the Office of the Vice President (OVP)."[8]

The second of two malfunctions "prevented incoming e-mail to users with first names starting with the letter D from being captured by ARMS."[9] In March 2000, EOP was forced to undertake a back-up tape restoration project that carried over into President George W. Bush's first term.

The restoration project was necessary because GAO found that "[Vice President Gore's Office] did not implement adequate records management practices to ensure that all e-mail records generated or received were preserved in accordance with applicable law and best practices.... The OVP could not demonstrate that all e-mail records had been preserved by acceptable methods until May 2000, when ARMS began capturing all OVP e-mail records."[10] According to the National Archives and Records Administration (NARA), approximately two million Clinton Administration emails had to be restored at a cost of approximately 12 million dollars.[11]

Efforts by the Majority to Publicize Unfounded Conclusions

On December 20, 2007, Chairman Waxman wrote to White House Counsel Fred Fielding and the Archivist Allen Weinstein expressing concern that "the White House has

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[6] CREW describes itself as: "Citizens for Responsibility and Ethics in Washington (CREW) is a nonprofit 501(c)(3) organization dedicated to promoting ethics and accountability in government and public life by targeting government officials -- regardless of party affiliation -- who sacrifice the common good to special interests." See http://www.citizensforethics.org/about. NSA describes itself as: "An independent non-governmental research institute and library located at The George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act." See http://www.gwu.edu/~nsarchiv/nsa/the_archive.html.

[7] H.R. Rep. No. 106-1023, at 20 (2000).

[8] U.S. Gen. Accounting Office, Electronic Records: Clinton Administration's Management of Executive Office of the President's E-Mail System, GAO-01-446 (2001).

[9] *Id* at 2.

[10] *Id.* at 2.

[11] Gary Stern, General Counsel, NARA, Sharon Fawcett, Assistant Archivist for Presidential Libraries, NARA, Briefing to Staff of the Committee (Feb 13, 2008). *See also* GAO-01-446.

not implemented a robust system for archiving e-mails and other electronic records despite several efforts to do so."[12] In his letters, the Chairman also requested a broad range of documents related to, among other things, the White House email system, the transfer of presidential records to NARA, and the electronic records archiving systems at the White House.

Prior to the letter, Committee staff had been informed by the White House Counsel's office that during a 2005 review of White House servers, the White House found [473 separate] days with few or no e-mails for certain White House components.[13] Nobody believes the 2005 review was accurate. In meeting notes produced by the National Archives concerning the so-called missing emails OA officials knowledgeable of the situation described the dubious nature of this review as follows:

> In 2005, [Microsoft] used a Visual Basic tool to count the messages and generate reports. This is the report which first generated results indicating that there were problems with the email collection systems, i.e., all emails were not being [counted] . . . Visual Basic is known to have problems . . . so they believe this counting/analysis tool they have been using is faulty.[14]

The CIO – Theresa Payton – explained the flaws in the 2005 review at length. Some of the most obvious flaws include:

- The technology tool used in the review skipped PST folders that were not named in a recognizable format. This resulted in those messages not being counted.
- The tool did not flag which PST folders were counted or not. As a result, some folders may be skipped or counted twice.
- The tool did not count PST folders that exceed a certain volume of records. As a result, PST folders were likely skipped over.

Without consulting with the Minority, late on January 17, 2008, staff for Chairman Waxman sent a second letter to Fielding. This letter challenged statements made by Deputy Press Secretary Tony Fratto regarding whether or not there are emails missing from the White House servers. The letter contained the sensational – but deeply flawed – charge that 473 days of emails had gone missing. The letter was immediately sent to the *Washington Post*. The January 18, 2008, paper contained a page one story on

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[12] Letter from Rep. Henry A. Waxman, Chairman, the Committee to the Honorable Allen Weinstein, Archivist, NARA and Counsel to the President, Mr. Fred Fielding (Dec. 20, 2007).
[13] Letter from Rep. Henry A. Waxman, Chairman, the Committee to the Counsel to the President, Mr. Fred Fielding (Jan. 17, 2008).
[14] Meeting Notes by NARA officials concerning a conference call between NARA, OA and the White House Counsel's office, Sept. 25, 2007.

the missing emails. According to one *Washington Post* reporter covering the story, the information from Majority staff was communicated so late on the evening of January 17, the newspaper did not have time to contact the Minority for comment. The article from January 18, 2008, is attached to this memo. **Again, it must be stressed that White House officials have never certified to the Committee that the 2005 review and chart are accurate.** Presently, the White House is attempting to recreate the original analysis depicted in the 2005 review and its results in order to verify its accuracy and get a baseline of how many emails there are for each day, during a specified period, for each EOP component. This is a complex and technical process.

What we do know is the 2005 review, and the sensational claim that 473 days of missing email was demonstrably flawed. The White House knew this; the Majority staff knew this; but it makes a great headline – "White House Study Found 473 Days of E-Mail Gone."

On February 22 – last Friday – Payton provided the staff with updated numbers. Although their work is not complete, the CIO's office has identified email for a substantial portion of the 473 days. At present, the number of days with unidentified email is 202. The CIO's staff work is not complete. It is conceivable all email will be identified and recovered.

The Committee's Investigation

The staff interviewed six witnesses.

- David McCrosky, former branch chief of systems infrastructure and support at the White House
- Carlos Solari, former White House CIO
- Tim Campen, former White House CIO and former Director of Administration
- John Straub, former Deputy Director of Administration & former Director of Administration
- Robert Spangler, currently an IT Specialist at NARA, former IT specialist at the White House
- Jim Estep, outside contractor to the White House (Microsoft).

The Committee has no evidence – testimonial or otherwise – that shows the intentional destruction or deletion of email. All witnesses, to one extent or another, believe the emails are somewhere on the system.

Carlos Solari testified:

> Q Okay. And just a little bit more about that. I am sure you have read in the media the allegations of the missing e-mails. So would you -- on a scale of likelihood of deletion, do you think it is likely that somebody manually deleted e-mails?

A No. And I read that, and I don't know where –

Q Actually, I should ask you, do you even believe the allegations?

A The straight answer is no.[15]

Moreover all witnesses agree that any searches of electronic records conducted by the White House at the behest of the Department of Justice, were performed with the utmost integrity and care. David McCrosky explained:

Q You sound very confident in your search. And it's my understanding that Mr. Fitzgerald was ultimately satisfied. I mean, that's -- I'm reading that correctly, right?

A As far as I know. Now, we did do some pretty innovative things, things to make sure, because once again, everybody from on top down, everybody wanted to make sure that this went well. Because once again, you know, that Clinton ghost of the missing e-mails and the congressional hearings -- did you order her or did she order these people to destroy these e-mails? You know that was -- that was in our rear-view mirror. And certainly we didn't want that. We wanted to do the right thing.[16]

With regard to the searches related to the leak of the identity of Ms. Valerie Plame Wilson, Solari testified:

Q Well, and my understanding is that Mr. Fitzgerald, Special Prosecutor Fitzgerald, was ultimately satisfied with the production you all gave him. Would that be a fair statement as far as you know?

A As far as I know. Now, obviously, I didn't have any firsthand conversations with him, but through the attorneys on the White House side who were dealing with that, yeah, otherwise we would still be busy at it answering questions, or there would have been questions come back to us that says, you know, we don't have the confidence that you are providing us with everything that we have asked for. But that wasn't the case at all.[17]

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[15] Solari Interview at page 55.
[16] McCrosky Interview at 53-55.
[17] Solari Interview at 56.

McCrosky reiterated the same point regarding the Plame electronic search(es) on at least three occasions during his interview when he said:

> They [the DOJ] were always asking for more. And to my knowledge, the whole time I was there, we always had everything they asked for. In fact, I'm certain of it.[18]
>
> The only thing I know is that there were no tapes missing -- I do know that -- and that everything that DOJ wanted, we gave them, while I was there.[19]
>
> * * *
>
> A And everything that they [DOJ] asked us for, we [the White House IT offices] gave them. And all the feedback that I ever got was, "Thank you. This is a ton of stuff. We appreciate it." Now, of course, maybe it takes a long time to realize that there's a big gap in dates. Maybe that's what he's referring to.
>
> Q Okay.
>
> A And that could be, because maybe we just missed something, although we did it two and three times and we had people double-check because, once again, we were very concerned to do this right and make sure that he got everything that they [DOJ] had asked for.[20]

These interview excerpts are just a few examples illustrating the White House technical employees' opinions that there was no nefarious plan to delete emails from the White House system.

Presidential Records Act

According to the Majority, the stated purpose of the investigation is to "determine whether the Executive Office of the President has complied with Federal laws requiring the preservation of Presidential . . . records . . . ."[21]

The Presidential Records Act (PRA) requires each president to "take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or

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[18] McCrosky Interview at 35-38.
[19] McCrosky Interview at 40.
[20] McCrosky Interview at 84-85.
[21] Transcribed Interview of Robert Spangler [hereinafter Spangler Interview] (Feb. 19, 2008) at 4.

ceremonial duties are **adequately documented** and that such records are maintained as Presidential records."[22]

The White House is NOT required to preserve and retain every communication or piece of paper ever created. The PRA merely requires presidential decision making to be adequately documented. It should be noted there is no penalty for violating the PRA and it is arguable whether there is a judicial enforcement mechanism.

Witnesses interviewed by the Committee are confident they complied with the PRA. Moreover, they are not aware of a plan or scheme to subvert the PRA. When asked about the PRA and the Federal Records Act, Solari explained:

> Q Do you feel like in hindsight that you and the folks working under you complied with both those acts to the best of your ability?
>
> A I would even say it stronger than that. We complied, and we were meeting those requirements. And I would even go so far as to say that these were not sort of self-serving thoughts; we actually again went to the archivists, and we agreed this was the method by which we were going to do these things. So we didn't do it in isolation.[23]

McCrosky testified:

> Q And so you're confident that your team was satisfying [the PRA]—
>
> A Oh, yeah, absolutely.
>
> Q Or you had every intent, at least, to satisfy the Presidential Records Act, correct?
>
> A Oh, absolutely.[24]

Summary

To date, the White House CIO's office and the White House Counsel's office have cooperated with the Committee's investigation in a manner that exceeds expectations. The White House Counsel's office, the CIO, and/or the Director of OA have briefed Committee staff on no less than six occasions. At this point, the White House is aware of the Committee's concerns and is working to satisfy those concerns.

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[22] 44 U.S.C § 2203 (emphasis supplied).
[23] Solari Interview at 47-48.
[24] McCrosky Interview at 57.

Oversight should not be a pretext for Congressional micromanagement of executive branch functions. From the comprehensive review they are currently undertaking, it is clear that the current administration has learned from IT mistakes of previous administrations. The extravagant allegations of missing emails have not been proven and in fact have been refuted at every turn. Sadly, this hearing can be seen as an attempt by the majority to bolster pending litigation against the White House, not a constructive look at the White House IT infrastructure.

Witness List

Alan R. Swendiman
Director, Office of Administration
The White House

Theresa Payton
Chief Information Officer, Office of Administration
The White House

The Honorable Allen Weinstein
Archivist of the United States
National Archives and Records Administration

Gary M. Stern
General Counsel
National Archives and Records Administration

Sharon Fawcett
Assistant Archivist for Presidential Libraries
National Archives and Records Administration

Staff contacts: Steve Castor and Ashley Callen (202) 225-5074.

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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Minority (202) 225-5074

Full Committee Hearing on "Electronic Records Preservation at the White House"

Tuesday, February 26, 2008 at 10:00 a.m. in 2154 RHOB

SUPPLEMENTAL MEMORANDUM

To: Republican Members and Staff, Committee on Oversight and Government Reform

From: Republican Committee Staff

Date: February 25, 2008

Re: Interrogatory Responses of former White House CIO Staff Member, Steven McDevitt

The Committee has obtained 25 pages of interrogatory responses from former White House technology staffer Steven McDevitt.

McDevitt was employed by the Office of the Chief Information Officer (CIO) within the Office of Administration (OA) in the Executive Office of the President (EOP) from September 2002 through October 2006.

One of McDevitt's primary responsibilities was to manage the electronic records system at the White House. Management of these records included ensuring that the White House email was archived properly, and produced when necessary to the public (through FOIA requests), to the Congress as part of the oversight function, and to relevant parties, including the Department of Justice, as legal proceedings require.

During a period of time between January 2003 and August 2005, it is now understood that a technology error occurred in the email archiving system. These archiving errors were largely the result of the use of a manual archiving system. Instead of using a software program to retrieve and store White House email, technology staffers

were periodically backing up email on a server-by-server basis. These manual efforts raised a variety of predictable problems. Principal among these was an inconsistent file naming convention, and other electronic filing-related irregularities. The bottom line is the huge cache of saved email was not well organized.

McDevitt's 2005 Review – He Says There Are 473 Days of Missing Email

The disorganized nature of the email archiving system prompted some White House technology personnel – namely McDevitt – within the CIO's directorate to conclude that email may have gone missing.

Sometime during 2005, McDevitt led an effort to survey all White House servers to identify all stored email. His review, as we have come to learn through documents and testimony, was deeply flawed. McDevitt erroneously concluded that 473 days of email traffic had gone missing.

With the benefit of hindsight, nobody knowledgeable about the situation believes McDevitt's initial review was accurate.

For example, in meeting notes produced by the National Archives concerning the so called missing emails OA officials knowledgeable of the situation described the dubious nature of this review as follows:

> In 2005, [Microsoft] used a Visual Basic tool to count the messages and generate reports. This is the report which first generated results indicating that there were problems with the email collection systems, i.e., all emails were not being [counted] . . . Visual Basic is known to have problems . . . so they believe this counting/analysis tool they have been using is faulty.[1]

Additionally, over the course of numerous briefings with the Committee staff, White House CIO – Theresa Payton – explained the flaws in the 2005 review. Some of the most obvious flaws include:

- The technology tool used in the review skipped Outlook PST folders that were not named is a recognizable format. This resulted in those messages not being counted.

- The tool did not flag which PST folders were counted or not. As a result, some folders may be skipped or counted twice.

- The tool did not count PST folders that exceed a certain volume of records, i.e. those folders containing more than 32,000 email records. As a result, PST folders were likely skipped over.

[1] Meeting Notes by NARA officials concerning a conference call between NARA, OA and the White House Counsel's office, Sept. 25, 2007.

- No quality assurance was conducted on the 2005 review – meaning the flawed aspects of the study were not ameliorated with a quality control program.

- The 2005 review was conducted with faulty assumptions about the number of users on Microsoft Exchange. The 2005 review falsely counted as missing emails that existed in the Lotus environment.

Press Coverage of McDevitt's Deeply Flawed Review

McDevitt's flawed report turned into a front page news story.

The Committee had come into possession of McDevitt's review through the course of its oversight into the matter. The chart of his findings was presented to the Committee with the instruction from the White House Counsel's office that the chart was believed to have been deeply flawed. Consequently, the White House was reluctant to provide the Committee with the information contained in the review. With this understanding, the Committee staff was permitted to make notes about – but not keep – the 2005 review.

Without consulting with the Minority, late on January 17, 2008, staff for Chairman Waxman sent a second letter to Fred Fielding. This letter challenged statements made by Deputy Press Secretary Tony Fratto regarding whether or not there are emails missing from the White House servers. The letter contained the sensational – but deeply flawed – charge that 473 days of emails had gone missing. The letter was immediately sent to the *Washington Post*.

The January 18, 2008, paper contained a page one story on the missing emails. According to one *Washington Post* reporter covering the story, the information from Majority staff was communicated so late on the evening of January 17, the newspaper did not have time to contact the Minority for comment. The article from January 18, 2008, is attached to this memo. **Again, it must be stressed that White House officials have never certified to the Committee that the 2005 review and chart are accurate.** Presently, the White House is attempting to recreate the original analysis depicted in the 2005 review and its results and get a baseline of how many emails there are for each day, during a specified period, for each EOP component. This is a complex and technical process.

What we do know is the 2005 review, and the sensational claim that 473 days of missing email was demonstrably flawed. The White House knew this; the Majority staff knew this; but it makes a great headline – "White House Study Found 473 Days of E-Mail Gone."

- On February 22 – last Friday – Payton provided the staff with updated numbers. Although their work is not complete, the CIO's office has identified email for a substantial portion of the 473 days. At present, the number of days

with unidentified email is close to 200. The CIO's staff work is not complete. It is conceivable all email will be identified and recovered.

Majority's Apparent Secret Partnership With McDevitt

The Majority required every non-White House employee interviewed for this investigation to appear for a transcribed interview. McDevitt was given a free pass. In place of a transcribed interview, McDevitt was permitted to respond to a set of interrogatories propounded by the Chairman. As a result, the Minority has not had an opportunity to cross examine McDevitt on the record.

The Committee sent a lengthy set of interrogatories to McDevitt on Tuesday, February 19 – 47 questions over 6 pages.

Remarkably, McDevitt replied immediately to the Committee. On Friday, February 22, less than three days later, McDevitt supplied the Committee with 25 pages of responses.

McDevitt's complete and immediate response raises the question of whether he has been working in secret partnership with the Majority staff. During a telephone conversation with the staff, McDevitt confirmed as much. In addition to meeting separately with the Majority, McDevitt told our joint staff that he was permitted to review documents produced to the Committee.

No Opportunity to Examine McDevitt On the Record

After raising concerns about McDevitt's unofficial partnership with the Majority, a joint teleconference was arranged. During this teleconference, the Minority was permitted to ask follow-up questions to McDevitt.

The joint staff spoke with McDevitt on Sunday, February 24. McDevitt remains unusually passionate about the White House email archiving system. His ability to remain conversant with detailed facts from a job he last held in 2006 is difficult to reconcile.

- McDevitt's willingness to produce 25 pages of interrogatory responses and his level of energy on the topic of the so called White House's "missing email" is curious – why does he care so much?

- We asked McDevitt whether he is assisting CREW and the other private plaintiffs that have sued the White House on the topic of "missing email." McDevitt replied ambiguously – he said he has consulted with a number of "private attorneys" on this topic. He stated that he had met with the Department of Justice and officials from the National Archives to express his concerns about the inadequate nature of the White House's electronic record keeping system.

- Further attempts to inquire whether McDevitt has been a participant in the private litigation about this topic were shut down by the Majority staff. We were prohibited from asking any further questions on this topic.

- McDevitt admitted he has no information concerning attempts by White House staff to delete emails that were allegedly available on servers for all EOP users. McDevitt further admitted he did not know whether the ordinary network logging software would capture attempts to maliciously destroy email records. Secure network environments such as the House computer network, and presumably the White House network are equipped with logging software to capture network activity.

- McDevitt admitted he had personal issues with his former supervisor and current White House CIO Theresa Payton. With further explanation, he opined that Payton – a former Senior Vice President with Bank of America – was not qualified for the CIO position. He elaborated in some detail the technology policy differences he had with Payton.

- McDevitt admitted he was demoted by Theresa Payton and further stated that he left the White House due to these differences. McDevitt remains disgruntled.

- McDevitt remains deeply attached to the ECRMS technology solution that he championed as a White House staffer. Several witnesses explained to the Committee during the course of transcribed interviews why ECRMS was not a feasible technology solution for records management.

Conclusion

The staff recommends that Members object to the inclusion into the official record information supplied by McDevitt.

Unlike all other former White House personnel interviewed during the course of this investigation, Steven McDevitt was permitted to escape the ordinary question and answer format – that is a transcribed interview or deposition. During transcribed interviews, staff for both the Majority and Minority have equal opportunity to question and cross examine witnesses.

The Minority was never afforded the opportunity to cross examine McDevitt in an on-the-record transcribed format. Consequently, McDevitt's interrogatory responses remain the only on the record testimony and are inherently unreliable.