MINORITY VIEWS ON THE E-MAIL INVESTIGATION

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I. EXECUTIVE SUMMARY

This Committee has a long history of making unsubstantiated allegations. Many of these allegations are summarized in a report recently released by the ranking minority member, Rep. Henry A. Waxman.[1] The majority has alleged that Deputy White House Counsel Vince Foster was murdered as part of a coverup of the Whitewater land deal, that the White House intentionally maintained an "enemies list" of sensitive FBI files, that the IRS targeted the President's enemies for tax audits, that the White House may have been involved in "selling or giving information to the Chinese in exchange for political contributions," and that the White House "altered" videotapes of White House coffees to conceal wrongdoing, among numerous other unfounded allegations.

One theme in the majority's allegations is that the wrongdoing by the Clinton Administration exceeds the wrongdoing exposed in the Watergate scandal. As early as 1997, Rep. Burton described his campaign fundraising investigation as follows: "I think this thing could end up being much bigger than Watergate ever was."[2]

The majority's report on e-mails again asserts that the majority has uncovered a scandal bigger than Watergate:

> The implications of these revelations are profound. When the Nixon White House was forced to admit that there was an eighteen-and-a-half minute gap on a recorded tape, there was a firestorm of criticism. The "gap" created by hundreds of thousands of missing e-mails, and by a Vice Presidential staff decision to manage records so they could not be searched, is of no less consequence. If senior White House personnel were aware of these problems, and if they failed to take effective measures to recover the withheld information – or inform those with outstanding document requests – then the e-mail matter can fairly be called the most significant obstruction of Congressional investigations in U.S. history. While the White House's obstruction in Watergate related only to the Watergate break-in, the potential obstruction of justice by the Clinton White House reaches much further. The e-mail problem effects [sic] almost every investigation of the Administration, from campaign finance to Monica Lewinsky.[3]

As these views will demonstrate, the Committee's e-mail investigation has followed the same pattern as its previous "scandal" investigations. Many sensational allegations have been

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[1]Minority Staff Report of the House Committee on Government Reform, *Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration* (Oct. 2000) (attached as exhibit 1).

[2]*The NewsHour with Jim Lehrer*, PBS (Feb. 25, 1997).

[3]House Committee on Government Reform, *The Failure to Produce White House E-Mails: Threats, Obstruction and Unanswered Questions*, 106th Cong., viii (2000) (emphasis added) (hereinafter "Majority Report").

made, but none have been proven.

A. Background

In July 1994, the White House created a central electronic database, called the Automated Records Management System (ARMS), to archive official presidential and federal records, including e-mails. ARMS was created to comply with the court decision *Armstrong v. Executive Office of the President*,[4] which interpreted the Federal Records Act as requiring the preservation of e-mail messages by parts of the Executive Office of the President.[5] In June 1998, contractors working for Northrop Grumman discovered a technical problem affecting a White House e-mail server (named "Mail2") which prevented incoming e-mail to accounts on that server from being archived in ARMS. The problem, which dated back to August 1996, was fixed prospectively in November 1998.

The number of e-mails affected by the Mail2 problem is relatively small compared to the total number of e-mails properly recorded in ARMS. The Mail2 problem affected only incoming e-mail sent to 526 accounts on the Mail2 server; the problem did not affect any e-mails sent *from* those 526 accounts. Furthermore, any incoming e-mails that were replied to or forwarded by the recipient (or that were copied to a nonaffected user) were archived in ARMS.[6]

The Mail2 problem may have had some limited impact on White House document production. Because the White House conducted searches of ARMS to respond to information requests, some of the narrow subset of e-mails affected by the Mail2 problem may not have been supplied to independent counsels and congressional committees investigating the White House. Some of the e-mails affected by the Mail2 problem, however, were likely to have been captured

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[4]1 F.3d 1274 (D.C. Cir., 1993).

[5]Testimony of Beth Nolan, House Committee on Government Reform, *Hearing on Missing White House E-Mails: Mismanagement of Subpoenaed Records (Continued)*, 85 (March 30, 2000) (stenographic record) (stating that "ARMS was set up in order for the executive office of the President to comply with the Federal Records Act") (hereinafter "March 30 hearing"). The Executive Office of the President (EOP) consists of a group of 11 federal agencies immediately serving the President. These agencies include the White House Office, where many of the President's closest advisors are located; the Office of Management and Budget; the National Security Council; and the Office of Administration. The White House Office is legally exempt from the Federal Records Act, but was nonetheless included in ARMS.

[6]Statement of Counsel to the President Beth Nolan (March 23, 2000); Testimony of Daniel A. "Tony" Barry, House Committee on Government Reform, *Hearing on Missing White House E-Mails: Mismanagement of Subpoenaed Records*, 78-79 (March 23, 2000) (stenographic record) (hereinafter "March 23 hearing").

by other search means and given to the investigators.[7]

In the course of responding to Committee inquiries regarding the Mail2 problem, the White House also discovered information about other e-mail problems, including a problem that prevented incoming e-mail sent between approximately November 1998 and April 1999 to users whose account names began with the letter "d" from being archived; a problem that caused a small, random assortment of e-mails from June 1997 to August 1999 not to be archived on the National Security Council's classified computer system; and a problem that prevented e-mails on the server of the Office of the Vice President (OVP) from being fully managed by ARMS.

The White House is in the process of reconstructing the e-mails that were not initially searched due to these computer glitches. As of September 29, 2000, the White House had committed or spent approximately $6.9 million on this project, and had expended 39,157 hours of work (34,822 hours by contract employees, 3,795 hours by employees of the Executive Office of the President, and 540 hours by security personnel). Overall, the cost of the project has been estimated at $11.7 million dollars.[8]

B. Allegations

The e-mail problems in the White House are highly technical. They do not involve any conscious effort to withhold subpoenaed materials from the Committee. Nevertheless, during the course of the Committee's investigation, they have spawned a series of inflammatory accusations. The principal allegations and the actual facts uncovered during the investigation are described below:

- *Allegation: The missing White House e-mails contain "information relating to Filegate, concerning the Monica Lewinsky scandal, the sale of Clinton Commerce Department trade mission seats in exchange for campaign contributions, and Vice President Al*

[7]When the White House counsel's office responds to subpoenas, in addition to searching ARMS it "instructs individuals within the relevant EOP offices to search for responsive materials. This directive explicitly states that each individual should search computer records as well as hard copies." Statement of Counsel to the President Beth Nolan (March 23, 2000) (attached as exhibit 2). Thus, any responsive e-mails that were saved by the sender or recipient should have been produced, regardless of whether or not they were recorded in ARMS. In addition, e-mails that were not retrieved by the White House may have been provided to investigators by other sources that sent e-mails to the White House. These potential sources include federal agencies and the Democratic National Committee.

[8]Letter from Michael K. Bartosz, General Counsel to the Office of Administration, to James C. Wilson, Chief Counsel (Sept. 29, 2000) (attached as exhibit 3).

Gore's involvement in campaign fundraising controversies."[9] *If the contents of these e-mails become known, "there would be different outcomes to these scandals, as the e-mails were incriminating and could cause people to go to jail."*[10]

The Facts: The only witness to view the contents of any of the "missing" e-mails was a Northrop Grumman employee, Robert Haas, who had the responsibility of searching for missing e-mails relating to Monica Lewinsky. Mr. Haas found a few Lewinsky-related e-mails that turned out to have been previously provided to Independent Counsel Kenneth Starr.[11] He testified under oath: "I never . . . intimated in any way, shape, or form that I knew any content of any e-mails other than the two Monica Lewinsky documents" and "[a]t no time did I look at any other documents in any other mail files."[12]

- *Allegation: Recently retrieved e-mails produced by the White House "are highly relevant to the Committee's investigation of campaign finance matters;" the information in these e-mails is "important for evaluating whether the Vice President committed perjury" and "shows that it is impossible to come to a final conclusion about underlying campaign finance matters without a complete review of all the previously withheld information."*[13]

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[9]Declaration of Betty Lambuth, *Alexander v. FBI*, No. 96-2123 (February 24, 2000). *See also* Third Declaration of Sheryl Hall, *Alexander v. FBI*, No. 96-2123 (February 19, 2000).

[10]Third Declaration of Sheryl Hall, *Alexander v. FBI*, No. 96-2123 (February 19, 2000).

[11]A member of the office of White House Counsel, Michelle Peterson, compared the e-mails retrieved by Mr. Haas with previously produced e-mails and determined that they were duplicative. Interview of Michelle Peterson by Majority and Minority Staff, House Committee on Government Reform (June 8, 2000). Ms. Peterson recently filed a declaration indicating that she may have overlooked two nonsubstantive differences between the Haas e-mails and previously produced e-mails. Ms. Peterson stated that the Office of Independent Counsel Robert Ray showed her an e-mail allegedly retrieved by Mr. Haas which was substantively identical to an e-mail that had previously been produced "but had a different time and a different spelling of the e-mail addressee." Third Declaration of Michelle Peterson at ¶ 7, *Alexander v. FBI*, No. 96-2123 (Sept. 27, 2000). Ms. Peterson also was shown an e-mail allegedly retrieved by Mr. Haas which was identical to an already-produced e-mail but which contained a "cc" list that the earlier e-mail lacked. *Id.* at ¶ 8. Ms. Peterson reaffirmed that she believed at the time that all of the e-mails retrieved by Mr. Haas had been produced, but allowed that she may have overlooked the two technical differences discussed above (although she could not confirm this fact herself, as she did not have access to any of the sets of e-mails produced or retrieved by the White House). *Id.* at ¶ 9.

[12]Testimony of Robert Haas, March 23 hearing at 89, 61.

[13]Majority Report at viii-x.

The Facts: So far, between 180,000 and 200,000 e-mails have been reconstructed and reviewed, and any responsive e-mails have been produced to the Office of Independent Counsel Robert Ray or the Justice Department's campaign finance task force. Only 56 of the e-mails produced to the Independent Counsel or the task force were responsive to this Committee's subpoenas, and several of those had already been produced in similar form (e.g., with a different recipient or sender). None of these 56 e-mails provided significant new evidence.

The majority cites as significant new information one e-mail between two vice presidential staffers that refers to "FR coffees" at the White House, which the majority asserts is evidence that the coffees were used for fundraising purposes.[14] It is not clear whether the term "FR" refers to "fundraising" or "finance-related." Even if the term "FR" is construed to refer to fundraising, however, the e-mail does not add new evidence. Other internal communications in the Vice President's office have described these coffees as "fundraising" events.[15] Even the Vice President has repeatedly said that attendees at White House coffees would likely be solicited for contributions later on.[16]

Another e-mail relied upon by the majority is an e-mail from a scheduler that refers to a fundraising event in Los Angeles and lists an event at the Hsi Lai Buddhist Temple.[17] This e-mail is a draft schedule and it is incomplete and inaccurate in several places.[18] It adds little to what is already known about the Hsi Lai Temple event. Internal communications in which the Vice President's staff apparently used the term "fundraiser" to describe the Hsi Lai Temple event

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[14]E-Mail from Karen Skelton to Ellen L. Ochs (April 23, 1996) (E 8862) (discussed in Majority Report at x).

[15]*See, e.g.*, Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns,* 105th Cong., 2d Sess., v. 1, 196 (March 1998) (stating that "[a] number of White House and DNC documents underline the importance of the coffees as fundraising events" and citing to documents).

[16]The Vice President told investigators that the coffees "allowed the President to spend time with influential people who wanted to talk about policy, who would at some later time possibly be asked to financially support the DNC." He further stated that "[i]t was contemplated at the time when they were set up that some or many of those who participated in those sessions would later on be likely to contribute." Interview of Vice President Gore with Robert J. Conrad, Jr., Head of the Department of Justice Campaign Financing Task Force (April 18, 2000).

[17]E-Mail from Jackie A. Dycke to R. Martinez (April 9, 1996) (E 8747-54) (discussed in Majority Report at x).

[18]For example, the document indicates that the Vice President will attend a DNC Reception at the Hsi Lai Temple both in Los Angeles and San Jose. *Id.*

were produced and investigated long ago.[19] Three years ago, the Senate Governmental Affairs Committee talked with the Vice President's scheduling staff about such internal communications and thoroughly explored whether staff viewed the event as a fundraiser and how the Vice President was briefed about the event.[20] The newly reconstructed e-mails contain no e-mail either to or from the Vice President regarding the Temple event.

- *Allegation: "As a result of the White House cover-up, information was kept from this Committee."*[21] *There was "in effect, a purposeful effort to keep documents from Congress, the Department of Justice, and various Independent Counsels."*[22]

The Facts: The evidence shows that at the time the Mail2 problem was first discovered, the Office of Administration (OA) employees responsible for managing the e-mail system did not want any public discussion of the problem until the scope of the problem was identified and senior White House officials could be informed. This was an appropriate response given that the problem was discovered around June 1998, when the White House was the subject of intense media scrutiny generated by Independent Counsel Ken Starr's investigation of the Monica Lewinsky affair.

There is no evidence, however, that the White House deliberately kept any e-mails from federal or congressional investigators. In fact, in 1997 the White House provided approximately 7,700 pages of e-mails to this Committee on campaign finance matters alone,[23] many of which the majority has cited in its investigation.[24]

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[19]*E.g.*, Document Labeled "Current Schedule for April 29" (EOP 056497) (referring to a "DNC luncheon in LA/Hacienda Heights") (attached as exhibit 4); E-Mail from Jackie A. Dycke to R. Martinez (April 10, 1996) (EOP 053292) (noting that "the VP is going to San Jose and LA for DNC fundraising events on April 29") (attached as exhibit 5).

[20]Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns,* 105th Cong., 2d Sess., v. 2, 1793-94, v. 4, 4818-31 (March 1998). The Vice President's staff testified that they were sloppy in their use of the term "fundraiser." *Id.* at 4822-26.

[21]Statement of Rep. Dan Burton, House Committee on Government Reform, *Hearing on Contacts Between Northrop Grumman Corporation and the White House Regarding Missing White House E-Mails,* 8 (Sept. 26, 2000) (hereinafter "Sept. 26 hearing").

[22]Letter from Rep. Dan Burton to Counsel to the President Beth Nolan (March 8, 2000).

[23]Statement of Counsel to the President Beth Nolan (March 23, 2000).

[24]For example, the White House produced an e-mail to this Committee from the National Security Council describing Democratic fundraiser Johnny Chung as a "hustler" and expressing

The OA employees who were first informed of the e-mail problem promptly brought the problem to the attention of the White House deputy chief of staff and the Office of White House Counsel.[25] The counsel's office then directed that a "test" be performed to determine whether the e-mail problem had affected the production of documents to Independent Counsel Starr.[26] This test turned up no new documents, leading the counsel's office to believe that the e-mail problem did not affect document production.[27] Although it now appears that this belief was mistaken, there is no evidence that White House counsel acted in bad faith.

After White House counsel became aware of the significance of the e-mails problems in 2000, the White House began the process of restoring backup tapes of the affected e-mails.[28] On September 14, 2000, White House counsel informed Committee staff that the reconstruction effort had reached the stage where the White House could search and produce batches of e-mails on an expedited basis and offered to conduct searches specified by the Committee.[29] The White

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concern over Mr. Chung's efforts to bring Chinese businessmen into the White House. That e-mail was referred to repeatedly during the Committee's two hearings on Mr Chung, and received extensive coverage in the press. *See, e.g, An Investigative Report: What Clinton Knew -- How a Push for New Fund-Raising Led to Foreign Access, Bad Money and Questionable Ties*, Los Angeles Times (Dec. 21, 1997); *Democratic Donor Chung Invokes 5th Amendment; House Members Informally Interview Businessman*, Washington Post (Nov. 15, 1997); *Donors Allege Laundered Contributions to Clinton-Gore Campaign*, Associated Press (Nov. 11, 1997).

[25]Testimony of Mark Lindsay, March 23 hearing at 246.

[26]Statement of Counsel to the President Beth Nolan (March 23, 2000); Testimony of Robert Haas, March 23 hearing at 60, 80-81; Testimony of Mark Lindsay, March 23 hearing at 247.

[27]Statement of Counsel to the President Beth Nolan (March 23, 2000).

[28]*Id.*; Testimony of Counsel to the President Beth Nolan, March 30 hearing at 25-26. According to Ms. Nolan, steps in the reconstruction process included selecting and contracting with a private entity with the appropriate technical expertise and resources, putting in place and testing the requisite equipment, and engaging a separate private contractor for independent validation and verification. Testimony of Counsel to the President Beth Nolan, March 30 hearing at 25-26.

[29]*See* Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (Sept. 26, 2000) (attached as exhibit 6). According to the White House, with about three weeks of computer staff time, it would be able to conduct targeted searches using 100 back-up tapes, 70 e-mail accounts, and 70 search terms. *Id.*

House repeated the offer on October 4.[30] To date, the majority has failed to take the White House up on its offer.

- *Allegation: "[E]vidence suggests that contracted staffers were personally threatened with repercussions and even jail should they mention the very existence of the server problem to anyone, even their bosses. This occurred while these e-mails were under subpoena. This is inexcusable. This is criminal. If this is not obstruction of justice, I don't know what is."*[31]

The Facts: The evidence regarding alleged jail threats is inconclusive and contradictory. In total, eight individuals were present at meetings when the alleged threats were made. Of these eight individuals, two deny making any jail threats;[32] three have no recollection of any jail threats;[33] one recalls a jail threat being made in response to a "flippant" question;[34] and one recalls the word "jail" being mentioned but cannot remember who said it.[35] Moreover, the individuals who allegedly made the jail threats, Mark Lindsay and Laura Callahan, were not even White House employees; both worked in the Office of Administration, which provides support services to the White House, and Mrs. Callahan is a career civil servant.[36] There is no evidence that White House officials had any knowledge of -- or participated in -- any threats.

- *Allegation: Earl Silbert, a "high-priced Washington fixer," was hired by Northrop Grumman and told "about possible law breaking and threats to his client's employees."*[37] *Evidence of contacts between Mr. Silbert and the White House "may dramatically undermine White House claims of a 'disconnect' that prevented them from understanding*

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[30]Letter from Associate Counsel to the President Lisa Klem to Chief Counsel James C. Wilson (Oct. 4, 2000) (attached as exhibit 7).

[31]Statement of Rep. Helen Chenoweth-Hage at March 23 hearing.

[32]Testimony of Laura Callahan, March 23 hearing at 216, 226-27; Testimony of Mark Lindsay, March 23 hearing at 199.

[33]Testimony of Yiman Salim, March 23 hearing at 21; Testimony of John Spriggs, March 23 hearing at 47; Statement of Paulette Cichon (March 29, 2000) (attached as exhibit 8).

[34]Testimony of Robert Haas, March 23 hearing at 32.

[35]Testimony of Sandra Golas, March 23 hearing at 45.

[36]Testimony of Laura Callahan, March 23 hearing at 206.

[37]Statement of Rep. Dan Burton (Sept. 26, 2000).

the e-mail problem."[38]

The Facts: This allegation is wholly speculative. Mr. Silbert's two brief phone calls with White House counsel may have involved nothing more than contractual disputes then being discussed by Northrop Grumman and the White House.[39] There is no evidence that Mr. Silbert was aware of or communicated information about threats or subpoena compliance. These issues were peripheral, if not irrelevant, to the contractual matter at stake.

- *Allegation: The Vice President's office "took affirmative steps to keep from storing its e-mail records in the only system that would permit full and accurate subpoena compliance."*[40] *A counsel to the Vice President "personally decided that the Vice President would not store his records in a way that would permit compliance with document requests" and there "can be little doubt that the Vice President's advisors knew that their actions would permit his office to operate in a manner that would make it less susceptible to oversight."*[41]

The Facts: In 1994, the Office of the Vice President opted not to archive its e-mails electronically via ARMS. There is no evidence whatsoever that this decision was seen, or could have been seen, as affecting subpoena compliance. At the time, ARMS was intended to be strictly a way of archiving electronic records for posterity, not a tool for subpoena compliance. The Office of the Vice President, which was under no legal or ethical obligation to archive its e-mail electronically, opted not to use ARMS because of apparent technical concerns about connecting the OVP computer system to ARMS.[42] Instead of using ARMS, the office preserved

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[38]Memorandum from Rep. Dan Burton to Members of the Government Reform Committee (Sept. 21, 2000).

[39]There was a difference of opinion between Northrop Grumman and the White House over whether work on the e-mail problem was within the scope of the company's contract. Testimony of Mark Lindsay, March 23 hearing at 261-63. *See also* Letter from Joseph F. Lucente, Director, Contracts and Subcontracts, Northrop Grumman, to Dale Helms, Executive Office of the President (Sept. 14, 1998) (NGL 00503) (stating that "the level of effort required to remedy the [e-mail] dysfunction will substantially exceed the scope of work contemplated under the referenced contract") (attached as exhibit 9).

[40]Majority Report at viii.

[41]*Id.* at xviii.

[42]Interview of Michael Gill by Majority and Minority Staff, House Committee on Government Reform (July 24, 2000). According to Mr. Gill, who handled information technology matters in the OVP, in order for the OVP to connect to ARMS, it would have had to take a giant technological step backwards by converting its windows-based e-mail system to a

its records by instructing personnel to print out and save work-related e-mails, and by regularly backing up the system and saving the back-up tapes.[43]

- *Allegation: "[A] White House employee, aided and counseled by Justice Department lawyers, submitted a false affidavit to a federal court that concealed the failure of the White House to search for all e-mails responsive to subpoenas."[44] The affidavit contains an assertion about ARMS that is "utterly false."[45]*

The Facts: The affidavit was filed in 1999 by a career civil servant, Daniel A. "Tony" Barry, as part of the government's efforts to convince a judge hearing a civil lawsuit that ARMS searches were not necessary for discovery purposes. In the course of describing the cost and difficulty of conducting e-mail searches, the affidavit states: "Since July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived in the EOP Automated Records Management System (ARMS)."[46] Read in context, the affidavit was simply and accurately attempting to describe the basic function of ARMS -- namely, that it archives e-mail and that it has been in effect since July 14, 1994.

- *Allegation: An e-mail written by a mid-level OA employee "concludes by saying, 'Let sleeping dogs lie.' I think translated that means let's keep a lid on this, and don't let Congress and the independent counsels know about it."[47] This e-mail "would be considered evidence of obstruction of justice."[48]*

The Facts: The employee who wrote the e-mail in question is Karl Heissner, a 25-year career civil servant. He testified that his e-mail memo addressed two separate and unrelated

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character-based system which Mr. Gill considered to be less user-friendly. *Id.*

[43]Interview of Michael Gill by Majority and Minority Staff, House Committee on Government Reform (July 24, 2000); Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[44]Letter from Rep. Dan Burton to Attorney General Janet Reno (Sept. 7, 2000).

[45]Letter from Rep. Dan Burton to Attorney General Janet Reno (March 30, 2000).

[46]Declaration of Daniel A. Barry, *Alexander v. FBI*, No. 96-2123 (July 9, 1999), ¶ 4.

[47]Statement of Rep. Dan Burton, House Committee on Government Reform, *Hearing on Missing White House E-Mails: Mismanagement of Subpoenaed Records -- Day Three*, 13 (May 3, 2000) (stenographic record) (hereinafter "May 3 hearing").

[48]Statement of Rep. Bob Barr, May 3 hearing at 35.

issues.[49] One part of the e-mail is entitled "Mail2 Reconstruction," and it provides a summary of the Mail2 problem, its discovery, and subsequent efforts to fix it. The other part of the e-mail, entitled "Information Requests," discusses the number of information requests received by the White House. Mr. Heissner testified that his reference to letting "sleeping dogs lie" referred to the declining number of information requests received by the White House, and that it had nothing to do with the Mail2 problem.[50]

- *Allegation: "The White House has in its possession a previously undisclosed computer disk with e-mails by former intern Monica Lewinsky" that were sought "by a federal grand jury and three congressional committees, but never turned over."*[51]

The Facts: The computer disk was a copy of a file belonging to a computer contractor. It did not contain any previously undisclosed e-mail. The Lewinsky-related e-mail on the disk had been examined and determined to be duplicative of material that had already been produced.[52]

- *Allegation: The Justice Department "took no steps to determine whether reports about the e-mail problem were true."*[53] *"The only answer is to appoint a Special Counsel to do the job."*[54]

The Facts: The e-mail matter is already being investigated by Independent Counsel Robert Ray, who is working in coordination with the Justice Department.[55] The Independent Counsel's investigation is focused on examining e-mail glitches as they relate to productions of documents to his office, which means that all of the issues explored by the Committee -- including allegations of threats and a cover-up -- are relevant to his inquiry. There is no evidence that the Department has hindered Mr. Ray's investigation. Nor is there any evidence that the Department's investigation is less complete than that of Mr. Ray or that the Department has failed to consult with Mr. Ray before making any investigative decisions.

C. The Majority's Version of Events

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[49]Testimony of Karl Heissner, May 3 hearing at 49-50.

[50]*Id.* at 50-51.

[51]*White House Has Disk With Lewinsky E-Mail*, Washington Times (March 29, 2000).

[52]Testimony of Beth Nolan, March 30 hearing at 26; *see also supra* note 11.

[53]Letter from Rep. Dan Burton to Judge Royce C. Lamberth (March 29, 2000).

[54]Statement of Rep. Dan Burton, March 30 hearing at 14.

[55]Testimony of Alan Gershel, Sept. 26 hearing at 35, 48.

The majority has woven a tale of massive coverup and subterfuge conducted to prevent investigators from learning about White House e-mails glitches. Under the majority's theory, numerous individuals, from computer specialists, to administrators, to White House lawyers, to individuals outside the White House, have either been dishonest with the Committee about the e-mails matter or have purposely attempted to impede the work of investigators.

The individuals implicated by the majority include:

- Charles F.C. Ruff, currently a member of the law firm Covington & Burling. Mr. Ruff's public service spans three decades. He has served as Counsel to the President; Corporation Counsel, District of Columbia; United States Attorney, District of Columbia; Special Prosecutor, Watergate Special Prosecution Force; Principal Associate Deputy Attorney General; Acting Deputy Attorney General of the United States; and Deputy Inspector General, Department of Health, Education and Welfare;

- Beth Nolan, currently Counsel to the President. Ms. Nolan previously served as Deputy Assistant Attorney General in the Office of Legal Counsel at the Department of Justice, and as an Attorney-Advisor in the Office of Legal Counsel. She also was a law professor at George Washington University from 1985-1997, where she taught courses in constitutional law, legal ethics, government ethics, and government lawyering;

- Todd Campbell, a federal judge in Tennessee since 1996. Judge Campbell's public service includes two years as legal counsel for Vice President Gore;

- Earl J. Silbert, currently a member of the law firm Piper Marbury Rudnick & Wolfe. Mr. Silbert has a long history of public service, including work as Assistant U.S. Attorney at the Department of Justice, and Principal Assistant U.S. Attorney and then U.S. Attorney for the District of Columbia;

- Mark Lindsay, currently Assistant to the President for Management and Administration. Mark Lindsay's public service includes serving as Deputy Assistant to the President for Management and Administration, Director of the Office of Administration, General Counsel for the Office of Administration, and senior counsel to Rep. Louis Stokes;

- Cheryl Mills, currently senior vice president for corporate policy and public programming at Oxygen Media. Ms. Mills's public service includes nearly seven years in the office of White House Counsel, first as Associate Counsel and later as Deputy Counsel;

- Laura Callahan, currently special assistant for information technology at the Department of Labor. Mrs. Callahan is a career federal civil servant whose service dates back to 1984, and she is also a registered Republican;

- Karl Heissner, currently a computer specialist at the Office of Administration. Mr.

Heissner is a career federal civil servant who served as a computer specialist during the Ford, Carter, Reagan, Bush, and Clinton Administrations; and

- Daniel A. "Tony" Barry, currently deputy data center manager/electronic records manager at the Office of Administration. Mr. Barry has worked as a computer specialist in the Office of Administration in both the Bush and Clinton Administrations.

As support for their allegations involving these individuals, the majority relies heavily on speculation, presents evidence selectively, cites authority which does not support the proposition that they are stating, disregards sworn testimony of White House officials and career civil servants, and interprets gaps in the evidence as opposed to objectively analyzing the evidence before the Committee. The majority's theories are based on the premise that all of the individuals implicated cast their integrity aside to conceal a subset of e-mails whose content was entirely unknown to them. This premise is wholly implausible and amounts to a smear on the reputations of many distinguished individuals.

In sum, the majority's comparison of the e-mails matter to Watergate is ludicrous. The Committee has received no information that any White House official or Office of Administration employee intentionally created the e-mail problems, made any attempt to impede investigation of the problems, or had any knowledge of the content of e-mails that may not have been captured.

II. BACKGROUND

The Committee has devoted considerable resources to investigating the e-mail matter. The Committee has held five days of hearings on this topic -- on March 23, March 30, May 3, May 4, and September 26 -- at which it received testimony from 17 people (three of whom each testified twice).[56] Committee staff also privately interviewed 36 people in connection with the e-mail investigation, and the Committee has requested and received 10,676 pages of documents.

The following discussion summarizes what the Committee learned about the origin and nature of the White House e-mail problems during the investigation.

A. Background on the Automated Records Management System

Beginning in 1950, Congress has passed several statutes regulating the process by which federal agencies and the White House create, manage, and maintain official records. These record-keeping laws distinguish between federal and presidential records.

The Federal Records Act[57] (FRA) covers:

> documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.[58]

Under the FRA, agency heads are required to "establish and maintain an active, continuing program for the economical and efficient management of the records of the agency."[59] In addition, the Archivist of the United States is required to "establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody."[60]

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[56]Those three people are Mark Lindsay, Beth Nolan, and Robert Raben.

[57]This report follows the convention of collectively referring to the statutory regime governing federal records as the "Federal Records Act."

[58]44 U.S.C. § 3301.

[59]44 U.S.C. § 3102.

[60]44 U.S.C. § 2905.

Presidential records are regulated under the Presidential Records Act (PRA).[61] They are defined as:

> documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.[62]

While federal records are regulated by a "strict document management regime . . . the PRA 'accords the President virtually complete control over his records during his term of office.'"[63] The PRA stipulates that, once the President leaves office, responsibility for the custody and control over that President's official records is assigned to the Archivist of the United States,[64] but even then the President may still designate a period of up to 12 years during which access to his presidential records is restricted.[65]

In January 1989, in the waning days of the Reagan administration, several researchers and nonprofit organizations filed a lawsuit seeking to prevent the destruction of electronic data stored on the computer systems of the Executive Office of the President (EOP) and the National Security Council (NSC). The suit sought a declaration that such data were federal and presidential records and thus subject to the statutory provisions cited above. On August 13, 1993, the D.C. Circuit Court of Appeals issued a decision in the case, *Armstrong v. Executive Office of the President,* which affirmed that the FRA applies to electronic mail (e-mail) and that existing EOP guidelines for managing e-mail -- which required employees to print and save hard copies of e-mails -- were not in compliance with FRA requirements.[66]

Following the *Armstrong* decision, the White House authorized the creation of a database

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[61]Pub. L. No. 95-591, 92 Stat. 2523 (1978).

[62]44 U.S.C. § 2201.

[63]*Armstrong v. Executive Office of the President,* 1 F.3d at 1290-91 (citation omitted).

[64]44 U.S.C. § 2203(f)(1).

[65]44 U.S.C. § 2204(a).

[66]The decision explained that "important information present in the e-mail system, such as who sent a document, who received it, and when that person received it, will not always appear on the computer screen and so will not be preserved on the paper print-out." 1 F.3d at 1284.

known as the Automated Records Management System (ARMS) to manage electronic records.[67] While the *Armstrong* decision applied only to federal records, the White House opted to use ARMS to manage both federal and presidential records generated within the EOP. All internally generated e-mails -- meaning e-mails sent from ARMS-managed accounts within the EOP -- would be automatically copied and sent to ARMS at the time they were sent.[68] In addition, software was written that would regularly scan user accounts on the EOP's computer servers for incoming e-mail, which would then be copied and archived in ARMS.[69]

ARMS went into operation in July 1994.[70] In order to comply with *Armstrong*, the White House also launched a reconstruction effort to ensure that e-mails dating from before July 1994 back to the beginning of the Clinton Administration were entered into the new system. That reconstruction effort was completed in 1999.[71]

Responsibility for the pre-1994 reconstruction effort, and for general maintenance of ARMS, lay with the Office of Administration (OA), which provides administrative support services, including data processing and records maintenance, to all units within the EOP. OA is headed by a presidentially appointed director and has approximately 180 staff, the vast majority of whom are career civil servants. In order to assist OA with its responsibilities, the EOP has contracted with private companies. Prior to 1997, the EOP had a contract with PRC Inc., a wholly owned subsidiary of Litton PRC, to provide information technology (IT) services. Upon the contract's expiration in late 1997, a new contract was signed with Northrop Grumman, and Northrop Grumman's contract and subcontract employees continue to provide onsite assistance to OA personnel.

While ARMS was originally designed to comply with the *Armstrong* decision, the White House later opted to use ARMS's word-search capabilities to assist it in responding to subpoenas and other information requests. Upon receipt of a request for documents, the White House Counsel's office will instruct individuals within the relevant EOP offices to search for responsive materials, including computer records.[72] In addition, the White House will instruct OA personnel

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[67]Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (March 17, 2000) (attached as exhibit 10).

[68]*Id.*

[69]*Id.*

[70]*Id.*

[71]*Id.*

[72]*Id.*

to do a computerized search of ARMS.[73] While it is not clear when the White House first used ARMS to respond to information requests, a letter sent by then-Counsel to the President Charles F.C. Ruff to Rep. Burton in September 1997 indicates that the White House informed this Committee in the spring of 1997 that White House e-mails were stored in a central archive which was capable of being searched (albeit by a costly and time-consuming procedure).[74]

B. The Mail2 Problem

Daniel A. "Tony" Barry, an OA computer specialist who is responsible for the overall system administration of ARMS, was performing an ARMS search in January 1998 for documents relating to Monica Lewinsky when he found what appeared to be a gap in the e-mail correspondence between Ms. Lewinsky and Ashley Raines. As Mr. Barry explained to the Committee, "I discovered what looked like conversational e-mail between two people and I only saw one side of the conversation."[75] Mr. Barry enlisted the help of a Northrop Grumman contract employee named John Spriggs but the two men were unable to figure out the cause of the problem. Mr. Barry then filed a report with his superior, Jim Wright, describing the incident. In this report, Mr. Barry noted that he could not determine if the incident reflected a systemic problem or a one-time problem.[76] This was apparently not the first time that problems with ARMS had been discovered; testimony from several government employees indicated that e-mail-related problems were not uncommon.[77]

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[73]*Id.*

[74]Letter from then-Counsel to the President Charles F.C. Ruff to Rep. Dan Burton (Sept. 11, 1997) (attached as exhibit 11).

[75]Testimony of Daniel A. Barry, March 23 hearing at 103.

[76]Undated, Type-written Notes (E 2496). While this document contains no indication on its face as to its author or recipient, OA Counsel John H. Young identified it as Mr. Barry's anomaly report for the Committee. Testimony of John H. Young, March 23 hearing at 190. The majority report states that Mr. Barry hand-delivered the report to Mr. Wright, contrary to his "general practice" of e-mailing weekly reports. Majority Report at 16. The majority also states that Mr. Barry did not refer to the names of the account users in his incident report, contrary to his "general practice." Majority Report at 16-17. These assertions about Mr. Barry's "general practice" are not substantiated, however. Moreover, their significance is questionable, even if they were accurate.

[77]Mr. Barry testified that "there have been problems in the past with the [Lotus] Notes [e-mail network]-ARMS interface." Testimony of Daniel A. Barry, March 23 hearing at 110. OA employee Laura Callahan told the Committee that "[w]e've had numerous problems with the e-mail system. It was very poorly designed and very poorly constructed by a contractor prior to Northrop Grumman. So, as a result, anomalies were fairly common." Testimony of Laura

It was several more months before OA and Northrop Grumman personnel were able to identify the cause of the problem noted by Mr. Barry. Around June 1998, two systems administrators at the EOP under contract to Northrop Grumman -- Yiman Salim and Robert Haas -- discovered a problem which was preventing some incoming e-mails from being properly processed by ARMS.[78] According to Ms. Salim, "[i]t was a very technical typographical-type error committed by a prior contractor before Northrop Grumman."[79] Mr. Haas and Ms. Salim immediately notified their direct supervisor, Betty Lambuth, about the problem, which they continued to investigate.

In the days that followed, it was determined that the problem was specific only to one computer server, created in August 1996, and that it affected only e-mails sent from outside the EOP. Ms. Salim explained that the problem began:

> when the contractors prior to Northrop Grumman built a new e-mail server called "Mail2." When the contractors [sic] personnel named the Mail2 server, they used an upper-case "M" and lower-case letters for the rest of the name. Following its creation, however, the individual name accounts on the Mail2 server were assigned the name "MAIL2" using all capital letters.
>
> When the case-sensitive ARMS scanner process ran on the Mail2 server to perform its comparison of the names, the comparison failed, since the names did not appear in the exact same case; therefore, none of those accounts from Mail2 were scanned. . . . [A]s a result, inbound e-mails were not records managed.
>
> Outbound e-mails were automatically records managed without the need for such

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Callahan, March 23 hearing at 212-13. Assistant to the President for Management and Administration Mark Lindsay testified that "I had potential problems with computer systems and with e-mail issues frequently. We had an antiquated system that we are working very diligently to make improvements on." Testimony of Mark Lindsay, House Committee on Government Reform, *Hearing on Missing White House E-Mails: Mismanagement of Subpoenaed Records -- Day 4*, 108 (May 4, 2000) (stenographic record) (hereinafter "May 4 hearing").

[78]There is some disagreement about when exactly this occurred. Mr. Haas and Ms. Salim are in general agreement on the date. He testified that it was June 12. Testimony of Robert Haas at March 23 hearing. Ms. Salim testified that it was a "few days" prior to June 15. Testimony of Yiman Salim, March 23 hearing at 20. According to Northrop Grumman employee Betty Lambuth, however, the problem was discovered in May 1998, while Counsel to the President Beth Nolan suggested that it was discovered in May or June. Testimony of Betty Lambuth at March 23 hearing; Statement of Counsel to the President Beth Nolan (March 23, 2000).

[79]Testimony of Yiman Salim, March 23 hearing at 19.

scanning. That is why outbound White House e-mails were not affected by this error.[80]

As Ms. Salim and the others working on the Mail2 problem learned, the problem affected a relatively small subset of EOP e-mails.[81] The problem only affected incoming e-mails sent to 526 individuals with accounts on the Mail2 server, 464 of whom worked in the White House.[82] The total number of affected users, 526, represents less than one-third of the number of employees in the entire EOP.[83] Furthermore, e-mails that were copied to non-affected employees would have been archived in ARMS,[84] as would e-mails which the recipient responded to "with

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[80]*Id.* at 20.

[81]Mr. Barry, OA's ARMS expert, testified that the number of documents being archived in ARMS did not appear to increase after the Mail2 problem was fixed in November 1998, thus suggesting that the problem was not as serious he had thought. According to Mr. Barry, "[W]hen I went back and looked at the growth numbers between November of 1998 and December of 1998, which would be the significant ones in this case, I saw nothing other than what I would normally expect in the growth between one month and the other, given the trend line that we have in place." Testimony of Daniel A. Barry, March 23 hearing at 105.

[82]Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (March 17, 2000). Of the remaining Mail2 accounts, 58 belonged to employees of the Office of Policy Development -- which is also located in the EOP -- and 4 belonged to OA employees.

[83]Currently, there are approximately 1,650 EOP employees. Since this number does not include detailees, and does not account for turnover, the proportion of EOP e-mail accounts affected by the Mail2 problem can be expected to be even lower than one-third. Some of the affected accounts apparently dated back to the creation of the Mail2 server in August 1996; in other cases, as new EOP employees were hired they may have been assigned to the Mail2 server and, depending on whether or not the name of the server was written in the correct case, their incoming e-mails may or may not have been sent to ARMS.

[84]Mr. Barry's testimony confirmed this fact:

> Mr. Waxman: What we're talking about were e-mails from outside of the [EOP] system to somebody in the system . . . [If] one of those e-mails were sent to somebody inside, and there was a carbon copy or copy directed to somebody else, then that would have been picked up, as well, in the ARMS system, wouldn't it?
>
> Mr. Barry: That's correct.

March 23 hearing at 78.

history" or forwarded.[85]

Furthermore, even if an e-mail was not archived by ARMS at all, it nevertheless could have been produced to investigators by the White House. Ms. Nolan informed the Committee that when the White House counsel's office responds to subpoenas, in addition to searching ARMS it "instructs individuals within the relevant EOP offices to search for responsive materials. This directive explicitly states that each individual should search computer records as well as hard copies."[86] Thus, any responsive e-mails that were saved by the sender or recipient should have been produced, regardless of whether or not they were recorded in ARMS.[87]

At the time of the discovery of the Mail2 problem, there was widespread discussion in the press about the ongoing Monica Lewinsky investigation being conducted by Independent Counsel Kenneth Starr.[88] Laura Crabtree Callahan, a career civil servant in OA, and Mark Lindsay, then OA's General Counsel, discussed the Mail2 problem and agreed that this was a sensitive issue, given the "other events going on" reported in "newspapers and the media."[89] Within days of the discovery of the Mail2 problem, a meeting was held in the office of Mrs. Callahan. Ms. Lambuth, Mr. Spriggs, Mr. Haas, Ms. Salim, and Sandra Golas -- all of whom

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[85]If "an affected user received an incoming e-mail and forwarded it or replied to it with history (sending back the original incoming e-mail) then ARMS should have recorded the incoming e-mail." Statement of Counsel to the President Beth Nolan (March 23, 2000). Mr. Barry confirmed that the text of a message would be in ARMS "[i]f the user had done a reply with history." Testimony of Daniel A. Barry, March 23 hearing at 79.

[86]Statement of Counsel to the President Beth Nolan (March 23, 2000). The majority asserts that reliance on manual searches is "woefully inadequate" and states that Mr. Ruff was "at a complete loss" when asked how he conducted searches of his own e-mail. Majority Report at 105. In fact, Mr. Ruff explained that "I rarely used my E-mail for any substantive business. Indeed, I'm not sure that I ever did." Transcript of Interview of Charles F.C. Ruff, House Committee on Government Reform, 6 (Apr. 6, 2000).

[87]In addition, e-mails that were not retrieved by the White House may have been provided to investigators by other sources that sent e-mails to the White House and that were subpoenaed for documents including e-mails. These potential sources include federal agencies and the Democratic National Committee.

[88]*See, e.g.*, *Starr Hints He May File Impeachment Report*, New York Times (June 3, 1998); *Political Clock Ticking on Interim Starr Report*, The Washington Post (June 6, 1998).

[89]Testimony of Laura Callahan, March 23 hearing at 216.

were Northrop Grumman contract or subcontract employees -- attended.[90] Although accounts of this meeting conflict in some of their particulars, the testimony of those present at the meeting is in general agreement on two points. The first point is that Mr. Lindsay spoke with those present by speaker-phone and instructed them to avoid discussing the e-mail problem with anyone else as it was a sensitive matter.[91] The second point is that, after Mr. Lindsay had spoken, Mrs. Callahan then reiterated to the contractors that they should not talk about the e-mail problem.[92]

After this meeting, the contractors continued investigating the technical issues at stake. Mr. Haas was charged with determining how many e-mails had not been records-managed (i.e., had not been archived into ARMS) because of the Mail2 problem. He spent several weeks examining the mail files of Mail2 users and determining how many of the e-mails in each file had not been records-managed. Because Mr. Haas was only able to examine e-mails that still remained on the server (i.e., that had not been deleted by their recipient), he was not able to identify how many e-mails had been affected by the Mail2 problem since its inception in August 1996. Nor was Mr. Haas able to determine whether the non-records-managed e-mails he located had been archived into ARMS "through a secondary process."[93] Nonetheless, the results of Mr. Haas's survey did provide a rough sense of the magnitude of the problem. As recorded in a 75-page document that Northrop Grumman provided to the Committee, Mr. Haas's survey extended to 501 accounts and found that 246,053 e-mails out of a total of 1,353,641 e-mails (18%) had not been sent directly to ARMS.[94]

Meanwhile, OA quickly notified the White House about the Mail2 problem. A two-page

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[90]Testimony of Yiman Salim, March 23 hearing at 20; Testimony of Robert Haas, March 23 hearing at 31.

[91]According to Mr. Haas (who referred to Mrs. Callahan by her maiden name of "Crabtree"), "Mr. Lindsay told us that the discovery of the Mail2 problem was to be treated as top secret and that only Ms. Crabtree, Ada Posey, and Mr. Lindsay, himself, could authorize the group to talk to anyone else." Testimony of Robert Haas, March 23 hearing at 31-32. Ms. Golas testified that she remembered Mr. Lindsay "talking to us and telling us that it was very important that we didn't take the information out of the room, that we shouldn't discuss it with anyone." Testimony of Sandra Golas, March 23 hearing at 45. Mr. Lindsay, however, while he did not contest this point, told the Committee that he did not recall having addressed the group by speaker-phone. Testimony of Mark Lindsay, March 23 hearing at 217.

[92]Testimony of Yiman Salim, March 23 hearing at 20-21, 46; Testimony of Robert Haas, March 23 hearing at 32; Testimony of John Spriggs, March 23 hearing at 47-48.

[93]Testimony of Robert Haas, March 23 hearing at 83.

[94]The document compiled by Mr. Haas (NGL 00291-365) also indicates that an additional nine e-mail accounts had been deleted, and thus did not contain any e-mails.

memo dated June 19, 1998, was sent from Virginia Apuzzo, then the Assistant to the President for Management and Administration, to then-deputy Chief of Staff John Podesta outlining the problem. The memo noted that an "important function" of the ARMS system was the "identification and retrieval of documents in response to information requests."[95] Mark Lindsay then separately briefed Mr. Podesta and then-White House Counsel Charles Ruff about the Mail2 problem.[96] Former White House Deputy Counsel Cheryl Mills may also have attended the briefing of Mr. Ruff.[97]

As the Northrop Grumman contractors continued to investigate the e-mail problem, tensions arose between them and Steven Hawkins, Northrop Grumman's program manager. These tensions contributed to Ms. Lambuth's being removed from the Northrop Grumman contract around the end of July.

Several Northrop Grumman contract employees contacted and met with company executives and lawyers around early September 1998. Subsequent to these meetings, Northrop Grumman executives determined that fixing the Mail2 problem was outside of the scope of their contract with the EOP. Northrop Grumman communicated its determination to the EOP in a letter dated September 14, 1998, which stated:

> the level of effort required to remedy the dysfunction will substantially exceed the scope of the work contemplated under the referenced contract. As a consequence we are not proceeding with our efforts to remedy the dysfunction until we have received further

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[95]Memorandum from Virginia M. Apuzzo, Assistant to the President for Management and Administration, to John D. Podesta, Assistant to the President and Deputy Chief of Staff (June 19, 1998) (E 3234-36, E 3373-76).

[96]*See* Testimony of Mark Lindsay, March 23 hearing at 246. The majority questions Mr. Podesta's "complete failure to follow-up at all on how the problem was handled." Majority Report at 49, note 282. In fact, it appears that Mr. Podesta acted responsibly by making sure that Mr. Ruff was briefed immediately about the problem. Interview of John Podesta by Majority and Minority Staff, House Committee on Government Reform (May 30, 2000) (stating that he either instructed Mr. Lindsay to brief Mr. Ruff or was told by Mr. Lindsay that Mr. Lindsay was going to brief Mr. Ruff); Testimony of Mark Lindsay, March 30 hearing at 246 (stating that "Mr. Podesta's response was just to ask if I had had any conversation with Mr. Ruff").

[97]Mr. Ruff's calendar for June 19, 1998 (E 3445) contains a 4:30 p.m. entry for "Lindsay, Mills." It is not clear if this entry refers to Mr. Lindsay's Mail2 briefing, nor is it clear that Ms. Mills actually attended the meeting. Ms. Mills testified that her best recollection was that she did not attend the meeting. Testimony of Cheryl Mills, May 4 hearing at 32. Mr. Lindsay did not recall Ms. Mills being present at the meeting, while Mr. Ruff did not recall whether or not she was present. Testimony of Mark Lindsay, May 4 hearing at 29; Testimony of Charles Ruff, May 4 hearing at 42, 121.

contractual direction.[98]

After the Northrop Grumman letter, employees of OA and Northrop Grumman discussed how to fix the Mail2 problem and reconstruct the "missing" e-mails. Mr. Haas's study had suggested that there were many non-archived e-mails still on the Mail2 server. The problem lay in retrieving e-mails that had been deleted from the server without being archived into ARMS. The solution to this problem lay in the fact that the EOP regularly backs up its servers and generally maintains its back-up tapes. It soon became apparent, however, that actually cataloguing and accessing these back-up tapes -- which are essentially snapshots of what was on the entire computer system at a given point in time -- would be a difficult and time-consuming process at best.[99] There was also the problem of entering the recovered e-mails into the ARMS system in such a way that they could be accessed and searched in the future.

Northrop Grumman employees prepared a detailed proposal for a work order authorizing contract work by Northrop Grumman to retrieve the non-archived e-mails from the back-up tapes. The proposal did not provide a solution to the Mail2 server problem but rather a detailed plan for how to come up with a solution to the problem. The proposal, which was completed and provided to the EOP in October 1998, estimated that the process of reconstructing the "missing" e-mails would take six to nine months, at a cost of around $602,000.[100]

The EOP apparently rejected the draft work order for cost reasons. A decision was then made to "stop the bleeding," and on November 22, 1998, the Mail2 problem was fixed prospectively.[101] From that date forward, the Mail2 error ceased to prevent e-mails from being processed by ARMS. The problem remained, however, of reconstructing non-archived e-mails from before November 22, dating back to the origins of the Mail2 problem in August 1996. Having "stopped the bleeding," OA deferred action on this reconstruction project in 1999 as it focused on addressing Y2K concerns.[102]

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[98]Letter from Joseph F. Lucente, Director, Contracts and Subcontracts, Northrop Grumman, to Dale Helms, Executive Office of the President (Sept. 14, 1998) (NGL 00503).

[99]Interview of John Spriggs by Majority and Minority Staff, House Committee on Government Reform (March 7, 2000).

[100]E-Mail from Tracey A. Breeding to Joseph A. Vasta (Dec. 2, 1998) (NGL 00609-11).

[101]Testimony of Yiman Salim, March 23 hearing at 21.

[102]Testimony of Mr. Lindsay, March 23 hearing at 202 ("Because of that requirement to address the Y2K glitch . . . the reconstruction of the e-mail was a matter which had to be placed in the context of maintaining the total e-mail situation. What we did after we were able to address the Y2K problem, a[t] the end of February 29th of 2000, is we were able to then continue the efforts"). *See also* Testimony of OA Director Michael Lyle, May 3 hearing at 55-58.

It was only in 2000, with the Y2K concerns over and the end of the administration approaching, that the EOP focused again on the Mail2 reconstruction project. Ms. Nolan testified that she was first informed of the Mail2 problem during a January 18, 2000, briefing by OA on post-presidency records management issues.[103] At the briefing, Ms. Nolan was informed that the White House had previously made sure that these technical problems did not affect the White House's responses to information requests.[104]

C. Other E-Mail Problems

In April 1999, Northrop Grumman personnel discovered an additional ARMS problem. This problem prevented incoming mail to persons whose account names began with the letter "d" from being recorded by ARMS. Approximately 200 accounts within the EOP were affected, including 54 accounts in OMB, 42 accounts in the White House Office, 32 accounts in OA, and 21 accounts in the NSC. The so-called "letter 'd'" problem had apparently been caused accidentally by Northrop Grumman employees in the fall of 1998.[105] This problem was fixed prospectively around May or June 1999. Mr. Lindsay testified that he informed the Office of White House Counsel about the letter "d" problem,[106] but Mr. Ruff had no recollection of being informed of the "d" problem and Ms. Mills testified that she did not learn about the problem.[107]

Since the Mail2 problem was publicly revealed in February 2000, the White House has

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[103]Statement of Counsel to the President Beth Nolan (March 23, 2000). The Committee received briefing papers for the meeting which suggest that the Mail2 and letter "d" issues were discussed in the context of records management issues relating to *Armstrong* (E 3412-17). Michael Lyle, OA's Director, who also attended the briefing, confirmed that the purpose of the meeting was to prepare for another meeting, with the National Archives and Records Administration, regarding the presidential transition. Testimony of Michael Lyle, May 3 hearing at 59.

[104]According to OA Director Michael Lyle, Ms. Nolan inquired at the meeting about whether the problems had affected subpoena compliance. Testimony of Michael Lyle, May 3 hearing at 103-04. Mr. Lyle said that he assured her that "the question that she was asking had been dealt with prior by Mr. Lindsay and Mr. Ruff." *Id.* at 104. Mr. Lyle then checked with Mr. Lindsay, who confirmed that he had indeed handled the issue with Mr. Ruff. *Id.*

[105]According to Ms. Nolan, this problem occurred when the Mail2 problem was fixed in November 1998. Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (March 17, 2000).

[106]Testimony of Mark Lindsay, May 4 hearing at 177. Mr. Lindsay could not recall whom he spoke to in the Counsel's office. *Id.* at 178.

[107]Testimony of Charles Ruff and Cheryl Mills, May 4 hearing at 184.

also discovered and disclosed several additional problems relating to the archiving of e-mails. Ms. Nolan informed the Committee on March 17, 2000, that e-mails on the server of the Office of the Vice President (OVP) have not been fully managed by ARMS.[108] As explained by Ms. Nolan -- and as confirmed by the Committee's own investigation -- the OVP apparently opted not to be connected to ARMS when the latter went into effect in 1994. Instead, it appears that the OVP maintained its own computer system, serviced by a contractor rather than by OA.[109]

Because the OVP server was not linked to ARMS, incoming and outgoing e-mails to or from OVP e-mail accounts created before March 1997 were not sent directly to ARMS (although, for the reasons explained above with respect to the Mail2 problem, some of those e-mails may nonetheless have been sent to ARMS by other means). Outgoing e-mail from OVP accounts created after March 1997 was apparently records-managed, but incoming e-mail to those OVP accounts was not sent to ARMS.[110] The White House informed the Committee on June 7, 2000, that all OVP accounts in the White House were now records-managed.[111]

Although OVP e-mail accounts were not records-managed by ARMS, OVP personnel were instructed to print out and save e-mails, and the OVP system was regularly backed up and the back-up tapes saved.[112] However, a technical configuration error apparently prevented e-mail on the OVP server from being backed up from the end of March 1998 through early April 1999.[113] The error apparently resulted in three days' worth of Vice President Gore's e-mail being deleted.[114]

In addition, on July 26, 2000, Ms. Nolan informed the Committee of a computer software

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[108]Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (March 17, 2000).

[109]Statement of Counsel to the President Beth Nolan (March 23, 2000). OA took over responsibility for the OVP's computer system in approximately March 1997.

[110]*Id.*

[111]Letter from Senior Associate Counsel to the President Steven F. Reich to Chief Counsel James C. Wilson (June 7, 2000). The letter noted that OA was developing a way to records-manage OVP accounts on the Senate e-mail system. *Id.*

[112]Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[113]Letter from Senior Associate Counsel to the President Steven F. Reich to Chief Counsel James C. Wilson (June 7, 2000).

[114]Memorandum from Dorothy E. Cleal, Associate Director for Information Systems and Technology, Office of Administration, to Virginia Apuzzo, Assistant to the President for Management and Administration (May 13, 2000) (E 5201-03, E 6956-58).

problem that affected the National Security Council classified computer system from June 1997 until August 1999. According to Ms. Nolan, "[a]s a result of this error, a small percentage of e-mails on a random basis were not recorded by the NSC's classified Electronic Records Management Database (ERMS)."[115]

The Office of White House Counsel also informed the Committee on August 31, 2000, of a recently discovered problem which caused a small percentage of e-mail messages processed since May 4, 2000, to be improperly archived in ARMS.[116] The problem apparently caused some e-mails to be archived with mismatched headers and messages; because there is no way of distinguishing yet between properly and improperly archived e-mails, all e-mails sent between April 15, 2000, and August 30, 2000, are potentially unreliable.[117]

Finally, on September 29, 2000, White House counsel informed the Committee that it had learned of a new anomaly which "causes problems with at least certain electronic pager records."[118] According to White House counsel, the problem is still under investigation but "pager confirmation documents bearing the phrase 'unable to convert' are the most likely documents to be affected."[119]

D. Committee Knowledge of the E-Mail Matter

The record is unclear regarding when the Committee was first aware of the Mail2 problem. There is evidence that the Committee received information about the e-mail problem in 1998 but failed to act on that information. In courtroom testimony in an evidentiary hearing

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[115]Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (July 26, 2000). According to a memorandum attached to the letter, the software error affected approximately 0.15% of NSC e-mails sent during the relevant time-frame. Memorandum from Robert A. Bradtke to Counsel to the President Beth Nolan (July 21, 2000).

[116]Letter from Associate Counsel to the President Lisa J. Klem to Rep. Dan Burton (Aug. 31, 2000) attaching Memorandum from Alberto Feraren to Daniel Barry (Aug. 31, 2000) (EOPNG-00-0297).

[117]*Id.*; Memorandum from Alberto Feraren to Conrad Ribeiro and Robert Helms (Sep. 1, 2000) (EOPNG-00-0299). While the problem only affects e-mails processed since May 4, there was a two-week backlog of e-mails in the Lotus Notes/ARMS interface queue at the time. Memorandum from Alberto Feraren to Conrad Ribeiro and Robert Helms (Sep. 1, 2000) (EOPNG-00-0299).

[118]Letter from Associate Counsel to the President Gregory S. Smith to Chief Counsel James C. Wilson (Sept. 29, 2000).

[119]*Id.*

concerning the White House e-mail problems, Sheryl Hall, a former OA employee, stated under oath that she personally informed one of the Committee's majority staff attorneys investigating the White House database (WhoDB) about the White House e-mail problem in November 1998 -- over 15 months before the Committee's e-mail investigation began.[120] According to a press report, the majority staff attorney in question, who is currently working for Independent Counsel Robert Ray, admitted that he talked to Ms. Hall "a couple of times" and that he "might have met with her once," but does not recall her telling him about the e-mail problem.[121]

The majority could also have learned about the problems through the news media in 1998. In December 1998, *Insight* magazine published a short article about contractors in the White House investigating "problems with a server in a West Wing computer system" and discovering a "blockage caused by about 100,000 e-mails."[122] The article referred to efforts to investigate the e-mail problem as "Project X."[123]

The majority apparently overlooked these early indications of e-mail problems. The Committee's investigation did not begin until the *Washington Times* reported on February 15, 2000, that Sheryl Hall had accused the White House of "hid[ing] thousands of e-mails containing information on Filegate, Chinagate, campaign finance abuses and Monica Lewinsky, all of which were under subpoena."[124] Judicial Watch had previously filed a lawsuit on Ms. Hall's behalf in which Ms. Hall alleged that White House employees and the First Lady retaliated against her

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[120]Transcript of Evidentiary Hearing at 124, 149, 186-88, *Alexander v. FBI*, No. 96-2123 (July 31, 2000). According to a news article, Ms. Hall said that she told the staff attorney that the computer problem had caused over 100,000 e-mails to be missing. *Congress Told of Project X in 1998*, WorldNetDaily (Aug. 1, 2000) (on line at http://www.worldnetdaily.com/bluesky_sperry_news/20000801_xnspy_congress_t.shtml) (attached as exhibit 12).

[121]*Congress Told of Project X in 1998*, WorldNetDaily (Aug. 1, 2000) (on line at http://www.worldnetdaily.com/bluesky_sperry_news/20000801_xnspy_congress_t.shtml).

[122]*Computer Glitch Leads to Trove of 'Lost' E-Mails at White House*, Insight, 6 (Dec. 28, 1998).

[123]*Id.* The nickname "Project X" was apparently coined by Mr. Haas as a joking reference to the "X-Files" TV show, and was used informally to refer to the Mail2 project. Interview of Robert Haas by Majority and Minority Staff, House Committee on Government Reform (March 7, 2000); *see* Interview with Yiman Salim by Majority and Minority Staff, House Committee on Government Reform (March 7, 2000).

[124]*White House Accused of Cover-Up*, Washington Times (Feb. 15, 2000). Ms. Hall repeated her allegations in a declaration that she filed on February 19, 2000. Third Declaration of Sheryl Hall, *Alexander v. FBI*, No. 96-2123 (Feb. 19, 2000).

after she accused the administration of using a White House database for political purposes. The day after the *Washington Times* article appeared, Rep. Burton issued a letter to Ms. Nolan citing "recent media reports that certain e-mail systems were not searched for materials responsive to subpoenas," thus marking the beginning of the Committee's investigation.[125]

[125]Letter from Rep. Dan Burton to Counsel to the President Beth Nolan (Feb. 16, 2000).

III. ALLEGATIONS REGARDING THE MAIL2 PROBLEM

The majority has made numerous exaggerated allegations about the Mail2 issue, including allegations of a "cover-up," "obstruction of justice," and a "criminal conspiracy." Rep. Burton has charged that "[t]he big deal is how the White House reacted to" the Mail2 problem and "it looks like they chose to cover it up."[126] He even compared the missing e-mails to the 18-and-a-half-minute gap in President Nixon's audiotapes, stating that "[w]e had a President run out of office because of the missing tapes, 18-½ minutes. Here we have hundreds of thousands of e-mails, and the White House has stonewalled the Justice Department, the Congress, several independent counsels."[127] Rep. Christopher Shays stated, "the White House obstructed justice, and we're just trying to see who did it."[128] Rep. Chenoweth-Hage has accused the White House of engaging in "an ongoing criminal conspiracy."[129]

As discussed below, however, the evidence simply does not support these allegations.

A. Allegation That E-Mails Relevant to Investigations Have Not Been Produced

There have been numerous allegations that the missing e-mails contain "smoking guns" that would change the outcome of Clinton Administration scandals. The source of many of these allegations appears to be two persons formerly affiliated with OA, Sheryl Hall and Betty Lambuth. Ms. Hall, a former OA employee, filed a declaration asserting that:

> A contractor for Northrop-Grumman assigned to the Clinton White House who examined this group of 100,000 e-mails told me the documents contained information relating to Filegate, concerning the Monica Lewinsky scandal, the sale of Clinton Commerce Department trade mission seats in exchange for campaign contributions, and Vice President Al Gore's involvement in campaign fundraising controversies. . . . I was also told by this contractor that if the contents of the e-mails became known, then there would be different outcomes to these scandals, as the e-mails were incriminating and could cause people to go to jail.[130]

Ms. Lambuth has made similar accusations:

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[126]Statement of Rep. Dan Burton, March 23 hearing at 4-5.

[127]Statement of Rep. Dan Burton, May 3 at 15-16. *See also* Statement of Rep. Dan Burton, Sept. 26 hearing at 24; Majority Report at viii.

[128]Statement of Rep. Christopher Shays, May 3 hearing at 137.

[129]Statement of Rep. Chenoweth-Hage at March 23 hearing.

[130]Third Declaration of Sheryl Hall, *Alexander v. FBI*, No. 96-2123 (Feb. 19, 2000).

> [a] contractor for Northrop-Grumman whom I supervised, and who examined this group of e-mail, told me the e-mail contained information relating to Filegate, concerning the Monica Lewinsky scandal, the sale of Clinton Commerce Department trade mission seats in exchange for campaign contributions, and Vice President Al Gore's involvement in campaign fundraising controversies.[131]

These allegations have been widely reported. According to the *Washington Times*, a "former White House computer manager has said that more than 100,000 White House e-mails containing information on Filegate, 'Chinagate,' campaign finance abuses and Monica Lewinsky were missing, all of which were under subpoena by a federal grand jury and three congressional committees."[132] Similarly, CNN reported that contractors testified that they were told "not to discuss an ongoing e-mail server problem that resulted in hundreds of unrecorded messages that may have pertained to investigations such as the Monica Lewinsky matter."[133]

Ms. Lambuth and Ms. Hall both claimed that the person who told them about incriminating material in the e-mails was Robert Haas.[134] Mr. Haas, however, specifically denied that he knew or had said anything about what was in the "missing" e-mails. Mr. Haas testified that "I never . . . intimated in any way, shape, or form that I knew any content of any e-mails" other than two Monica Lewinsky-related e-mails that he looked at in an attempt to understand the Mail2 problem, and "[a]t no time did I look at any other documents in any other mail files."[135]

Moreover, the Committee's investigation has revealed that it is not presently possible to determine the content of the e-mails that were not archived or produced because of the Mail2 problem (or any of the other technical problems discussed above). The White House is currently reconstructing, or retrieving, those e-mails from backup tapes, and until that process is complete, speculation about information in the "missing" e-mails is just that -- speculation. Rep. Burton apparently conceded this point when he remarked at the first e-mail hearing that, "At this point, I

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[131]Declaration of Betty Lambuth, *Alexander v. FBI*, No. 96-2123 (February 24, 2000). Ms. Lambuth repeated this claim in her testimony before the Committee. Testimony of Betty Lambuth at March 23 hearing.

[132]*Hillary, White House Officials Cleared by Counsel on FBI Files*, Washington Times (March 17, 2000).

[133]*Former White House Employees Say They Were Told to Keep Quiet on E-Mail Glitch*, CNN.com (March 23, 2000).

[134]Testimony of Betty Lambuth, March 23 hearing at 58, 88; Testimony of Sheryl Hall, Transcript of Evidentiary Hearing at 24-26, *Alexander v. FBI*, No. 96-2123 (July 13, 2000).

[135]Testimony of Robert Haas, March 23 hearing at 89, 61.

don't think anyone has any idea what is in these e-mails."[136]

B. Allegation That Northrop Grumman Employees Were Threatened with Jail If They Discussed the Mail2 Problem

Several members of the Committee have alleged that Northrop Grumman contractors were threatened with jail if they disclosed the Mail2 problem, and that these threats constituted an attempt to obstruct justice. Rep. Bob Barr said with respect to the allegations of threats, "My concern is . . . with regard to obstruction of justice, which includes intimidation of witnesses."[137] Rep. Chenoweth-Hage stated:

> evidence suggests that contracted staffers were personally threatened with repercussions and even jail should they mention the very existence of the server problem to anyone, even their bosses. This occurred while these emails were under subpoenae. This is inexcusable. This is criminal. If this is not obstruction of justice, I don't know what is.[138]

In fact, witnesses provided conflicting testimony about whether or not these alleged threats were made. In total, eight individuals were present at meetings when the alleged threats were made. Of these eight individuals, two deny making any jail threats;[139] three have no recollection of any jail threats;[140] one recalls a jail threat being made in response to a "flippant" question;[141] and one recalls the word "jail" being mentioned but cannot remember who said it.[142] Moreover, the individuals who allegedly made the jail threats were not even White House employees; both worked in the Office of Administration, which provides support services to the White House, and one was a career civil servant. There is no evidence that White House officials had any knowledge of -- or participated in -- any threats.

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[136]Statement of Rep. Dan Burton, March 23 hearing at 12.

[137]Statement of Rep. Bob Barr, March 23 hearing at 123. Rep. Barr also referred to "the obstruction that we went into last week with regard to witnesses testifying under oath that they were intimidated into not disclosing evidence that they had about this particular problem." Statement of Rep. Bob Barr, March 30 hearing at 108.

[138]Statement of Rep. Chenoweth-Hage at March 23 hearing.

[139]Testimony of Laura Callahan, March 23 hearing at 216, 226-27; Testimony of Mark Lindsay, March 23 hearing at 199.

[140]Testimony of Yiman Salim, March 23 hearing at 21; Testimony of John Spriggs, March 23 hearing at 47; Statement of Paulette Cichon (March 29, 2000).

[141]Testimony of Robert Haas, March 23 hearing at 32.

[142]Testimony of Sandra Golas, March 23 hearing at 45.

With one exception, discussed below, the allegations of jail threats focus on a single remark allegedly made by Laura Crabtree Callahan, who served as the Branch Chief for Desktop Systems in OA's Information Systems and Technology Division (IS&T), in a meeting with six Northrop Grumman contract or subcontract employees that was held shortly after the discovery of the Mail2 problem. The Committee heard testimony from Mrs. Callahan, as well as from the Northrop Grumman employees who attended the meeting (Betty Lambuth, John Spriggs, Robert Haas, Yiman Salim, and Sandra Golas).

Ms. Salim said of the meeting with Mrs. Callahan, "I do not remember hearing the word 'jail,' and I never felt threatened."[143] Mr. Spriggs also said that he "did not hear the word 'jail,'"[144] although he did concede that he felt threatened "in narrow context."[145] Mr. Haas, however, testified that he asked Mrs. Callahan "[i]n a somewhat flippant way" what would happen if he told his wife or then-Assistant to the President for Management and Administration Virginia Apuzzo about the Mail2 problem, to which she "responded that there would be a jail

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[143]Testimony of Yiman Salim, March 23 hearing at 21.

[144]Testimony of John Spriggs, March 23 hearing at 47.

[145]Mr. Spriggs engaged in the following exchange with Rep. Barr:

> Mr. Spriggs: When I was called into that office and Ms. Crabtree and Mr. Lindsay were giving me instructions, I perceived that those instructions were reasonable instructions.
>
> Mr. Barr: Okay. That's not what I'm asking you, Mr. Spriggs.
>
> Mr. Spriggs: Were they threatening -- I know, sir. I'm trying to get at your question. Were they threatening to me?
>
> Mr. Barr: Get at it quickly.
>
> Mr. Spriggs: Were they threatening to me? Yes, they were threatening to me, in --
>
> Mr. Barr: That's my only question.
>
> Mr. Spriggs: -- in narrow context

March 23 hearing at 100.

While Mr. Spriggs was not asked to explain these comments, it appears that he was referring to the instructions made by Ms. Crabtree and Mr. Lindsay that the contractors not discuss the Mail2 issue. That issue is considered below.

cell with my name on it."[146] Mr. Haas testified that despite the flippancy of his question, he took the response seriously.[147]

Ms. Golas, who also attended the meeting, testified that she recalls a mention of jail in the meeting, but doesn't recall who said it.[148] Ms. Golas further testified that when, shortly after the meeting, her supervisor Steve Hawkins accused her of being insubordinate by not telling him about the Mail2 problem, she replied, "If it's a choice of being insubordinate or going to jail, I guess I'll have to be insubordinate."[149]

Mrs. Callahan denied Mr. Haas's allegation:

> I do not ever remember, nor would I have ever said anything about a jail cell. And, quite frankly, I think Mr. Haas characterized himself with his flippant comments. I would suggest that he may be either having [a] bad recollection or may have an overactive imagination with regards to the threat being made to him.[150]

Other than Mr. Haas's and Ms. Golas's testimony about Mrs. Callahan's alleged reference to a jail cell, the only other testimony alleging that threats were made comes from Betty Lambuth. Ms. Lambuth accused Mrs. Callahan of threatening her with jail if she talked about the e-mail problem.[151] Afterwards, according to Ms. Lambuth's testimony, she asked for and received a meeting with then-OA General Counsel Mark Lindsay and Paulette Cichon, then the Deputy Director for Information Management at OA, at which Mr. Lindsay told Ms. Lambuth that if she and other Northrop Grumman workers told anyone about the Mail2 problem, "we would all lose our jobs, we would be arrested, and we would be put in jail."[152]

Ms. Cichon, however, signed a written statement stating that Mr. Lindsay did not threaten

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[146]Testimony of Robert Haas, March 23 hearing at 32.

[147]*Id.* at 32, 90. Confirmation of this point was provided by Mr. Hawkins, who testified that he met with Mr. Haas, Mr. Spriggs, and Ms. Golas shortly thereafter and Mr. Haas said that he had been threatened. Testimony of Steven Hawkins, March 23 hearing at 55.

[148]Testimony of Sandra Golas, March 23 hearing at 45.

[149]*Id.* at 45. *See also* Testimony of Sandra Golas, March 23 hearing at 142.

[150]Testimony of Laura Callahan, March 23 hearing at 226-27.

[151]Testimony of Betty Lambuth, March 23 hearing at 24.

[152]*Id.* at 25.

Ms. Lambuth or anyone else in her presence.[153] Ms. Cichon confirmed the accuracy of her statement in a subsequent interview with Committee staff.[154] Mr. Lindsay also denied making any threats.[155] Furthermore, Ms. Lambuth's testimony may be viewed with a degree of skepticism, given that the Committee also received evidence -- discussed above -- directly contradicting her allegation about the content of the "missing" e-mails.

In addition, Ms. Lambuth's testimony about the threats is confused and inconsistent. Ms. Lambuth initially testified that Mrs. Callahan "relayed those messages on to my staff, which had been relayed to her by Mr. Lindsay."[156] However, asked by Mr. Burton "what went on in that meeting, what went on in the conversations between you and Ms. Crabtree and Mr. Lindsay," Ms. Lambuth replied, "I had more than one conversation that my staff was in, so some of this is going to mold in together."[157] Ms. Lambuth then repeated her two allegations about Mr. Lindsay and Mrs. Callahan threatening her separately, but made no mention of the contractors being personally threatened by Mrs. Callahan.[158] Nor do Ms. Lambuth's detailed opening statement or her affidavit mention the contractors being threatened.[159] In fact, in both her opening statement and her declaration Ms. Lambuth states, "I conveyed Lindsay's threats to my staff."[160]

In her courtroom testimony, Ms. Lambuth alleged that Mr. Lindsay -- not Mrs. Callahan -- threatened the contractors with jail and loss of job when he addressed the group by speaker-phone.[161] None of the others present have corroborated this allegation. Ms. Lambuth also

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[153]Statement of Paulette Cichon (March 29, 2000).

[154]Interview of Paulette Cichon by Majority and Minority Staff, House Committee on Government Reform (April 14, 2000). The majority asserts that "Cichon has reason to be supportive of Lindsay and Callahan because she may in part be accountable for the failure to take effective steps to cure the problem or notify Congress." Majority Report at 38. However, the majority fails to substantiate this allegation.

[155]Testimony of Mark Lindsay, March 23 hearing at 199.

[156]Testimony of Betty Lambuth, March 23 hearing at 24.

[157]*Id.* at 50.

[158]*Id.* at 50-51.

[159]Statement of Betty Lambuth at March 23 hearing; Declaration of Betty Lambuth, *Alexander v. FBI*, No. 96-2123 (Feb. 24, 2000).

[160]*Id.* (emphasis added).

[161]Transcript of Evidentiary Hearing at 28-29, *Alexander v. FBI*, No. 96-2123 (Aug. 1, 2000).

testified that Mr. Haas informed her that Mrs. Callahan had threatened him with a "jail cell with his name on it" -- indicating that she was not present for the exchange.[162]

In sum, then, the evidence is inconclusive. Mr. Haas has a clear memory of Mrs. Callahan threatening him with jail in response to his "flippant" question. Ms. Golas recalls someone mentioning the word "jail" but does not know who. Neither Ms. Salim nor Mr. Spriggs recall the jail threat, however, and Mrs. Callahan emphatically denies the allegation. Ms. Lambuth recalls being threatened with jail by Mr. Lindsay and Mrs. Callahan separately, but apparently could not recall whether a threat was made in the meeting described by the other contractors. Her statements are also filled with internal inconsistencies. Ms. Cichon -- who attended the meeting at which Mr. Lindsay allegedly threatened Ms. Lambuth -- does not believe that threats were made in her presence.

Moreover, no one has alleged that anyone in the White House (as distinct from OA) made any threats. There is simply no evidence that any White House officials had any knowledge of -- or participated in -- any threats.

C. Allegation That Northrop Grumman Employees Were Told Not To Tell Others about the Mail2 Problem

The evidence clearly indicates that Northrop Grumman employees were instructed not to tell others about the Mail2 problem when it was first discovered. The majority has claimed that this is evidence of a White House cover-up. Rep. Barr stated:

> we do have evidence that you all indicated to persons not to share information, not to disclose information, to withhold information. . . . The fact of the matter is that it does appear that steps were taken to limit very severely information surrounding a very serious glitch in the White House computer system that related specifically [to] the matters well known to be under investigation by at least three different bodies -- namely, the Office of Independent Counsel, this committee, and the Judiciary Committee.[163]

However, the evidence suggests that the instructions not to discuss the matter were an appropriate attempt to prevent disclosure of the e-mail problem pending further investigation and did not constitute a "cover-up."

1. The OA Instructions Not To Discuss

The testimony of Mr. Haas, Ms. Golas, Mr. Spriggs, Ms. Salim, and Ms. Lambuth is in general agreement that they were told by Mr. Lindsay and Mrs. Callahan to treat the Mail2 matter

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[162]*Id.* at 34-35.

[163]Statement of Rep. Bob Barr, March 23 hearing at 277-79.

as sensitive and not to discuss it. The contractors evidently took these instructions seriously; several of them testified that they subsequently took steps, such as holding meetings outside the office, to keep the e-mail problem confidential.[164] Mr. Lindsay and Mrs. Callahan also agreed that they were concerned about the e-mail matter being widely discussed. Mrs. Callahan testified that she discussed the e-mail problem with Mr. Lindsay shortly after its discovery, and they agreed that this was a sensitive issue, given the "other events going on" reported in "newspapers and the media."[165]

Mrs. Callahan testified that she "instructed the contract employees at the meeting that this was an extremely sensitive situation."[166] According to her testimony, she and Mr. Lindsay:

> concurred that this was a situation that we needed to be careful of because it was sensitive. And, as such, Mr. Lindsay participated in the team conference call meeting in which all of the members of the team were present and Mr. Lindsay was there via conference call, and re-articulated the standard operating procedure. And in absolutely no way did I ever make any personal threats to any individuals during that time frame.[167]

Mrs. Callahan explained:

> what I mean by that, as far as the "standard procedures," and what they were advised at the meeting was the fact that the normal procedures are, if you are receiving any inquiries from folks such as the press, to please refer them to the Office of Public Affairs, and if anyone else had any particular questions or had a need to know, to please refer them to either myself or Mr. Lindsay.[168]

There was nothing inappropriate about Mrs. Callahan's and Mr. Lindsay's instructions not to discuss the matter. At the time of the discovery of the Mail2 problem, Independent

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[164]According to Ms. Lambuth, "We did meet privately. We did go to the park. We did sometimes go across the street to Starbuck's and speak in generalities." Testimony of Betty Lambuth, March 23 hearing at 26. Mr. Spriggs explained that "if we're going to talk about this stuff and keep it under wraps, then we have to be careful as to where we are." Testimony of John Spriggs, March 23 hearing at 52. According to Mr. Vasta's notes, the contractors were further instructed not to take any notes about the Mail2 matter. Document entitled *Summary of Project X Discussions* (Sept. 9, 1998).

[165]Testimony of Laura Callahan, March 23 hearing at 216.

[166]*Id*. at 253.

[167]*Id*. at 216.

[168]*Id*. at 215.

Counsel Starr was conducting a widely publicized investigation into matters concerning Ms. Lewinsky. Given the circumstances -- a potential document production issue arising in the midst of a high-profile and widely reported-on investigation -- it is not difficult to understand why Mr. Lindsay and Mrs. Callahan may have wanted to avoid widespread discussions about the matter pending further investigation.

Moreover, several of the contractors explained that they did not find these requests for confidentiality to be unreasonable or suspicious. Ms. Salim testified that she believed that it "was a reasonable request for them to ask us to keep a lid on this until they could manage the situation."[169] Mr. Spriggs testified, "When I was called into that office and Ms. Crabtree and Mr. Lindsay were giving me instructions, I perceived that those instructions were reasonable instructions."[170]

The majority's allegation that Mr. Lindsay and Mrs. Callahan's instructions constituted a "cover-up" are apparently based on the assumption that those instructions were supposed to prevent further investigation into or the eventual disclosure of the Mail2 problem. Ms. Salim, however, testified that she did not understand Mr. Lindsay and Mrs. Callahan's instructions to mean that the problem would be kept permanently under wraps:

> My understanding was that this issue would remain with this small group only temporarily until the Office of Administration had a chance to manage the situation.[171]

Mr. Spriggs's testimony reaffirmed that far from being impeded in their attempts to investigate the Mail2 problem, the contractors were encouraged to complete their work. According to Mr. Spriggs:

> the reality was we needed to figure out what the problem was and how were we going to deal with getting these in the records management system. . . . There was no, from my point of view, any kind of question that we were not going to proceed forward with this and resolve this question. We were trying to get all of the information so that whomever -- OA counsel or White House Counsel -- would have sufficient information to be able to judge the import of the information that they had. As far as I knew personally -- and my colleagues can speak to what they knew -- I had no knowledge of anyone trying to stop us from doing any of that or trying to keep any information away from [Kenneth] Starr or anyone else at that point.[172]

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[169]Testimony of Yiman Salim, March 23 hearing at 91.

[170]Testimony of John Spriggs, March 23 hearing at 100.

[171]Testimony of Yiman Salim, March 23 hearing at 21.

[172]Testimony of John Spriggs, March 23 hearing at 91-92.

Even Ms. Lambuth believed that the request for confidentiality was reasonable:

> Mr. Waxman: I'd like to ask whether you think this was an unreasonable request? Anybody think it was an unreasonable request?
>
> Ms. Lambuth: I think in the beginning that's the way we all felt.[173]

Ms. Lambuth did testify that the delay in fixing the Mail2 problem caused her to change her mind:

> I think in the beginning we all felt that they just wanted to get their act together, basically, how they were going to let the public know about this. But as time went on and we couldn't get any decisions of how they wanted us to handle it, what the next step was going to be, etc., it became very obvious to us, and we had some discussions on this that they did not want this to come forth.[174]

Mr. Hawkins concurred with Ms. Lambuth, citing his dealings with Mr. Lindsay as justifying his own belief "that they did try to cover up the fact that they had a computer glitch."[175]

Neither Ms. Lambuth nor Mr. Hawkins played a significant role in the e-mail project, however. Ms. Lambuth, by her own account, "was only on this [e-mail] project for a short period of time;[176] she left the White House in July 1998,[177] one month after the discovery of the Mail2 problem. Mr. Hawkins told Committee staffers that he left Northrop Grumman on October 9, 1998, and by his own account he played little if any role in the e-mail project prior to his departure.[178] Mr. Spriggs, who played a significant role in the e-mail project, had a more judicious assessment. Asked if he agreed with Ms. Lambuth's conclusion, he testified that "from my point of view, we didn't know enough about what was going on to say that the White House

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[173]March 23 hearing at 90-91. When pressed on this point later in the hearing, Ms. Lambuth reaffirmed that "I didn't feel that it was unusual, knowing the circumstances of all the subpoenas." Testimony of Betty Lambuth, March 23 hearing at 175.

[174]Testimony of Betty Lambuth, March 23 hearing at 93.

[175]Testimony of Steven Hawkins, March 23 hearing at 93.

[176]Testimony of Betty Lambuth, March 23 hearing at 132.

[177]Testimony of Betty Lambuth at March 23 hearing.

[178]Interview of Steven Hawkins by Majority and Minority Staff, House Committee on Government Reform (March 7, 2000).

had stopped anything."[179]

The Committee has received documentary evidence which further suggests that the contractors did not think that the requests were improper. According to notes taken by Northrop Grumman employee Joe Vasta about a meeting he had with the contractors on August 28, 1998, Mr. Vasta "questioned the team to determine whether they felt they were being asked to do anything that was illegal or unethical. They replied in the negative."[180] A few days later, Mr. Hawkins also met with the contractors, who "reiterated they believed they were not doing anything illegal."[181]

2. The OA Instructions Regarding Northrop Grumman Management

While Mr. Lindsay and Mrs. Callahan's requests for confidentiality do not appear to have been, on their face, unreasonable, Mr. Haas, Mr. Spriggs, and Ms. Lambuth further testified that they were specifically told not to tell their supervisor, Steve Hawkins, about the e-mail matter.[182] Although Mr. Lindsay and Mrs. Callahan denied this allegation,[183] Mrs. Callahan stated that she wanted information about the Mail2 matter limited to "[t]hose in the room" at the Mail2 meeting, which would by implication exclude the absent Mr. Hawkins.[184] Certainly, the weight of the evidence suggests that the contract employees felt that they were not allowed to discuss their work with their supervisor, and this put them in a difficult and unfair position.

The testimony regarding Mr. Hawkins's involvement in inconclusive. Mr. Hawkins indicated that he believed there was an effort to limit his understanding of the Mail2 problem.[185] On the other hand, Mr. Lindsay testified that it "didn't matter" to him "whether or not Hawkins

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[179]Testimony of John Spriggs, March 23 hearing at 96.

[180]Document entitled *Summary of Project X Discussions* (Sept. 9, 1998).

[181]*Id.*. According to Mr. Vasta's notes, the contractors were "uncomfortable because the project leader giving them direction was a non-Northrop Grumman employee" and were "concerned that decisions could be made concerning the project that were not in the best interests of Northrop Grumman." *Id.*

[182]Testimony of Robert Haas, March 23 hearing at 32; Testimony of John Spriggs, March 23 hearing at 48-49; Testimony of Betty Lambuth, March 23 hearing at 50.

[183]Testimony of Mark Lindsay, March 23 hearing at 245; Testimony of Laura Callahan, March 23 hearing at 254.

[184]Testimony of Laura Callahan, March 23 hearing at 254.

[185]*See* Testimony of Steven Hawkins, March 23 hearing at 93.

was involved with" the Mail2 investigation;[186] indeed, Mr. Lindsay said that he himself briefed Mr. Hawkins about the Mail2 problem.[187]

After the March 23 hearing at which both Mr. Hawkins and Mr. Lindsay testified, the Committee received information that casts their testimony in a different light. The new evidence indicates that Northrop Grumman management above Mr. Hawkins's level was informed about the e-mail problem.

James DeWire, currently a program manager with Logicon, a wholly owned subsidiary of Northrop Grumman, managed Northrop Grumman's EOP contract for approximately the last seven months of 1998. Mr. DeWire told Committee staff that he received a phone call from Mr. Hawkins in early or mid-June 1998, in which Mr. Hawkins said that employees had told him that they had been given instructions not to tell him what they were working on.[188] Shortly after this phone call -- possibly within minutes of his hanging up -- Mr. DeWire received another phone call, this one from then-OA Director Ada Posey.[189] According to Mr. DeWire, Ms. Posey explained that she had a very sensitive task which she wanted to be handled in a limited environment, with the Northrop Grumman employees reporting directly to a government employee without the intervening involvement of Northrop Grumman management.[190]

Mr. DeWire said that after Ms. Posey assured him that the work was both within the scope of the contract and not illegal, he agreed to her request.[191] Mr. DeWire said that he immediately informed Mr. Hawkins of the arrangement and instructed him not to try to find out the nature of the work being done by the contract employees.[192]

According to Mr. DeWire, then, within a short period of the discovery of the Mail2 problem, he was informed of, and he approved of, a scheme whereby the contract employees reported directly to EOP personnel as they investigated the Mail2 problem. Mr. DeWire's statements indicate that the actions of OA management towards Northrop Grumman management and contract personnel were appropriate and above-board.

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[186]Testimony of Mark Lindsay, March 23 hearing at 256.

[187]*Id.* at 245.

[188]Interview of James DeWire by Majority and Minority Staff, House Committee on Government Reform (June 15, 2000).

[189]*Id.*

[190]*Id.*

[191]*Id.*

[192]*Id.*

D. Allegation That the White House Concealed Information about the Mail2 Problem from Congress and Various Independent Counsels

Rep. Burton has alleged that the White House intentionally failed to notify investigators about the Mail2 problem, and its potential impact on past and future subpoena compliance. Rep. Burton stated that there is "in effect, a purposeful effort to keep documents from Congress, the Department of Justice, and various Independent Counsels."[193] Rep. Burton said that the White House "knew about [the e-mail problem] in 1998, and they kept it under wraps from the Congress."[194]

Rep. Burton's allegation is contradicted by the testimony of White House and OA lawyers that they did not notify Congress or any independent counsels of subpoena compliance problems because they did not believe that any such problems existed. Former White House Counsel Charles F.C. Ruff, former White House Deputy Counsel Cheryl Mills, and former OA General Counsel Mark Lindsay all testified that they did not cover up, or have any knowledge of others covering up, the e-mail problem.[195] Mr. Ruff testified emphatically that "[n]ever, not once, did anyone on my staff seek to conceal, delay production of or otherwise cover up any document production whether it be electronic or paper."[196]

White House counsel explained that their failure to inform investigators about the Mail2 problem resulted from their own (mistaken) belief that the problem had not affected document production. After the Mail2 problem was discovered, Mr. Haas was directed to perform a test search for non-records-managed e-mails relating to Monica Lewinsky. According to Ms. Nolan, the White House Counsel's office compared the results of Mr. Haas's search:

> against previously produced documents and determined that they were duplicative. The Counsel's Office believed that all necessary steps to make a complete search had been taken. They did not know that there was any remaining problem -- prospective or retrospective.
>
> Thus, as Mr. Ruff understood the technical problem at the time, he did not think that the error had an effect on previous searches or that it might affect future searches of e-mail records. As a result, Mr. Ruff had no reason to believe there was any need to notify

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[193]Letter from Rep. Dan Burton to Counsel to the President Beth Nolan (March 8, 2000).

[194]Statement of Rep. Dan Burton, May 3 hearing at 65.

[195]Testimony of Mark Lindsay, Cheryl Mills, and Charles Ruff, May 4 hearing at 54-57.

[196]Testimony of Charles Ruff, May 4 hearing at 57.

investigative bodies of this error.[197]

Mr. Ruff confirmed that "at the point where the word came back to me that the Lewinsky e-mails had in fact been collected and it turned out they were duplicative of what we had already found, I believed that the problem did not, in fact, retrospectively affect our compliance."[198]

Similarly, Mr. Lindsay testified that, after the test search was performed, "the word that I got back was that 'Hey, these are duplicates. It probably isn't that big of a problem because this information has already been produced.'"[199] Thus, Mr. Lindsay concluded:

> there may not have been a legal problem in terms of whether or not documents were produced or whether or not that was completed, but I still had a problem, and that was I still had a technical staff that reported to me that there was a glitch. Even if that test came back in a positive way, I may not have had a production problem, but I had a technical problem with my e-mail system and my ARMS system and how they worked together. If that -- that was the issue that I needed to resolve.[200]

Mr. Burton has dismissed Mr. Ruff's explanation, saying, "The President's counsel never understood the full extent of the problem? I seriously doubt that explanation. This issue isn't very complicated."[201] But the Committee's investigation has demonstrated the extremely technical and complicated nature of the e-mail problems at the White House. It took the Northrop Grumman team of computer experts many months to investigate and fix the Mail2 problem. Even a technically adept observer could be excused for failing to grasp the intricacies of ARMS, and Mr. Ruff, by his own admission, "didn't understand the scope or the details of the technology involved."[202] Indeed, as discussed above in part II.D, there is evidence that the Committee's own staff may have been informed of the Mail2 problem in 1998 and failed to understand its significance.

The alternative is to suppose that White House counsel embarked on a systematic conspiracy to avoid telling investigators about a technical problem affecting document

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[197]Statement of Counsel to the President Beth Nolan (March 23, 2000).

[198]Testimony of Charles Ruff, May 4 hearing at 50.

[199]Testimony of Mark Lindsay, March 23 hearing at 248.

[200]*Id.* at 259.

[201]Statement of Rep. Dan Burton, March 30 hearing at 9.

[202]Transcript of Interview of Charles F.C. Ruff, House Committee on Government Reform, 27 (Apr. 6, 2000).

production, all in an effort to avoid producing documents whose content they did not -- could not -- have known.[203] There is no evidence to support this far-fetched supposition.

E. Allegation That Earl Silbert Told the White House about the Alleged Threats and Problems with Subpoena Compliance

The majority apparently believes that they have found the "smoking gun" which demonstrates that the White House was aware of (1) the alleged threats against Northrop Grumman contractors, and (2) the possibility that the Mail2 problem had affected information requests from investigative bodies. That "smoking gun" involves contacts in 1998 between White House counsel and an attorney representing Northrop Grumman, Earl Silbert. Rep. Burton has described Mr. Silbert as "a high-priced Washington fixer"[204] and charged that "Silbert's contacts may dramatically undermine White House claims of a 'disconnect' that prevented them from understanding the e-mail problem."[205] Rep. Burton further asserted that "Silbert's two separate contacts with the White House cast even more doubt on the White House claim that they weren't actively covering up the problem."[206]

Rep. Burton's allegations about Mr. Silbert are wholly speculative and overlook the most obvious explanation for Mr. Silbert's contacts with White House counsel -- namely, that Mr. Silbert was hired to assist Northrop Grumman in its attempt to resolve the question of whether work on the Mail2 project was within the scope of the company's contract with the EOP. Mr. Silbert's billing records indicate that he was hired to give "advice to Logicon re: Executive

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[203]The majority also alleges that it is "difficult to understand why [White House Counsel Beth] Nolan did not understand that the e-mail problems had ongoing subpoena compliance consequences" when she was told of the problems at a January 18, 2000, briefing on records management issues, and accuses Ms. Nolan of failing to exercise "minimal due diligence." Majority Report at 51-52. In fact, OA Director Michael Lyle, who attended the meeting, testified that Ms. Nolan inquired about whether the e-mail problems had affected subpoena compliance. Testimony of Michael Lyle, May 3 hearing at 103-04. Mr. Lyle told Ms. Nolan that this question "had been dealt with prior by Mr. Lindsay and Mr. Ruff." *Id.* at 104. Mr. Lyle further testified that he checked with Mr. Lindsay, who assured him that he had indeed handled the matter with Mr. Ruff. *Id.*

[204]Statement of Rep. Dan Burton at Sept. 26 hearing.

[205]Memorandum from Rep. Dan Burton to Members of the Committee on Government Reform (Sept. 21, 2000).

[206]Statement of Rep. Dan Burton at Sept. 26 hearing

Office of the President Contract" or simply "Contract Advice."[207] Furthermore, it is clear that Northrop Grumman executives believed that work on the e-mail project was outside the scope of the EOP contract and that they communicated their belief to the EOP.[208] Given the time and expense involved in fixing the problem retrospectively, their concern on this point is understandable.

The Committee has obtained no evidence that Mr. Silbert was even aware of allegations concerning threats or subpoena compliance -- issues that were peripheral, if not irrelevant, to the contractual matter at stake.[209] Mr. Silbert's billing records contain an entry of 1.25 hours on September 11, 1998, for a "teleconference with Northrop Grumman counsel and a company

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[207]Billing Records of Earl J. Silbert (Nov. 19, 1998, Jan. 27, 1999, March 31, 1999). Logicon is a wholly owned Northrop Grumman subsidiary.

[208]*See* Letter from Joseph F. Lucente, Director, Contracts and Subcontracts, Northrop Grumman, to Dale Helms, Executive Office of the President (Sept. 14, 1998) (NGL 00503). Mr. Lindsay testified before the Committee about the difference of opinion between Northrop Grumman and the White House over whether work on the e-mail problem was within the scope of the company's contract. Testimony of Mark Lindsay, March 23 hearing at 261-63.

[209]Subsequent to the Committee vote on the majority's e-mail report, the majority issued a document that purports to address the draft minority views that were circulated before the Committee vote. *Inaccuracies, Misrepresentations, and Omissions in the Democrats' E-Mail Report Rebuttal*, House Committee on Government Reform (undated). In this "rebuttal," the majority states that the Committee has learned that Mr. Silbert took notes of his conversations with Northrop Grumman counsel and a Northrop Grumman employee. Noting that these documents have not been available to the Committee, the majority asserts:

> Until Mr. Silbert either explains the substance of the meeting or produces the notes, it is simply premature for the Minority to claim that "[t]here is no evidence" related to Mr. Silbert's communications concerning threats or subpoena compliance.

Id. at 4.

In essence, the majority is asserting that notes that the majority has never seen -- and does not know the content of -- constitute "evidence" of White House wrongdoing.

As additional support for its critique, the majority asserts that Mr. Haas "testified that he recounted the threats to an outside counsel described to him as a 'gray beard,'" and that Mr. Silbert's billing records suggest that he was the "grey beard" to whom Mr. Haas spoke. *Id.* This statement mischaracterizes the evidence before the Committee. As discussed *infra* at note 210, even assuming that Mr. Silbert was the "grey beard" in question, the Committee simply does not know what Mr. Haas told him.

employee." Mr. Silbert claimed that the identity of the employee was protected by the work product privilege, but said that he did not recall the substance of this conversation.[210]

Nor is there any evidence that Mr. Silbert communicated information about the alleged threats or subpoena compliance issues to the White House. A privilege log accompanying his billing records indicates that on September 28, 1998, and December 30, 1998, Mr. Silbert billed Northrop Grumman for a "teleconference with White House counsel."[211] Each of the teleconferences lasted 0.25 hours each; since this is apparently the smallest increment of time for which Mr. Silbert's firm bills its clients, the calls may have been considerably less than 15 minutes long. Mr. Silbert informed Committee staff that he has no recollection of whom he spoke to or the subject matter of the brief discussions.[212]

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[210]There is evidence to indicate that the employee in question was Mr. Haas. Mr. Haas provided courtroom testimony in a lawsuit relating to the White House's handling of confidential FBI files about a meeting he attended with Northrop Grumman executives in September 1998. Mr. Haas said that during the meeting there "was a phone conversation from the Northrop Grumman lawyer's office. He called a person he referred to as a Grey Beard. And I recanted [sic] my story to him." Transcript of Evidentiary Hearing at 56-57, *Alexander v. FBI*, No. 96-2123 (Aug. 14, 2000). Mr. Haas did not further identify the "grey beard," nor did he provide any information about what he relayed to the "grey beard."

Rep. Burton has alleged that "Haas told the outside counsel about the threats he had encountered, as well as his concerns about the legal ramifications of the e-mail problem." Letter from Rep. Dan Burton to Judge Royce Lamberth, note 1 (Sept. 26, 2000). A careful reading of Mr. Haas's testimony makes clear, however, that Mr. Haas was describing what he said at the meeting with Northrop Grumman counsel and that he did not describe or characterize his statements to the "grey beard." Transcript of Evidentiary Hearing at 56-61, *Alexander v. FBI*, No. 96-2123 (Aug. 14, 2000). Thus, even if Mr. Haas's testimony is accurate, and even if Mr. Silbert was the "grey beard" in question, the Committee does not know exactly what exactly Mr. Haas told Mr. Silbert.

[211]Mr. Silbert redacted information in the billing records about the nature of the work he performed for Northrop Grumman, claiming attorney-client and attorney work product privileges.

[212]Rep. Burton questioned Mr. Silbert's veracity on this point, stating that Mr. Silbert:

> told our staff that he didn't remember who he called or what he discussed. We've had an epidemic of memory loss in this town. Significant things, an absolute epidemic. I can't believe it. Must be something in the water. He didn't remember who called him or what he discussed or who he had called at the White House or what he had discussed. Imagine that. He hears a story about possible law breaking and threats to his client's employees and he doesn't even remember who he talked to at the White House.

Testimony provided by Mark Lindsay in the *Alexander* case reinforces the likelihood that Mr. Silbert's contacts with White House counsel were limited to contractual matters and did not concern threats or subpoena compliance. Mr. Lindsay testified that he heard mention of Mr. Silbert's name in the context of Northrop Grumman:

> there was a concern about the scope of the contract and I believe that someone in the counsel's office knew this person [Mr. Silbert] and they raised a concern, and he called me to say is this something we should be worried about? I didn't talk to the Northrop Grumman person. This is someone in the White House counsel's office, and I said, no, I don't think so.[213]

Mr. Lindsay testified that "it was a very, very general reference about scope of work," and that he was not aware of Mr. Silbert raising with the White House counsel's office the alleged threats against the Northrop Grumman employees.[214]

Furthermore, Mr. Silbert explained that the entry in his billing records for 0.25 hours for "document review" on September 12, 1998, related to a letter that was sent by Northrop Grumman's Joseph Lucente to Dale Helms of OA. That letter makes clear that Northrop Grumman had determined that work on the e-mail dysfunction would "substantially exceed the scope of work contemplated under the" EOP contract.[215] The letter makes no mention of threats or issues regarding compliance with information requests. Nor is there any reason to think that those matters would have been relevant to Mr. Silbert if, as the evidence indicates, his role was simply to mediate or advise with respect to a straight-forward contractual discussion.[216]

Statement of Rep. Dan Burton, Sept. 26 hearing at 13-14.

Mr. Burton, however, overlooks a more mundane explanation -- namely, that Mr. Silbert does not recall his contacts because they were (1) brief, (2) related to a matter that he worked on two years ago for less than five hours, and (3) solely related to contractual matters and not to allegations "about possible law breaking and threats to his client's employees."

[213]Transcript of Evidentiary Hearing at 139, *Alexander v. FBI*, No. 96-2123 (Aug. 23, 2000). Mr. Lindsay said that he thought the person in the counsel's office who contacted him was Lanny Breuer. *Id.*

[214]*Id.* at 140-41.

[215]Letter from Joseph F. Lucente, Director, Contracts and Subcontracts, Northrop Grumman, to Dale Helms, Executive Office of the President (Sept. 14, 1998) (NGL 00503).

[216]The majority has alleged that "Lucente told the Committee that '[t]he threats were the inspiration for sending the letter,'" citing an interview of Joseph Lucente by majority and minority staff on May 1, 2000. *Inaccuracies, Misrepresentations, and Omissions in the*

Rep. Burton has also suggested that Mr. Silbert had reason to be less than forthcoming about the e-mail problem in his discussions with the White House. Noting that Mr. Silbert has represented Indonesian businessman James Riady (who has been accused of orchestrating conduit contributions to President Clinton in the 1992 election), Peter Knight (a former aide to Vice President Gore investigated for his involvement in the Portals matter), and former White House Chief of Staff Erskine Bowles, Rep. Burton stated that Mr. Silbert's clients "have many reasons to be worried about what will come out when all the White House e-mails are reconstructed."[217]

The insinuation that Mr. Silbert shaded the truth in his dealings with the White House is wholly unsubstantiated. Mr. Silbert is a well-respected attorney with a distinguished career in public service, including five years as the U.S. Attorney for the District of Columbia. The allegation also directly contradicts Rep. Burton's assertion that Mr. Silbert may have told the White House about the Mail2 problem. It is impossible to reconcile Mr. Burton's speculation that Mr. Silbert fully briefed White House counsel about the Mail2 problem with his speculation that Mr. Silbert obscured the truth about the Mail2 problem in an effort to protect other clients.

Mr. Burton also launched an entirely gratuitous attack upon the integrity of one of Mr. Silbert's law partners, Richard Oparil. Mr. Burton wrote to Judge Lamberth on September 26, 2000, to say that Mr. Oparil, who represents Northrop Grumman in the *Alexander* case, "intentionally misled the Court in stating that there had not been any contacts between Silbert and the White House regarding the e-mail matter."[218] Mr. Burton cited statements by Mr. Oparil indicating that after speaking to Mr. Silbert and after looking through the firm's files, "we don't believe that there were any oral communications" between Mr. Silbert and White House counsel.[219] Mr. Burton wrote that, since "[t]he firm's billing records provide the most obvious source of corroboration of telephone calls and are presumably easily searched," Mr. Oparil must

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Democrats' E-Mail Report Rebuttal, House Committee on Government Reform, 4 (undated). However, in a subsequent interview, Mr. Lucente told Committee staffers that the threats were not "the" inspiration but "an" inspiration for the letter, and that the letter makes no mention of threats, veiled or otherwise. Interview of Joseph Lucente by Majority and Minority Staff, House Committee on Government Reform (Oct. 17, 2000). More importantly, Mr. Lucente did not say -- and there is no evidence to suggest -- that he talked to Mr. Silbert about the alleged threats.

[217]Statement of Rep. Dan Burton at Sept. 26 hearing. *See* Majority Report at 64, note 362.

[218]Letter from Rep. Dan Burton to Judge Royce Lamberth (Sept. 26, 2000).

[219]Transcript of Evidentiary Hearing at 229, *Alexander v. FBI*, No. 96-2123 (Aug. 16, 2000).

have "intentionally misled the Court."[220]

As Mr. Oparil explained, however, "[t]he billing records for the Northrop Grumman matter were not part of the client file that I reviewed."[221] Furthermore, Mr. Oparil wrote Judge Lamberth on September 13 -- almost two weeks before Mr. Burton made his allegation -- to tell him that he had located the two entries on Mr. Silbert's billing records regarding phone calls with White House counsel.[222] In other words, Mr. Burton publicly accused Mr. Oparil of covering up a matter that he had already voluntarily disclosed.

F. Allegation That the White House Failed To Disclose a Computer Disk Containing Non-Produced Monica Lewinsky E-Mails

An article in the *Washington Times* alleged that the White House had in its possession "a previously undisclosed computer disk with e-mails by former intern Monica Lewinsky" that were among e-mail messages sought "by a federal grand jury and three congressional committees, but never turned over."[223]

This allegation was shown to be wholly without merit. White House Counsel Beth Nolan informed the Committee that the computer disk containing Monica Lewinsky's e-mails was a copy of a file belonging to Mr. Haas and that the Lewinsky-related e-mail on the disk had already been produced.[224] The contents of this disk were provided to the Committee. The Committee has obtained no evidence that contradicts Ms. Nolan's explanation.

G. Allegation That an OA Employee Filed a False and Misleading Affidavit about the Mail2 Problem

Mr. Burton also alleged that "a White House employee, aided and counseled by Justice Department lawyers, submitted a false affidavit to a federal court that concealed the failure of the White House to search for all e-mails responsive to subpoenas."[225] Mr. Burton even made a

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[220]Letter from Rep. Dan Burton to Judge Royce Lamberth (Sept. 26, 2000).

[221]Letter from Richard J. Oparil to Judge Royce C. Lamberth (Sept. 27, 2000) (attached as exhibit 13).

[222]Letter from Richard J. Oparil to Judge Royce C. Lamberth (Sept. 13, 2000) (attached as exhibit 14).

[223]*White House Has Disk With Lewinsky E-Mail*, Washington Times (March 29, 2000).

[224]Testimony of Beth Nolan, March 30 hearing at 26-27.

[225]Letter from Rep. Dan Burton to Attorney General Janet Reno (Sept. 7, 2000).

criminal referral to the Attorney General, in which he accused the employee, Daniel A. "Tony" Barry, of knowingly making false statements under oath, adding that "there is evidence that the Justice Department itself may have been involved in preparing and presenting false testimony."[226]

The affidavit in question was filed by Mr. Barry, OA's ARMS expert, on July 9, 1999, in the *Alexander* case involving FBI files. The affidavit states in relevant part, "Since July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived in the EOP Automated Records Management System (ARMS)."[227] According to Mr. Burton, this statement is "utterly false."[228]

This allegation ignores the context of the Barry affidavit. The affidavit was filed as part of the government's efforts to convince the judge hearing the lawsuit that ARMS searches were not necessary for discovery purposes. Accordingly, the affidavit describes in some detail the cost and time involved in conducting a search of ARMS. Given this context, it appears that Mr. Barry was simply and accurately attempting to explain some basic facts about ARMS -- namely, that it archives e-mail and that it has been in effect since July 14, 1994.[229]

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[226]Letter from Rep. Dan Burton to Attorney General Janet Reno (March 30, 2000). Earlier, Rep. Burton had accused the Justice Department's civil division of "help[ing] the White House craft its efforts to hide these e-mails." Letter from Rep. Dan Burton to Attorney General Janet Reno (March 27, 2000).

[227]Declaration of Daniel A. Barry, *Alexander v. FBI*, No. 96-2123 (July 9, 1999), ¶ 4.

[228]Letter from Rep. Dan Burton to Attorney General Janet Reno (March 30, 2000).

[229]The majority also states that Mr. Barry should have corrected similarly general statements that he made about ARMS during a June 11, 1998, deposition and criticizes Sally Paxton, a member of the Office of White House Counsel who assisted Mr. Barry, for a "cavalier attitude towards the deposition process." Majority Report at 131-33. The charge involving Ms. Paxton is doubly unfair. For one thing, since Ms. Paxton was apparently not aware of any ongoing ARMS problems, it is difficult to see how she can be blamed for failing to clarify Mr. Barry's statements. For another, the majority mischaracterizes Ms. Paxton's comments in an interview about the deposition with Committee staff on June 22, 2000. Ms. Paxton did <u>not</u> say that "she told Barry not to change the substance of depositions because it could open him up to being re-deposed." Majority Report at 133. Rather, Ms. Paxton told staff that she did not recall telling Mr. Barry anything, and that she was not sure that she had standard instructions for a deponent about problems he might have with a deposition transcript. Interview of Sally Paxton by Majority and Minority Staff, House Committee on Government Reform (June 22, 2000). She further said that making substantive changes would open the person up to being re-deposed but that she was not sure that she would generally mention this detail to deponents. *Id.* *See* Letter from Steven M. McNabb to Rep. Dan Burton (Oct. 18, 2000) (correcting "certain false and misleading statements about my client, Sally Paxton" in the majority's report) (attached as

The flimsiness of Mr. Burton's allegation is underscored by the fact that Mr. Barry received letters from both the Justice Department and the Office of Independent Counsel stating that he is not a target of their respective e-mail investigations.[230]

The majority report also states that "[b]y counseling Barry through the process of preparing and submitting the false affidavit to the court, Justice Department and White House lawyers were complicit in the fraud perpetrated upon Judge Royce Lamberth's court."[231] This allegation overlooks the incontrovertible fact that there is no evidence that any White House or Justice Department lawyers involved in preparing and submitting the affidavit were aware of any ARMS-related problems.

H. Allegation That an OA Employee Attempted To Hide Information about the Mail2 Problem from Congress

Rep. Burton has accused Karl Heissner, the branch chief for Systems Integration and Development in OA's IS&T division, of seeking to keep the Mail2 problem a secret from investigators. Mr. Burton cited as evidence an e-mail written by Mr. Heissner, which he interpreted as follows: "he concludes by saying, 'Let sleeping dogs lie.' I think translated that means let's keep a lid on this and don't let Congress or the independent counsels know about it.'"[232] Mr. Barr suggested that, if he were a prosecutor, Mr. Heissner's e-mail "would be considered evidence of obstruction of justice."[233]

Mr. Heissner, a 25-year career civil servant, testified that his e-mail memo addressed two separate and unrelated issues.[234] The first part of the e-mail is entitled "Information Requests" and states, in relevant part:

> While I'll be glad to write up something related to the "Information Requests" channeled to us via White House Counsel in response to various requests from Congress and litigants against the Government, we may not want to call undue attention to the issue by

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exhibit 15).

[230]Letter from Alan Gershel, Deputy Assistant Attorney General, to Steve Ryan, Esq. (Aug. 1, 2000) (attached as exhibit 16); Letter from Independent Counsel Robert W. Ray to Stephen M. Ryan, Esq., and Pamela J. Marple, Esq. (Aug. 2, 2000) (attached as exhibit 17).

[231]Majority Report at 135.

[232]Statement of Rep. Dan Burton, May 3 hearing at 13.

[233]Statement of Rep. Bob Barr, May 3 hearing at 35.

[234]Testimony of Karl Heissner, May 3 hearing at 49-50.

> bringing the issue to the attention of Congress because [l]ast year's hours consumed by SID staff amounts to only a little over 500, [t]his year's hours consumed so far amounts to only 65, and [t]he level of requests appears to be declining.
>
> (Let sleeping dogs lie...)[235]

The second part of the e-mail is entitled "Mail2 Reconstruction." It provides a summary of the Mail2 problem, its discovery, and subsequent efforts to fix it.

Mr. Heissner testified that his suggestion to let "sleeping dogs lie" was simply expressing a desire not to bring up the fact that the number of information requests received by the White House was declining.[236] According to Mr. Heissner, since the number of information requests was declining, "we don't need to go to Congress to ask for funding to pay for the costs for performing these information requests."[237] Mr. Heissner stated that he was not trying to prevent Congress from finding out about the Mail2 problem.[238]

The majority appears to recognize that the allegations about Mr. Heissner are without merit because there is no mention of Mr. Burton's or Mr. Barr's allegations in the majority report. Unfortunately, the majority makes no attempt to clear the record or to clear Mr. Heissner's name in the majority report.

I. Allegation That Cheryl Mills Was Responsible for the Failure To Disclose the Mail2 Problem

Mr. Burton has made a number of misleading and inaccurate allegations about the role of then-Deputy Counsel to the President Cheryl Mills in the e-mail matter. For example, Mr. Burton alleged that "Cheryl Mills is a central figure in the e-mail investigation,"[239] and that Ms. Mills:

> was in charge of determining the extent of the problem and whether there were any ramifications for document production. As we now know, Ms. Mills -- by incompetence

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[235]E-Mail from Karl H. Heissner to Dorothy E. Cleal (Feb. 5, 1999) (E 3865-74).

[236]Testimony of Karl Heissner, May 3 hearing at 51.

[237]*Id.* at 34.

[238]*Id.* at 50.

[239]Letter from Rep. Dan Burton to Attorney General Reno (June 28, 2000). *See also* Majority Report at 114 ("Cheryl Mills has been a central figure in the investigation into the White House's e-mail problems and subsequent failure to produce subpoenaed documents").

> or design -- may have prevented a number of investigative bodies, including Congress, the Justice Department, and Independent Counsels, from receiving subpoenaed documents. . . . [I]t is clear that Ms. Mills is the central figure in terms of the White House Counsel's Office['s] failure to solve the e-mail problems or its failure to notify interested parties that documents were not being produced.[240]

In fact, Ms. Mills's testimony before the Committee indicated that her involvement in the e-mail matter was limited to a discussion with Mr. Ruff about the problem, after which she forwarded a batch of e-mails to White House Associate Counsel Michelle Peterson, who determined that they had already been produced. According to Ms. Mills's testimony:

> Mr. Ruff indicated that there had been a problem with certain e-mails that might not have been captured, that OA was gathering them, that they were going to forward them to our office. We were going to then need to make a determination whether or not those e-mails had or had not been produced and if they had not been produced that we needed to produce them immediately. . . . The e-mails -- the material came from OA over to our office; and I forwarded them to Shelly Peterson, an associate counsel in our office, who reviewed the materials to determine whether or not they were duplicative.[241]

Ms. Mills's testimony contradicts Mr. Burton's assertion that she was "in charge of determining the extent of the problem and whether there were any ramifications for document production." According to her testimony, her role was limited to determining whether or not certain e-mails relating to Monica Lewinsky had or had not been produced.[242] There is no evidence to suggest that Ms. Mills's testimony on this point was inaccurate.

Rep. Burton has also implied that Ms. Mills was informed about broad e-mail problems affecting the office of the Vice President. Rep. Burton wrote to the Attorney General that a matter of "some importance" was a document indicating that "[t]he OVP memorandum regarding the Vice President's computer problems has been cleared with Cheryl Mills' office."[243] This statement seems to suggest that the memorandum in question contained information about deficiencies in the records management practices of the Office of the Vice President.

In fact, however, the memorandum in question discussed a technical failure that caused the Vice President to be "unable to send or receive E-mail for approximately seven hours" on

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[240]Letter from Rep. Dan Burton to Attorney General Reno (June 28, 2000).

[241]Testimony of Cheryl Mills, May 4 hearing at 33-34.

[242]*Id.* at 34.

[243]Letter from Rep. Dan Burton to Attorney General Reno (June 28, 2000).

April 2, 1999.[244] According to this memorandum, as a result of this technical failure, "[a]ll documents which had not been saved to a disk -- in this case three days of E-mail -- were irretrievably lost."[245] The memorandum does not discuss broader issues about records management of the Vice President's e-mail. It is therefore difficult to understand how Ms. Mills's alleged knowledge of the contents of the memorandum are in any way inculpatory.

This is not the first time the Committee has targeted Cheryl Mills. In September 1998, Rep. David McIntosh requested that the Department of Justice investigate whether Ms. Mills committed perjury and obstructed justice because, in essence, she did not agree with him about the relevance of two sets of documents to a Committee request.[246] As the Department of Justice found, this attempt to transform a simple document request into a potential criminal offense lacked any merit.[247] The allegations in this instance appear equally unwarranted.

J. Allegation That the Justice Department Has Failed To Investigate, or To Appoint a Special Counsel to Investigate, the E-Mail Matter

Mr. Burton has repeatedly condemned the Justice Department's investigation of the e-mail matter. Mr. Burton has accused the Department of "investigative laxity"[248] and has charged that the Justice Department "took no steps to determine whether reports about the e-mail problem were true,"[249] further stating that "I get the impression that the Justice Department really isn't all that interested" in the e-mails.[250] Because of these perceived deficiencies, Mr. Burton has called for the appointment of a special counsel to investigate the e-mail matter.[251]

While it would be premature to judge the thoroughness of the Department's e-mail

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[244]Memorandum from Dorothy E. Cleal, Associate Director for Information Systems and Technology, Office of Administration, to Virginia Apuzzo, Assistant to the President for Management and Administration (May 13, 2000) (E 5201-03, E 6956-58).

[245]*Id.*

[246]Letter from Rep. David McIntosh to Attorney General Janet Reno (Sept. 17, 1998).

[247]Letter from Ms. Faith Burton to Rep. David McIntosh (May 6, 1999) (attached as exhibit 18).

[248]Letter from Rep. Dan Burton to Attorney General Janet Reno (June 28, 2000).

[249]Letter from Rep. Dan Burton to Judge Royce C. Lamberth (March 29, 2000).

[250]Statement of Rep. Dan Burton, March 23 hearing at 12.

[251]Letter from Rep. Dan Burton to Attorney General Janet Reno (March 27, 2000); Letter from Rep. Dan Burton to Attorney General Janet Reno (March 30, 2000).

investigation, Mr. Burton's request for a special counsel makes no sense, as the e-mail matter is already the subject of an investigation by Independent Counsel Robert Ray. Deputy Assistant Attorney General Alan Gershel testified that "with respect to the White House e-mail matter the [Department's] task force and the office of the independent counsel are working together in a coordinated investigation."[252]

Mr. Burton has alleged that Independent Counsel Ray's investigation "is limited" and "[a] lot of the things that we're talking about in the e-mail investigation Mr. Ray does not have any jurisdiction over."[253] In fact, Mr. Gershel confirmed that the Independent Counsel's investigation necessarily involves the same basic factual matters as the Committee's e-mail investigation.[254] While the Independent Counsel may be focused on examining the e-mail matter as it relates to the production of documents to his office, all of the issues explored by the Committee -- including allegations of threats and a cover-up -- are relevant to this inquiry. Mr. Burton's allegation is simply without basis.

The majority report also makes the assertion that "[i]t appears that for at least part of its e-mail investigation, the Justice Department had only one part-time lawyer assigned to its e-mail investigation."[255] The majority report offers no evidence to support this allegation. Instead, the report states the Mr. Gershel's refusal to rebut the charge "suggests that it is likely true."[256] In fact, Mr. Gershel made clear that his refusal to discuss staffing levels was based on the Department's longstanding policy of not disclosing staffing levels for ongoing investigations.[257]

Finally, the majority report accuses the Justice Department of having a conflict of interest because of the role of the Department's civil division in defending the White House in the *Alexander* case.[258] However, Assistant Attorney General Robert Raben explained to the Committee:

The Department often represents the interests of a governmental entity in civil litigation

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[252]Testimony of Alan Gershel, Sept. 26 hearing at 35.

[253]Statement of Rep. Dan Burton, Sept. 26 hearing at 69.

[254]Testimony of Alan Gershel, Sept. 26 hearing at 105-06. Mr. Gershel also affirmed that the Department had not impeded or limited the scope of Mr. Ray's e-mail investigation. *Id.* at 48.

[255]Majority Report at 141.

[256]*Id.* at 143.

[257]Testimony of Alan Gershel, Sept. 26 hearing at 34-35.

[258]Majority Report at 129.

where an issue presented in that civil case touches upon a pending criminal investigation. If an aspect of an ongoing civil case threatens to duplicate or interfere with the conduct of an ongoing criminal investigation, the Department often seeks to stay that part of the civil case that might duplicate or interfere with the progress of the criminal investigation. That is precisely the relief the Department sought in the *Alexander* case, in which the Department asserted that the lawyers in the Civil Division, who had been looking into the email issue, should not proceed with that investigation because it could duplicate or compromise the investigation by the Task Force and the Office of Independent Counsel.[259]

K. Other Allegations

1. Allegation That the White House Has Delayed Reconstruction of the E-Mails

Mr. Burton has stated that "it is now obvious to me that the White House has failed to expedite the production of subpoenaed documents to the Committee," adding that "the White House has clearly demonstrated its utter disregard for both the legislative and judicial branches" and that delays in the reconstruction process "are not surprising and seem very convenient."[260] Mr. Burton has further called for the appointment of a special master to supervise production of e-mails.[261]

Ms. Nolan has responded in writing to Mr. Burton's allegations in some detail, noting correctly that she warned during her testimony before the Committee that the schedule for the e-

[259]Letter from Assistant Attorney General Robert Raben to Rep. Dan Burton (April 12, 2000) (attached as exhibit 19). The majority asserts that "[t]he Department of Justice has received no such stay." Majority Report at 129. This assertion is misleading, as the judge hearing the *Alexander* case delayed holding hearings on the e-mail matter for several months until receiving assurances that "the criminal investigation has reached a stage where further inquiry . . . can recommence without threatening the integrity of the criminal investigation or other law enforcement interests." Order of Judge Royce Lamberth, *Alexander v. FBI*, No. 96-2123 (July 20, 2000). The judge further noted that he had "proceeded cautiously" since the task force began its investigation "to ensure that these proceedings do not interfere with the criminal investigation." *Id.* The *Alexander* plaintiffs filed a motion requesting an evidentiary hearing on e-mail matters on February 19, 2000; the court did not commence the hearing until July 31. *Id.*

[260]Letter from Rep. Dan Burton to Counsel to the President Beth Nolan (July 26, 2000).

[261]Letter from Rep. Dan Burton to Counsel to the President Beth Nolan and Attorney General Janet Reno (July 12, 2000).

mail reconstruction project was subject to possible delays.[262] Ms. Nolan also testified that "[a]s our review progresses to completion, we will likely uncover information that alters or amends these preliminary conclusions" and referred to the "contractor's preliminary estimate," adding that "I want to emphasize preliminary because these estimates are subject to amendment as the process proceeds and the contractor learns new information."[263]

The majority has not yet responded to an offer made by the White House on September 14, 2000, to search, reconstruct, and produce batches of e-mails on an expedited basis.[264] The White House notified Committee staff that with about three weeks of computer staff time, it would be able to conduct targeted searches using 100 back-up tapes, 70 e-mail accounts, and 70 search terms.[265] The White House repeated the offer on October 4.[266] To date, however, the majority has failed to take the White House up on its offer. This might suggest that the majority is more interested in speculating about the "missing" e-mails -- and accusing the White House of delay -- than in actually reviewing the e-mails.

2. Allegation That the White House Has Impeded the Committee's Investigation

The majority asserts that "the White House Counsel's Office has used a number of questionable tactics that appear to have no purpose other than to impede the investigation."[267] However, the majority cites scant evidence to support this assertion. For example, the majority states:

> the original White House production in the e-mail matter was sent in the evening, two

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[262]Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (Aug. 7, 2000) (attached as exhibit 20). Ms. Nolan also pointed out that, in addition to testifying twice before the Committee, she has provided the Committee with several updates on the reconstruction project and records management issues. *Id.*

[263]Testimony of Beth Nolan, March 30 hearing at 25.

[264]*See* Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (Sept. 26, 2000).

[265]*Id.* The White House further noted that with about two weeks of computer staff time, it would be able to conduct targeted searches using 50 back-up tapes, 35 e-mail accounts, and 35 search terms. *Id.*

[266]Letter from Associate Counsel to the President Lisa Klem to Chief Counsel James C. Wilson (Oct. 4, 2000).

[267]Majority Report at 107.

> days before the Committee's first scheduled hearing of March 23, 2000. This forced an expedited review of 3,396 pages of documents in less than 36 hours. By placing the Committee in this difficult position, the White House made the hearing process less efficient.[268]

In fact, the majority has only itself to blame for its "difficult position." The problem encountered by the majority was caused by the fact that the majority scheduled a hearing before the Committee had received key documentation.

The majority also accuses the White House of employing a "delaying tactic" by asserting privilege over certain documents.[269] This accusation concerns an April 28, 2000, letter from White House counsel to the majority in which the White House counsel enclosed a "draft log" describing several documents "subject to privilege."[270] The majority concedes, however, that one day after receiving a written objection from Mr. Burton, the White House decided not to pursue privilege discussions and agreed to provide the documents to the Committee.[271] Given that this whole process took all of two business days, it is unclear how much advantage this alleged "delay" could have given the White House.[272]

Another trivial accusation is the majority's complaint that White House counsel did not initially produce copies of the Lewinsky-related e-mails located by Mr. Haas. In fact, after receiving a letter from Mr. Burton, the White House provided these documents. Once again, the majority construes a minor disagreement over document production as evidence of dilatory

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[268]*Id.* at 107.

[269]*Id.* at 110.

[270]Letter from Associate Counsel to the President Dimitri J. Nionakis to Chief Counsel James Wilson (April 28, 2000). White House counsel testified that the log was provided as an invitation to discuss seven documents that White House counsel believed concerned areas relating to "the internal deliberations of the executive branch," and that "that is exactly the kind of thing that calls for a discussion between the committee and the relevant executive agency." Testimony of Beth Nolan, May 4 hearing at 228-29.

[271]Majority Report at 111.

[272]According to the majority, "the White House so quickly abandoned its privilege claims because the claims were without merit and could only have been intended to drag out the investigation." *Id.* at 111. The majority overlooks the equally plausible assumption that the White House dropped its claim in order to accommodate the Committee, and to avoid providing the majority with another pretext to complain of "delaying tactics."

tactics -- even when the White House immediately accedes to the majority's demands.[273]

The majority also makes another spurious allegation:

> Because of the Committee's persistence regarding responsive OVP documents, the White House eventually made a startling admission about the OVP server. On June 7, 2000, Steven Reich sent a letter accompanying a large production of documents related to the OVP e-mail problems. He wrote, "your May 16, 2000, letter regarding non-records managed e-mail has led us to discover that a technical configuration error apparently prevented e-mail on the OVP server from being backed-up from the end of March 1998 through early April 1999." In other words, if the Committee had not followed-up on the OVP problems . . . the White House most likely would *never* have disclosed the existence of another serious flaw in its records management process.[274]

This allegation distorts the role of White House counsel. As Mr. Reich's letter clearly stated, White House counsel only discovered the back-up problem with the OVP server in the course of responding to the Committee's request. The implication that White House counsel were aware of the problem all along, and only disclosed it when they were forced to do so, is wholly unsubstantiated.

3. Allegation That OA Briefing Materials Are Evidence of a Conspiracy To Hide the Mail2 Problem from Congress

A reference to the Mail2 problem was removed from draft materials prepared to brief Mr. Lindsay prior to his testimony before congressional appropriators. The majority has suggested this deletion reflected a deliberate attempt to prevent Congress from finding out about the problem.[275] In fact, the deletion had an innocent explanation. OA Director Michael Lyle explained that the briefing materials were internal documents prepared for Mr. Lindsay's testimony regarding appropriation matters, and that the reference to Mail2 was removed because

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[273]The majority states that White House counsel claimed that the Lewinsky e-mails "were unrelated to the Mail2 error and therefore were not relevant to the Committee's inquiry." *Id.* at 111. In fact, Ms. Nolan testified that she took the view that the Lewinsky e-mails were not covered by the Committee's pre-existing subpoena. Testimony of Beth Nolan, May 4 hearing at 253. Ms. Nolan further pointed out her view was evidently shared by Rep. Burton, who had told Ms. Nolan during her previous appearance before the Committee that he intended to issue a separate subpoena for the zip disk containing the Lewinsky e-mails. *Id; see* Statement of Rep. Dan Burton, March 30 hearing at 82 (stating that "I think we'll issue a subpoena for both the original zip disk and the one that was remade off of [Mr. Haas's] hard drive").

[274]Majority Report at 110 (emphasis added).

[275]*Id.* at 89.

"funds were not being sought for the e-Mail2 reconstruction project in this appropriation."[276]

4. Allegation That Sidney Blumenthal Tried to Prevent His E-Mails from Being Archived

A May 3 *Washington Times* article stated that a White House memo shows that "White House aide Sidney Blumenthal, who figured prominently in the Monica Lewinsky investigation, asked last year to have his personal e-mail messages removed from the White House's automated-records management system -- meaning they couldn't be retrieved."[277]

However, according to testimony by OA's director, Michael Lyle, the memo regarding the Blumenthal e-mail concerned a single e-mail to Mr. Blumenthal that had duplicated itself to the point where it crashed Mr. Blumenthal's computer.[278] Mr. Lyle said the Office of Administration decided to delete the duplicates, while keeping the original.[279] There is no evidence to contradict Mr. Lyle's testimony or to suggest that there was an attempt to prevent Mr. Blumenthal's e-mails from being records-managed.

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[276]Testimony of Michael Lyle, May 3 hearing at 130-33.

[277]*Blumenthal Wanted His E-mail Erased from White House*, Washington Times (May 3, 2000).

[278]Testimony of Michael Lyle, May 3 hearing at 81.

[279]*Id.* at 82.

IV. ALLEGATIONS CONCERNING THE OFFICE OF THE VICE PRESIDENT

A. Allegation That the OVP Deliberately Attempted to Circumvent Subpoena Compliance

The majority report alleges that "the Vice President's Office took affirmative steps to keep from storing its e-mail records in the only system that would permit full and accurate subpoena compliance."[280] According to the majority, a counsel to the Vice President "personally decided that the Vice President would not store his records in a way that would permit compliance with document requests" and there "can be little doubt that the Vice President's advisors knew that their actions would permit his office to operate in a manner that would make it less susceptible to oversight."[281]

This allegation is wholly without merit. The Committee's investigation revealed that in 1994, the Office of the Vice President opted not to archive its e-mails electronically via ARMS.[282] Instead, in order to preserve vice presidential records in compliance with the Presidential Records Act, and consistent with previous practice, OVP personnel were instructed to print out and save work-related e-mails. In addition, the OVP system was regularly backed up and the back-up tapes were saved.[283]

There is no evidence whatsoever that this decision was intended, or could have been intended, to hamper subpoena compliance. At the time, ARMS was intended solely as a means of archiving electronic records for posterity in compliance with the Federal Records Act -- not as a tool for subpoena compliance.[284] There is no evidence that anyone had even considered the possibility of using ARMS to search for responsive documents. Indeed, former Counsel to the Vice President Todd Campbell, now a federal judge, informed the Committee that the OVP

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[280]Majority Report at viii.

[281]*Id.* at xviii.

[282]Instead, the OVP maintained its own computer system, serviced by a contractor rather than by OA. Statement of Counsel to the President Beth Nolan (March 23, 2000).

[283]Former Counsel to the Vice President Todd Campbell described this system as a "belts and suspenders" records management policy, with the back-up tapes in place in the event of any technical or other problem arising. Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[284]Testimony of Beth Nolan, March 30 hearing at 85 (stating that "ARMS was set up in order for the executive office of the President to comply with the Federal Records Act").

received only a few subpoenas during his tenure there, which lasted through the 1994 election.[285] Judge Campbell also indicated that he made the decision not to use ARMS to archive vice presidential records; that his decision was not intended to prevent OVP e-mails from being saved on a searchable database; and that he had no memory of ARMS even being a searchable database.[286]

Judge Campbell explained that he made his decision after consulting with Michael Gill, who handled information technology matters in the OVP from 1993 through the fall of 1996, and Kimiki Gibson, then the associate counsel to the Vice President.[287] Judge Campbell believed that his decision was legal and appropriate, and there is no evidence that would indicate his belief was mistaken. As explained above, ARMS was created in order to comply with the *Armstrong* decision, which held that existing EOP guidelines for managing e-mail were not in compliance with FRA record-keeping requirements. Since records created by the OVP are governed by the PRA, not the FRA, the OVP was under no requirement to rely on ARMS for its records management.[288] Moreover, the OVP's decision to rely on saving paper copies of e-mails instead of using ARMS to archive e-mails was fully in keeping with both the letter and the spirit of

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[285]Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[286]*Id.*. The majority notes that Judge Campbell told staff that he did not direct that the back-up tapes be searched in response to subpoenas but claims that "[h]e could not offer any explanation as to why not." Majority Report at 76. In fact, Judge Campbell stated in his interview that the subpoenas received when he was at the White House were so remote from matters handled by the OVP that there was no need to take this step. Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[287]Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[288]The *Armstrong* decision explicitly applied only to federal records, and the court made it clear that the President has great discretion in implementing the PRA. The PRA "accords the President virtually complete control over his records during his term of office." 1 F.3d at 1291 (citation omitted). The *Armstrong* decision also made clear that judicial review of the PRA is limited: "the courts may review guidelines outlining what is, and what is not, a 'presidential record' to ensure that materials that are not subject to the PRA are not treated as presidential records" but "the PRA impliedly precludes judicial review of the President's decisions concerning the creation, management, and disposal of presidential records during his term of office." 1 F.3d at 1294 (citation omitted).

Armstrong.[289]

The majority asserts that it is "difficult to understand why the OVP chose not to use the White House's ARMS system."[290] In fact, Judge Campbell told the Committee that the OVP had technical concerns about connecting to ARMS.[291] According to Mr. Gill, in order for the OVP to connect to ARMS, it would have had to take a giant technological step backwards by converting its e-mail system from the Windows-based "Lotus cc:Mail" to the character-based "All-in-One," which Mr. Gill considered to be less user-friendly.[292]

The majority further asserts that the "decision by the Vice President's office to have his [sic] e-mails managed separately from the rest of the White House meant that the Vice President's office could not effectively comply with subpoenas."[293] This assertion is simply wrong. The notion that the White House, or any other entity, cannot "effectively comply with subpoenas" unless it has a word-searchable electronic archive that preserves its e-mails has no basis in law. If the majority's assertion were true, there would be few, if any, corporations, citizens, or governmental entities capable of complying with subpoenas "effectively."[294] As any

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[289]The *Armstrong* decision did not hold that printing and saving paper copies of e-mails was inherently incompatible with records management responsibilities. Rather, the *Armstrong* decision noted that "important information present in the e-mail system, such as who sent a document, who received it, and when that person received it, will not always appear on the computer screen and so will not be preserved on the paper print-out." 1 F.3d at 1284. *Armstrong* did not hold that the only acceptable way to manage electronic records was via an electronic archiving system, but rather that retaining "amputated paper print-outs" -- lacking data contained in the original e-mail -- was not sufficient for purposes of the FRA. 1 F.3d at 1285. Since the OVP's paper print-outs apparently contained full data about the sender and recipients, the OVP's records management regime was in compliance with the spirit of *Armstrong*.

[290]Majority Report at 76.

[291]Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[292]Interview of Michael Gill by Majority and Minority Staff, House Committee on Government Reform (July 24, 2000).

[293]Majority Report at xvii.

[294]*See, e.g.*, Statement of Counsel to the President Beth Nolan (March 23, 2000) ("archiving e-mail records is a relatively novel concept. I am told that the ARMS system had to be custom built because at that time no appropriate system was commercially available. As far as we are aware, no other government entity -- including Congress -- maintains a similar on-line archival system"). *See also With White House E-Mail, It's Click Now, Repent Later*, Christian

lawyer with rudimentary litigation experience can attest, compliance with subpoenas requires a reasonable, good faith effort to locate responsive documents -- no more and no less.[295]

B. Allegation That the Reconstructed OVP E-Mails Contain Significant Information

To date, between 180,000 and 200,000 e-mails have been reconstructed and reviewed, and any responsive e-mails have been produced to the Office of Independent Counsel Robert Ray or the Justice Department's campaign finance task force. Only 56 of the e-mails produced to the Independent Counsel or the task force were responsive to this Committee's subpoenas, and several of those had already been produced in similar form (e.g., with a different recipient or sender). The majority has alleged that the e-mails contain damaging new information. According to the majority report, the e-mails produced by the White House "are highly relevant to the Committee's investigation of campaign finance matters," and the information in these e-mails is "important for evaluating whether the Vice President committed perjury" and "shows that it is impossible to come to a final conclusion about underlying campaign finance matters without a complete review of all the previously withheld information."[296]

In fact, none of the 56 reconstructed e-mails provided to the Committee contain significant new evidence.

Science Monitor (Apr. 7, 2000) (noting that "[i]ronically, the office of Rep. Dan Burton (R) of Indiana, who last week grilled White House counsel about the missing e-mails, stores its electronic messages for a mere week, then overrides them with new work") (attached as exhibit 21). The majority's assertion that "the difficulty in searching backup tapes was one of the fundamental reasons for the creation of ARMS" is equally specious. Majority Report at 20. The only evidence the majority cites in support of this proposition is a statement by Mr. Haas, a Northrop Grumman contract engineer who evidently took no part in the legal and policy discussions that led to ARMS's creation. Mr. Haas's assertion is inconsistent with the interviews conducted and documents received by the Committee, which uniformly indicate that the sole impetus for the creation of ARMS was the *Armstrong* decision. *See, e.g.*, Testimony of Beth Nolan, March 30 hearing at 85 (stating that "ARMS was set up in order for the executive office of the President to comply with the Federal Records Act"); Interview of Daniel A. Barry by Majority and Minority Staff, House Committee on Government Reform (March 9, 2000).

[295]*See, e.g., U.S. v. Ryan*, 402 U.S. 530, 534 (1971) (subpoena duces tecum "placed respondent under a duty to make in good faith all reasonable efforts to comply with it"); *Food Lion v. United Food and Commercial Workers International Union*, 103 F.3d 1007, 1017 (D.C. Cir. 1997) (noting that "[s]everal courts have held that a party charged with contempt may assert a defense of good faith substantial compliance").

[296]Majority Report at viii, x.

The majority cites as significant new information one e-mail between two vice presidential staffers that refers to "FR coffees" at the White House, which the majority asserts is evidence that the coffees were used for fundraising purposes.[297] It is not clear, however, whether the term "FR" refers to "fundraising" or "finance-related." Moreover, even if the term "FR" is construed to refer to fundraising, the e-mail does not add new evidence. Other internal communications in the Vice President's office have described these coffees as "fundraising" events.[298] Indeed, the Vice President has repeatedly said that he knew attendees at White House coffees would likely be solicited for contributions later on.[299]

Another e-mail relied upon by the majority is an e-mail from a scheduler that refers to a fundraising event in Los Angeles and lists an event at the Hsi Lai Buddhist Temple.[300] But this e-mail is a draft schedule and it is incomplete and inaccurate in several places.[301] It adds little to what is already known about the Hsi Lai Temple event. Internal communications in which the Vice President's staff apparently used the term "fundraiser" to describe the Hsi Lai Temple event were produced and investigated long ago.[302] Three years ago, the Senate Governmental Affairs Committee talked with the Vice President's scheduling staff about such internal communications, and thoroughly explored whether staff viewed the event as a fundraiser and

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[297]E-Mail from Karen Skelton to Ellen L. Ochs (April 23, 1996) (E 8862) (discussed in Majority Report at x).

[298]*See, e.g.*, Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns,* 105th Cong., 2d Sess., v. 1, 196 (March 1998) (stating that "[a] number of White House and DNC documents underline the importance of the coffees as fundraising events").

[299]The Vice President told investigators that the coffees "allowed the President to spend time with influential people who wanted to talk about policy, who would at some later time possibly be asked to financially support the DNC." He further stated that "[i]t was contemplated at the time when they were set up that some or many of those who participated in those sessions would later on be likely to contribute." Interview of Vice President Gore with Robert J. Conrad, Jr., Head of the Department of Justice Campaign Financing Task Force (April 18, 2000).

[300]E-Mail from Jackie A. Dycke to R. Martinez (April 9, 1996) (E 8747-54) (discussed in Majority Report at x).

[301]For example, the document indicates that the Vice President will attend a DNC Reception at the Hsi Lai Temple both in Los Angeles and San Jose. *Id.*

[302]*E.g.*, Document Labeled "Current Schedule for April 29" (EOP 056497) (referring to a "DNC luncheon in LA/Hacienda Heights"); E-Mail from Jackie A. Dycke to R. Martinez (April 10, 1996) (EOP 053292) (noting that "the VP is going to San Jose and LA for DNC fundraising events on April 29").

how the Vice President was briefed about the event.[303] The newly reconstructed e-mails received by the Committee contain no e-mails either to or from the Vice President regarding the Temple event.

C. Allegation That Vice President Gore Sought To Hide E-Mails from Investigators

Mr. Burton recently alleged:

> the Vice President wanted the back-up tapes on many of his e-mails not kept. He didn't want there to be back-up tapes because they said the only way -- in one of the memos, they says [sic] the only way that we can keep from having back-up tapes is to use the Clinton-Gore email system. And so there was a deliberate attempt to try to keep these e-mails from being backed up on the tapes."[304]

This allegation is wholly without merit. Mr. Burton appears to be referring to an e-mail sent to the Vice President which stated that "[a]ll internet e-mails are recorded on the White House computers. According to Michael, the only way not to have your e-mails backed up on government computers would be to get a Clinton/Gore computer in your office and set it up for private e-mails."[305] The White House has informed the Committee that, as best it can determine, the Vice President did not have a Clinton/Gore '96 computer or e-mail account in the White House.[306] Nor is there anything inappropriate about the suggestion that "private e-mails" should not be archived. Since the PRA requires only that official vice presidential records be saved, it would be legal and appropriate not to archive private, personal, or campaign e-mails.

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[303]Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns*, 105th Cong., 2d Sess., v. 2, 1793-94, v. 4, 4818-31 (March 1998). Staff testified that they were sloppy in their use of the term "fundraiser." But the key scheduler responsible for the Hsi Lai Temple event in the Vice President's office testified that she viewed the event as a community outreach event, not a fundraiser, and the staff person who briefed the Vice President on the event testified that he informed the Vice President that the event was a community outreach event. *Id.* at 4822-26.

[304]*The Edge with Paula Zahn*, Fox News (Sept. 27, 2000).

[305]E-Mail from Joel Velasco to Vice President Gore (February 22, 1998) (E 8701).

[306]Ms. Nolan informed the Committee that such computers were set up in the EOP as "[u]nder federal law, equipment in the White House that is dedicated for political purposes must be paid for by the appropriate political committee, not with official funds." Letter from Counsel to the President Beth Nolan to Rep. Dan Burton (Sept. 26, 2000). However, Ms. Nolan stated that "[a]s best we can determine, the Vice President did not have a Clinton/Gore '96 computer or Clinton/Gore '96 e-mail account in the White House." *Id.*

D. Allegation That the Vice President Was Aware of Records Management Problems in the OVP

The Vice President has informed investigators that he did not know about the failure of the White House e-mail system to store or archive e-mail messages from 1998 to 1999.[307] According to the majority, "The Vice President's claim to be ignorant of his Office's records management problems is not credible."[308]

The only support that the majority can cite for this assertion, however, is the fact that the Vice President "is extremely computer savvy and highly involved in issues related to information systems both generally and within his office."[309] Such speculation is flimsy and provides no reasonable basis for questioning the Vice President's credibility.

There is also no evidence to suggest that the Vice President was aware of the decision not to use ARMS. To the contrary, Judge Campbell told Committee staff that he did not inform the Vice President in 1994 about his decision not to connect to ARMS and that he would be surprised if anyone else did.[310] Furthermore, the Vice President's Chief of Staff, Charles Burson, told the Committee that he thought, on the basis of meetings he had had with White House counsel, that OVP e-mails were being electronically archived on the same system as the rest of the White House.[311]

In fact, the Committee has documentary evidence that Vice President Gore was told that his e-mails were being automatically archived. The Committee received a copy of an e-mail to Vice President Gore, discussed above, which stated that "[a]ll internet e-mails are recorded on the White House computers. According to Michael, the only way not to have your e-mails backed up on government computers would be to get a Clinton/Gore computer in your office and

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[307]Interview of Vice President Gore with Robert J. Conrad, Jr., Head of the Department of Justice Campaign Financing Task Force (April 18, 2000). *See also The Edge with Paula Zahn*, Fox News (June 14, 2000).

[308]Majority Report at 73.

[309]*Id*.

[310]Interview of Hon. Todd Campbell by Majority and Minority Staff, House Committee on Government Reform (Aug. 18, 2000).

[311]Interview of Charles Burson by Majority and Minority Staff, House Committee on Government Reform (Aug. 3, 2000). Mr. Burson joined the OVP as counsel in February 1997, long after the decision about connecting to ARMS had been made.

set it up for private e-mails."[312]

While technical personnel in OA were apparently aware that the OVP was not connected to ARMS, it does not appear that they communicated this information to anyone in the White House. To the contrary, White House counsel repeatedly received written communications indicating that OVP e-mails were being archived on ARMS. The Committee received dozens of e-mails between Tony Barry, OA's ARMS expert, and persons in the White House counsel's office which indicate that Mr. Barry told White House counsel that he was searching ARMS for OVP records.[313] Although Mr. Barry was presumably aware that OVP e-mails were not being systematically captured, he apparently placed OVP e-mails which arrived in ARMS through various secondary means into a "bucket," which he would search in response to requests to look for OVP records.[314]

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[312]E-Mail from Joel Velasco to Vice President Gore (February 22, 1998) (E 8701).

[313]Mr. Barry explained to the Committee that after he receives requests to perform an ARMS search, he responds by e-mail to confirm the details of the search (i.e., the search definition, an estimate of the cost and time that the search will take, and the search schedule). Interview of Daniel A. Barry by Majority and Minority Staff, House Committee on Government Reform (March 9, 2000). Many of these e-mails from Mr. Barry to members of the Office of White House Counsel were produced to the Committee and refer explicitly to Mr. Barry conducting searches of OVP records. *See*, *e.g.*, E-Mail from Daniel A. Barry to Michael Imbroscio (Sept. 2, 1997) (E 7845); E-Mail from Daniel A. Barry to Karl Racine (July 27, 1998) (E 7830); E-Mail from Daniel A. Barry to Steven Reich (March 6, 2000) (E 7822). These three e-mails are attached as exhibit 22.

[314]*See* E-Mail from Daniel A. Barry to Sandra Golas (July 28, 1998) (describing the processing of e-mails into ARMS and referring to distinct "buckets" for records from such EOP agencies as "WHO" (the White House Office), "VPO" (the Vice President's Office), "OPD" (the Office of Policy Development), and "CEA" (Council of Economic Advisors)) (E 7301) (attached as exhibit 23).

V. THE COSTS OF THE INVESTIGATION AND THE RECONSTRUCTION EFFORT

As of September 29, 2000, the White House has committed, obligated, or expended approximately $6.9 million on reconstructing the "missing" e-mails.[315] 39,157 hours of work have been spent on this mammoth project -- 34,822 hours by contract employees, 3,795 hours by employees of the Executive Office of the President, and 540 hours by security personnel. Overall, the cost of the project has been estimated at $11.7 million dollars.[316]

The Committee has also expended considerable taxpayer dollars on its own investigation. The Committee's investigation has included five days of hearings and 36 interviews of witnesses, many of them federal government employees. It also required the production of over 10,000 pages of documents, the majority of which were produced by the White House.

In dollar terms, then, the majority's allegations are costing the taxpayers of this country millions of dollars.

For many, however, dollars alone fail to capture the true cost of the e-mail investigation. The investigation is part of a series of scandal investigations by this Committee that unfairly smeared reputations of many dedicated public servants and drove others to leave government service. The impact of these investigations was eloquently expressed by Cheryl Mills in her testimony before the Committee on May 4, 2000:

> Mr. Chairman, I left because I was tired of playing a role in dramas like today, when so many issues that mattered to me . . . were not being addressed. You have held four days of hearings, and spent countless more dollars on depositions and document productions, but yet you have not chosen to use your oversight authority to hold one day's worth of hearings about: a man who was shot dead by an undercover New York police officer while he was getting into a cab, after refusing to buy drugs from that officer; any of the 67 cases and counting that have been overturned because officers in Los Angeles Police Department planted guns and drugs to frame people, shot an unarmed man, and quite possibly shot another man, with no criminal record, 10 times -- killing him; why African American youths charged with drug offenses are 48 times more likely than white youths to be sentenced to prison.
>
> * * *
>
> Nothing you discover here today, will feed one person, give shelter to someone who is homeless, educate one child, provide health care for one family, or offer justice to one African American or Hispanic juvenile. You could do so much to transform our country -

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[315]Letter from Michael K. Bartosz, General Counsel to the Office of Administration, to James C. Wilson, Chief Counsel (Sept. 29, 2000).

[316]*Id*.

- but instead you are compelled to use your great authority and resources to address . . . e-mails.[317]

[317]Testimony of Cheryl Mills, May 4 hearing (attached as exhibit 24).