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HEARING ON THE ELECTRONIC RECORDS

PRESERVATION AT THE WHITE HOUSE

Tuesday, February 26, 2008

House of Representatives

Committee on Oversight and

Government Reform,

Washington, D.C.

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Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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10 | The committee met, pursuant to call, at 10:00 a.m., in
11 | Room 2157, Rayburn House Office Building, the Honorable Henry
12 | A. Waxman [chairman of the committee] presiding.

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

17 | Staff Present: Phil Schiliro, Chief of Staff; Phil
18 | Barnett, Staff Director and Chief Counsel; Kristin Amerling,
19 | General Counsel; Karen Lightfoot, Communications Director and
20 | Senior Policy Advisor; David Rapallo, Chief Investigative

21 Counsel; John Williams, Deputy Chief Investigative Counsel;
22 Michael Gordon, Senior Investigative Counsel; Earley Green,
23 Chief Clerk; Teresa Coufal, Assistant Clerk; Caren Auchman,
24 Press Assistant; Kerry Gutknecht, Staff Assistant; William
25 Ragland, Staff Assistant; Larry Halloran, Staff Director;
26 Jennifer Safavian, Chief Counsel for Oversight and
27 Investigations; Keith Ausbrook, General Counsel; Steve
28 Castor, Counsel; Ashley Callen, Counsel; Patrick Lyden,
29 Parliamentarian & Member Services Coordinator; Brian
30 McNicoll, Communications Director; Benjamin Chance, Clerk;
31 and Ali Ahmad, Deputy Press Secretary

32 Chairman WAXMAN. Good morning. The Committee will
33 please come to order.

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

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

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

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

56 In the end, the overblown charges of wrongdoing were

57 | proven false. The lost e-mails turned out to be the result
58 | of a few technical glitches, not any intentional acts.

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

65 | That is what makes the actions of the Bush
66 | Administration so inexplicable.

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

72 | In its place, the White House adopted a system that one
73 | of its own experts described as ``primitive'' and carried a
74 | high risk that ``data would be lost.'' The system also had
75 | serious security flaws. Until the problem was corrected in
76 | 2005, all officials in the White House had access to the
77 | archive system and the ability to delete or alter existing
78 | information.

79 | The White House's own analysis of its system identified
80 | over 700 days in which e-mail records seem either impossibly
81 | low or completely nonexistent. This 2005 analysis was

82 | prepared by a team of 15 White House officials and
83 | contractors.

84 | And these are not the only missing e-mails from the
85 | White House. We also know that over 80 White House
86 | officials, including some of the most senior officials in the
87 | White House, routinely used e-mail accounts at the Republican
88 | National Committee. The RNC didn't preserve e-mails for over
89 | 50 of these officials and has few e-mails for any White House
90 | officials prior to 2006.

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

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

105 | While many of us have grown used to the White House
106 | attacking congressional or independent study that conflicts

107 | with President Bush's policies, this is the first time I can
108 | remember the White House using those same tactics on itself.
109 | And it is remarkable.

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

116 | The lack of cooperation became so severe that, last May,
117 | the Archivist himself wrote to the White House Counsel, Fred
118 | Fielding, to urge ``utmost dispatch'' in addressing the
119 | missing e-mails.

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

129 | The Archives also asked the White House to start
130 | recovering official e-mails that the Republican National
131 | Committee deleted pursuant to its policy of regularly purging

132 e-mails from its servers. These repeated requests have also
133 been rebuffed. In fact, the RNC has informed our Committee
134 that it has no intention of trying to restore the missing
135 White House e-mails from backup tapes containing past RNC
136 e-mail records.

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

142 I also--

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

145 Chairman WAXMAN. The gentleman is recognized on his
146 reservation.

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

156 The fact is that we would like to have a clear hearing

157 | and a clear understanding. We want to have all parties that
158 | may have something to say not only say it, but be open to
159 | reasonable cross-examination.

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

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

170 | If the gentleman objects, he objects, and we will have
171 | to have a vote for the Committee at some point during the
172 | hearing. But, as I understand, Mr. Davis does not object. I
173 | will yield to him if he does, but--

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

182 | but somehow the majority was most accommodating to Mr.
183 | McDevitt.

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

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

195 | Chairman WAXMAN. Mr. Davis?

196 | Mr. DAVIS OF VIRGINIA. Yes.

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

198 | Mr. DAVIS OF VIRGINIA. Sure.

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

202 | Mr. DAVIS OF VIRGINIA. Sure.

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

206 | Evidently, the Republicans are unhappy that Mr.

207 | McDevitt, who worked at the White House, gave testimony they
208 | didn't like. But we followed the rules that the White House
209 | set out, and the Republicans were happy for us to follow
210 | those rules. And now that they read the testimony, they would
211 | like to impeach the fellow from the White House who said
212 | things that they didn't like.

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

215 | Chairman WAXMAN. Pardon?

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

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

218 | Mr. DAVIS OF VIRGINIA. That is correct. In fact--

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

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

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

228 | Chairman WAXMAN. The gentleman will state his point of
229 | inquiry.

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

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

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

237 Mr. DAVIS OF VIRGINIA. Which is normal Committee
238 practice. I mean, generally--

239 Chairman WAXMAN. Is there objection?

240 Mr. ISSA. Mr. Chairman, I will dispense--

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

242 Chairman WAXMAN. Yes?

243 Ms. WATSON. Can you finish your statement and then--

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

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

248 Chairman WAXMAN. Is there an objection?

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

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

255 Mr. ISSA. Without reference.

256 Chairman WAXMAN.--without reference to the

257 | interrogatories, or you agree to it. Give us your--you have
258 | a reservation. Give us your withholding of unanimous consent
259 | request or agreement to the unanimous consent request.

260 | Mr. ISSA. Without that, I agree.

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

262 | Now I would like to continue with my opening statement.

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

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

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

282 that just didn't work.

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

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

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

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

295 [Prepared statement of Chairman Waxman follows:]

296 ***** COMMITTEE INSERT *****

297 [The referenced material follows:]

298 ***** COMMITTEE INSERT *****

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

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

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

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

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

324 | changed, and continue to change.

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

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

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

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

344 | The preservation of essential records, though, is a
345 | Government-wide responsibility and a growing challenge with
346 | so much more of the public's business done today using
347 | electronic media rather than paper. The massive
348 | proliferation of digital records confronts each branch of

349 Government with complex and potentially costly questions
350 about which records to keep, how long to keep them, and how
351 best to store and index them for retrieval.

352 But it appears today's hearing may be less about
353 preserving records and more about resurrecting this claim
354 that the White House lost millions of official e-mails. It
355 is a charge that is based on a discredited internal report
356 conveniently leaked to the media. Information gathered since
357 then has forced Administration critics to back away from the
358 politically charged allegation and acknowledge the less
359 sensational but far more probative technical realities that
360 are at work here.

361 Regarding the capabilities of the White House's
362 information technology infrastructure, the facts are not all
363 in yet, and in that respect this hearing would be viewed as
364 premature. But we do know this much: During the White House
365 migration from Lotus Notes to a Microsoft e-mail system in
366 2002, some archive files may have been mislabeled, making
367 them difficult to find using routine search protocols.

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

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

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

386 Any frustration at the White House's inability to
387 instantaneously produce every conceivable stream of electrons
388 has to be tempered by both the legal rights and prerogatives
389 of the Executive and by the technical realities of modern
390 Government record-keeping.

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

396 I expect we will hear today that the White House is well
397 aware of its obligations under the Presidential Records Act
398 and other laws, and cognizant of the duty to preserve and

399 provide adequate Presidential records for the National
400 Archives.

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

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

411 At some point this risks becoming investigation for its
412 own sake or for the sake of private plaintiffs looking to use
413 the Committee to conduct non-judicial discovery in pending
414 lawsuits against the Government. Nor is it the best use of
415 our time and resources to attempt to micro-manage Executive
416 Branch activities, like the next White House transition,
417 based on groundless suspicions or incomplete investigations
418 into missing e-mails.

419 Nevertheless, our witnesses can help us understand the
420 intricacies and challenges of electronic records
421 preservation. We welcome their testimony this morning, and I
422 want to repeat, I think, as, institutionally, the Legislative
423 Branch does have the right to pursue these and to get these

424 e-mails, Mr. Chairman.

425 Thank you very much.

426 [Prepared statement of Mr. Davis of Virginia follows:]

427 ***** COMMITTEE INSERT *****

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

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

433 On January 30th, the Committee wrote to Mr. McDevitt
434 asking him to come in for an interview. He was responsive
435 and immediately scheduled an interview for Monday, February
436 11th. The White House then contacted Mr. McDevitt and
437 instructed him not to discuss with the Committee broad areas
438 relevant to our investigation, including "any deliberative
439 discussions involving the participation of OCIO management."

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

446 Over the next week, minority and majority staff
447 discussed the Committee's interest in obtaining information
448 from Mr. McDevitt, and on February 14th our staffs jointly
449 agreed to send Mr. McDevitt questions in writing, allowing
450 him to share his responses with the White House counsel. So
451 together our staffs sent him questions. He responded in
452 writing to those questions. The White House had a chance to

453 | review his answers and they cleared them without any
454 | redactions.

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

468 | Despite this second opportunity to question Mr.
469 | McDevitt, the Minority now says it is somehow unfair to use
470 | any information provided by Mr. McDevitt because they didn't
471 | get an opportunity to question him. Well, they had an
472 | opportunity two weeks ago. They got another opportunity on
473 | Sunday night, which they fully exhausted.

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

478 Mr. DAVIS OF VIRGINIA. Mr. Chairman, let me just
479 quickly--

480 Chairman WAXMAN. Yes.

481 Mr. DAVIS OF VIRGINIA. We will talk about this and we
482 will find an accommodation, but let me just say that there
483 were six other witnesses that were subject to the same White
484 House ground rules, and they were brought in for
485 on-the-record interviews and cross-examination. Mr. McDevitt
486 was the only one who was accommodation, we believe, because
487 he fit the story you wanted to tell. And we think that there
488 is another side to that and we would like that opportunity.
489 I don't care what the White House Counsel's Office says on
490 this. We are speaking to this as a review committee.

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

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

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

502 Mr. DAVIS OF VIRGINIA. Well, there are inconsistencies

503 | with what he said because he has been gone for 18 months.

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

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

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

518 | Sharon Fawcett is the Assistant Archivist for
519 | Presidential Libraries at the National Archives and Records
520 | administration.

521 | Alan R. Swendiman is the Director of White House of
522 | Administration.

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

525 | We are pleased to welcome all of you.

526 | Mr. DAVIS OF VIRGINIA. Mr. Chairman, can I just make one
527 | point? We join with you in wanting to get all the e-mails

528 | and not giving up. I just want to make that clear. This is
529 | not an effort to stop the disclosure of these. We want to
530 | get at these. We really object to the characterization of
531 | how this came. I would think much of this is technical and
532 | hopefully this hearing will be able to bring both sides an
533 | opportunity to bring that out. Thank you.

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

540 | Ladies and gentlemen, it is the policy of this Committee
541 | that all witnesses that testify before us testify under oath,
542 | so I would like to ask you, if you would, to please rise and
543 | raise your right hand.

544 | Do you solemnly swear that the testimony you will give
545 | before this Committee will be the truth, the whole truth, and
546 | nothing but the truth?

547 | [Witnesses answer in the affirmative.]

548 | Chairman WAXMAN. Thank you.

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

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

552 | All of you have sent prepared statements, or those of

553 | you who have sent prepared statements. I want to assure you
554 | that they will be in the record in full. We would like to
555 | ask, if you would, to try to limit the oral presentation to
556 | five minutes. You will have a clock that will be indicated
557 | on the table. Green, then after four minutes there will be a
558 | yellow; and then after five minutes is complete it will turn
559 | red. If you are not finished by that po int, we would like
560 | to ask you to summarize the last part of your testimony.

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

563 | Chairman WAXMAN. Yes.

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

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

570 | Mr. WEINSTEIN. Thank you.

571 | STATEMENTS OF THE HONORABLE ALLEN WEINSTEIN, ARCHIVIST OF THE
572 | UNITED STATES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION,
573 | ACCOMPANIED BY GARY M. STERN, GENERAL COUNSEL, NATIONAL
574 | ARCHIVES AND RECORDS ADMINISTRATION AND SHARON FAWCETT,
575 | ASSISTANT ARCHIVIST FOR PRESIDENTIAL LIBRARIES, NATIONAL
576 | ARCHIVES AND RECORDS ADMINISTRATION; ALAN R. SWENDIMAN,
577 | DIRECTOR, OFFICE OF ADMINISTRATION, THE WHITE HOUSE; THERESA
578 | PAYTON, CHIEF INFORMATION OFFICER, OFFICE OF ADMINISTRATION,
579 | THE WHITE HOUSE

580 | STATEMENT OF THE HONORABLE ALLEN WEINSTEIN

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

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

590 | I am pleased to appear before you today to discuss the
591 | work of the National Archives and Records Administration,
592 | NARA, in managing Presidential papers at the time of

593 | transition from one president's administration to the next.
594 | I will summarize my remarks and ask that my full statement be
595 | included in the record.

596 | Let me begin by discussing preparation for the
597 | transition in January 2009 of the Presidential records of the
598 | George W. Bush Administration to the National Archives.
599 | National Archives has a long and successful history of moving
600 | Presidential records and gifts from the White House to the
601 | custody of the Archives for ultimate deposit in the
602 | Presidential library. We have done this work under the
603 | exigent circumstances of current departure, as in the case of
604 | Presidents Kennedy and Nixon; the foreshortened notice of
605 | one-term administrations, such as George H.W. Bush; and the
606 | more predictable pace afforded by a two-term President, for
607 | example, William Jefferson Clinton.

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

618 | transfer to the National Archives.

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

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

638 | The National Archives has leased a temporary facility in
639 | the Dallas, Texas area that will serve as the archival
640 | repository for these records until the George W. Bush
641 | Presidential Library is completed. We have already begun to
642 | hire and train archival staff, along with a museum registrar,

643 | who will take charge of the records and gifts as they arrive.
644 | We expect to continue the hiring of full staff when we
645 | receive our fiscal year 2009 appropriation.

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

657 | When we read the press reports in April 2007 that the
658 | White House had apparently acknowledged that a large number
659 | of e-mails might be missing from the Executive Offices of the
660 | President, the EOP system, we immediately began to enquire
661 | about this matter with White House staff. The National
662 | Archives made similar inquiries in 2006 upon learning of
663 | press reports that Special Council Patrick Fitzgerald had
664 | reported on e-mail archiving problems with the Office of the
665 | Vice President's records. Some time later in April 2007,
666 | White House staff told us that a chart prepared in 2005
667 | indicated that there might be some missing e-mails, but that

668 | no one within the Executive Office of the President, EOP, had
669 | been able to validate the chart's results. My staff was
670 | further informed that efforts would be made to corroborate
671 | whether any e-mails were actually missing.

672 | In addition, because the EOP mail system contains
673 | records governed under both the Presidential Records Act and
674 | the Federal Records Act, FRA, on May 6th, 2007, I sent a
675 | standard letter to the Director of the White House Office of
676 | Administration requesting a report on the allegations of
677 | unauthorized destruction of Federal records. This letter has
678 | been provided to the Committee.

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

686 | Further, we have made our views clear, both to the White
687 | House and to this Committee, that in the event e-mails are
688 | determined to be missing, it is the responsibility of the
689 | White House to locate and restore all the e-mails, probably
690 | from the backup tapes, and that such a project needs to begin
691 | as soon as possible. The National Archives has also
692 | emphasized that supplemental congressional funding to the

693 White House will almost certainly be necessary for such a
694 restoration effort.

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

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

716 In the fall of 2006, the National Archives learned that
717 the Office of Administration had decided not to implement

718 ECRMS. In early 2007, the National Archives began meetings
719 with the Office of Administration to discuss how the Office
720 proposed to manage Executive Office of the President e-mails
721 in anticipation of the upcoming transition. The National
722 Archives was not informed about the possibility of missing
723 e-mails at this time.

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

727 [Prepared statement of Mr. Weinstein follows:]

728 ***** INSERT *****

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

732 Mr. WEINSTEIN. Of course.

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

737 | STATEMENT OF ALAN R. SWENDIMAN

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

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

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

756 | The Office of the Chief Information Office is one of the
757 | operating units of OA. Among its important functions, OCIO
758 | is responsible for providing all EOP components with unified
759 | enterprise services. Certain of the subjects that the

760 Committee may ask today are within the purview of the OCIO,
761 and Ms. Payton may speak to them. I will direct my remarks
762 principally to OA's efforts on the important subject of
763 Presidential transition planning.

764 Presidential records are the property of the United
765 States Government and OA takes very seriously its
766 responsibilities for the transfer of records to the National
767 Archives. These responsibilities derive in significant
768 measure from the Presidential Records Act and the effective
769 fulfillment of these responsibilities is important to the
770 continuity of the presidency as an institution and for the
771 Bush presidency, and we are focused on making this transition
772 process as smooth and cooperative as possible.

773 Toward that end, transition-related meetings between
774 NARA and White House began in approximately the summer of
775 2007. At that time, NARA noted and welcomed what it
776 described as EOP's early engagement on transition and
777 Presidential records issues. Since that first meeting, there
778 have been at least eight meetings with NARA and numerous
779 internal meetings. For example, NARA has met with the OA
780 Offices of the Chief Financial Officer, the Chief Facilities
781 Management Officer, and the Chief Operating Officer to
782 receive records-related functional and operational briefings
783 and to ask questions. NARA and OA are committed to continuing
784 to meet, and, in fact, the next meeting is this Friday,

785 February 29th. Through these meetings, NARA will learn about
786 the dozens and dozens of computer applications at the EOP
787 that may have records subject to PRA which will need to be
788 transferred to NARA.

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

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

806 From this summary, we trust that the Committee can see
807 that a lot of predicate work has begun and is ongoing. We
808 have approximately 11 months remaining to work on this
809 transition, and we are committed to making sure that all the

810 Presidential records that we have transferred to NARA are
811 transferred at the end of this Administration.

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

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

828 [Prepared statement of Mr. Swendiman follows:]

829 ***** INSERT *****

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

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

832 | Ms. PAYTON. Yes.

833 STATEMENT OF THERESA PAYTON

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

838 I am Theresa Payton, and I am the Chief Information
839 Officer in the Office of Administration Executive Office of
840 the President. I have been in this role since mid-May of
841 2006, and it has been an honor and a pleasure to serve.

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

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

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

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

872 Under people and process, I will just give you a couple
873 examples of some of the things we have been able to
874 accomplish. First of all, we recognized we have a slim
875 staff, you know, we are a small but mighty team supporting
876 the 3,000 customers. We have roughly 55 Federal employees
877 and roughly 60 contractors to support these 3,000 customers.
878 We took a look at the resource allocation and the manpower
879 stacked up against records keeping versus the other parts of
880 the operation and the mission that we serve, and in 2006 we

881 | had roughly the equivalent of 10 of our 115 employees, from a
882 | manpower perspective, dedicated to records keeping. We have
883 | ramped that up. We looked at our mission. We have slimmed
884 | down some of the services we provide in some other parts of
885 | the mission and we ramped that up in 2007. We had the
886 | equivalent of manpower of about 22 people out of the 115
887 | focused on records keeping and we have ramped that up a
888 | little bit more for 2008, and we are currently running at
889 | about 23.5. So that is an example of some of the people
890 | investments.

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

905 | On a weekly basis an executive summary report is

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

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

928 | One of the areas you are probably going to be the most
929 | interested in, though, is going to be the technology
930 | improvements we have made on our existing technology. As I

931 | mentioned before--and I can go into more detail during the
932 | questions--we have e-mail that goes into the Journal, the
933 | Microsoft Journal. It is automatically moved through a
934 | program that we have in place since 2005 into the PST archive
935 | for records keeping, and what we have been doing is actually
936 | re-baselining that entire inventory of the records. We felt
937 | like we had to do this. We found some different technology
938 | glitches in some of some tools that had been wonderful
939 | workhorses for EOP, but as we were trying to do the analysis
940 | to try and figure out what was going on with the problem days
941 | and we were having problems replicating some and some were
942 | replicating, we felt it in the best interest to upgrade and
943 | update some of those tools and implement those tools around
944 | the records keeping inventory and statistical analysis
945 | process.

946 | We are in the early phase. We actually have three
947 | phases we are implementing for this. We are in the early
948 | phase of that process, where we have just started to get some
949 | early results. They have not had a quality assurance check
950 | on them, so the results are very preliminary and they are not
951 | conclusive. Some of the promising trends that we have been
952 | seeing is we have identified more e-mails for that exact time
953 | period that was looked at in 2005 than was previously
954 | identified. We have been able to identify and locate e-mails
955 | with an exchange for days that were previously red. There

956 are, in this phase one, some days that still show as red.
957 That is where phase two is going to come in. From a phase
958 two perspective, we will be looking at the message level.
959 And I can get into more detail on that during the Q&A, but in
960 phase two it is our desire and our hope to eliminate all or
961 most of the red days and low volume days by being able to
962 read the information down at a more granular level.

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

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

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

975 [Prepared statement of Ms. Payton follows:]

976 ***** INSERT *****

977 Chairman WAXMAN. Thank you very much.

978 By bipartisan agreement on the Committee, the Chairman
979 will control 15 minutes of questioning and then Mr. Davis
980 will control 15 minutes on his side. So I will start off the
981 questions.

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

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

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

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

1000 Chairman WAXMAN. Thank you. Now, over the last year,
1001 serious questions have been raised about the White House

1002 | compliance with this Presidential Records Act. We have
1003 | learned about two violations of the Act that appear to be
1004 | serious. One involves the extensive use of Republican
1005 | National Committee e-mail accounts by White House staff and
1006 | the other involves the failure to archive e-mails sent
1007 | through the official White House e-mail system. I want to
1008 | start out by asking you about the use of these RNC e-mail
1009 | accounts to conduct official White House business.

1010 | This Committee first started asking questions about the
1011 | use of RNC e-mails last March. As we investigated, we
1012 | learned three facts: one, many senior White House officials,
1013 | including Karl Rove and Andrew Card, had RNC e-mail accounts;
1014 | two, these officials made heavy use of these accounts,
1015 | including for official purposes, such communicating about
1016 | Federal appointments and policies; and, three, the RNC
1017 | preserved almost none of these e-mails from President Bush's
1018 | first term and only some of the e-mails from his second term.

1019 | Dr. Weinstein, the documents that we have seen reveal
1020 | that the Archives was concerned about these RNC missing
1021 | e-mails as well. Can you explain why?

1022 | Mr. WEINSTEIN. Well, I wish I had all the facts at this
1023 | stage in the game, Chairman, to--

1024 | Chairman WAXMAN. Can you speak up?

1025 | Mr. WEINSTEIN. I wish I had all the facts at this point
1026 | to discuss this issue, but the fact is that it has been our

1027 | understanding that the White House has been working with the
1028 | RNC to try to restore PRA e-mails that were created.

1029 | Chairman WAXMAN. Well, perhaps they are or they are not;
1030 | we are going to get into that. But how concerned are you
1031 | that we may not have the RNC e-mails from senior White House
1032 | staff?

1033 | Mr. WEINSTEIN. Well, Mr. Chairman, I am concerned about
1034 | the problems that we might have with any group of records,
1035 | including these. I want the fullest, I think the American
1036 | people want the fullest possible account of any
1037 | administration.

1038 | Chairman WAXMAN. Karl Rove was a key advisor to the
1039 | President. We also know he was an extensive user of the RNC
1040 | account. Mr. Rove is reported to have sent and received
1041 | ``about 95 percent`` of his e-mails through his RNC account.
1042 | His secretary, Susan Ralston, confirmed for the Committee
1043 | that Mr. Rove used his RNC account extensively.

1044 | When we asked the RNC what kinds of records they had,
1045 | they told us they had virtually no e-mails from Mr. Rove
1046 | before November 2003. They had virtually none of his e-mails
1047 | for 2001, 2002, and most of 2003. Well, these years were in
1048 | many years the defining years for the Bush Administration;
1049 | they include the critical months when President Bush was
1050 | making the case for war in Iraq.

1051 | Are you concerned about the loss of Mr. Rove's e-mails

1052 | for these years, Mr. Weinstein?

1053 | Mr. WEINSTEIN. Mr. Chairman, I am concerned about the
1054 | loss of e-mails that are White House e-mails, no matter what
1055 | the system they are involved in. I am concerned about
1056 | maintaining the fullest possible Presidential records. I
1057 | should add, perhaps, that in listening to Ms. Payton's
1058 | testimony, we are still awaiting the completion at the White
1059 | House of this process.

1060 | Chairman WAXMAN. We are too, but I want to ask you about
1061 | these RNC e-mails first, before we get into that.

1062 | Mr. WEINSTEIN. Before we go any further, though, my
1063 | counsel has dealt with this issue to a very great extent. I
1064 | would ask Gary Stern if he would like to add anything.

1065 | Chairman WAXMAN. Mr. Stern?

1066 | Mr. STERN. Yes. As we have discussed with the Committee
1067 | staff and with the White House, our view is Presidential
1068 | records exist and must be preserved whatever system they are
1069 | used on. So to the extent they were used on a non-White
1070 | House system, it is still the responsibility of the White
1071 | House to preserve them. We understand that, also, White
1072 | House officials create non-Presidential records, and then,
1073 | for those records, it would be appropriate to use a non-White
1074 | House system like the RNC system for non-Presidential records
1075 | involving political campaign and all.

1076 | Chairman WAXMAN. Well, we know Mr. Rove used most of his

1077 e-mails, whatever the subject, on RNC accounts. So if we
1078 have a deletion of Mr. Rove's RNC e-mail as the rule for the
1079 White House, not the exception, we don't know what he had to
1080 say. In fact, the Committee learned that the RNC retained no
1081 e-mail messages for all of 51 of the 88 White House officials
1082 with RNC e-mail accounts. We know whether they were
1083 personal, political, or official Government. The records
1084 appear to be woefully incomplete for the remaining 37
1085 officials. For example, the RNC retained e-mails from before
1086 2006 for only 14. So we had 51 of the 88 White House
1087 officials using e-mail accounts and the records are
1088 incomplete except for 14 of these officials.

1089 Mr. Stern or Dr. Weinstein, you and others at the
1090 National Archives have made repeated inquiries to the White
1091 House about this problem and the White House appeared to tell
1092 you it was taking all this very seriously. I want to read
1093 some notes from a May 21, 2007 meeting.

1094 Your staff asked what steps the White House was taking
1095 to restore these e-mails and here is what your staff said
1096 they were told, and I want to quote: ``We then asked about
1097 the RNC e-mail issue. They, the White House, are working
1098 with the RNC and looking at this issue. They are exploring
1099 how they will try to capture the Presidential record e-mails.

1100 This will be a separate restoration effort from the EOP
1101 e-mail restoration.''

1102 Dr. Weinstein, can you tell us what the current status
1103 is of the recovery effort? Specifically, has the White House
1104 taken steps to restore RNC backup tapes?

1105 Mr. WEINSTEIN. Well, I hate to say this, Mr. Chairman,
1106 but I am afraid that is a question that is going to have to
1107 be asked to Ms. Payton and Mr. Swendiman simply because we
1108 have not been given that information. We were told by her
1109 testimony that the process is nearly complete, which is a
1110 phrase that she used.

1111 Chairman WAXMAN. You have been told by the White House
1112 that the process is nearly complete to get the RNC e-mails?

1113 Mr. WEINSTEIN. It is in Ms. Payton's testimony.

1114 Chairman WAXMAN. Mr. Stern, do you want to respond to
1115 that?

1116 Mr. STERN. On the RNC system, we have enquired
1117 periodically and we were under the impression they were still
1118 working with the RNC and some effort would be undertaken to
1119 recover whatever could be recovered from either backup tapes
1120 or from laptops, individual hard drives. We heard today that
1121 maybe the RNC is not doing that, and that would be a concern
1122 and a problem and disappointment. If it is a funding issue,
1123 that is where Congress would potentially need to come in and
1124 say if there are Government records there, they--

1125 Chairman WAXMAN. So you were relying on the White House
1126 telling you that they are going to make sure they get all the

1127 records, including from the RNC.

1128 Mr. STERN. That is correct, which is their
1129 responsibility.

1130 Chairman WAXMAN. Yes. And I can understand why you
1131 would think that they should be the one doing it. But we
1132 talked to the RNC yesterday and they told us that the White
1133 House has taken no steps to obtain backup tapes. The White
1134 House hasn't begun any type of restoration effort and the
1135 tapes haven't been touched. I am sure you are concerned
1136 about that, is that correct?

1137 Mr. WEINSTEIN. More than concerned about that, Chairman.
1138 Obviously, if that is the case, this should be looked into
1139 as soon as this hearing is over.

1140 Chairman WAXMAN. Well, Ms. Payton and Mr. Swendiman, I
1141 would like to get your perspective. The White House told the
1142 Archives last May that it was exploring a restoration of RNC
1143 e-mail, but when we checked, the RNC told us the White House
1144 never even obtained the RNC's backup tapes. Why isn't the
1145 White House following through to recover and preserve these
1146 records?

1147 Ms. PAYTON. Chairman Waxman, since you mentioned me
1148 first, I will go first. I have responsibility for the
1149 Executive Office of the President network and e-mails, so I
1150 am, unfortunately, unqualified to talk to you about the RNC
1151 restore; I am not part of that process. If, at some point,

1152 | there were--

1153 | Chairman WAXMAN. You are not part of the process to get
1154 | the RNC e-mails?

1155 | Ms. PAYTON. No, sir, I am not. No, sir, I am not.

1156 | Chairman WAXMAN. Okay, well, maybe Mr. Swendiman is part
1157 | of that process.

1158 | Mr. SWENDIMAN. As part of the Office of Administration,
1159 | Mr. Chairman, we have responsibility for the official but
1160 | sensitive EOP network. We can't control what individuals do
1161 | on their own.

1162 | Chairman WAXMAN. But you have the responsibility for all
1163 | the officials working at the White House to get their e-mail
1164 | records, and if they use some other e-mail system, aren't you
1165 | responsible to gather that information under the Presidential
1166 | Records Act?

1167 | Mr. SWENDIMAN. Well, I am advised, Mr. Chairman, that
1168 | Counsel's Office has taken steps with regard to that. The
1169 | letters have gone out to former White House employees with
1170 | regards to use of RNC laptops that--

1171 | Chairman WAXMAN. Letters telling them not to do it in
1172 | the future or to get the information from the past?

1173 | Mr. SWENDIMAN. Mr. Chairman, I don't know the exact
1174 | substance of the letter, I simply have been advised that that
1175 | step has been taken.

1176 | Chairman WAXMAN. Will you get that information, what

1177 | steps have been taken, what letters have been sent?

1178 | Mr. SWENDIMAN. I will consult with counsel, yes, sir.

1179 | Chairman WAXMAN. Well, I am sure we asked the counsel
1180 | for this information.

1181 | The White House e-mails that the RNC deleted are the
1182 | core types of communications that the Presidential Records
1183 | Act is supposed to preserve; they are the candid
1184 | communications of the President's most senior advisors. The
1185 | White House may not want these e-mails disclosed, the White
1186 | House may be worried that the true record of how the White
1187 | House led the Nation to war in Iraq will be embarrassing, but
1188 | that is not a legitimate reason for your failure to recover
1189 | the deleted e-mails. I think it is tremendously important
1190 | that we get those Republican National Committee e-mails, and
1191 | I assume, Mr. Weinstein, that you agree, the RNC has a box of
1192 | backup tapes.

1193 | Are they being searched, Mr. Swendiman?

1194 | Mr. SWENDIMAN. Mr. Chairman, is what being searched?

1195 | Chairman WAXMAN. The box of backup tapes at the RNC.

1196 | Mr. SWENDIMAN. I don't know. All I can tell you, Mr.
1197 | Chairman, is that among the steps that I am advised are being
1198 | taken is, first of all, I mentioned the letter--

1199 | Chairman WAXMAN. Pull the microphone and be sure it is
1200 | on. Our members are having trouble hearing you.

1201 | Mr. SWENDIMAN. The second is that there have been

1202 contractual efforts with regards to forensic and recovery. I
1203 cannot, at this time, tell you the status with regard to
1204 that.

1205 Chairman WAXMAN. Well, this is what this hearing is all
1206 about and that is why you were invited to come. We were told
1207 that the White House has not even asked for them. Is that a
1208 problem, if the White House hasn't even asked for them?

1209 They assured you, Dr. Weinstein and Mr. Stern, that they
1210 are going to take care of it and they are going to get this
1211 information.

1212 Mr. WEINSTEIN. Mr. Chairman, I can only promise you one
1213 thing, that you and Ranking Member Davis and members of this
1214 Committee will have my best information on this by the end of
1215 the week. I am going to make some inquiries as soon as this
1216 hearing is over and hope that we can get to the heart of the
1217 matter.

1218 Chairman WAXMAN. Well, we--

1219 Mr. WEINSTEIN. I don't have an answer for you now.

1220 Chairman WAXMAN. Well, you don't have the answers
1221 because the White House assured you they were getting it and
1222 it looks like, from what we hear, they haven't done anything.

1223 Dr. Weinstein, you wrote to Fred Fielding, the White
1224 House Counsel, about this issue on May 1, 2007.

1225 Mr. WEINSTEIN. Yes, sir.

1226 Chairman WAXMAN. Particularly the archiving in the White

1227 House system itself. You wrote: ``We believe that it is
1228 essential that the White House move with the utmost dispatch
1229 both in assessing any problems that may exist with preserving
1230 e-mails on the Executive Office of the President system and
1231 in taking whatever action may be necessary to restore any
1232 missing e-mails.'' After you wrote this letter, your staff
1233 made several attempts to learn more. These weren't
1234 successful.

1235 Now I want to read from a memo that Mr. Stern wrote to
1236 you on September 5, 2007. Now we are talking about the
1237 official White House e-mail system. And Mr. Stern wrote:
1238 ``We still have made almost zero progress in actually moving
1239 ahead with the important and necessary work that is required
1240 for a successful transition. More significantly, our
1241 repeated requests to begin office-by-office meetings to scope
1242 out and inventory the volume, formats, and sensitivities of
1243 the PRA records that will be transferred to the National
1244 Archives has gone unheeded. Of most importance, we still
1245 know virtually nothing about the status of the alleged
1246 missing White House e-mails. We have not received a written
1247 response to our May 5, 2007 letter regarding alleged missing
1248 Federal record e-mails. As we stressed to the White House
1249 last spring, it is vital that any needed backup restoration
1250 project begin as soon as possible in order that it be
1251 completed before the end of the Administration.''

1252 Dr. Weinstein, what was your reaction when Mr. Stern
1253 informed you that the White House had still provided
1254 virtually no information about a potentially large loss of
1255 Presidential records? And how would you describe the
1256 situation now? Do you all the information you need to assess
1257 the extent of this problem?

1258 Mr. WEINSTEIN. In response to your first question, Mr.
1259 Chairman, I am obviously not happy about that situation. I
1260 would like an answer and I would like to move forward on this
1261 process. In connection with what the situation is today, I
1262 think we have a very sensitized group of people to this
1263 issue, but we don't have the results yet. So that is why I
1264 ask you for a few more days to see whether I can get some
1265 results for you.

1266 Chairman WAXMAN. Well, we will certainly, without
1267 objection, hold the record open for you to give us any
1268 further information, and I am sure you will get further
1269 questions about this. But Congress doesn't have all the
1270 information we need. We still don't know what the White
1271 House is going to recover, whether they are going to recover
1272 the missing White House e-mails that the RNC deleted, and
1273 every week we seem to get a different story from the White
1274 House about whether the White House's own e-mail archives are
1275 complete. I think it is important we get those RNC e-mails
1276 and we get the White House e-mails from their own operating

1277 system, and without that this Administration is not complying
1278 with the Presidential Records Act.

1279 I want to recognize Mr. Davis for 15 minutes.

1280 Mr. DAVIS OF VIRGINIA. Thank you. Let me just say that
1281 these people are not responsible for the RNC e-mails. They
1282 have a separate corporate culture over there, isn't that
1283 correct, in terms of when they move them?

1284 Mr. SWENDIMAN. That is correct.

1285 Mr. DAVIS OF VIRGINIA. And you are not into that loop
1286 particularly. The other thing that troubles me about this is
1287 the fact that when you have the Committee asking the RNC to
1288 recover e-mails that they may or may not have, that is a huge
1289 expense to the National Committee. My feeling is--and we
1290 need to look at this in the future--when you have congresses
1291 of different parties going after political committees, that
1292 is taking a lot of money out of the system for congressional
1293 investigations that could go other places, and I think if
1294 Congress really wants to pursue this, we ought to look at an
1295 appropriation or something, and not have it come out of their
1296 coffers. It has been hundreds of thousands, at a minimum,
1297 that I know that it has cost the RNC in this particular case.

1298 Let me ask some questions.

1299 Ms. Payton, we have backup tapes for all of this, don't
1300 we?

1301 Ms. PAYTON. Excuse me?

1302 Mr. DAVIS OF VIRGINIA. All the e-mails, are there backup
1303 tapes?

1304 Ms. PAYTON. We have disaster recovery backup tapes,
1305 primarily--

1306 Mr. DAVIS OF VIRGINIA. What is the difference between a
1307 disaster recovery backup tape and a backup tape?

1308 Ms. PAYTON. Sure. Let me try and explain it. From a
1309 disaster recovery standpoint, which is what our backup tapes
1310 are, what you do is you actually take a picture of what all
1311 of the servers, the applications--

1312 Mr. DAVIS OF VIRGINIA. Well, backup tape covers
1313 everything that happened.

1314 Ms. PAYTON. Yes, sir.

1315 Mr. DAVIS OF VIRGINIA. It may be for disaster recovery,
1316 but are there backups for all of these missing e-mails?

1317 Ms. PAYTON. We believe we should have backups based on
1318 our first pass analysis, which is not complete and has not
1319 been QAed yet.

1320 Mr. DAVIS OF VIRGINIA. But, in all likelihood, there are
1321 backups for everything.

1322 Ms. PAYTON. Yes, sir.

1323 Mr. DAVIS OF VIRGINIA. So there is nothing really
1324 missing here, it is recoverable.

1325 Ms. PAYTON. We won't know until we finish the analysis,
1326 but we feel very confident that we will be able to use the

1327 disaster recovery backup tapes if we need to. At the end of
1328 phase two of our analysis, if we still have anomalies--

1329 Mr. DAVIS OF VIRGINIA. So the Committee should be able
1330 to get this, if they want it, one way or the other, is that--

1331 Ms. PAYTON. Yes, sir.

1332 Mr. DAVIS OF VIRGINIA. Okay. I mean, I think that is
1333 important to get out here. Now, it is expensive going
1334 through the disaster recovery backup tapes to retrieve that,
1335 is it not?

1336 Ms. PAYTON. Yes.

1337 Mr. DAVIS OF VIRGINIA. Can you describe the cost to me?

1338 Ms. PAYTON. The team actually put together an algorithm
1339 based on having to do this before, and basically the
1340 algorithm--and it is a very rough approximation, but if you
1341 have one component one day that needs to be restored from a
1342 disaster recovery backup tape, we have estimated it would
1343 cost around \$50,000 for one component one day. So if you
1344 have three components on one single day, that would be three
1345 times 50,000, which would be 150,000.

1346 Mr. DAVIS OF VIRGINIA. Well, can you give me a ballpark
1347 number if we had to go to the backup? Assume for a minute we
1348 can't recover the originals of this. To get what the
1349 Committee wanted to, if we had to go to backup, can you give
1350 me a ballpark?

1351 Ms. PAYTON. There is also servers that would have to be

1352 purchased because you wouldn't want to do the backup on
1353 servers you already have, so we said it would be about
1354 \$500,000 for the servers. And I believe--and I am working
1355 off of memory here--but I believe we had said if we restored
1356 every single day from the original analysis, it was going to
1357 be somewhere in the ballpark of \$15 million or more.

1358 Mr. DAVIS OF VIRGINIA. Okay. But it is recoverable. In
1359 your judgment, by the time you have looked at all of this,
1360 one way or the other, these haven't been doctored or hidden;
1361 it is recoverable.

1362 Ms. PAYTON. Yes, it should be recoverable.

1363 Mr. DAVIS OF VIRGINIA. At a cost.

1364 Ms. PAYTON. The caveat I give is you don't know what you
1365 don't know until you get into the technology. So sometimes
1366 you don't know if there might be a flaw in a tape and some of
1367 those other things. But based on what we know right now, it
1368 should be recoverable.

1369 Mr. DAVIS OF VIRGINIA. Okay, thank you very much.

1370 Mr. Issa, do you want to--

1371 Mr. ISSA. Thank you. I thank the gentleman for
1372 yielding.

1373 Mr. Chairman, I would ask, since I understand we are
1374 going to accept additional information at the end of this
1375 hearing, that the back-and-forth correspondence with Mr.
1376 Steven McDevitt related to the White House guidance and his

1377 further guidance be included in the record.

1378 Chairman WAXMAN. Without objection, that will be the
1379 order.

1380 Mr. ISSA. Thank you, Mr. Chairman.

1381 Mr. DAVIS OF VIRGINIA. Would the gentleman yield for one
1382 more?

1383 Mr. ISSA. Of course. Take your time.

1384 Mr. DAVIS OF VIRGINIA. Let me just make one other
1385 comment on White House versus RNC, because this is a
1386 long-term problem I think this Committee needs to wrestle
1387 with if we are going to be successful.

1388 You have a political operation in the White House, and
1389 you do politics and you do governance at the same time. To
1390 be able to use Government systems to do political e-mails
1391 would really not be consistent with the Hatch Act and
1392 everything else. Is that everybody's understanding? Mr.
1393 Stern?

1394 Mr. STERN. Well, that is correct, and with the
1395 Presidential Records Act. The Presidential Records Act
1396 itself requires that White House officials separate
1397 Presidential records from what are called personal records,
1398 which include political records. So they are supposed to
1399 keep them separate and generally not use Government systems
1400 for non-Governmental business.

1401 Mr. DAVIS OF VIRGINIA. I think what we need to do, we

1402 | can't reinvent the past, but, going forward, we should--one
1403 | thing this Committee could do is we could is we could outline
1404 | some guidelines in the future for how you keep those records,
1405 | saving them and the like. I think that may be helpful. I
1406 | mean, the fact that you had different servers and computers
1407 | keeping these things in itself is compliant with the law.

1408 | Mr. STERN. Yes, the notion of having a separate computer
1409 | to do political work in the White House makes sense; you just
1410 | shouldn't be doing your official work on that computer.

1411 | Mr. DAVIS OF VIRGINIA. Right. And that would mean that
1412 | for the political parties, now all the e-mails wouldn't have
1413 | gone--I mean, if it was an RNC or a DNC computer that you
1414 | were keeping there, maybe we ought to put out guidelines for
1415 | preservation of records, which currently don't exist. Would
1416 | that be a recommendation that might come out of here that
1417 | could be helpful in going forward?

1418 | Mr. STERN. I would think so. And that is the kind of
1419 | thing that--you know, the White House Counsel issues records
1420 | management guidance for all White House employees that they
1421 | should be doing and I think did do, in fact. There is
1422 | guidance to that effect at some level, I believe, by the
1423 | White House.

1424 | Mr. DAVIS OF VIRGINIA. But this is--I mean, e-mail, this
1425 | is fairly new, this has evolved over the last decade, and it
1426 | may be appropriate, Mr. Waxman, at the right time, at least

1427 | going forward, that we put out some hard and fast rules.

1428 | Mr. Weinstein, do you have any thoughts on that?

1429 | Mr. WEINSTEIN. I am in total agreement with that, Mr.

1430 | Davis. One of the points I would like to make is about the

1431 | cost of this. Apparently, this process of restoring e-mails

1432 | from the Clinton years cost about \$12 million and took about

1433 | two years to achieve, so these are not cost-free issues.

1434 | Mr. DAVIS OF VIRGINIA. I got you. Thank you.

1435 | Okay, Mr. Issa.

1436 | Mr. ISSA. Thank you.

1437 | Sort of finishing up with Mr. McDevitt, my understanding

1438 | from staff is that the call that was made, they were

1439 | prohibited from asking certain probative questions, one of

1440 | them clearly would be is Mr. McDevitt working with CREW in

1441 | private litigation. Certainly, that would be a fair question

1442 | if he were here before us today. Another one would be, you

1443 | know, were the interrogatories that he submitted the result

1444 | of back and forth work with the Majority. Certainly, I would

1445 | like to know that. Lastly, I might note for the panel before

1446 | us that Mr. McDevitt, a Federal employee at FEMA, chose--even

1447 | though he is a past White House employee--chose to use his

1448 | g-mail account to correspond back and forth with us as to

1449 | whether or not he could give testimony.

1450 | And I think, Mr. Stern, I will start with you, if you

1451 | don't mind.

1452 Is it appropriate to use g-mail when you are a Federal
1453 employee and a committee of Congress is asking you questions?
1454 Or would that have been something that he should have done on
1455 his FEMA account, since he is a Federal employee, and he was
1456 contacted in the ordinary course of previous Federal
1457 employment?

1458 Mr. STERN. Well, ultimately, like we have said, whether
1459 something constitutes official Government business and
1460 therefore a Government record has to be preserved on whatever
1461 system you use it on. People do use their home e-mail
1462 accounts if they are working from home and don't have access
1463 to the Government account. So the fact of mere use of a
1464 private account for Government business is not prohibited, it
1465 just needs to be preserved according to whatever Government
1466 record-keeping laws apply.

1467 Mr. ISSA. Okay.

1468 Mr. STERN. But g-mail is not something where you can
1469 easily catch the archive on it.

1470 Mr. ISSA. Dr. Weinstein, are you keeping all of the
1471 YouTube stuff that is up on the President? Are you keeping
1472 all the other activities, the things that show up on the
1473 internet for President Bush and his Administration? Are you
1474 capturing that? Because certainly it is part of the total
1475 internet, but not part of Ms. Payton's normal capturing.

1476 Mr. WEINSTEIN. What specifically, are you referring to?

1477 Mr. ISSA. Well, if the Chairman thinks that he should
1478 have Karl Rove's every thinking, including correspondence
1479 with the wife or a girlfriend or an old buddy because it was
1480 done at the RNC and not official work, toward this voyeur,
1481 peeping tom thing that you are entitled to everything, the
1482 question is, are you capturing everything or, in fact, are
1483 you leaving a huge amount that is out there not there. Are
1484 you capturing every utterance of the President, no matter
1485 where he is, for example?

1486 Mr. WEINSTEIN. Congressman, I think you know the answer
1487 to that question.

1488 Mr. ISSA. I do, and, unfortunately, the only time I have
1489 is the time to say that this Committee was supposed to be
1490 looking into the failure to keep 200 days--it continues to
1491 shrink--worth of e-mail, but it is very clear that it is Karl
1492 Rove's nonofficial activities that, for example, were related
1493 to fund-raising or other activities, maybe strategizing how
1494 the Republicans in the House could have kept the majority
1495 rather than become part of the minority, which, I suspect,
1496 Karl Rove did at the RNC. He probably did that, and would
1497 his successor in a Democrat Administration.

1498 So my question is, if Karl Rove over at the RNC chose to
1499 decide that, let's say talking about fund-raising, or talking
1500 about strategizing how to maintain a majority in the House or
1501 the Senate, if he did something on an e-mail, would that be

1502 appropriate for you to gather at the time, Mr. Weinstein?
1503 You're shaking your head no, so I assume that you have an
1504 answer to that, that that is not appropriate, right?

1505 Mr. STERN. The President's record of that pretty clearly
1506 defines what is a Presidential record and what is not a
1507 Presidential record, and says activities by officials for
1508 purely political purposes, campaigns, reelection of the
1509 President are non-records and should not be maintained by the
1510 Government system and not--they do not come to the National
1511 Archives as Presidential records. So it is entirely
1512 appropriate to conduct that business on a separate system.

1513 I think the issue is always, was there are also official
1514 Presidential records on that system. That is what we would
1515 be interested in getting at.

1516 Mr. ISSA. Well, but is there any evidence that any of
1517 you have that there is official Government Presidential
1518 records there? Or are we simply going on a fishing
1519 expedition at \$40,000 or \$50,000 dollars a month of campaign
1520 funds at the RNC because we have the power of subpoena? And
1521 we will forget the second half of that for a moment.

1522 Do any of you know of any official deliberative,
1523 required under law, not nice to have but required under law,
1524 that was done at the RNC? Obviously, from the Government to
1525 the RNC you have already got, you will capture that. We are
1526 talking about use of other servers and other e-mails not

1527 related to the Government. Do any of you know of a single
1528 document, because this Committee doesn't, a single document
1529 that should have been in the archives but, in fact, was done
1530 at the RNC?

1531 Mr. WEINSTEIN. Two points. First of all, it is hard to
1532 know anything before we have some information.

1533 Mr. ISSA. Okay. Now, that is the whole point. We are
1534 not entitled--

1535 Chairman WAXMAN. The gentleman's time--

1536 Mr. ISSA. No, no, but--Mr. Chairman, this is my time, if
1537 you don't mind. You have used plenty of time that is not
1538 allocated time under the Committee Rules.

1539 I need to be as simplistic as possible because we have
1540 limited time. If you know of any, you say yes; if you do not
1541 know of any, you say no. I understand that there might be
1542 some there that we do not know, but there might be some on
1543 YouTube.

1544 The President may have had a conversation, a
1545 deliberative conversation, well, at a fund-raiser. He may
1546 have done that, but it is not being captured by you today,
1547 nor is there a burden under law to go get it to see, is
1548 there? You have no mandate to go peeping tom into every
1549 piece of correspondence that people say is private in order
1550 to determine whether it might be public.

1551 Mr. WEINSTEIN. Of course not.

1552 Mr. ISSA. Okay. So, I mean, it is important for today
1553 because Ms. Payton, I think, has very important information
1554 for us, that there will be a certain amount of days of
1555 re-imaging servers with the images you captured as the
1556 typical backup you do. It is much faster, obviously, to
1557 capture an image than to do a sequential backup.

1558 You captured images. If you are lucky, you capture one
1559 and you get 80 days' worth of back, or 30 days worth of back
1560 e-mails; if you are not lucky, you may have to go day after
1561 day after day to capture them. And I appreciate the fact
1562 that sometimes those images are not 100 percent perfect. You
1563 might not be able to restore a server, and that may be lost,
1564 and it may be millions of dollars.

1565 But the Committee's legitimate reason for calling this
1566 today, as I understand, is not the RNC; it is whether or not
1567 you can capture that and what it will cost. And I think you
1568 have given us a great answer that if all we care about is Dr.
1569 Weinstein's ability to get the legitimate archives that we
1570 know should be available to the history of America, you are
1571 going to be able to provide that in all likelihood, all or
1572 virtually all.

1573 So now I get back to the same thing in the remaining
1574 time, and I will ask each of you, do any of you know of
1575 something that was wrongly use outside official channels by
1576 Karl Rove? Because it is clear the Chairman, a little bit

1577 | like Dan Burton, who I disagreed with some of what he did in
1578 | the 1990s, but he is clearly wanting to know what Karl Rove
1579 | said or did even if Karl Rove did not deliver it as official
1580 | work. And the question is, do any of you know of any
1581 | misconduct by Karl Rove using the RNC to circumvent what
1582 | would otherwise be official legitimate activities covered
1583 | under the Records Act? Do any of you know of that, yes or
1584 | no, please?

1585 | Mr. WEINSTEIN. Yes or no?

1586 | Mr. ISSA. Yes or no. I mean, do you know or do you not
1587 | know? You do not know.

1588 | Mr. WEINSTEIN. I would say that the question itself is
1589 | both above and below my pay grade.

1590 | [Laughter.]

1591 | Mr. ISSA. Mr. Chairman, I will take that as a no, and
1592 | thank you.

1593 | Chairman WAXMAN. I would take it as more than a no.

1594 | For the record, the White House has a responsibility of
1595 | preserving all of the e-mails. And if some of the e-mails
1596 | are at the Republican National Committee, the White House has
1597 | a responsibility to get them, but only those that relate to
1598 | Federal work, Government activities.

1599 | And when we know that, for the record, that there are 51
1600 | of the 88 White House officials who had RNC e-mail accounts,
1601 | and then we do not know what has happened to 37 of those 51,

1602 | and before 2006 only 14 of these officials had the e-mails
1603 | even retained at all and that Karl Rove, for example, used 99
1604 | percent of his time on RNC e-mails, one would assume he was
1605 | doing some Government work. But we do not know unless we see
1606 | the e-mails. And if we do not see thee-mails, we do not
1607 | know.

1608 | Mr. ISSA. Mr. Chairman, do you presume that we have a
1609 | right to look into private people's lives simply because--

1610 | Chairman WAXMAN. Absolutely not.

1611 | Mr. ISSA.--there might be something there?

1612 | Chairman WAXMAN. Absolutely not. But the White House
1613 | has an obligation to have the official business of the White
1614 | House on e-mails that are preserved. And they need to be
1615 | preserved whether they are on one account or another.

1616 | Mr. ISSA. Mr. Chairman, I truly agree with you on that,
1617 | and that is why we have been cooperating as a minority. But
1618 | I would hope that we would ask the White House just as what I
1619 | asked here, are there any records that are covered under
1620 | official deliberation in the Records Act that have been
1621 | conducted under any non-Government service by any individuals
1622 | and ask them to answer that.

1623 | Chairman WAXMAN. Mr. Swendiman, that is a good question.

1624 | Are there Government activities that are handled on an RNC
1625 | e-mail account when we have so many employees of the highest
1626 | level in the White House with no official records of their

1627 e-mails, and we know that they use their RNC accounts for
1628 everything that they send on e-mails?

1629 Mr. SWENDIMAN. Well, much of the things that you have
1630 talked about, Mr. Chairman, preceded my coming to the
1631 position of Director of the Office of Administration.

1632 Chairman WAXMAN. Oh. Well, then, it's improper for us
1633 to ask you. But you are here representing the White House?
1634 Let me go on to members who are waiting for their opportunity
1635 to ask questions.

1636 Mr. Davis?

1637 Mr. DAVIS OF ILLINOIS. Thank you very much, Mr.
1638 Chairman.

1639 As I listened to that discussion, I just happened to
1640 have in my hand a report that says Investigation of Possible
1641 Presidential Records Act violations. And information in the
1642 report indicates that White House officials used their RNC
1643 e-mail accounts to conduct official business. So I am not
1644 sure that we have to speculate about that. I think that we
1645 actually have the information that has been under
1646 investigation and, actually, is written in a report. So I
1647 think we can move on.

1648 But let me move on to my questions of Dr. Weinstein. As
1649 I understand the White House e-mail problem, this all began
1650 in 2002 when the White House decided to move its staff from
1651 the Lotus Notes e-mail system to the Microsoft Exchange

1652 e-mail system. But when the White House switched away from
1653 the old e-mail system, it also abandoned the archiving system
1654 that went with it.

1655 The archiving system was called the Automatic Records
1656 Management System, or ARMS, and had been used since the
1657 Clinton administration. The problem was that instead of
1658 putting in place a new archiving system, the White House
1659 began an ad hoc process called journaling. And under this
1660 process, a White House staffer or contractor would collect
1661 copies of e-mails and manually save them on various White
1662 House service.

1663 The Committee interviewed Carlos Solari, who was Ms.
1664 Payton's predecessor, as the White House Chief Information
1665 Officer, and he told us that this journaling process was ``a
1666 temporary and short-term solution that was not considered a
1667 good long-term solution.''

1668 Dr. Weinstein, your own staff had a similar reaction.
1669 In an e-mail sent last November, Sam Watkins with the
1670 Archives said that the archiving system used by the White
1671 House ``hardly qualifies as a system'' by the usual IT
1672 definition.

1673 My question is, do you agree with this ad hoc journaling
1674 process was not an ideal e-mail archiving system?

1675 Mr. WEINSTEIN. Congressman, may I first compliment you
1676 on a very brief distilled analysis of the systems, which I am

1677 | afraid I could not match. So we will start with the fact
1678 | that I am a very low-tech person, I have only been at the
1679 | Archives for three years. But I think the judgment of that
1680 | system will have to be made by colleagues who have watched
1681 | this over--unfortunately, I am not even sure that Mr. Watkins
1682 | is here. Is he here?

1683 | So we will listen to my counsel on that one.

1684 | Mr. DAVIS OF ILLINOIS. So you would not say that this is
1685 | an ideal--

1686 | Mr. WEINSTEIN. Well, I think when one has to change any
1687 | system completely, or one decides to change any system
1688 | completely, you are going to run into not simply the normal
1689 | obstacles but that wonderful historical--I am a historian by
1690 | profession--and the law of unintended consequences is the
1691 | only major historical law which I know, which is--

1692 | Chairman WAXMAN. Dr. Weinstein, we're having a hard time
1693 | hearing you. Pull it right up to--

1694 | Mr. WEINSTEIN.--which is absolutely infallible for
1695 | historians which is a law of unintended consequences. I am
1696 | sure there were some in the change from one system to
1697 | another, but perhaps Mr. Stern knows of some specifics here.

1698 | Mr. DAVIS OF ILLINOIS. Well, let me ask you, Mr. Stern,
1699 | on responsive, do you have any concerns about the adequacy of
1700 | the White House archiving system?

1701 | Mr. STERN. I think, and as the documents we provided to

1702 | Committee reflect, it had been our understanding that the
1703 | journaling function was meant to be temporary stop-gap until
1704 | they put in a new formal records management application which
1705 | we had spent some time working with them during the first
1706 | term of the President, and which we still had hoped and
1707 | expected they would put in a new formal system.

1708 | So I think, as the quote you indicated, or you quoted
1709 | from, indicates that it is our view that the journaling
1710 | function is not the ideal solution.

1711 | Mr. DAVIS OF ILLINOIS. And it has been used for six
1712 | years, so I would want to ask Dr. Weinstein, do you have any
1713 | concerns--

1714 | Mr. WEINSTEIN. Correct.

1715 | Mr. DAVIS OF ILLINOIS.--about how long this system has
1716 | been used, or the White House has continued to rely upon a
1717 | nonproductive system?

1718 | Mr. WEINSTEIN. Congressman, in fairness to the White
1719 | House, what I would like to see is the results of what my
1720 | colleague here, Ms. Payton, is doing. You indicated that
1721 | your process is coming to a conclusion, so I would like to
1722 | hear the results of what Mr. Swendiman and his colleagues
1723 | have come up with, and it seems to me to be unfair to judge
1724 | that system before we have seen it in operation. And this
1725 | is, literally, the first time it can be seen in full
1726 | operation.

1727 Mr. DAVIS OF ILLINOIS. Well, let me ask Ms. Payton how
1728 she would respond to that, or if she has any concerns about
1729 it.

1730 Ms. PAYTON. If your question, Mr. Davis--I just want to
1731 make sure I understand the question you are asking me--is
1732 around--is it an ideal solution?

1733 Mr. DAVIS OF ILLINOIS. We used it--I mean, the White
1734 House has continued to use it pretty much knowing that it was
1735 not yielding the kind of results that you would want to have
1736 it yield.

1737 Ms. PAYTON. I think this is a very complex challenge. It
1738 is not as simple to say this is the right software produce
1739 and this is the wrong software product.

1740 What I have been able to gather from the people who have
1741 been here prior to my arrival, as well as some of the
1742 documents that I have read, is best efforts have been made to
1743 actually do a more comprehensive solution, but once the
1744 products had run through their paces through some of the
1745 unique and demanding requirements that EOP has, they have to
1746 do both Presidential Records and Federal Records Act
1747 management. They have to separate things out by components,
1748 and they have to be able to record key statistics so that
1749 they can do searches.

1750 And it appears that each time those products were run
1751 through the paces, they were left wanting. So that has been

1752 the challenge.

1753 So part of what we have been doing in knowing that we
1754 want a more comprehensive solution--this is not the solution
1755 that we want to live on for the rest of the time that we are
1756 on exchange, barring whatever the next platform is that comes
1757 out for e-mail, we know that we want to move to a newer
1758 platform. However, in the meantime, you have to make do with
1759 what you have and make sure the processes around it are
1760 tight, make sure that people are trained, and as much as you
1761 can improve the technology around it to make sure the
1762 processes capture any potential problems that may happen.

1763 A comprehensive solution still does not account for, if
1764 you have four processes around a comprehensive solution, if
1765 it breaks, you are still going to have challenges. I think
1766 we have seen that in the industry. And I am not going to,
1767 you know, mention by name some of the large companies that
1768 have had challenges with this that do have more comprehensive
1769 solutions.

1770 So I hope I am answering your question, Mr. Davis.
1771 Would it be what my staff and I would have picked if we could
1772 have had the ideal world, probably not. But it is the
1773 solution we have, and our focus is on making sure it is
1774 accurate, reliable, stable, and has good processes around it
1775 until we can get on a more comprehensive solution.

1776 Mr. DAVIS OF ILLINOIS. Thank you very much.

1777 Chairman WAXMAN. The gentleman's time has expired.

1778 Mr. Mica.

1779 Mr. MICA. Thank you, Mr. Chairman. Sixteen years is, I
1780 think, Mr. Chairman, you have been on the Committee longer, I
1781 am sure you have, but I have been on 16 years. It is
1782 interesting how what comes around sort of goes around.

1783 Here with this discussion reminded me of, with the
1784 Clinton administration, and the missing FBI files, and those
1785 were not e-mails, those were FBI files. Remember Craig
1786 Livingstone, and I think Mrs. Clinton was in the middle of
1787 that one, too. But it is interesting how it sort of just all
1788 comes around full circle. Now, we are looking for some
1789 e-mails.

1790 And this raises an interesting question, because we have
1791 gone from like hard FBI files and documents to the electronic
1792 era. I had a good discussion with the librarian of Congress
1793 because the same thing is happening with Congress. You used
1794 to have all these great, well, the archivist has an
1795 incredible collection of hard copies. I think it is just one
1796 of the most fabulous things I have ever seen is to go into
1797 the Archives. And you do a, generally, a magnificent job of
1798 preserving those documents. But we are entering a new era in
1799 trying to sort out sort of the rules of how you preserve
1800 electronic communications.

1801 Ms. Payton, this Steven McDevitt that has made some

1802 | allegations, part of the reason that he was upset was that, I
1803 | had heard that there was a difference in technology he wanted
1804 | to implement. Are you aware of that as far as recording
1805 | e-mails and preserving them?

1806 | Ms. PAYTON. Did you--

1807 | Mr. MICA. Are you aware of that, Dr. Weinstein?

1808 | Mr. WEINSTEIN. Well, obviously, in an ideal world, which
1809 | is, you know, Congressman, is the world we live in, it would
1810 | be best if all concerned had a very high comfort level with
1811 | the technology they were using. I am not privy to the
1812 | specific arguments involved with technological debate over
1813 | what to do at the White House in this regard. I am at the
1814 | National Archives.

1815 | Mr. MICA. Well, is there a difference of opinion as to
1816 | how the records were kept, do you know?

1817 | Mr. WEINSTEIN. I am not sure that there was. Did you
1818 | have a difference of opinion?

1819 | Mr. MICA. Well, if there was not, we would have one
1820 | protocol, and everything would, things would be saved. And,
1821 | obviously, some things are missing that Mr. Waxman would like
1822 | to find.

1823 | Mr. WEINSTEIN. But at the staff level, it seems to me
1824 | that one of the things that keeps the system working is a
1825 | remarkable amount of civility back and forth, normally,
1826 | between the staffs in terms of getting basic things done.

1827 Mr. MICA. But, you know, the high regard I have for the
1828 Archives. Mr. Stern, I think you were involved in the Sandy
1829 Berger issue, and I asked that we find out about the missing
1830 papers.

1831 Now, Sandy Berger had top secret classified documents he
1832 was charged by President Clinton to report to the 9/11
1833 Commission, and he had access to and misplaced top secret
1834 documents. Is that not correct, Mr. Stern?

1835 Mr. STERN. He had access. He had clearance. I mean, I
1836 could answer your question, if you would like. It seems that
1837 that is, obviously, a separate topic from what this hearing
1838 is about.

1839 Mr. MICA. No, but you are charged, it is just like I am
1840 going to ask Ms. Payton about the Clinton records, you are
1841 charged with keeping presidential records. The Clinton
1842 records, is there not a hold on some of those being released
1843 now for the Clinton Library?

1844 Ms. Payton, is that correct?

1845 Ms. PAYTON. My understanding is they are NARA, sort of
1846 in a kind of a temporary area until all of them are--

1847 Mr. MICA. So we cannot get access to Presidential
1848 records from that Administration, and then the Archives,
1849 which does its best in preserving them, particularly a new
1850 mode of communications which is electronic, we take
1851 top-secret hard documents that were stuffed, according to Mr.

1852 Lester's e-mail, which I would like to make part of the
1853 record, Mr. Chairman.

1854 Chairman WAXMAN. We will accept it for review and not
1855 make it part of the record.

1856 Mr. MICA. Okay, but it refers to his e-mail as to how
1857 those documents were preserved, and I guess they were stuffed
1858 in Sandy Berger's socks.

1859 Mr. MICA. Is that what you understand, Mr. Stern?

1860 Mr. STERN. There's been a lot of review and
1861 investigation by lots of folks about what Mr. Berger did.

1862 Mr. MICA. But there are e-mails that say one thing, and
1863 then the IG Report says another thing. And I want them to be
1864 made part of the record.

1865 Chairman WAXMAN. The gentleman's time has expired. The
1866 Chair will not admit that in the record. That has nothing to
1867 do with this hearing.

1868 Ms. Watson?

1869 Ms. WATSON. Thank you so much, Mr. Chairman, I want to
1870 address my remarks to Ms. Payton. And Ms. Payton, to comply
1871 with the Presidential Records Act, an e-mail archiving system
1872 has to ensure that it captures all pertinent e-mail, but it
1873 also has to prevent people who are unauthorized from
1874 tampering with or deleting e-mail, would you not agree?

1875 Ms. PAYTON. Yes, ma'am. Yes, absolutely.

1876 Ms. WATSON. And the Committee has been informed that in

1877 | 2005 the White House was warned that not only its system was
1878 | at risk of data loss but also that it was vulnerable to
1879 | tampering. And Mr. McDevitt, who worked for you at the White
1880 | House, correct? He did work for you?

1881 | Ms. PAYTON. Yes. I started mid-May of 2006.

1882 | Ms. WATSON. He informed the Committee that there is no
1883 | way to guarantee that all records are retained in their
1884 | complete and unmodified state. And he said the approach of
1885 | simply storing e-mail messages in PST files provide no
1886 | mechanism or audit trail that tracks changes to day the
1887 | files. According to him, the integrity of the data could be
1888 | called into question because it was not possible to ensure
1889 | that inappropriate action, either intentional or
1890 | unintentional, could not occur. So this does not necessarily
1891 | mean that someone tampered with White House documents, but it
1892 | does mean there is no way to know if someone did.

1893 | Let me then address this to Dr. Weinstein. Does this
1894 | raise a concern for you that there could be tampering?

1895 | Mr. WEINSTEIN. Congresswoman, anything of this kind
1896 | raises concerns for me and any possibility of tampering in
1897 | any fashion. Because of an unfortunate employee--

1898 | Ms. WATSON. I know, but are you concerned about that?

1899 | Mr. WEINSTEIN. Am I concerned about this specific issue
1900 | that you raise?

1901 | Ms. WATSON. That the data could be tampered with.

1902 Mr. WEINSTEIN. I would like to see some of the material,
1903 if I may that--

1904 Ms. WATSON. I cannot hear you, sir.

1905 Mr. WEINSTEIN. I would like to read through some of the
1906 material that you have in front of you so that I can judge
1907 for myself.

1908 Ms. WATSON. No. Give me a yes or no.

1909 Mr. WEINSTEIN. Yes, I am most concerned. Yes.

1910 Ms. WATSON. Yes is your answer?

1911 Mr. WEINSTEIN. Yes was my answer.

1912 Ms. WATSON. Yes, it is just a simple question, okay.

1913 Mr. McDevitt also raised another concern, and this one
1914 is even more serious. He stated that there was a critical
1915 security issue in this system that was not identified and
1916 corrected until 2005. And he said this: "During this period
1917 it was discovered that the file servers and the file
1918 directories used to store the retained e-mail PST files were
1919 accessible by everyone on the EOP network."

1920 Now, Ms. Payton, the Executive Office of the President
1921 has several thousand people, and your former employee, Mr.
1922 McDevitt, is saying that until 2005 any of them could access
1923 these e-mail files. They could delete files, they could
1924 modify files, or read the files of other officials. Is that
1925 correct?

1926 Ms. PAYTON. Ms. Watson, since that precedes me, I am

1927 going to go off of information based on conversations with my
1928 staff, and in asking and trying to understand the e-mail
1929 situation so we have the right course of action and the right
1930 people matched to it, that has not been brought up.

1931 I mean, at some point in time I can certainly go back
1932 and ask them about that. That has not been brought up, nor
1933 is that typical--

1934 Ms. WATSON. Let me stop you.

1935 Ms. PAYTON. Yes, ma'am.

1936 Ms. WATSON. Are you saying to me that it has not been
1937 brought up that these files could be deleted or tampered
1938 with?

1939 That there was system-wide access by 3,000 customers to
1940 servers that are in the data center, that is against, you
1941 know, sort of Technology 101 principles, if that happened--
1942 Please. Please.

1943 It would appear to me that if you had a system in place
1944 so it could be accessed by 3,000 people or unofficial
1945 personnel, and it could be changed, you mean to say that
1946 there was no concern or discussion? Is that what I am to
1947 hear?

1948 Ms. PAYTON. I have not been made aware that at some
1949 point in time that these servers were open to just anybody.

1950 Ms. WATSON. So, as I understand it, and please correct
1951 me, you had a system in place in the White House for several

1952 | years in which anyone could have gone in and deleted files
1953 | without a trace?

1954 | Ms. PAYTON. Ma'am, I do not know that to be true. I
1955 | have not been told that.

1956 | Chairman WAXMAN. The gentlelady's time has expired.

1957 | Mr. Duncan?

1958 | Mr. DUNCAN. Thank you, Mr. Chairman. Let me just ask
1959 | that again. I think maybe you just answered this, you do
1960 | realize, of course, you are under oath. Do you have any
1961 | knowledge of any kind that any person has ever tampered with
1962 | or deleted any of these files?

1963 | Ms. PAYTON. I have no knowledge of anybody going out
1964 | there and intentionally deleting files that should not be
1965 | deleted.

1966 | Mr. DUNCAN. All right.

1967 | Ms. PAYTON. Again we are referring to a time period
1968 | before my time, but I have not had an employee come to me and
1969 | say this is something that needs to be researched and that
1970 | anything has happened. So I do not know what to do with that
1971 | statement.

1972 | Mr. DUNCAN. So you have no knowledge of anybody
1973 | purposely trying to hide or delete something from this
1974 | Committee or from any Government investigator?

1975 | Ms. PAYTON. That is correct. There is only one
1976 | exception that is allowed as far as any kind of delete, and

1977 | that has to go through a very specific process. That is only
1978 | in the event that information from the classified network is
1979 | found on the unclassified network. That is the only time
1980 | that a delete is allowed to happen, and that is managed
1981 | through very tight process.

1982 | Mr. DUNCAN. Mr. Swendiman, let me ask you, or Ms. Payton
1983 | either one, how many times has your staff or either of you or
1984 | your staff briefed Oversight Committee staff, and can you
1985 | tell us how many letters of inquiry you have received from
1986 | the Committee?

1987 | Mr. SWENDIMAN. I briefed the Oversight staff once very
1988 | recently in terms of being responsive to the Committee. We
1989 | have certainly in hand the Chairman's letter, and we have
1990 | been producing the documents that were requested. That has
1991 | consumed approximately, given the last check of about
1992 | February 8th, about 1,500 hours of time from the OA staff to
1993 | do that, and that's staff across the board; that is not just
1994 | the OCIO's office, but it is the Chief Financial Officer, the
1995 | Chief Operating Officer, the Procurement Division, and so
1996 | forth.

1997 | Mr. DUNCAN. That is really what I was getting at, is
1998 | some idea about how much staff time, or how many hours or how
1999 | much, has been devoted to trying to find this information.
2000 | Do either of you have any idea about how many documents or
2001 | interviews have been submitted? How many pages of documents

2002 | of pages have come here to the Committee in regard to this
2003 | investigation?

2004 | Mr. SWENDIMAN. Right now I think the estimate that I
2005 | have been given is that approximately 15,000 pages of
2006 | documents have been produced to the Committee, and
2007 | approximately another 15,000 have been shown to the
2008 | Committee.

2009 | Mr. DUNCAN. So 1,500 hours and 15,000 pages.

2010 | Mr. SWENDIMAN. Approximately, sir.

2011 | Ms. PAYTON. Mr. Duncan, since you have addressed it to
2012 | both of us?

2013 | Mr. DUNCAN. Sure.

2014 | Ms. PAYTON. Allen covered the OA portion which would
2015 | cover my area. But in addition to that you had asked the
2016 | question about briefings, and I have provided, if I remember
2017 | correctly, it has been four briefings, two in person, two via
2018 | telephone on this topic to Committee staff.

2019 | Mr. DUNCAN. All right. Thank you very much.

2020 | Chairman WAXMAN. Mr. Tierney.

2021 | Mr. TIERNEY. Thank you, Mr. Chairman. Ms. Payton, I
2022 | would like to ask you about some e-mails that were missing
2023 | from Vice President Cheney's office that were related to CIA
2024 | Agent Valerie Plame Wilson. Before I get to any questions,
2025 | let me see if I have the chronology right, and I know you
2026 | will correct me if I am wrong on that.

2027 I understand that first your office produced a chart in
2028 2005 that showed 473 days with no e-mail sent to or from
2029 certain components of the White House in the Microsoft
2030 Exchange System.

2031 For the Vice President's office, there were days during
2032 the week of October 1, 2003, with no e-mail, and that was
2033 apparently of interest to Special Counsel Patrick Fitzgerald,
2034 who requested those documents during the period. My
2035 understanding is that when the inventory was done in 2005,
2036 nobody at the White House could locate those e-mails in the
2037 PST files that were stored in the servers.

2038 And now, as far as I know in 2008, the White House still
2039 hasn't located those e-mails in the PST files in the White
2040 House servers. So after not finding the e-mails there, the
2041 White House went to backup tapes and ultimately recovered the
2042 e-mails for those days. These were provided to the Special
2043 Counsel.

2044 Is that pretty accurate so far?

2045 Ms. PAYTON. Yes.

2046 Mr. TIERNEY. So my first question, I guess, is what
2047 happened to the files that were supposed to be on the White
2048 House servers?

2049 Ms. PAYTON. Well, we have not finished our analysis, Mr.
2050 Tierney. We still have, roughly, 17 million e-mails as we
2051 are going through this first pass that we have not attributed

2052 | to a component, and in our phase two we will have enhanced
2053 | technology which will allow us to read those messages at a
2054 | lower level and attribute those to a component.

2055 | Mr. TIERNEY. But so far, I mean, this is a long period
2056 | of time that has transpired now. You haven't found them, and
2057 | now you went to a pretty serious effort in trying to respond
2058 | to Special Counsel Patrick Fitzgerald, I would assume, and
2059 | found none of them on the servers and had to go to the
2060 | backup. Right?

2061 | Ms. PAYTON. Yes, that is correct.

2062 | Mr. TIERNEY. Let me ask you about the backup tapes,
2063 | then. They are supposed to, as far as I know, copy
2064 | everything on the White House servers, right?

2065 | Ms. PAYTON. They are disaster recovery backup tapes, so
2066 | they actually take a picture of how things look in the data
2067 | center at that day.

2068 | Mr. TIERNEY. Right.

2069 | Ms. PAYTON. So it is a picture of the server, the
2070 | applications on it, and then any data associated with the
2071 | applications.

2072 | Mr. TIERNEY. So it should copy the journals, the PST
2073 | files, and everybody's individual mailboxes.

2074 | Ms. PAYTON. Yes.

2075 | Mr. TIERNEY. Now, we got a document showing that when
2076 | the White House restored the backup tapes for the Vice

2077 | President's office, there were no journal files, there were
2078 | no PST files containing e-mails for the days that Mr. Bashara
2079 | was interested in. So not only were they missing from the
2080 | servers, they were missing from the backup tapes as well.

2081 | Can you explain that to us?

2082 | Ms. PAYTON. Because this predates me, I do not know all
2083 | the details of that particular restorer. I do know that
2084 | they--

2085 | Mr. TIERNEY. Well, does it mean that there were no
2086 | journal files of the time the backup tape was made?

2087 | Ms. PAYTON. I am not sure. What I do know is that 70
2088 | mailboxes were restored and 17,000 e-mails, but I don't know
2089 | all the details of that particular restoring process.

2090 | Mr. TIERNEY. Well, I would assume, you know, the problem
2091 | with just having the mailboxes of individual officials of the
2092 | Vice President's office is, it is my understanding, is that
2093 | if somebody deletes an e-mail on the same day that they
2094 | receive it, it is gone. It is not stored or whatever. We
2095 | will never know what was on there, so no historical record of
2096 | that.

2097 | So I am looking at this, and what--I will be an
2098 | expert--it looks that there is a lot of unanswered questions
2099 | here about the e-mails that were missing from the Vice
2100 | President's office.

2101 | Ms. PAYTON. Mr. Tierney, if I might, we still have PST

2102 files that we have not been able to associate with a
2103 component. I am assuming that was the same case back in
2104 2005, but I do not know that for sure. They contain 17
2105 million e-mails. Once we go through phase two, it is our
2106 hope and our assumption that we are going to be able to find
2107 e-mails that were properly archived, but they are just not
2108 associated with a component at this point in time.

2109 Mr. TIERNEY. Well, I hope you will forgive me for being
2110 a little bit skeptical, because a lot of time has come and
2111 gone on this.

2112 Ms. PAYTON. I understand.

2113 Mr. TIERNEY. The servers did not have it. It looks like
2114 the backup certainly, at least to date, has not had it
2115 despite fairly extensive efforts to recapture that. You
2116 know, you want us to rely on this system to believe that, you
2117 know, this is something that is reliable, and I just do not
2118 see that at this point in time, and it is disconcerting.

2119 I mean, all the other questions what we have seen here
2120 today about the RNC being, deleting tapes and everything
2121 disappearing, and these are critical periods of time where
2122 the historical records should be accurate and should be
2123 complete. In the amount of time that it has taken to review
2124 all of these things and still come up with non-answers is
2125 disturbing.

2126 So I yield back, Mr. Chairman. Thank you.

2127 Chairman WAXMAN. Mr. Bilbray.

2128 Mr. BILBRAY. Thank you, Mr. Chairman.

2129 Mr. Stern, I had the privilege of having a discussion
2130 with Mary Nichols, who previously was at EPA and now over at
2131 Air Resources Board, about an issue that is raised here, and
2132 that is the California waiver, and the hearing and the
2133 process on that.

2134 In fact, I have noticed that a group that has called
2135 themselves Citizens for Responsible Ethics in Washington,
2136 CREW, has filed a lawsuit pertaining to the latest lack of a
2137 waiver for California pertaining to greenhouse gases. So,
2138 sir, do you know if they have filed a lawsuit pertaining to
2139 the mandate to use ethanol in California that California
2140 tried to get a waiver for from the Clinton administration and
2141 was blocked by that administration? Do you know if they
2142 filed anything?

2143 Mr. STERN. I am sorry. I am with the National Archives.
2144 I am not familiar with that EPA issue.

2145 Mr. BILBRAY. Okay, I appreciate that.

2146 Mr. Chairman, I just don't know if that group was
2147 involved in any litigation pertaining to the other waiver,
2148 but I am interested in this, and, Mr. Weinstein, do we have
2149 the possibility, if we wanted to follow up on this other
2150 waiver, to get into the records of the Clinton Administration
2151 about what was done and why they would not issue a waiver to

2152 California Air Resources Board when we requested it for over
2153 eight years?

2154 Chairman WAXMAN. I think it would depend, Congressman,
2155 on whether those records had already been totally processed
2156 for release.

2157 Mr. STERN. Yes, under the Presidential Records Act, the
2158 Congress, through committee or subcommittee, can make what we
2159 call a Special Access Request for records of a former
2160 President. So if we got a formal request from the Committee
2161 for Presidential records of the Clinton Administration, then
2162 we would respond to that, search for those records, see if we
2163 have them at the Clinton Library, and respond to the
2164 Committee. So there is a formal process through the PRA to
2165 do that.

2166 Mr. WEINSTEIN. But that would have to be the Chairman of
2167 the Committee responding.

2168 Mr. BILBRAY. The Chairman of the Committee would have to
2169 request that?

2170 Mr. STERN. That is correct.

2171 Mr. BILBRAY. Okay. Because it is an ongoing problem
2172 that Chairman Waxman knows we are concerned about the
2173 environmental impact of the ethanol/methanol mandate. We
2174 have gotten the methanol off, but we still have a mandate on
2175 ethanol, and why the Administration, previous Administration,
2176 kept telling us that they were going to pull the mandate, it

2177 | never did; and what meetings and communications they had with
2178 | industry representatives who were representing those who were
2179 | profiteering off of this mandate as opposed to where we go.

2180 | So that is obvious. Now the concern is what kind of
2181 | contacts the Republican Administration that followed made,
2182 | specifically to greenhouse gas issues.

2183 | Mr. Chairman, at this time I would like to yield my
2184 | remaining time to the gentleman from Florida.

2185 | Mr. MICA. Ms. Payton, you joined the Office of
2186 | Administration in mid-2006, so all the missing e-mail issues
2187 | occurred, exclusively, before your tenure began, is that
2188 | correct?

2189 | Ms. PAYTON. Yes. I mean that is correct.

2190 | Mr. MICA. And were you around when these things took
2191 | place, too?

2192 | Mr. SWENDIMAN. No.

2193 | Mr. MICA. You were not?

2194 | Mr. SWENDIMAN. No, my tenure began November 27th of--

2195 | Mr. MICA. And so have sort of a little game being
2196 | played. This Steven McDevitt, he worked for you? Did he
2197 | leave on good terms, or was there some dispute? He is sort
2198 | of the accuser here bringing up that they could have had a
2199 | system that would have better, that would have preserved
2200 | things, and some things may be missing, they may not. But he
2201 | has raised these questions, right?

2202 Ms. PAYTON. He did, initially, report directly to me,
2203 and then once I got a deputy director, he reported to the
2204 deputy director. Steve--

2205 Mr. MICA. There had to be some disagreement. I mean,
2206 were you aware that, I mean, now he is making these charges
2207 that you all didn't handle this right.

2208 Ms. PAYTON. He was very passionate about the ECRMS
2209 platform that was going to go to pilot, and the pilot had to
2210 keep being delayed. And he was--

2211 Mr. MICA. So there was a disagreement on how these
2212 records would be preserved?

2213 Ms. PAYTON. We actually did not make the decision around
2214 ECRMS until after he left.

2215 Mr. MICA. Okay. An important question, Mr. Chairman.
2216 One of the things I passed after the Clinton fiasco was the
2217 White House had to live under all the laws the rest of us
2218 did. I think Mr. Ehlers and I passed that after we went
2219 through years of seeing the disorganization at the White
2220 House and non-compliance with law under the Clinton
2221 Administration.

2222 Do we need to change the law? Is there
2223 something--because again we have new technology that we are
2224 trying to capture history. Let's go right now the line.
2225 Tell me if you think the law is adequate or something we need
2226 to change.

2227 Chairman WAXMAN. The gentleman's time has expired, but
2228 if any members wish to answer his question.

2229 Mr. MICA. I don't think--

2230 Chairman WAXMAN. If any witnesses wish to answer his
2231 question.

2232 Mr. SWENDIMAN. I think with regard to the law or rules
2233 on technology, I need to defer to somebody who is an expert
2234 in IT and has a technological background.

2235 Ms. PAYTON. As far as the law goes, I cannot legally
2236 comment on whether or not the law should be changed, but the
2237 fact that more communication that used to happen in the
2238 hallway and used to happen on the telephone now happens on
2239 e-mail. So e-mail volumes are driving up, and it is now, you
2240 know, it is also a very casual form of communication as well
2241 as a very official form of communication.

2242 So we do have some work to do, both on the user side as
2243 well as on the technology side to understand the new
2244 protocols around managing, preserving it properly, managing
2245 it, planning for that type of volume, because it is only
2246 going to increase.

2247 Did I get at the heart of your question, sir?

2248 Chairman WAXMAN. Well, the question was, do you
2249 recommend a new law. You are not recommending a new law.
2250 Let's go on, if anybody wants to answer his question,
2251 directly, let's do that, because other members are waiting to

2252 ask their questions.

2253 And the gentleman's time has expired.

2254 Mr. Weinstein?

2255 Mr. WEINSTEIN. Mr. Chairman, as you know, I am an
2256 historian by profession, and I am afraid I am unable to
2257 respond to that question. Certainly not without you and the
2258 Honorable Member agreeing on a particular thing. When there
2259 is consensus in this body, then that is the moment that
2260 probably the law should move forward. I will stop there.

2261 Chairman WAXMAN. Okay. Anybody else want to respond?

2262 If not, Mr. Yarmuth.

2263 Mr. YARMUTH. Thank you, Mr. Chairman. I am going to ask
2264 a question that is based on a conversation I had several
2265 years ago, before I ever dreamed of getting into politics,
2266 when I was a journalist. I actually had forgotten about this
2267 conversation, but I was reminded of it when all of these
2268 disappearing e-mails, when the story of them arose.

2269 A woman told me, this was back in 2004, 2005, that she
2270 had a blood relative who worked for a private contractor
2271 somewhere in a remote area from D.C., I don't remember
2272 whether it was Virginia or Maryland. And that every six
2273 weeks or so he came, his company came to the White House and
2274 took computers and hard drives back to a remote location
2275 where he was many stories underground. I am not exactly
2276 clear on which term she used, whether she said cleaned or

2277 scrubbed the hard drives of those computers.

2278 I am very honest to say, she implied a nefarious motive.

2279 I as a journalist wasn't quite sure, and I understand the

2280 danger of hearsay stories like that. I wouldn't even ask the

2281 question except for the connection to missing data. So my

2282 question is to Mr. Swendiman and Ms. Payton, are you aware of

2283 any activity or procedure that resembles the activity that I

2284 just described?

2285 Mr. SWENDIMAN. Sir, I am aware of none.

2286 Ms. PAYTON. I can't comment on that time period, but I

2287 can comment currently. There are, as employees depart, if we

2288 want to be able to re-use their equipment, we actually take

2289 the files and store them on a shared drive. Then if we want

2290 to re-use their equipment, we would need to wipe their drive,

2291 so that we are not buying a new PC and then you can't use it

2292 any more, every time you have a new person.

2293 So from a current standpoint, that is a practice that we

2294 are using. I don't know if that answers your question.

2295 Mr. YARMUTH. Well, it may.

2296 Let me ask another one, though. Are you aware of any

2297 contract with a non-Governmental entity that involves

2298 handling of White House computer information?

2299 Ms. PAYTON. We have--

2300 Mr. YARMUTH. Other than the one you may have just

2301 described.

2302 Ms. PAYTON. We have 60 contractors on staff who help us
2303 with our messaging, who also help us with our PC tech
2304 support. So contractors would be touching computers. This
2305 process that she is mentioning, I am not sure I am aware of.

2306 Mr. YARMUTH. Okay. And so you don't, well, okay, I will
2307 leave it at that. But let me ask a question, you mentioned
2308 one issue with regard to deleting information that might be
2309 classified, and you described it as being subject to a very
2310 tight process. I think those were your words. How can we as
2311 a Committee, how can the Congress, how can the American
2312 people be confident in what that process is and that there is
2313 any accountability for it? Or are we relying totally on the
2314 White House's assurance that it is a tight process that only
2315 deals with classified information?

2316 Ms. PAYTON. I am not exactly sure how to answer your
2317 question. I mean--

2318 Mr. YARMUTH. Would you be willing to, for instance,
2319 describe the tight process that you use?

2320 Ms. PAYTON. Sure. I can definitely walk you through
2321 that.

2322 I am sorry, I just got guidance that because we are
2323 talking about classified, I can't talk about the details of
2324 classified in this setting. So I will just tell you
2325 organizationally, we have an Office of Security Emergency
2326 Preparedness. If they are notified, they notify us, we get

2327 | our direction and we follow our direction.

2328 | Mr. YARMUTH. Okay. Doesn't sound like a very tight
2329 | process, but I will let you characterize that.

2330 | I want to ask you now about the ECRMS program. You made
2331 | the decision to cancel that program after what was described
2332 | to the Committee by Mr. McDevitt as a pretty extensive
2333 | three-year process in which a lot of different people made a
2334 | decision that this was the system that was desirable to
2335 | implement. You made that decision and you have given in your
2336 | written testimony some reasons for it.

2337 | You gave, apparently, in a meeting with Mr. Stern's
2338 | staff, you gave some slightly different reasons. I would
2339 | like to ask Mr. Stern, did you think and did your staff think
2340 | that Ms. Payton's reasons for canceling the ECRMS program
2341 | were legitimate and were compelling?

2342 | Mr. STERN. I am really not in a position to answer that.
2343 | We defer to them. And it is the White House's
2344 | responsibility to make the records management decisions. We
2345 | certainly, as we have said before, hoped and expected they
2346 | would have a formal records management system in place. We
2347 | thought that ECRMS was going to be it. So we were
2348 | disappointed that they didn't use ECRMS and would hope that
2349 | they still try to get one in place even now, if they can.

2350 | Mr. YARMUTH. My time is up, Mr. Chairman, I yield back.
2351 | Thank you.

2352 Chairman WAXMAN. Thank you very much. Mr. Welch?

2353 Mr. WELCH. Thank you, Mr. Chairman. I want to thank all
2354 the witnesses. I want to focus on the recovery of some of
2355 the e-mails and what efforts have been made to do that. I
2356 don't really want to focus on motives or what we can prove
2357 when we don't have the documentation to draw any realistic
2358 conclusions.

2359 Mr. Stern, the Presidential Records Act of course
2360 requires that official business be available and then stored
2361 in the repository of the National Archives, correct?

2362 Mr. STERN. Correct.

2363 Mr. WELCH. And it is your responsibility to see that
2364 that is done?

2365 Mr. STERN. Correct, to ensure that all the Presidential
2366 records in the White House are transferred to our custody.

2367 Mr. WELCH. Right. And whether an official action
2368 involving White House business is done in a White House
2369 e-mail account or an RNC account or g-mail account or AOL
2370 account, if it is official business it belongs in the
2371 Archives, correct?

2372 Mr. STERN. Ultimately, at the end of the Administration,
2373 it should be preserved as a Presidential record and then
2374 transferred to us.

2375 Mr. WELCH. And we know that about 88 White House
2376 officials, in fact, used a non-White House mail account to do

2377 | some official business, for whatever reason, correct?

2378 | Mr. STERN. I guess. I am not familiar with the details
2379 | of that. It is my understanding that there was at least some
2380 | belief, even by the White House, that there could be official
2381 | business done on the RNC system.

2382 | Mr. WELCH. And you have made specific inquires from the
2383 | White House about having them obtain from the RNC the e-mails
2384 | that relate to official White House business, correct?

2385 | Mr. STERN. Yes, we asked them to do that.

2386 | Mr. WELCH. You asked them to do that in May of 2007?

2387 | Mr. STERN. I believe so.

2388 | Mr. WELCH. What did they do as a result of that request?

2389 | Mr. STERN. We don't know specifically. They said they
2390 | were attempting to do that, and we have inquired periodically
2391 | and we don't know anything specific except that we though
2392 | they were still continuing in that effort.

2393 | Mr. WELCH. Since you made the request in May of 2007 for
2394 | the White House to gather up its e-mails that were used on
2395 | the RNC account, are you aware of any specific, concrete step
2396 | that the White House has taken to comply with that request?

2397 | Mr. STERN. No.

2398 | Mr. WELCH. Do they have a legal duty to provide official
2399 | communication records to the Archives?

2400 | Mr. STERN. At the end of the Administration, yes.

2401 | Mr. WELCH. Ms. Payton, are you aware of any specific and

2402 concrete step that the White House has taken to comply with
2403 the request by Mr. Stern on behalf of the National Archives
2404 to obtain these e-mails?

2405 Ms. PAYTON. Mr. Welch, because that is in a separate
2406 technology team that reports up through RNC, I am not
2407 involved in that.

2408 Mr. WELCH. So the answer is it is not your job, so you
2409 don't know?

2410 Ms. PAYTON. That is correct, sir.

2411 Mr. WELCH. Mr. Swendiman, how about you?

2412 Mr. SWENDIMAN. The Office of Administration is
2413 responsible for the official, sensitive but official EOP
2414 network. It is not--

2415 Mr. WELCH. So it is not your job, either?

2416 Mr. SWENDIMAN. It is not.

2417 Mr. WELCH. All right. So nobody here can speak for the
2418 White House and explain to Mr. Stern why they haven't done
2419 what they told Mr. Stern they would do, namely, make those
2420 communications subject to the Presidential Records Act
2421 available to the National Archives? You don't know?

2422 Mr. SWENDIMAN. Well, I think I have tried to explain
2423 this as I understand it, sir, as to what steps I have been
2424 told have been undertaken.

2425 Mr. WELCH. Well, no, I want to know, well, no steps. Is
2426 he misinformed?

2427 Mr. SWENDIMAN. I am not privy to the communications Mr.
2428 Stern has had with--

2429 Mr. WELCH. Well, let me ask you this. Apparently, some
2430 of these may be gone forever, we don't know. But there are
2431 two boxes of backup tapes at the RNC, we are told. Mr.
2432 Stern, are you aware of any effort to make those backup,
2433 those tapes in those two boxes available to the National
2434 Archives?

2435 Mr. STERN. They wouldn't make those available to us. If
2436 they were going to do a recovery effort, they would either do
2437 it themselves and then search through recovered e-mails for
2438 official e-mails, or they would let somebody through the
2439 White House do that.

2440 Mr. WELCH. Ms. Payton, are you aware of any recovery
2441 effort that has been made with respect to those two boxes?

2442 Ms. PAYTON. No.

2443 Mr. WELCH. Mr. Swendiman, are you aware of any steps
2444 that have been taken to recover the e-mails that are
2445 contained in those two boxes?

2446 Mr. SWENDIMAN. Sir, I can't speak to the two boxes. What
2447 I can--

2448 Mr. WELCH. So you do not know?

2449 Mr. SWENDIMAN. I do not know specifically as to those
2450 two boxes.

2451 Mr. WELCH. So there is no dispute, either on the part of

2452 | the White House folks or the National Archives folks, that
2453 | any e-mails, whether it's on an RNC account or a White House
2454 | account, that may be in those two boxes, and this goes back
2455 | to the 2001, 2002 when major decisions in this Country were
2456 | being made, including the decision to go to war in Iraq,
2457 | there's no question that anything that relates to official
2458 | White House business is subject to the Presidential Records
2459 | Act? Mr. Swendiman, do you agree with that?

2460 | Mr. SWENDIMAN. Could you repeat the question, sir?

2461 | Mr. WELCH. Any document, e-mail that relates to White
2462 | House business is subject to the Presidential Records Act,
2463 | correct?

2464 | Mr. SWENDIMAN. Any document that involves official
2465 | business that involves the constitutional, the statutory,
2466 | ceremonial activities of the President or the immediate White
2467 | House staff is subject to the Presidential Records Act.

2468 | Mr. WELCH. Right, we are reciting the law, we are all in
2469 | agreement. It is the compliance with the law question that
2470 | we have. I understand it is not your job. So I don't want
2471 | to be asking you to do somebody else's job, you have your
2472 | hands full.

2473 | I guess I will come back to you, Mr. Stern, I am close
2474 | to the end of my time. What if anything can you do in order
2475 | that the National Archives have possession of the official
2476 | communications that may be there, or what can you do to make

2477 | certain that the National Archives can see that whatever
2478 | reasonable steps can be taken to recover that which is
2479 | available is done, so that the Presidential Records Act is
2480 | complied with?

2481 | Mr. STERN. Under the PRA, we have no direct authority.
2482 | All we can do is ask them for and acquire. And then we also
2483 | can report to the Congress. Obviously, the Congress is aware
2484 | of this issue, so I think the PRA envisions that it is up to
2485 | the Congress when dealing with Presidential records to
2486 | communicate and work directly with the White House on--

2487 | Mr. WELCH. So here is where we are, just to sum up. You
2488 | have asked and gotten no reply. You don't know and somebody
2489 | else does, but they are not here.

2490 | Thank you very much. I yield the balance of my time.

2491 | Chairman WAXMAN. The gentleman's time has expired. Mr.
2492 | Clay?

2493 | Mr. CLAY. Thank you, Mr. Chairman.

2494 | Mr. Payton, one of the White House officials who we
2495 | contacted in preparing for today's hearing was Steven
2496 | McDevitt, who worked for you. We asked him whether there was
2497 | any concern about abandoning the e-mail archiving system and
2498 | relying on this ad hoc journaling process. He said there was
2499 | great concern. Let me show you an excerpt from page 7 of his
2500 | answers to the Committee. He stated: ``There was a great
2501 | deal of concern about proceeding with the migration of

2502 Outlook Exchange without having an adequate e-mail records
2503 management solution in place.''

2504 Mr. McDevitt described in detail the risks that were
2505 discussed within the White House on numerous occasions. One
2506 of the major concerns was the risk of data loss. He said
2507 this: ''The process by which e-mail was being collected and
2508 retained was primitive, and the risk that that data would be
2509 lost was high. The potential impact is that the system does
2510 not contain all required data.''

2511 Ms. Payton, what are your views? Do you agree with your
2512 staff that the archive system was inadequate and risked
2513 losing data?

2514 Ms. PAYTON. The challenge about his statement is it does
2515 predate me. And this is also his technology professional
2516 opinion. In talking with the staff on our go-forward basis,
2517 we have improved the people, process and technology with what
2518 we have to live with until we can get to a more comprehensive
2519 solution. Back at that time, even if you had a more
2520 comprehensive solution in place, if you don't have the right
2521 processes to make sure it is running right, you can still end
2522 up with the same result. That is why we want to get to the
2523 bottom of our analysis and figure out if we still have any
2524 resulting anomalies and then make a decision around doing a
2525 restore. But to be able to comment specifically on things
2526 that predated me, I am unable.

2527 Mr. CLAY. But look, it wasn't just the internal White
2528 House staff that raised the red flag about the archive
2529 system. The Committee has obtained notes from a meeting on
2530 January 6th of 2004 between staff from the Archives and the
2531 White House. According to these notes, Archive staff were
2532 also raising these very same concerns with the White House.
2533 And the notes describe how the Archive staff learned that the
2534 White House was converting from Lotus Notes to Microsoft
2535 Exchange e-mail. Then in bold face, the note says this:
2536 ``Messages in Exchange are not being captured in ARMS or any
2537 other system external to Exchange. The NARA team emphasized
2538 that EOP was operating at risk by not capturing and storing
2539 messages outside the e-mail system.''

2540 What were the best efforts that the White House put
2541 forward when they did not heed their own warning?

2542 Ms. PAYTON. Mr. Clay, I don't know if I have time to, I
2543 would like to, if you would allow me, to actually walk
2544 through sort of where an e-mail travels in the system.

2545 Mr. CLAY. No, we don't have time for that, but I will
2546 say this, in your previous testimony you mentioned how much
2547 it is going to cost to retrieve these e-mails.

2548 Ms. PAYTON. Right.

2549 Mr. CLAY. Well, you know, all of that is taxpayer
2550 dollars. And it is such a cavalier attitude that it may be
2551 \$50,000 one day, \$150,000 the next. But where does the care

2552 | come in for taxpayers' money?

2553 | Ms. PAYTON. That is part of why we want to do the
2554 | analysis first, so we can have a very targeted list. If
2555 | there are any anomalies at the end of the work we are doing,
2556 | we have a very targeted list for the restore. So by having
2557 | less days to restore, we will save money as far as the
2558 | restore that needs to be done.

2559 | Mr. CLAY. And then no one there heeded their own
2560 | warnings. What was all of that about? Nobody said, wait a
2561 | minute, maybe we need to listen to Archives. Or maybe we
2562 | need to listen to our own staff. And nobody heeded those
2563 | warnings. What is all of that?

2564 | Ms. PAYTON. I wasn't there, sir, so I don't know.

2565 | Mr. CLAY. Dr. Weinstein, do you agree that the White
2566 | House process was primitive and that there was a high risk of
2567 | data loss?

2568 | Mr. WEINSTEIN. If that is what my staff decided after
2569 | looking at this process, I would have to agree that there
2570 | were some problems. What the nature of those problems were,
2571 | I think even Mr. Payton and Mr. Swendiman would agree that
2572 | they were working on a new platform and they didn't have all
2573 | the answers.

2574 | But I do want to make one point to you, Congressman, on
2575 | this issue of who cares about the taxpayer. And it is
2576 | crucially important, particularly for the cultural

2577 | institutions in the Country, such as the National Archives,
2578 | Library of Congress, others, to be very sensitive to the fact
2579 | that we can lose the support of the American taxpayer very
2580 | quickly.

2581 | Congressman Welch, in his questions, had raised one
2582 | question with Mr. Stern, my colleague here. Basically, one
2583 | slight correction, I signed that letter, I drafted the final
2584 | version of that letter. So if the Congressman has any
2585 | interest in learning who has been trying to get the
2586 | Republican National Committee or whomever to return whatever
2587 | materials they may have, I will take responsibility for that.

2588 | Chairman WAXMAN. Please speak up. We can't hear you.

2589 | Mr. WEINSTEIN. We have not responded, we have not asked
2590 | that question lately. We asked for the return of this last
2591 | year, we periodically question people. I guess we have to be
2592 | a bit stronger in our questioning, in our requests.

2593 | Mr. CLAY. But, look, Doctor--

2594 | Mr. WEINSTEIN. I will have that information to the
2595 | Chairman by the end of this week.

2596 | Mr. CLAY. But Doctor, excuse me, it seems like everyone
2597 | was warning the White House about the risks of data loss.
2598 | And the White House's own technical people were warning them,
2599 | and your team in the Archives also warned them. Yet they
2600 | continued with the migration and they continued to rely on
2601 | this ad hoc process from 2002 until today.

2602 What troubles me is that these are e-mails documenting
2603 how the Bush Administration was making decisions. They are
2604 official Presidential documents that the White House is
2605 required by law to save and turn over to the National
2606 Archives. They belong not to George Bush, but to the
2607 American people. But the White House seems to have ignored
2608 numerous warnings from people inside and outside the White
2609 House about its flawed approach. Do you have similar
2610 concerns?

2611 Mr. WEINSTEIN. More than anything else, I want whatever
2612 materials may be in other locations like the Republican
2613 National Committee or any other location, if they are
2614 official White House documents, they belong with the White
2615 House, they belong with the Archives or in preparation for
2616 coming to the National Archives. My main concern here is
2617 with the future of my institution, National Archives.

2618 Chairman WAXMAN. The gentleman's time is expired.

2619 Ms. Norton.

2620 Ms. NORTON. Thank you, Mr. Chairman.

2621 Ms. Payton, I would like to reconcile your sworn
2622 statements with what the Committee has since learned, and
2623 perhaps you can help us. On January 15th, 2008, you filed a
2624 sworn declaration in U.S. District Court here regarding the
2625 loss of White House e-mail. In that declaration you
2626 criticized the chart produced in 2005, showing hundreds of

2627 | days with no White House e-mail. And here I am going to
2628 | quote what you said in the sworn declaration. ``I am aware
2629 | of a chart created by a former employee within the OCIO,``
2630 | Office of Chief Information Office.

2631 | Now, that of course, anyone reading that declaration,
2632 | would believe that a single member created, staff person
2633 | created this chart perhaps indeed almost on his own. But the
2634 | Committee in fact obtained documents showing that your office
2635 | created a 15 person what you call message storage team to
2636 | work on this problem. This team documented its actions in
2637 | very painstaking detail and reported frequently to the
2638 | director of administration and White House counsel.

2639 | Ms. Payton, I ask you, why didn't you mention this team
2640 | of White House officials in your sworn declaration?

2641 | Ms. PAYTON. Ms. Norton, one of the things that I have
2642 | mentioned before is that because this is prior to my arrival,
2643 | I put the information together based on what my team has told
2644 | me as well as--

2645 | Ms. NORTON. You are unaware, are you testifying here
2646 | that you were unaware of this team?

2647 | Ms. PAYTON. No, I am explaining to you is based on what
2648 | the team has told me, as well as information I had, there was
2649 | a group of people who put data together. But as far as--

2650 | Ms. NORTON. I am asking you, were you unaware of the
2651 | message storage team who worked on this problem?

2652 Ms. PAYTON. Ma'am, all I know is that they put data
2653 together. They did not work on the chart. And that is how
2654 it was presented to me.

2655 Ms. NORTON. Later in your declaration, and here I am
2656 quoting you again, you said ``The OCIO has reviewed the chart
2657 and has so far been unable to replicate its results or affirm
2658 the correctness of the assumptions underlying it.'' We got a
2659 quite different account from Steven McDevitt, he is the
2660 former White House employee who worked on this project. This
2661 is what he said: ``Extensive testing was performed at that
2662 time to ensure that the tools and the tabulation process was
2663 performed correctly. An independent verification and
2664 validation also was performed by a different set of
2665 contractors to ensure that this analysis process was
2666 completed correctly and that the data was correctly analyzed
2667 and accurately represented.''

2668 Ms. Payton, why didn't you mention this testing by the
2669 independent contractors?

2670 Ms. PAYTON. I am not aware of that testing.

2671 Ms. NORTON. You still are not aware of that testing?

2672 Ms. PAYTON. I am aware that Steve has made those
2673 statements. We have a team that does IV&V. When I asked my
2674 staff about the chart and the validity of the chart, one of
2675 the things they said to me is, as far as they could tell, it
2676 had not gone through an extensive IV&V process.

2677 Ms. NORTON. And so no one made you aware--this is an
2678 amazing testimony given the position you were in and the post
2679 you held.

2680 Now, in your declaration again, it is a sworn
2681 declaration, you stated that there was a "lack of supporting
2682 documentation." For somebody who said she didn't know
2683 anything, you certainly had something to say in your sworn
2684 declaration. Lack of supporting documentation. But Mr.
2685 McDevitt told us that the chart itself was just a summary.
2686 He said the complete analysis was 250 pages in length, it
2687 included the complete background data and trend analysis.
2688 Why didn't you mention, Ms. Payton, the 250 page supporting
2689 document in your sworn declaration?

2690 Ms. PAYTON. That document had not been made aware to me.
2691 I know that we produced a lot of documents in response to
2692 this. So that document must not have been on the radar of my
2693 team to inform me.

2694 Ms. NORTON. My goodness, I don't know how you did your
2695 job. You seem to have known nothing about it.

2696 Ms. Payton, in your declaration you stated that you have
2697 serious reservations about the reliability of the chart.
2698 Well, it would appear that the easiest way to get information
2699 about the chart was to talk to the person who put it
2700 together, one of those of course is Mr. McDevitt. In fact,
2701 this is exactly what the Archives recommended to you. On

2702 November 6th, 2007, Sam Watkins from the Archives sent you
2703 this e-mail, and I am quoting from it, Ms. Payton, ''It would
2704 be useful for someone to contact the original
2705 author-requesters of the chart to ask questions about its
2706 nature and meaning, the methodology used to produce it, the
2707 shortcomings you have noted, and whether they prepared any
2708 additional or related documentation.'' But when we talked to
2709 Mr. McDevitt, he told us that throughout the entire process,
2710 you never contacted him once, even though he worked directly
2711 for you in 2006, while you were there. Why did you not
2712 contact him, Ms. Payton?

2713 Chairman WAXMAN. The gentlelady's time has expired, but
2714 please answer the question.

2715 Ms. PAYTON. At that point in time, when we were doing
2716 that analysis, we had already found flaws with the tool. So
2717 talking with Steve at that point, he probably was not aware
2718 that those flaws with the tool that was used existed.

2719 Ms. NORTON. I didn't ask you that. I said why hadn't
2720 you spoken directly to Mr. McDevitt?

2721 Ms. PAYTON. After he left the EOP?

2722 Ms. NORTON. Directly with him in 2006 while you were
2723 there, Ms. Payton.

2724 Ms. PAYTON. He reported to me directly for a short time,
2725 then he reported to the Deputy Director. I am not sure I
2726 understand the question.

2727 Ms. NORTON. Ms. Payton, look, I think the credibility
2728 problems you present are patent here. If you did not know,
2729 then you apparently tried not to know, even when the Archives
2730 told you that someone who was working for you could in fact
2731 tell you and again--

2732 Ms. PAYTON. Steve and I had multiple conversations about
2733 records and--

2734 Ms. NORTON. Why didn't you ask him any of the questions
2735 I have just run down? If he had all this information, why
2736 didn't you inquire?

2737 Chairman WAXMAN. The gentlelady's time has expired.

2738 Mr. Davis?

2739 Mr. DAVIS OF VIRGINIA. I think the time has expired and
2740 we need to move on.

2741 Chairman WAXMAN. I think that question will have to
2742 stand as a rhetorical question unless you have anything
2743 further you want to add, Ms. Payton.

2744 Ms. PAYTON. No, that is fine.

2745 Chairman WAXMAN. Mr. Sarbanes.

2746 Mr. SARBANES. Thank you, Mr. Chairman. Thank you to the
2747 witnesses. I just want to preface my question by saying
2748 that, I am trying to imagine people watching this, just sort
2749 of ordinary folk watching this hearing. I have to believe
2750 that they would find it completely implausible that this
2751 number of e-mails, this number of days of e-mail traffic

2752 | would just disappear by accident. And I mean to imply what I
2753 | am implying.

2754 | But let me ask you, Ms. Payton, are you familiar, and I
2755 | know you weren't there at the time the White House decided to
2756 | abandon the ARMS system that was in place. But you are an IT
2757 | person and you kind of know this arena. Have you become
2758 | familiar with what that ARMS system did? Do you have any
2759 | understanding of what the structure of it was and how it
2760 | worked at all?

2761 | Ms. PAYTON. I have a general understanding, because it
2762 | exists today. It still houses the Notes records. It was
2763 | built in 1994, and it was built actually for a system that
2764 | preceded Notes Mail. It had to be heavily customized so that
2765 | it could interpret Notes Mail and be able to actually store
2766 | it in ARMS for record keeping.

2767 | Mr. SARBANES. Did you ever find yourself over the last
2768 | year or two saying, gosh, I wish they hadn't abandoned that
2769 | system back in whenever it was, beginning of the term,
2770 | because things would have been a lot easier, we would have
2771 | been able to collect things in a much more deliberate
2772 | fashion? Did you ever find yourself saying that kind of
2773 | thing?

2774 | Ms. PAYTON. Obviously it would be nice. I try not to
2775 | second guess people that I walk in behind.

2776 | Mr. SARBANES. It would have been terrific to have had

2777 | that system in place. It seemed to be working extremely
2778 | well. It is inexplicable that the White House would choose to
2779 | move away from that and toward this other system. If I was
2780 | somebody, if I were somebody who wanted to get around the
2781 | system, that wanted to delete e-mails, make the record of my
2782 | communications disappear, the system that the White House
2783 | moved to would be an easier system to accomplish that, would
2784 | you not agree, compared to what had existed before? It
2785 | certainly seems that way from the testimony.

2786 | Ms. PAYTON. Actually, Mr. Sarbanes, it is a little bit
2787 | more complicated. Because when an e-mail comes in through
2788 | Exchange, it automatically gets copied over to a journal. So
2789 | for example, if you were at the EOP and you were in the
2790 | Office of Administration, and let's say I was in OMB, if I
2791 | e-mailed you, automatically a copy will go into the Microsoft
2792 | Exchange Journal underneath OMB and then when you get your
2793 | copy, it goes into the Exchange Journal as well, underneath
2794 | OA. Plus, it is also in your in basket and my sent.

2795 | Then when we do the PST archive, your record that is in
2796 | the OA journal moves over to the OA PSTs, the personal
2797 | storage tables which is also another Microsoft product. Then
2798 | my e-mail, which was under OMB in the OMB journal, would move
2799 | over to the--

2800 | Mr. SARBANES. Well, my, from reading--

2801 | Ms. PAYTON. So there are lots of different places that

2802 that e-mail would be.

2803 Mr. SARBANES. Well, lots of different places also where
2804 human intervention could alter the recording of the
2805 information, it seems to me. But let me move away from you.
2806 I do want to applaud you for all the things you are trying to
2807 do now, but it strikes me as building a wonderful barn and
2808 painting it a wonderful color of red and meanwhile, the cow
2809 is out the barn and in a pasture somewhere, given what has
2810 happened.

2811 I just wanted to ask the folks from the Archives, if 10
2812 is where you want to be now in the transition, on a scale of
2813 1 to 10, anticipating that we are coming to the end of the
2814 term, where would you say we are, from your assessment, on a
2815 scale of 1 to 10?

2816 Mr. WEINSTEIN. Let me answer that two ways. I will say
2817 that we will be a 10 by January 20th, 2009. We will be a 10.

2818 Mr. SARBANES. Where are you now?

2819 Mr. WEINSTEIN. Somewhere in between. I won't give it a
2820 number. But we have a way to go, but we will get there.

2821 Mr. SARBANES. I applaud your confidence and I hope it is
2822 well-founded, because we don't want these records to be lost.

2823 The last question I have, because I am running out of
2824 time is, we have talked about these backup tapes, disaster
2825 recovery tapes, very appropo term in this context, because
2826 the loss of these e-mails strikes me as a disaster. So it

2827 makes sense that they would be called disaster recovery
2828 tapes.

2829 My question is this: who has possession of those? In
2830 other words, if we get to January of next year and the
2831 recovery process isn't finished, but there is still out there
2832 material from which you can conduct the recovery, where does
2833 that material go? Who has possession of that? Does the
2834 Archives take possession of whatever the apparatus is from
2835 which the recovery can be conducted?

2836 Mr. WEINSTEIN. I am going to let our expert on recovery
2837 tapes deal with that one.

2838 Mr. STERN. I can describe what happened in the Clinton
2839 Administration, because they did have to undergo a tape
2840 restoration project that started during the Administration
2841 and was not finished on January 20th of 2001. And the Office
2842 of Administration continued to be responsible for that
2843 project. They rented an off-site facility up in Maryland.
2844 But the legal custody of the records and in fact those backup
2845 tapes did transfer to us. So the tapes became ours on
2846 January 20th, the records became ours. But the work was
2847 still done by OA through a contractor that we then
2848 coordinated with and helped supervise. But they still did
2849 the work. So if the same situation arose here and a recovery
2850 effort starts and is not completed, I assume it will be the
2851 same case. The tapes will become our legal property, but

2852 | still need to be worked on by OA until it is complete.

2853 | Mr. WEINSTEIN. I have to stress, Congressman, that the
2854 | financial responsibility for correcting the situation is the
2855 | White House's, not NARA's. It is the White House's.

2856 | Mr. SARBANES. Thank you, Mr. Chairman. I hope that
2857 | supervision by NARA is good come post-January. Thank you.

2858 | Chairman WAXMAN. Thank you, Mr. Sarbanes. Mr. Platts?

2859 | Mr. PLATTS. Thank you, Mr. Chairman. I would like to
2860 | yield time to the Ranking Member, Mr. Davis.

2861 | Mr. DAVIS OF VIRGINIA. Thank you.

2862 | Ms. Payton, several of the witnesses we have spoken to
2863 | have said that as far as they knew, Special Counsel
2864 | Fitzgerald was satisfied with the results that he received
2865 | from searches performed by the White House IT employees. And
2866 | none of the witnesses was aware of any plot to obstruct any
2867 | Department of Justice investigation. We asked former CIO
2868 | Carlos Solari about whether Special Counsel Patrick
2869 | Fitzgerald was satisfied with the White House production, and
2870 | this is what we had to say: As far as I know, now, obviously
2871 | I didn't have any first-hand knowledge with him, but through
2872 | the attorneys on the White House side who were dealing with
2873 | that, yes, otherwise, we would still be busy at it answering
2874 | questions, or there would have been questions come back to us
2875 | that say, we don't have the confidence you are providing us
2876 | with everything we have asked for. But that wasn't the case

2877 | at all.

2878 | McCloskey reiterated the same point regarding the Plame
2879 | electronics searches on at least three occasions during his
2880 | interview when he said they, the DOJ, were always asking for
2881 | more. To my knowledge, the whole time I was there, we always
2882 | had everything they asked for. In fact, I am certain of it.
2883 | The only thing I know is that there were no tapes missing. I
2884 | do know that, and that everything DOJ wanted, we gave them
2885 | while I was there. McCloskey continued, in everything that
2886 | they, the DOJ, asked us, we, which was the White House IT
2887 | office, gave them. And all the feedback that I ever got was,
2888 | thank you, this is a ton of stuff, we appreciate it. Now, of
2889 | course, maybe it takes a long time to realize that there is a
2890 | big gap in dates. Maybe that is what he is referring to. We
2891 | were very concerned to do this right and make sure that he
2892 | got everything that the DOJ had asked for.

2893 | John Straub, who was a former director of OA, said of
2894 | the searches, in nine times out of ten, it did not end up
2895 | being that something was missing. It ended up being that we
2896 | weren't doing the search properly or the system wasn't
2897 | gathering the right information, or you were searching across
2898 | two systems, and it would find hits in one system and
2899 | wouldn't find it in another. Then you go back and refine the
2900 | search terms and it found the same things. It wasn't because
2901 | there were documents missing.

2902 Tim Campen, the former CIO on the Hill at the White
2903 House and Director of OA had the following conversation with
2904 the staff. Do you recall any concerns during that time, the
2905 whole time that you were at the White House, these searches
2906 weren't producing all of the documents that were out there on
2907 any given subject? His answer, I remember that always, we
2908 always asked ourselves that, are we finding everything. I
2909 would ask that question and have debates about it,
2910 discussions about it, about the technical parameters of the
2911 searchers and of the accuracy of the billion searches that
2912 had to be created. The general answer was yes, researching
2913 everything we can, and we think we have constructed the right
2914 kind of searches. By the look of the volume of e-mails we
2915 are getting, we are doing something right, because we are
2916 producing an awful lot of this.

2917 Later Mr. Campen, when asked by the staff, so you are
2918 not aware of any evil right-wing plan to obstruct the Justice
2919 Department investigation, he replied no, no. And
2920 specifically, with regard to Fitzgerald, Mr. Campen said no,
2921 I was always admonished and directed by White House counsel
2922 that this was a serious and full effort. We were always told
2923 that through the spirit of this, we are complying with this.

2924 Ms. Payton, I know you weren't at the White House during
2925 these searches. But are these statements consistent with the
2926 documentation you have reviewed in the course of your duties?

2927 Ms. PAYTON. It is consistent with the documentation, as
2928 well as conversations with the current staff. I have asked
2929 them if they know of any searches we did not satisfy, and
2930 other than the one which we eventually satisfied, the
2931 Fitzgerald one, they said they knew of none. So that is
2932 consistent.

2933 Mr. DAVIS OF VIRGINIA. Earlier when we discussed,
2934 certainly with the backups, we have every reason to believe
2935 at this point that we will be able to get the documents we
2936 seek, isn't that correct?

2937 Ms. PAYTON. Yes, sir.

2938 Mr. DAVIS OF VIRGINIA. Let me ask Mr. Stern, is it true
2939 that at least on two occasions, Sandy Berger had access to
2940 original, uninventoried, uncopied documents that he could
2941 have removed from the Archives without detection?

2942 Mr. STERN. I believe yes, he did have access to original
2943 documents.

2944 Mr. DAVIS OF VIRGINIA. So we have problems with records
2945 preservation at the National Archives, too.

2946 Ms. Payton, could you walk us through the process that
2947 you and your team are undertaking to inventory all the White
2948 House e-mail for each specific day?

2949 Ms. PAYTON. Sure. And I mentioned some of that in my
2950 opening remarks, and I'll just kind of briefly go over the
2951 beginning part of it and then give you more detail, because I

2952 | didn't go through all the details.

2953 | From a technology perspective, we have three phases that
2954 | we are undertaking. We are in the midst of phase one right
2955 | now. That phase is where we introduced the new technology,
2956 | where we can actually read through the personal storage
2957 | tables that are on the archive, and we can actually read
2958 | through, read the name of the PST and from an inventory
2959 | perspective, associate the e-mails that are in that PST with
2960 | the components and the dates.

2961 | We are also undertaking some research to look at
2962 | weekends and holidays that may have low volume or zero days,
2963 | because there may have been maintenance going on on the
2964 | weekends. The way that would work, and this is standard
2965 | pretty much for exchange, is if you took mail servers out of
2966 | rotation to do maintenance on them for the weekend, what
2967 | would happen is your mail would be held. So if it was being
2968 | serviced Friday night and Saturday and it didn't come back
2969 | online until Sunday, you don't receive it until Sunday.

2970 | Well, the old tool, as well as the new tool, have a
2971 | limitation where they could only track the received date. So
2972 | it could look like you have some messages ``missing,`` and
2973 | you need the opportunity to be able to actually read it at
2974 | the message level to see the sent and the received date. So
2975 | that process is underway.

2976 | We are also looking at the network operations logs to

2977 | see if there is any documentation around outages as well.
2978 | And then when we finish that phase one, we will go through a
2979 | QA process and share that with NARA to make sure they are
2980 | comfortable with our methodology and our findings. Again,
2981 | since we haven't gone through the QA process, I am hesitant
2982 | to give a lot of details around our findings. But I can give
2983 | you some trends. We have identified roughly, somewhere in 10
2984 | million or more e-mails than were identified as part of the
2985 | 2005 analysis, using the older tools. Those were the best
2986 | tools they had at the time, good work horses. I am not sure
2987 | the team knew at that time that those tools had those
2988 | limitations.

2989 | In addition, we have been able to work through the whole
2990 | entire inventory, not just for the time period in question,
2991 | because we are concerned about Presidential transition, we
2992 | are doing from day one of exchange all the way through now
2993 | and will continue to do that. We have also identified, I
2994 | think I mentioned it earlier--

2995 | Chairman WAXMAN. Ms. Payton, the time has expired.

2996 | Ms. PAYTON. Yes, sir. I am sorry. There are two more
2997 | phases.

2998 | Mr. DAVIS OF VIRGINIA. If you could put this back into
2999 | writing, I think it would save the Committee's time. But I
3000 | want to get it on the record, Mr. Chairman.

3001 | Chairman WAXMAN. I understand.

3002 Ms. PAYTON. Yes, because there are two more phases, and
3003 the third phase is actually sitting down with NARA to go over
3004 any remaining anomalies.

3005 Chairman WAXMAN. My problem is after you are finished
3006 with your phases, you will probably be out of office.
3007 Because this is going to take a lot of time. The fact of the
3008 matter is, a lot of the staffers mentioned by Mr. Davis in
3009 his comments left the White House before you decided to abort
3010 the archiving system in 2006 that had been under development
3011 for three years, and after you made that decision, the White
3012 House failed to put an archiving system in place.

3013 To date, the White House still has not installed a new
3014 system. The bottom line is that from 2002 to 2008, the White
3015 House has not had an adequate, functioning e-mail archiving
3016 system in place. And now you have three or four phases to
3017 try to correct the problem that has been created.

3018 I will be happy to have you go on, if that is what Mr.
3019 Platts wants. Well, Mr. Platts is not here any longer, but
3020 his time has expired.

3021 Mr. Davis, what do you wish to do? You asked the
3022 question. May she submit an answer?

3023 Mr. DAVIS OF VIRGINIA. Yes, you can submit it for the
3024 record. But I think the point is that this is a lengthy
3025 process, this is a complicated, lengthy process and it just
3026 doesn't jump out at you. This is not like a Google search.

3027 Ms. PAYTON. Correct.

3028 Mr. DAVIS OF VIRGINIA. And we have backups in this case
3029 that we can always get. We can get the records if they don't
3030 get it by a certain time.

3031 Ms. PAYTON. And Mr. Davis, our early findings indicate
3032 that if we had done a restore based on the older analysis
3033 that had been done, we would have restored days that we have.

3034 Mr. DAVIS OF VIRGINIA. Let me ask you, you are not
3035 trying to run out the clock on the Committee, are you?

3036 Ms. PAYTON. No, sir. We want to transition, the OCIO
3037 team is very focused and dedicated on this. I speak for
3038 them, I speak for myself, we are very energized about getting
3039 to the bottom of this and transitioning the records over to
3040 NARA. This is something we want to get done.

3041 Chairman WAXMAN. The record can speak for itself,
3042 because a long time has already gone by without getting this
3043 information. The Archives is concerned about it, Congress is
3044 concerned about it, and you may not be intending to run out
3045 the clock, but I do think you are aware that you don't have
3046 too much time before this Administration goes out of office.

3047 Ms. PAYTON. Yes.

3048 Chairman WAXMAN. Mr. Cummings, do you want to ask some
3049 questions?

3050 Mr. CUMMINGS. Yes, I do.

3051 Chairman WAXMAN. Before you begin, we have one item of

3052 | business to complete. Maybe we can do it quickly. That is
3053 | the motion to include in the record the interrogatories by
3054 | Mr. McDevitt, we had a bit of a debate earlier, Mr. Davis, do
3055 | you want to say anything more about that?

3056 | Mr. DAVIS OF VIRGINIA. I will yield to Mr. Issa, but I
3057 | just want to note that this, your witness that you are
3058 | relying so much of your report on was given, I think, an
3059 | accord that has not been given to other witnesses that
3060 | request much of the same thing. We did not have a chance to
3061 | cross examine, and we think it would be a different record
3062 | were that allowed. We just want to put that on the record.

3063 | Chairman WAXMAN. Mr. Issa?

3064 | Mr. ISSA. Recognizing I still have five minutes of my
3065 | own time, but look, you are going to put this in the record,
3066 | you are going to put this in the record, Mr. Chairman. But
3067 | it sets a bad precedent to take an unsworn series of
3068 | statements that we can't even ask the witness whether or not
3069 | those were his own statements or not. Perhaps in fact they
3070 | were essentially pre-agreed answers that quite frankly might
3071 | be further fleshed out for accuracy if we had this
3072 | opportunity.

3073 | If the gentleman were not still a full-time Federal
3074 | employee, and for some reason was truly resisting, I would
3075 | have a different attitude. But we bring people in front of
3076 | this Committee at their own expense often, this would be

3077 | somebody who would be paid by the Federal Government to be
3078 | sitting there today. I really believe that we are doing an
3079 | injustice to the long-term well-being of this Committee on a
3080 | bipartisan basis by doing this today.

3081 | Chairman WAXMAN. I would like to respond to you, I am
3082 | concerned about this Committee and long-term considerations.
3083 | As a result, when we asked Mr. McDevitt to come in for an
3084 | interview, and he refused, we had a discussion on a
3085 | bipartisan staff basis what to do. Because we could have
3086 | subpoenaed him to come in and answer questions. Instead,
3087 | both sides said, let's send him interrogatories, and even let
3088 | the White House review the interrogatories. On that basis,
3089 | he was sent interrogatories, Republican and Democratic staff
3090 | had input into those interrogatories. When the Republican
3091 | staff saw the answers to the interrogatories, we suddenly got
3092 | this complaint, well, we didn't get a chance to cross-examine
3093 | him, this is not fair, on and on and on.

3094 | I just think that we operated in good faith. We ought
3095 | to include the answer to the interrogatories in the record.
3096 | And the reason that Mr. McDevitt didn't want to come in in
3097 | the first place is because the White House put such strong
3098 | restrictions on what he could say that he didn't feel he
3099 | could even say what he needed to say in a deposition. That
3100 | is how all this came about.

3101 | So I would ask the members to support the motion to

3102 | allow the interrogatories to be a part of the record. Are we
3103 | ready for the vote?

3104 | All those in favor of the motion, say aye.

3105 | [Chorus of ayes.]

3106 | Chairman WAXMAN. Opposed, no.

3107 | [Chorus of noes.]

3108 | Chairman WAXMAN. The ayes appear to have it.

3109 | Mr. ISSA. Mr. Chairman, reserving the right to question
3110 | the quorum, I would just like the record to recognize that
3111 | although you have said this was bipartisan, from this
3112 | particular member's viewpoint, and from the staff that I am
3113 | communicating with, we believe that it has not been and that
3114 | this is a form of sandbagging, to deliver it. Recognizing we
3115 | don't have the votes, I would not assert the quorum, but
3116 | recognizing that this is not with the support of any
3117 | Republicans.

3118 | Chairman WAXMAN. Well, I accept that, and let me say
3119 | that I am going to talk further to both staffs, because we
3120 | tried to accommodate the Republican staff throughout this
3121 | whole process. We even had the Republicans talk to Mr.
3122 | McDevitt for an hour and a half, asking him any questions
3123 | they wanted on Sunday night. So we have tried to be
3124 | accommodating.

3125 | You are saying to me that your staff on the Republican
3126 | side does not feel that is accurate. I am going to pursue

3127 | that with Mr. Davis, because we are not trying to sandbag
3128 | anybody. I am not going to apologize to anybody, because I
3129 | don't feel that we have. But I want to talk to staffs with
3130 | Mr. Davis after the hearing is over, because I want these
3131 | things not to be partisan, but to get the facts out.

3132 | Mr. DAVIS OF VIRGINIA. Let me say to my friend, we have
3133 | some EPA witnesses we hope you will give the same accounting
3134 | to that you gave to this gentleman. Thank you.

3135 | Chairman WAXMAN. The vote has occurred and the Chair has
3136 | heard the majority in the affirmative. The Chair then calls
3137 | the motion approved by the Committee, and the interrogatories
3138 | will be made part of the record.

3139 | [The referenced information follows:]

3140 | ***** INSERT *****

3141 Chairman WAXMAN. Mr. Cummings, you are now recognized
3142 for your five minutes.

3143 Mr. CUMMINGS. Thank you, Mr. Chairman.

3144 Mr. Stern, I would like to ask you about your
3145 perspective on the White House's effort to get to the bottom
3146 of the problem of the missing e-mail. The White House has
3147 known about this problem since 2005, from the time that
3148 Archives first learned about it, you repeatedly tried to get
3149 information from the White House, is that correct?

3150 Mr. STERN. Yes.

3151 Mr. CUMMINGS. Unfortunately the Archives wants to know,
3152 just like we do, what caused this problem and big it is, and
3153 what the White House plans to do about it. Is that an
3154 accurate statement?

3155 Mr. STERN. Yes.

3156 Mr. CUMMINGS. The problem is, each time the Archives
3157 asks for an explanation, the White House promises that they
3158 have almost finished diagnosing the problem. I call it
3159 paralysis by diagnosis. The White House says, just give us a
3160 little more time, and we will tell you the results of our
3161 review. But when the deadline arrives, the White House kicks
3162 the can farther down the road.

3163 For example, in 2007, you met with the White House
3164 officials to discuss the missing e-mails. The White House
3165 said they would tell you the full extent of the problem in

3166 | one month. They didn't give you the details in June, did
3167 | they?

3168 | Mr. STERN. No.

3169 | Mr. CUMMINGS. And at the end of June, the White House
3170 | said they would get you your results by the end of the
3171 | summer. They didn't give you their results at the end of the
3172 | summer, did they?

3173 | Mr. STERN. No.

3174 | Mr. CUMMINGS. In October, going further down this road,
3175 | the White House said they would have the results in six
3176 | weeks. They didn't give you the results in November, did
3177 | they?

3178 | Mr. STERN. No.

3179 | Mr. CUMMINGS. In fact, your own staff recognized the
3180 | obvious pattern. I just want to read from a summary your
3181 | staff prepared of a meeting between Archives and the White
3182 | House staff on October 11th, 2007. I want you to pay close
3183 | attention to this, Ms. Payton, since you said that you all
3184 | were not running out the clock. Well, I call it
3185 | rope-a-doping. And it states this. This is the statement.
3186 | ''We should note that this process was supposed to be
3187 | completed by the end of June, then the end of September and
3188 | the end of October in our previous briefings. They are now
3189 | saying that it will take about six weeks of work to have any
3190 | results.''

3191 Now, Mr. Stern, it is now February, 2008. Matter of
3192 fact, we are getting ready to go into March, and the White
3193 House still has not provided you those results, have they?

3194 Mr. STERN. No.

3195 Mr. CUMMINGS. Ms. Payton, it is your turn. The White
3196 House has known about this e-mail archiving problem for
3197 almost two and a half years. Yet despite repeated inquiries
3198 from Archives and this Committee, you still have not even
3199 produced a current inventory of the White House e-mails, is
3200 that correct?

3201 Ms. PAYTON. We--

3202 Mr. CUMMINGS. Have you produced an inventory?

3203 Ms. PAYTON. We have one that has not been through a
3204 quality assurance process yet for us to share with NARA.

3205 Mr. CUMMINGS. So it hasn't been, in other words, it has
3206 been created but nobody has seen it beyond--

3207 Ms. PAYTON. We need to go through a quality assurance
3208 process before we share the results.

3209 Mr. CUMMINGS. And when is that quality assurance process
3210 supposed to be completed? Do you have any idea?

3211 Ms. PAYTON. First, we need to finish all the work in
3212 phase one. So we have a preliminary inventory, we are still
3213 doing some work in phase one. Then we will be doing our
3214 quality assurance analysis. Our target, because the team and
3215 I sat down and went over this, this has been a much more

3216 | complex process, and if NARA will remember, when we sat down
3217 | in the summer, the team very optimistically said we wanted it
3218 | to be done by this time frame and estimated that it would be.
3219 | It has proved to be a lot more complex for a variety of
3220 | reasons. So it has taken us longer, because we are taking a
3221 | lot of care, and it is bigger than we thought it was going to
3222 | be.

3223 | Mr. CUMMINGS. Well, certainly we want you to take care.

3224 | Ms. PAYTON. The team and I sat down and we talked about
3225 | our time frame as to when we would sit down with NARA and
3226 | have completed phase one and phase two. We are targeting the
3227 | summer that we would actually sit down with them, we would
3228 | have completed phase one, phase two and have all the
3229 | remaining, if there are any anomalies left around low volume
3230 | days or zero days, we would go over that with them.

3231 | Mr. CUMMINGS. And what does summer mean? Give me a
3232 | date.

3233 | Ms. PAYTON. In the June, July time frame.

3234 | Mr. CUMMINGS. All right.

3235 | Ms. PAYTON. So the first phase, as we complete it and QA
3236 | it, we are going to sit down and go over with NARA. The
3237 | second phase, it will be the same thing, we will do a QA, go
3238 | over it with NARA and then we will sit down and talk about if
3239 | any remaining anomalies exist, what type of recovery effort
3240 | needs to be done.

3241 Mr. CUMMINGS. I just want you to clear up one thing real
3242 quick. You said in your opening statement that after phase
3243 two of your study, if you found e-mails were missing, you
3244 would consult with Archives and restore from backup tapes.
3245 Can you confirm that this will be done before the end of this
3246 Administration?

3247 Ms. PAYTON. I cannot confirm that, and I have read the
3248 GAO report which has said that the previous Administration,
3249 it took longer than the Administration. We hope with newer
3250 technology, but I just don't know the size of the recovery
3251 effort to give you an estimate to tell you whether or not it
3252 will be completed.

3253 Mr. CUMMINGS. We need a sense of urgency here.

3254 Ms. PAYTON. We absolutely have it, sir.

3255 Mr. CUMMINGS. We do?

3256 Ms. PAYTON. Yes.

3257 Mr. CUMMINGS. Oh.

3258 Chairman WAXMAN. Will the gentleman yield to me?

3259 Mr. CUMMINGS. Yes.

3260 Chairman WAXMAN. Over a year ago you got a letter from
3261 Dr. Weinstein, saying you have to get going with this thing,
3262 it is going to take a lot of time. So you have the
3263 possibility of going to the backup tapes and all of that.
3264 But he said it is going to take at least a year for you to
3265 get all this information. And still, we will have nothing on

3266 | the RNC tapes where there are backups in boxes. So I just
3267 | must tell you that I find it hard to believe that you have
3268 | any real sense of urgency when a whole year has been
3269 | frittered away.

3270 | Ms. PAYTON. We have not frittered it away. We really
3271 | have improved the overall inventory process, and it is
3272 | something that will benefit future administrations, as well
3273 | as if we had undertaken a recovery effort prior to doing this
3274 | work. We may have recovered days we didn't need to, as well
3275 | as we might not have recovered days we might need to.

3276 | Chairman WAXMAN. Well, this all remains to be seen, but
3277 | I appreciate your position.

3278 | Mr. Issa, you were recognized to pursue questions, but
3279 | it was under the 15 minutes and Mr. Davis asked, so you are
3280 | entitled to 5 minutes and I will recognize you for that
3281 | purpose.

3282 | Mr. ISSA. Thank you, Mr. Chairman.

3283 | I am going to follow up where the Chairman left off.
3284 | Mr. McDevitt is not here, and that is unfortunate, because
3285 | there are things that I am confused about, and Ms. Payton, I
3286 | am hoping you can straighten it out for us. He was the chief
3287 | information officer while he was at the White House, is that
3288 | right?

3289 | Ms. PAYTON. Excuse me?

3290 | Mr. ISSA. Mr. McDevitt was employed by the Office of the

3291 Chief Information Officer and his primary responsibility was
3292 to manage the electronic records systems of the White House,
3293 is that right?

3294 Ms. PAYTON. He was to manage the new archiving platform,
3295 that is correct.

3296 Mr. ISSA. But essentially, he was the guy that used the
3297 tool that wouldn't see any e-mail box that had more than
3298 32,000 e-mails in it, right? So the tool that failed was his
3299 tool that he used earlier, is that right?

3300 Ms. PAYTON. I don't believe that tool reported up
3301 through Steve. But I am not sure.

3302 Mr. ISSA. But at the time that tool was in use, it was a
3303 flawed tool, and that was more than 18 months ago. So when
3304 he said, for example, that there are 400 days of lost
3305 information, that is wrong, because he has been gone for 18
3306 months and doesn't know. When he says that e-mails could be
3307 deleted, he apparently doesn't know that there is a tracking
3308 log in the Microsoft operating system, so he doesn't know
3309 that you can't delete with impunity, that it is trackable.

3310 He obviously doesn't know that the tool that you used
3311 earlier was flawed and the tool you are using now is at least
3312 better. We will never know if it is flawed until a later
3313 generation. But it catches many of the lost documents that
3314 the previous tool didn't. Is that roughly correct?

3315 Ms. PAYTON. That is roughly correct, yes.

3316 Mr. ISSA. I want to hit a couple of other points. And I
3317 don't want to delve too much into software, but I think it is
3318 fair that we recognize that software moves on and that
3319 archiving in the digital age is not as easy as it might seem
3320 to the public, and hopefully this hearing is good for the
3321 public to understand.

3322 The Clinton Administration used Lotus Notes, right?

3323 Ms. PAYTON. Yes.

3324 Mr. ISSA. Lotus Notes no longer exists, right? It is no
3325 longer supported.

3326 Ms. PAYTON. It is no longer supported. Some groups may
3327 still use it, but it is no longer supported.

3328 Mr. ISSA. I wouldn't want to do business with somebody
3329 still using Lotus Notes or still using wooden wagon wheels.
3330 If I understand correctly, though, certainly I checked with
3331 the House of Representatives, we can no longer support it for
3332 members who want to stay on it. I assume that the robust
3333 tool you are now using to go through and recapture the PSTs
3334 deconflict the fact that PSTs often have multiple PSTs and
3335 you don't want to have 40,000 copies of the same e-mail, so
3336 you have to take care of the duplicates. Those tools didn't
3337 exist for Lotus Notes, in all likelihood, because it was on
3338 its way out by the time the Clinton Administration was on its
3339 way out, is that roughly correct?

3340 Ms. PAYTON. My understanding is that the way, because

3341 | they have a limited de-dupe process for ARMS, and it had to
3342 | be built. That is my understanding.

3343 | Mr. ISSA. Okay. So here we have a situation where the
3344 | Clinton Administration is on a platform that has to be phased
3345 | out. Simply, they lost the war of who is going to supply
3346 | e-mails. A period of time goes on in which yes, we are
3347 | dealing, to Dr. Weinstein's concern, with getting good
3348 | archives, but we are also dealing with the fact that I can't
3349 | play my Beta Max tapes any more, either, and I can't seem to
3350 | find anybody who has a Beta Max player any more. And in a
3351 | matter of a couple of years, it is going to be hard for me to
3352 | play my high definition DVDs that were on the platform that
3353 | now is being phased out.

3354 | This is one of the challenges that I gather, for Dr.
3355 | Weinstein, that you face that is going to be difficult for
3356 | you as an archivist going into the future, no matter who is
3357 | in the White House and no matter how hard they try, is that
3358 | correct?

3359 | Mr. WEINSTEIN. Yes, sir.

3360 | Mr. ISSA. Okay. So certainly, the House of
3361 | Representatives needs to begin making sure you are funded,
3362 | and that is part of what we do in oversight, fund it to deal
3363 | with ever-evolving technologies where archiving isn't just
3364 | putting them away, it is being able to retrieve it, is that
3365 | right?

3366 Mr. WEINSTEIN. And to migrate where necessary.

3367 Mr. ISSA. Okay. I am deeply disappointed, Mr. Chairman,
3368 that we do have a split in our otherwise bipartisan effort to
3369 deal with the archiving and preservation of our Nation's
3370 records, and particularly the office of the President. I am
3371 sorry that as of today, Mr. McDevitt is not made available to
3372 us. I would hope that in spite of the vote that occurred
3373 that you would reconsider and allow for us to bring up some
3374 of these points with a gentleman who I believe is at least
3375 misguided as to the tools, capability and ongoing work by the
3376 White House as to the White House's responsibility.

3377 Last but not least, Mr. Chairman, I think what you are
3378 doing is going to prove in retrospect to be shameful as to
3379 the RNC, that in fact, if we have no reason to believe that
3380 private correspondence done outside of the White House is
3381 inappropriate and are not willing to do so up front, we
3382 should not have members of the White House administration
3383 here in order to ask them questions about the RNC that is not
3384 within their purview.

3385 Chairman WAXMAN. The gentleman's time has expired. I
3386 want to recognize the last questioner, I believe.

3387 But we have a lot of evidence that the RNC e-mails
3388 involve Government responsibility, because a good number of
3389 the e-mails from Karl Rove's account were to Government
3390 agencies. We asked the RNC for the number of dot gov e-mails

3391 | from his e-mail site. And we saw that a good number of them
3392 | were done.

3393 | You want to assume otherwise. I am not surprised at the
3394 | partisanship. I have come to expect it. But I would hope
3395 | that something like this would not engender the partisanship
3396 | that we have seen. The Republicans are attacking Mr.
3397 | McDevitt, who worked at the Republican White House, you are
3398 | attacking everybody else and you don't believe the truth
3399 | about the RNC e-mails. Well, we will be glad to show you the
3400 | documentation that we have, but we have a vote on, so I want
3401 | Mr. Burton to have his full five minutes, and he is
3402 | recognized at this time.

3403 | Mr. BURTON. Thank you, Mr. Chairman. I yield to my
3404 | colleague.

3405 | Mr. ISSA. And I will only use one of his minutes, but
3406 | Mr. Chairman, although you spoke on time that doesn't exist
3407 | under the rules of this Committee, I do want to continue
3408 | working on a bipartisan basis. This White House will close
3409 | up and we will be looking to preserve all the records that
3410 | fall within the Act. Today, I am afraid we did not move
3411 | further toward it. Candidly, Mr. Chairman, constantly asking
3412 | about Karl Rove, Karl Rove, Karl Rove, who clearly had a
3413 | reason to be involved in many things which would have been
3414 | inappropriate begs the question of whether or not we have any
3415 | real evidence other than ``we didn't find e-mail traffic at

3416 | the White House, therefore they must have been doing
3417 | Government work on private sites.''

3418 | Mr. Chairman, I have to tell you, I have little doubt
3419 | that if we asked for the staff members of this Committee on
3420 | both sides of the aisle to provide to us all of their outside
3421 | information that we would in fact learn a great deal. Mr.
3422 | Chairman, we don't have that right within this Committee, and
3423 | we should not try to create it.

3424 | I yield back to the gentleman.

3425 | Mr. BURTON. Mr. Chairman, we have a vote on. I yield my
3426 | time.

3427 | Chairman WAXMAN. Thank you. I just want to make a
3428 | closing comment and will afford the other side an opportunity
3429 | for a closing comment.

3430 | The Congress is not required under any law to keep our
3431 | e-mails the way the White House has had that requirement
3432 | under the Presidential Records Act. I think it is
3433 | appropriate and I hope all members of Congress would think it
3434 | is appropriate that that law be adhered to, whether it is
3435 | this White House or any other White House.

3436 | I must say, what I have learned today, which is, this
3437 | hearing is about this Presidential Records Act, I am quite
3438 | disturbed. We have been asking questions about what happened
3439 | to these White House e-mails that were sent through the RNC
3440 | e-mail accounts, including messages sent by key advisors to

3441 the President during decisive periods of the Administration.
3442 We have established there are two boxes of backup tapes
3443 stored at the RNC. These backup tapes may contain the
3444 missing e-mails. Dr. Weinstein, the archivist, has said that
3445 it is essential that these records be restored.

3446 Yet we have learned there appears there is no effort, no
3447 effort to recover the missing RNC e-mails. And the only
3448 e-mails that we want are those that relate to Government
3449 business. All the evidence we have received says that these
3450 e-mails are a vital part of the historical record of this
3451 White House. Yet the White House has not asked the RNC to
3452 reconstruct the backup tapes, and it has not asked for the
3453 backup tapes so they could reconstruct them themselves.

3454 The effect is that the historical record will have major
3455 holes. This may save the White House from embarrassment, but
3456 it is an enormous disservice to the American people for the
3457 historical record. While there has been more effort to
3458 recover the missing e-mails from the White House, I am glad
3459 to hear that Ms. Payton has been working hard to recover
3460 these e-mails, and I am glad she has found e-mails that were
3461 previously missing. But in this area, too, I continue to
3462 have greave concerns.

3463 There is a certain way to recover the missing e-mails;
3464 that is to restore the backup tapes. The Archives have been
3465 asking the White House to do this for nearly a year, but the

3466 White House won't do this. The result is that it is
3467 impossible to have confidence in what the White House is
3468 doing. We know from the Plame case that the only way the
3469 White House could recover key e-mails was using the backup
3470 tapes. But the White House is resisting this practical step.

3471 It is important to remember what this hearing is about.
3472 It is not about Sandy Berger, it is not about a California
3473 waiver, it is not about whether Clinton did it or didn't do
3474 whatever. It is important to know that this hearing is about
3475 getting a complete record of what happened inside the Bush
3476 White House. This will never occur unless the White House
3477 recovers the deleted RNC e-mails. But we learned today that
3478 this is not happening. It is a major disappointment and I
3479 think a clear violation of the law.

3480 Mr. Davis is not here.

3481 Mr. ISSA. He left me to close, Mr. Chairman.

3482 Chairman WAXMAN. Okay, the gentleman is recognized.

3483 Mr. ISSA. Mr. Chairman, I want to close in the most
3484 positive and bipartisan way possible, because I believe that
3485 there was a great deal of good done here. I think we learned
3486 as a Committee that the statute requires adequate, according
3487 to the Archivist, records. We learned from Dr. Weinstein
3488 that in fact, we are going to, even though we are not at a 10
3489 day that regularly, at the end of an Administration, that
3490 there is this going from a 2 or a 3 up to a 10 in the gaining

3491 | of records and that there was a high confidence that we would
3492 | get to that 10 by the inauguration of the next President.

3493 | I personally have no doubt that Ms. Payton or a
3494 | successor will be in fact still employed on those last few
3495 | things that may need to be done in a digital age. But I am
3496 | also pleased to see the skill and the understanding, although
3497 | expressed in phase, clearly that there is a process necessary
3498 | to deliver all the information that is required by the
3499 | Archivist and requested by this Congress, and that we will
3500 | get there, but we will get there as close to or below the \$15
3501 | million fee that we could spend if we simply threw everything
3502 | at it.

3503 | So while I share with the Chairman a disappointment that
3504 | weeks, months and even a year can go by in this process, I
3505 | certainly will hope very much that we all understand that it
3506 | can take that long to get this information, and that this is
3507 | not something that is devious, at least as far as I can see,
3508 | that in fact, Ms. Payton, in good faith, is working toward
3509 | that and she has the confidence of the Archivist that
3510 | progress is being made. I think that is what we can take
3511 | away from this hearing on a bipartisan basis. I yield back.

3512 | Chairman WAXMAN. That concludes our business for today.
3513 | I thank all the witnesses for your very generous time here
3514 | with us. The Committee stands adjourned.

3515 | [Whereupon, at 1:15 p.m., the committee was adjourned.]