

I. EXECUTIVE SUMMARY

The majority report accuses the President, the First Lady, senior White House staff, and Democratic National Committee (DNC) employees of theft of government property. These conclusions are extraordinary. Simply put, the record does not support an allegation of theft. It is not theft to remove duplicate addresses from the President's holiday card list so that recipients do not receive duplicate cards. It is not theft to answer an inquiry as to whether an individual has attended an event at the White House. Yet, at bottom, this is the type of evidence the majority cites as support for its conclusions.

There has not been any prosecution for "theft of government property" that even remotely resembles the conduct examined here -- nor will there ever be. Violation of the "theft" statute occurs where an individual "embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys or disposes of any record, voucher, money, or thing of value of the United States." As the Supreme Court has ruled, to be guilty of this crime a person must have a "criminal intent to steal."

No one "stole" the President's holiday card list. In both the Republican and Democratic administrations, the President's holiday cards are paid for by the President's political party, so as to avoid any appearance that taxpayer money is being used to pay for greetings to political supporters. In the case of the 1994 list, a conscientious DNC employee, Brooke Stroud, learned that the contractor that had been hired by the DNC to remove duplicate addresses from the President's holiday card list did not properly "de-dupe" the list. She therefore worked over a weekend with her parents and several volunteers to properly remove duplicate addresses from the list. This is not embezzling, stealing, or purloining the holiday card list. Ms. Stroud obtained the holiday card list for the purpose of insuring that the President did not send two cards to the same address -- not for the purpose of stealing the list.

Similarly, there was no theft of the 1993 holiday card list. Apparently, the contractor charged with "de-duping" the 1993 holiday card list failed to remove the list from its computer. The computer was later moved -- for unrelated reasons -- to the 1996 Clinton/Gore campaign. There is no evidence that this list was used for campaign purposes. In fact, the Clinton-Gore campaign never even accessed this list. Not only was there no intent to steal, but it appears that the Clinton-Gore campaign was not even aware that it possessed the list.

The majority's assertion that it is theft to disclose attendance at White House events has even less of a foundation. When the White House Social Office was planning official events like a state dinner, the office had the responsibility of submitting a proposed guest list to the President and the First Lady. In order to assemble an appropriate list, the Social Office asked various parties, including the DNC, for suggestions. This was exactly the same practice followed in prior administrations.

To avoid recommending individuals to the White House who had recently been to the

White House, the DNC, on occasion, asked the White House Social Office whether certain individuals had attended an event at the White House recently. When White House employees answered these legitimate inquiries, they were not stealing government property. They were simply helping to insure that the President and the First Lady were presented with a better guest list.

A legitimate question is whether anyone improperly used government resources for political purposes. On this issue, however, the relevant witnesses testified that they had no reason to believe that the holiday card list or the attendance information -- or any other information derived from the White House database -- was ever used for campaign or political fundraising purposes. The Committee fully investigated every minuscule transfer of information from the White House to the DNC and did not establish that any of the information was used improperly.

It is tempting not to dignify the majority report's accusations regarding the President and First Lady with a response. Since the charge has been made, however, it is necessary to correct the record. The majority report's attempt to implicate the President and First Lady in the theft "scheme" is not, in any way, substantiated by the evidence. First, it is impossible to implicate the First Family in a crime that has not been committed. Further, the record indicates that the President and First Lady were only peripherally involved with the database. The staff involved in the database project could recall only a handful of conversations with the President and First Lady about the database -- and those discussions were general in nature and raise no concerns.

The majority also unfairly claims that Cheryl Mills, Deputy White House Counsel, has committed perjury and obstruction because Ms. Mills and other White House counsel disagreed with Rep. McIntosh's conclusion about whether two documents were responsive to his document request. It is not a crime to reach a different conclusion than Rep. McIntosh.

Two years ago, Rep. McIntosh falsely accused SEC Chairman Arthur Levitt of flying first-class at taxpayer expense, leading a *Wall Street Journal* columnist to observe:

Rep. David M. McIntosh has been chasing SEC Chairman Arthur Levitt Jr. all over Planet Washington. He does so in pursuit of a "scandal" that, when we press our x-ray spectrometer up against it, seems to consist of the substance of interstellar space, which is to say, nothing.

Mr. Levitt is accused of flying first class and staying in nice hotels, and digging into his own pocket to pay for it.

It takes a special kind of ingenuity to find something to get outraged about here.¹

¹Holman W. Jenkins, Jr., *Business World: Fly First Class (With the Other Criminals)*, Wall Street Journal (July 15, 1997) (attached as exhibit 1).

It also takes “special ingenuity” to discern a theft of government property in this case. It may be frustrating to spend over two years investigating an esoteric issue like the White House database and find nothing. However, this does not justify smearing the reputations of numerous public servants and others without factual or legal support, nor does it justify making ludicrous charges about the President and the First Lady.

II. FINDINGS

The White House Database (“WhoDB”) is a computerized Rolodex used to track contacts of citizens with the White House and to create a holiday card list. Well over two years ago, Rep. McIntosh, Chairman of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs began a sprawling investigation into the development and use of the WhoDB.² The Subcommittee, in conjunction with the Committee on Government Reform and Oversight, has deposed 34 witnesses exclusively on WhoDB issues,³ and obtained over 43,000 pages of documents. It spent a great deal of taxpayer money on this investigation. Yet neither the Subcommittee nor the Committee held a public hearing on merits of the investigation in the entire 105th Congress. What the evidence gathered by the Committee shows is summarized below.

A. Development of WhoDB

The Clinton Administration inherited a number of different computer systems that various offices within the White House had used to track contacts. The Clinton administration planned to update the computer systems by creating one White House database that a number of the offices could access for the most up-to-date contact information on individuals such as addresses and phone numbers.⁴ The idea for such a system apparently was not unique to the Clinton Administration. A database contract proposed late in the Bush Administration similarly described a system that would maintain a “list of names and addresses of individuals identified as

²Letter from Subcommittee Chairman David M. McIntosh to Leon Panetta (June 27, 1996).

³The deposition of one additional witness focused on both WhoDB and other campaign finance related matters. *See* Deposition of Truman Arnold, House Committee on Government Reform and Oversight (July 18, 1997). All depositions referenced in this report, unless otherwise noted, were conducted by this Committee.

⁴Deposition of Laura Tayman, 29 (March 20, 1998); Deposition of Marsha Scott, 26-27, 58-59 (Feb. 18, 1998); Deposition of Erich Vaden, 15-16 (Jan. 25, 1998); Deposition of Mark Bartholomew, 36-37 (Aug. 15, 1997).

important to the President.”⁵

The new database eventually became what is known as the White House database or the “WhoDB.” According to a survey by the Government Accounting Office, the White House estimated that the WhoDB contains approximately 200,000 names of individuals, as well as information such as the individuals’ addresses, organizational affiliations, and relationships with the First Family.⁶ The White House estimates that the total cost of development, operations, and maintenance of the database from FY 1994 through August 1998 is \$785,467.⁷

Although early plans anticipated that WhoDB would be used by many offices within the White House, the two main users were the Social Office, which used it to create guest lists for events held at the White House, and the Correspondence Office, which used it to create a list of names and addresses of individuals who would receive holiday cards from the President.

After conducting a lengthy investigation into the development and use of the WhoDB, the Subcommittee has learned that those involved in developing the WhoDB regularly consulted White House counsel on database issues, including the limits on the receipt and use of information contained in the WhoDB.⁸ For example, Brian Bailey, who was an assistant to then-Deputy Chief of Staff Erskine Bowles, testified as follows:

Erskine, from day one, was insistent that . . . this is a short-term assignment and it just didn't make any sense to even think about doing anything illegal, immoral, or unethical. He used those three words all the time. And he said, if there is anything that you have one ounce of question about or even a shade of gray in, go talk to the White House

⁵See *The Propriety of the Taxpayer-funded White House Database*, Hearing Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the Committee on Government Reform and Oversight, 53 (September 10, 1996).

⁶*Id.* at 97.

⁷This figure was provided by the Office of White House Counsel in September 1998. The majority does not explain anywhere in its report how it reached the conclusion that the WhoDB cost \$1.7 million, and no witnesses deposed by the Committee confirmed that that number was accurate.

⁸See, e.g., Deposition of Erskine Bowles, 30, 107-08 (May 5, 1998); Deposition of Laura Tayman, 79-80 (March 20, 1998); Deposition of Marsha Scott, 90-91 (Feb. 18, 1998); Deposition of Erich Vaden, 101-04 (Jan. 25, 1998); Deposition of Brian Bailey, 27-28 (Feb. 6, 1998).

Counsel, and if White House Counsel says no, then the answer is no.⁹

The advice from White House counsel to those who worked on the WhoDB distinguished between the transfer of data from outside sources into a White House database and the transfer of data from a White House database to outside sources. The counsel's office advised that the White House can receive data for a White House database from any source, including "private entities or individuals, non-profit organizations, political organizations, and other sources."¹⁰ For example, if the Clinton-Gore campaign had a computerized Rolodex of contacts who were important to the President, it would not be illegal to import this data into the WhoDB, just as it would not be illegal for a new government employee to bring the employee's personal Rolodex with him or her into government service.

The White House counsel took a dimmer view of transferring data from a White House database to outside sources. The counsel advised "data from the database system may be provided to a source outside the federal government only for authorized purposes."¹¹ All of the relevant witnesses testified that there was no transfer of data from the WhoDB to the DNC or the PeopleBase.¹²

In fact, according to testimony, the WhoDB system had a warning banner stating that data was for official use, and users had to acknowledge this before logging on.¹³ Not only were employees made aware of the legal limits on the WhoDB, witness after witness testified that they had no reason to believe that the legal advice from White House counsel was ever disregarded.¹⁴

⁹Deposition of Brian Bailey, House Government Reform and Oversight Committee, 27 (Feb. 6, 1998).

¹⁰Memorandum from Cheryl Mills, Associate Counsel to the President, to Marsha Scott, Deputy Assistant to the President and Director of Correspondence and Presidential Messages (Jan. 17, 1994), White House Bates Number M24918-20. All documents produced by the White House for the WhoDB investigation are designated with the letter "M."

¹¹Memorandum from Cheryl Mills, Associate Counsel to the President, to Marsha Scott, Deputy Assistant to the President and Director of Correspondence and Presidential Messages (Jan. 17, 1994), M24918-20.

¹²*E.g.*, Deposition of Erich Vaden, 296 (Jan. 25, 1998); Deposition of Marsha Scott, 133 (Feb. 18, 1998); Deposition of Mark Bartholomew, 88-89 (Aug. 15, 1997); Deposition of Al Hurst, 112 (March 13, 1998).

¹³Deposition of Erich Vaden, 115-16 (Jan. 25, 1998).

¹⁴*See, e.g.*, Deposition of Erskine Bowles, 107-08 (May 5, 1998); Deposition of Laura Tayman, 142 (March 20, 1998); Deposition of Harold Ickes, 132-33 (March 12, 1998);

B. Event Planning

The Social Office uses the WhoDB when planning official White House events and unofficial events held on the White House grounds. The Clinton administration's Social Office has helped plan thousands of events to which hundreds of thousands of guests were invited to the White House.¹⁵

1. Official Events

According to deposition witnesses, official events include events such as state dinners, arrival ceremonies, and bill signings. Following the practices of previous administrations, for these events, the Social Office collects a list of recommended invitees from other offices within the White House and from relevant outside entities such as congressional offices, the DNC, and interested parties.¹⁶ These lists are compiled into one list which is reviewed by the President, the First Lady, or the White House Counsel's Office.¹⁷ The guest list is then input onto the WhoDB.¹⁸

The WhoDB list is apparently used to create a calligrapher's list of names and addresses for producing written invitations; a Presidential identifier list which lists the names and affiliations of the guests for the President; a security list which lists names, social security numbers, and birthdates which is sent to the WAVES computerized security system; a gate list used for check-in on the date of the event which contains the list of guests approved by security; and a final attendee list which the gate sends to the Usher's Office after the event.¹⁹

According to the testimony of relevant White House and DNC staff, the White House did

Deposition of Judith Ann Stock, 162 (Feb. 20, 1998); Deposition of Marsha Scott, 134 (Feb. 19, 1998); Deposition of Donald Dunn, 151 (Jan. 27, 1998); Deposition of Erich Vaden, 296 (Jan. 25, 1998).

¹⁵See Deposition of Judith Ann Stock, 54-57 (Feb. 20, 1998) (testifying that the Social Office held about 2,000 events in 4 years, entertaining about half a million people in 4 1/2 years).

¹⁶Deposition of Judith Ann Stock, 32-37 (Feb. 20, 1998) ("again, what we're going on is a precedent of me sitting down with previous social secretaries and asking them how they did that and how they went about building lists").

¹⁷Deposition of Judith Ann Stock, 68, 76 (Feb. 20, 1998).

¹⁸Deposition of Kimberly Widdess, 26-28 (Feb. 24, 1998).

¹⁹Deposition of Judith Ann Stock, 90-95 (Feb. 20, 1998); Deposition of Kimberly Widdess, 129 (Feb. 24, 1998).

not want the same people to be invited repeatedly to official White House events.²⁰ Therefore, before the DNC recommended potential invitees, DNC staff would sometimes call the White House and ask whether a particular individual had been to a past White House event.²¹ These calls generally involved a request about the attendance of one or two individuals.²² The White House sometimes did not respond to these requests and sometimes did -- at times consulting WhoDB.²³

As a general rule, after guest recommendations were submitted to the Social Office by outside entities, the Social Office did not inform them whether their suggested invitees had been invited. However, on a few occasions, this information was verbally provided -- sometimes to the DNC.²⁴ In addition, for about a month (five to six events), the Social Office provided written

²⁰Deposition of Judith Ann Stock, 98 (Feb. 20, 1998) (“Of course. We don’t want duplicate invitations”); Deposition of Donald Dunn, 152 (Jan. 27, 1998); Deposition of Richard Sullivan, 59 (Oct. 22, 1997); Deposition of Jacob Aryeh Swiller, 182-83 (Jan. 6, 1998); Deposition of Karen Hancox, 60 (Dec. 18, 1997) (stating that the “genesis” of such calls was that the White House Social Secretary was concerned that DNC staff was submitting names of people who had been invited a lot to the White House).

²¹Deposition of Richard Sullivan, 33 (Oct. 22, 1997); Deposition of Jacob Aryeh Swiller, 105-06 (Jan. 6, 1998).

²²*E.g.*, Deposition of Jacob Aryeh Swiller, 105-06 (Jan. 6, 1998); Deposition of Richard Sullivan, 72-73 (Oct. 22, 1997).

²³*E.g.*, Deposition of Aryeh Swiller, 70, 80-81, 86 (Jan. 6, 1998) (testifying that “often” DNC requests to the White House for information about upcoming events “were not responded to,” and that DNC requests to the White House for event attendance lists were “often” denied); Letter from Charles Ruff, Counsel to the President, to Subcommittee Chairman McIntosh (Feb. 28, 1997).

²⁴Deposition of Judith Ann Stock, 54-64 (“we didn’t have time, energy, or the inclination to give that information. . . . That is not the business I was in. . . . I did not provide the information . . . The rule was not of not giving out the list. . . . I don’t know if [Social Office Staff] ever provided it”) and 97-99 (Feb. 20, 1998); Deposition of Kimberly Widdess, 76-77 (Feb. 24, 1998) (noting that the Social Office received requests from entities such as the Ford Theater and the Kennedy Center for information about who had accepted or regretted invitations, and that the Social Office treated such requests “the same way we treated the [DNC] requests”); Deposition of Jacob Aryeh Swiller, 70 (Jan. 6, 1998); Deposition of Richard Sullivan, 86-88 (Oct. 22, 1997) (Mr. Sullivan remembers other DNC employees making this type of call on 4-6 occasions); Deposition of Donald Dunn, 107-109 (Jan. 27, 1998) (Mr. Dunn testified that on some occasions he provided information to the DNC regarding the status of persons invited to an upcoming event. He did not specify whether this information concerned official or unofficial

lists of invitees to the offices and outside entities that had made recommendations.²⁵ However, this process was dropped as too cumbersome.²⁶ The Social Secretary assumed the entity wanted this information in order to set up appointments while the invitee was in town.²⁷

2. Events Sponsored by Outside Entities

As with prior administrations, outside entities sponsored events at the White House, meaning that these entities reimbursed costs of events held on White House grounds. In the Clinton administration, entities sponsoring such events have included the Kennedy Center, the Ford's Theater, and the International Olympics Committee, among others. The DNC has also sponsored events at the White House.²⁸

During the Reagan and Bush administrations, political entities also held events at the White House.²⁹ Former Clinton administration Social Secretary Judith Ann Stock testified that

White House events).

²⁵According to testimony, such lists were created and printed off of a Wordperfect system -- not off of WhoDB. Deposition of Kim Widdess, 27-28, 108 (Feb. 24, 1998).

²⁶Deposition of Judith Ann Stock, 54-64 and 143 (Feb. 20, 1998); Deposition of Brooke Stroud, 87 (Nov. 4, 1997) (noting that she saw such lists "once in a blue moon . . . rarely").

²⁷Deposition of Judith Ann Stock, 57-62 (Feb. 20, 1998).

²⁸House Committee on Appropriations, *Hearings on Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998*, Part 3, 113-142.

²⁹For example, Republican donor programs events at the White House during the Bush Administration include: October 17, 1991, Team 100 dinner hosted by President Bush; February 20, 1992, National Republican Senatorial Committee Trust reception, hosted by President Bush; March 9, 1992, National Republican Senatorial Committee (NRSC) and National Republican Congressional Committee (NRCC) fundraising planning event in which President Bush met with members of the NRSC and NRCC to discuss the President's Dinner, a joint fundraising event; April 8, 1992, Eagles reception hosted by President and Mrs. Bush; April 9, 1992, Eagles reception hosted by President and Mrs. Bush; May 14, 1992, NRCC President's Forum and House Council briefing and reception involving meeting with President Bush; January 6, 1993, Presidential Trust and Eagles reception hosted by President and Mrs. Bush; January 7, 1993, Presidential Trust and Eagles reception hosted by President and Mrs. Bush; January 12, 1993, Team 100 dinner hosted by President Bush. Republican donor programs events at the White House during the Reagan Administration include: July 9, 1981, two Eagles receptions hosted by President Reagan; September 22, 1981, Eagles reception hosted by President Reagan; April 16, 1982, Eagles reception hosted by President Reagan; June 21, 1982, Senatorial Trust reception

“[i]t’s the same as if there were a Republican President, the RNC also would pay for an event that might be sponsored in the White House with the Eagles. That’s what we based our judgment on. And that was something that was well defined and well understood . . . by previous administrations as well as this administration.”³⁰

As in prior administrations, invitation lists for White House events sponsored by outside entities generally were kept in White House databases, and the invitations were sent from the White House.³¹ The guest lists were vetted with the counsel’s office to ensure the potential invitees were “appropriate to be admitted to the White House.”³² The lists were then put into a database -- like the WhoDB -- to create a list for the calligraphers’ office, which sent out the invitations. The Office of the Social Secretary would receive invitation responses and ask for the social security numbers and birthdates of guests. According to the Social Secretary, that system had been “in place since they’ve been using the Secret Service to admit people through the White House.”³³ Thus, as in previous administrations, the Clinton Administration used White House resources and staff to input information from outside organizations like the DNC into White

hosted by President Reagan; September 13, 1983, Eagles reception hosted by President Reagan; November 22, 1983, Senatorial Trust reception hosted by President Reagan; May 10, 1984, reception for the President’s Dinner Committee hosted by President Reagan; August 29, 1984, reception for GOP Re-elect Committee hosted by President Reagan; April 2, 1985, Presidential Trust reception hosted by President Reagan; April 22, 1985, reception for the Republican Congressional Leadership Council; September 12, 1985, Eagles reception; December 9, 1986, Eagles meeting attended by President Reagan; December 16, 1986, reception for House-Senate dinner fundraisers hosted by President Reagan; April 29, 1987, President’s Dinner reception hosted by President Reagan; May 28, 1987, meeting hosted by President Reagan with GOPAC, a political action committee founded by Congressman Newt Gingrich; September 15, 1987, NRCC meeting with President Reagan; September 30, 1987, Eagles meeting with President Reagan; April 14, 1988, President’s dinner state chairmen meeting with President Reagan; May 11, 1988, President’s dinner donors meeting with President Reagan; June 30, 1988, Republican Congressional Leadership Council reception hosted by President Reagan; July 26, 1988, NRSC meeting with President Reagan; July 29, 1988 Presidential Trust meeting with President Reagan. See Minority Report, Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns*, S. Rep. No. 167, 105th Cong., 2d sess., v. 5., pp. 8053-55, appendix to Chapter 28 (March 10, 1998) (hereafter “Senate Minority Report”).

³⁰Deposition of Judith Ann Stock, 21 (Feb. 20, 1998).

³¹Deposition of Judith Ann Stock, 27-29 (Feb. 20, 1998).

³²Deposition of Judith Ann Stock, 27 (Feb. 20, 1998).

³³Deposition of Judith Ann Stock, 28 (Feb. 20, 1998).

House databases and to process RSVPs and guest admission for events sponsored by outside entities.

The White House Social Secretary testified that the Chief Usher of the White House was responsible for reimbursement for the time and resources of the persons involved in the invitation process. She stated that the Chief Usher's system regarding what was reimbursed was "again based on what the Bushes had used."³⁴

The record indicates that, on a few occasions, the Clinton White House provided status reports to the sponsoring entity regarding who had RSVPed.³⁵ The White House Social Secretary suggested that the purpose of providing such information was to help the sponsor determine whether it needed to follow-up on inviting people to the event.³⁶ Because guests generally RSVP directly to the White House, the entity would have no other way of obtaining up-to-date RSVP information. The White House provided such information to sponsoring entities such as the Library of Congress, the DNC, and others.³⁷ The record also indicates that the DNC received from the White House a few attendance lists regarding past DNC-sponsored events at the White House.³⁸ Mr. Swiller of the DNC testified that "sporadically, every couple of months" the DNC would receive such lists.³⁹

C. Holiday Card Project

Since 1995, the WhoDB was also used to create a list of names and addresses for individuals designated to receive a holiday card from the President. The Clinton administration followed the holiday card procedure established by previous administrations.⁴⁰ A number of entities -- including the White House, the DNC, the campaign, and others connected with the President -- created lists of card recipients. The DNC paid outside contractors to merge the lists

³⁴Deposition of Judith Ann Stock, 29 (Feb. 20, 1998).

³⁵*E.g.*, Deposition of Judith Ann Stock, 87 (Feb. 20, 1998).

³⁶Deposition of Judith Ann Stock, 87 (Feb. 20, 1998).

³⁷*See* Deposition of Kimberly Widdess, 76-77 (Feb. 24, 1998); Deposition of Judith Ann Stock, 30-31 (Feb. 20, 1998).

³⁸*E.g.*, List for "Reception (DNC Trustees)," with cover fax sheet dated April 4, 1994, DNC bates number 3058341.

³⁹Deposition of Jacob Aryeh Swiller, 18-20 (Jan. 6, 1998).

⁴⁰Deposition of Alice Pushkar, 158 (Jan. 13, 1998).

and to produce and mail the cards.⁴¹ As was the practice in prior administrations, the President's political party (in this case, the DNC) paid for the costs of producing and mailing the cards to avoid any appearance that federal funds were being used to send greetings to the President's supporters.

The record indicates that the holiday card lists that were on the WhoDB were not provided by the White House to any outside entity other than the contractors who were hired to merge and purge the lists and print the cards. No relevant witnesses had reason to believe the lists were used for campaign fundraising or any unofficial purposes.⁴²

However, in 1994, before the WhoDB was used for the holiday card project, the contractor charged with merging the various lists provided a copy of a holiday card list to the DNC. The White House informed the Subcommittee of this fact even though the Subcommittee had not requested this pre-WhoDB information.⁴³ Although relevant witnesses were questioned for numerous hours on the 1994 holiday card project, the record does not indicate that the 1994 holiday card list was used for any purpose other than the holiday card project.⁴⁴

Apparently, the DNC and White House employees responsible for the 1994 holiday card project were not satisfied with the work done by the contractor who merged the lists. Therefore, the DNC employee charged with the project, Brooke Stroud, along with her parents, spent a holiday weekend at the DNC with volunteers (apparently women who had volunteered to help with the holiday card project in previous administrations) removing duplicate names and addresses from a holiday card list.⁴⁵

⁴¹Deposition of Alice Pushkar, 158 (Jan. 13, 1998); Deposition of Jodie Torkelson, 99 (Sept. 9, 1997).

⁴²Deposition of Brooke Stroud, 90-92 (Nov. 18, 1997); Deposition of Alice Pushkar, 157 (Jan. 13, 1998).

⁴³Letter from the Executive Office of the President to Subcommittee Chairman McIntosh (Feb. 28, 1997).

⁴⁴Letter from the Executive Office of the President to Subcommittee Chairman McIntosh (Feb. 28, 1997).

⁴⁵Deposition of Brooke Stroud, 164-175 (Nov. 4, 1997). It also should be noted that the list that was de-duped at the DNC may not have included information that came from the White House. Although Brooke Stroud believed it did include White House information, documents relating to the de-duplicating project show that it may have been limited to a "merge and purge" of information provided by the DNC and the PeopleBase. Ms. Stroud explained, "The way I remember it is different than the way it is being described here (in the documents), but that doesn't mean that my memory is the one to go with." Deposition of Brooke Stroud, 97, 103 (Nov. 18,

During this process, only two DNC employees had access to this list, Ms. Stroud and computer specialist Al Hurst. Both testified that they had no reason to believe the information was used for campaign fundraising or any campaign purpose.⁴⁶ They only used the information for the holiday card project.⁴⁷

It also appears that the contractor responsible for “de-duping” the 1993 holiday card list failed to remove the list from its computer when the project was completed. The list ended up in the hands of the 1996 Clinton-Gore campaign by accident when the contractor moved its computer to the Clinton-Gore campaign in October 1995 so the campaign could access a different database on that computer (PeopleBase). Again the relevant witnesses testified that they had no reason to believe the list was used for campaign fundraising or any unofficial purpose.⁴⁸ To the contrary, the date-tag on the computerized file containing the holiday card list indicates that the file was not accessed after the computer was moved to the campaign.⁴⁹ Apparently, the campaign was not even aware of the existence of this file.

D. Involvement of the President and First Lady

The Committee thoroughly investigated the extent to which both the President and First Lady were involved in the WhoDB project. The record indicates that the President and First Lady were interested in and aware of the database, but had little involvement in its development or use. Several individuals who have regular contact with the President and First Lady testified about this matter.

Marsha Scott, then Director of Correspondence at the White House, who led the WhoDB project, testified that she felt confident that “at some point I probably said [to the President], ‘I am working on something to get a social system up.’” She had no memory, however, of specific

1997). Furthermore, James Dorskind, a White House employee who worked on the 1994 holiday card, testified that he believed that de-duplication did not include White House information. Deposition of James Dorskind, 90-91 (Oct. 3, 1997) (“there were volunteers who assisted in 1994 in de-duping the PeopleBase list, as I recall it, or the DNC, whatever it was that was going in for the purpose of the holiday card project”).

⁴⁶Deposition of Brooke Stroud, 92 (Nov. 18, 1997); Deposition of Al Hurst, 110-11 (March 13, 1998).

⁴⁷Deposition of Al Hurst, 111-12 (March 13, 1998); Deposition of Brooke Stroud, 91-94 (November 18, 1998).

⁴⁸Deposition of Brooke Stroud, 92 (Nov. 18, 1997); Deposition of Al Hurst, 110-11 (March 13, 1998).

⁴⁹Affidavit of Carl Mecum (Sept. 4, 1998).

discussions with the President about the database. She further testified that she did not believe that she ever made a progress report to him on the project.⁵⁰

Erskine Bowles, the then-Deputy Chief of Staff to the President, testified that he spoke with the President about the database “maybe twice.”⁵¹ Harold Ickes, also then-Deputy Chief of Staff to the President, testified that he believes he had “one or two conversations” with the President about the database, but that “it was not something that he was particularly focused on.” Mr. Ickes noted that the President’s concern was that “people be remembered.”⁵²

Furthermore, the record indicates that the President was not involved in discussions with White House staff regarding outside databases. Ms. Scott testified that she does not believe she ever spoke with the President about outside databases.⁵³ Mr. Ickes testified that he did not ever have an understanding that the President wanted the White House and DNC databases integrated or compatible.⁵⁴

Evidence indicates that the First Lady wanted a database of White House contacts, but that her involvement with the details of the WhoDB project was peripheral. Ms. Scott testified that she only recalled one conversation with the First Lady.⁵⁵ This discussion occurred early on in the development of the WhoDB. She discussed that conversation as follows:

What I remember of my discussions with her was that she hoped I would make this a high priority and she wanted this to get done. I mean, we were in a technological wasteland in the White House and it was very, very time consuming for all of us, and particularly for the offices that she controlled, which was the Social Office, to get their work done. And she wanted, before we got into another round of big functions and holiday lists, she very strongly and I would even say even desperately wanted us to have something set up so it would be a lot easier on all the staffs as we got into this.⁵⁶

Mr. Ickes testified that he did not recall any conversations with the First Lady about the

⁵⁰Deposition of Marsha Scott, 14-25 (April 28, 1998).

⁵¹Deposition of Erskine Bowles, 18 (May 5, 1998).

⁵²Deposition of Harold Ickes, 22-28 (March 12, 1998).

⁵³Deposition of Marsha Scott, 22 (April 28, 1998).

⁵⁴Deposition of Harold Ickes, 63-64 (March 12, 1998).

⁵⁵Deposition of Marsha Scott, 17 (April 28, 1998).

⁵⁶Deposition of Marsha Scott, 116 (Feb. 18, 1998).

WhoDB.⁵⁷

III. RESPONSE TO MAJORITY ALLEGATIONS

The majority report makes six major allegations regarding the WhoDB investigation: (1) the holiday card list was stolen, (2) event attendance information was stolen, (3) government resources and personnel were stolen, (4) an infrastructure at the White House was dedicated to supporting the Democratic National Committee, (5) the President and the First Lady were involved in the unlawful conversion of government property to the use of the DNC and the Clinton/Gore campaign, and (6) White House counsel, Cheryl Mills, committed perjury and obstructed the investigation. These allegations, however, were not substantiated by the Committee record. To the contrary, the majority's allegations conflict with the overwhelming weight of the testimony and evidence gathered by the Committee.

Regrettably, despite the extensive resources devoted to investigating the WhoDB and the serious nature of the charges being made by the majority, the majority did not schedule a single day of hearings on the merits of the WhoDB investigation in the 105th Congress.⁵⁸ As Rep. Waxman stated:

Mr. McIntosh didn't hold a single hearing on this investigation in the last two years, despite the fact that he summoned 34 witnesses to depositions and demanded 43,000 documents. . . . [T]hat means the entire investigation has been conducted in secret. The media and the public have had no opportunity to observe Representative McIntosh's methods or evaluate the credibility of his suspicions. In short, the public has had no chance to see if the investigation of the alleged Christmas card list caper was legitimate oversight or political witch hunt, or just foolishness.⁵⁹

⁵⁷Deposition of Harold Ickes, 26-29 (March 12, 1998).

⁵⁸In the 104th Congress, there was one hearing on the WhoDB. *The Propriety of the Taxpayer-funded White House Database*, Hearing Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the Committee on Government Reform and Oversight (Sept. 10, 1996). In the 105th Congress, the Committee addressed questions relating to document production, including the production of WhoDB material in a hearing, but never held a hearing on the merits of the investigation. *White House Compliance with Committee Subpoenas*, Hearing Before the Committee on Government Reform and Oversight (Nov. 6 and 7, 1997).

⁵⁹Meeting on Committee Report, Report on Investigation of the White House Database, and Release of Documents, House Committee on Government Reform and Oversight (Oct. 9, 1998).

A. The Alleged Theft of the Holiday Card List

The majority report claims that “[t]he knowing delivery of [the] holiday card lists to others outside of the government . . . constitute[s] the theft of government property under 18 U.S.C. §641.”⁶⁰ The record simply does not support this accusation.

The theft statute provides:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys, or disposes of any record, voucher, money, or thing of value of the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted -- shall be fined . . . or imprisoned not more than ten years, or both.⁶¹

The majority claims that “[t]he mere possession of the list by the DNC is evidence of a theft of the property,” but this is not true. As the Supreme Court has held in *Morissette v. United States*,⁶² an individual does not commit theft under this statute unless there is “criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property.”⁶³

This crucial element of intent does not exist in the case of the alleged theft of the 1994 holiday card list. Ms. Stroud, the DNC employee who obtained the list, did not obtain the list from the contractor with an intent to deprive the White House of property that belongs to the White House. Instead, she obtained the list for an entirely legitimate reason: to remove duplicate addresses. This is not a crime. In fact, it is commendable.⁶⁴

⁶⁰Majority report, *Investigation of the Conversion of the 1.7 Million Centralized White House Computer System, Known as the White House Database, and Related Matters*, House Committee on Government Reform and Oversight (Oct. 9, 1998) (hereafter, the “Majority report”).

⁶¹18 U.S.C. 641.

⁶²342 U.S. 246 (1952).

⁶³342 U.S. 246, 276.

⁶⁴The majority report mentions other versions of the 1994 list that may have been sent to the DNC. Deposition testimony indicates that these versions, as well, stayed in the possession of two employees -- Brooke Stroud and a computer operator -- until they were provided to DNC counsel in response to requests made pursuant to this investigation. Further, these lists were protected from disclosure to other employees and were only used for the purpose of sending out the holiday cards. Deposition of Brooke Stroud, 173-74 (Nov. 4, 1997); Deposition of Brooke

The same fundamental flaw -- lack of criminal intent -- invalidates the majority's assertion that a theft of property occurred in connection with the 1993 holiday card list. This holiday card list ended up at the 1996 Clinton-Gore campaign by accident. It is not theft to unknowingly accept a used computer that happens to have White House data stored in its hard drive.

In addition, the record indicates that neither of the holiday card lists were used for any purpose other than sending out holiday cards.⁶⁵ In fact, the 1996 Clinton-Gore campaign apparently did not even know that it had received the 1993 holiday card list and never accessed the list. Thus, there is no support for another element of the "theft" statute -- conversion of the property for his use or the use of another.

B. The Alleged "Theft" Concerning Event Attendance Information

The majority report also alleges that the White House and DNC committed "theft" by executing a "scheme" involving the use of WhoDB to help the DNC and the Clinton/Gore campaign. According to the majority, this plan purportedly was approved at a March 1995 meeting between then-DNC finance chair Truman Arnold, then-White House Social Secretary Ann Stock, and then-Deputy Chief of Staff Erskine Bowles. The majority claims that "theft" occurred because the White House responded to DNC inquiries about whether individuals had attended past White House events, and the DNC used that information in fundraising efforts.

These allegations are not substantiated by the evidence. The evidence shows that the White House employees who provided event attendance information to the DNC did not commit a "theft" of government property. To the contrary, they had a legitimate reason for responding to the DNC requests. The White House did not want to invite the same people repeatedly to White House events. Providing information on recent event attendance to entities like the DNC that were asked to submit recommendations for potential guests helped the White House build better guest lists. The DNC, too, sought information for legitimate purposes: making sure they provided appropriate guest suggestions for White House events. Nothing in these actions reflects any sort of intent to wrongfully deprive the government of property.

Further, it is difficult to see how the mundane information involving White House event attendance can even be "stolen." Everyone who attends an event at the White House has this information, as they obviously can see who is there. In addition, the White House regularly publishes who attends state dinners in the newspaper.

Stroud, 32-33, 45-46, 92-95 (Nov. 18, 1997); Deposition of Al Hurst, 30-54, 66-91, 110-11 (March 13, 1998).

⁶⁵Deposition of Brooke Stroud, 92 (Nov. 18, 1997); Deposition of Al Hurst, 110-111 (March 13, 1998); Affidavit of Carl Mecum (Sept. 4, 1998).

Other evidence also fundamentally contradicts the majority's claims. Relevant DNC witnesses testified that they did not use event attendance information from the White House for fundraising purposes. Mr. Sullivan, former finance director of the DNC, testified as follows:

Q: Now, to your knowledge, was anyone who had been invited or who had attended official events -- that's still what we are talking about here -- thereafter contacted by anyone at the DNC to make a contribution and reminded of their having been invited or attended an event?

A: Not to my knowledge.

Q: You never contacted anybody who had been invited or attended an event, asked for a contribution and reminded them of their having been invited or having attended?

A: No.

Q: Okay. . . . Did anyone at DNC ever contact a potential contributor and ask for a contribution and remind that contributor that a member of their family or a business associate had attended or been invited to such an event, to a White House event, to your knowledge?

A: No, not to my knowledge.⁶⁶

Ari Swiller, former head of the DNC trustee program, provided similar testimony:

Q: Do you have any reason to believe anyone at the DNC used this information that you received relating to attendance to White House events to determine whether or not to solicit a contribution from the invitee? For instance, would you solicit contributions from confirmed invitees and attendees and hold off soliciting from recommended invitees who had not been accepted by the White House?

A: No.⁶⁷

This testimony is inconsistent with the majority's claim that information was "converted"

⁶⁶Deposition of Richard Sullivan, 89-90 (Oct. 22, 1997). Later in his testimony, Mr. Sullivan testified that he had made a few fund-raising calls using names he saw on a list of attendees at a 1993-1994 White House CEO luncheon. The list Mr. Sullivan used, however, was created before the WhoDB was operational. Moreover, the record before the Committee does not establish that the list even came from the White House. Deposition of Richard Sullivan, 21, 40-49 (March 5, 1998).

⁶⁷Deposition of Jacob Aryeh Swiller, 183 (Jan. 6, 1998). Mr. Swiller also testified that he had no reason to believe that WhoDB was used for political fundraising or campaign purposes. *Id.* at 182. *See also* Deposition of Brook Stroud, 90-91 (Nov. 18, 1998) (testifying that she did not use final attendance lists regarding White House events to determine whether or not the DNC should solicit a contribution from anyone on such lists, and that she never used these lists for campaign fundraising purposes).

for the benefit of the DNC. Further, DNC staff requests to the White House were often ignored, and DNC staff testified that the DNC was not able to obtain information from the White House more readily following Mr. Arnold's March 1995 visit at the White House.⁶⁸

C. The Alleged "Conversion" of Government Personnel and Resources

The majority also alleges that the White House violated the "theft" statute by converting "government personnel and resources" to directly benefit outside political campaigns.⁶⁹ The main basis for the majority's assertion is a June 28, 1994, memo by Marsha Scott, who was leading the development of WhoDB at the time the memo was written.⁷⁰ The majority's claim, however, ignores relevant testimony by the author of the document and others that directly contradicts the majority's conclusion.

The June 28, 1994, memo by Ms. Scott discusses four different databases, including the White House database.⁷¹ In the memo, Ms. Scott states that her "team" and she are "engaged in conversations with the DNC about the new systems they are proposing," and suggests, "let my team work with the DNC to help them design a system that will meet our needs and technical specifications."⁷² Ms. Scott in her deposition testimony explained that she and the WhoDB team were working with the DNC to ensure that the WhoDB would be able to receive information from the DNC.⁷³

As the White House Counsel's Office had advised,⁷⁴ these efforts were not illegal. Like many individuals in many other types of jobs, the President is entitled to build a Rolodex of individuals who he knows and with whom he is interested in maintaining contact. The DNC database had extensive information about individuals who the President knew. It was therefore a logical source of data for populating the electronic White House Rolodex.

⁶⁸Deposition of Jacob Aryeh Swiller, 70, 80-81, 86-87 (Jan. 6, 1998).

⁶⁹Majority Report.

⁷⁰Memo from Marsha Scott to Harold Ickes and Bruce Lindsey, cc'd to the First Lady (June 28, 1994), M32438.

⁷¹Deposition of Marsha Scott, 89-101 (Feb. 19, 1998).

⁷²Memo from Marsha Scott to Harold Ickes and Bruce Lindsey, cc'd to the First Lady (June 28, 1994), M32438.

⁷³Deposition of Marsha Scott, 94-95 (Feb. 19, 1998).

⁷⁴See, e.g., Memorandum from Cheryl Mills, Associate Counsel to the President, to Marsha Scott, Deputy Assistant to the President (Jan. 17, 1994), M24918-20.

Consistent with Ms. Scott's testimony, individuals who worked with her on WhoDB testified that they recalled talking with the DNC to discuss making sure the White House could receive data from the DNC.⁷⁵ Nowhere in the voluminous deposition record is there evidence that any individuals on the WhoDB team -- or any White House employee -- did, in fact, work on developing outside databases. In fact, when Ms. Scott's former assistant, Erich Vaden, was asked whether anyone worked with the DNC to design a system, he testified, "I know she [Ms. Scott] would have liked that, but it never happened."⁷⁶

The only use of government resources for unofficial purposes that this investigation demonstrated regarding the June 28, 1994, memo was that the memo itself arguably should not have been printed on government paper because, in addition to discussing WhoDB, it also discussed outside political databases. Under the Hatch Act, it is not illegal for certain employees of the Executive Office of the President to engage in political activity, but the costs associated with that activity cannot be paid by the government.⁷⁷ Thus, it is arguable that a memo discussing outside political databases should be written on unofficial stationary.

The majority asserts that the use of government paper for the memo is "similar" to the conduct prosecuted in *United States v. Collins*.⁷⁸ The conduct in *Collins*, however, involved a government employee with an apparent partiality to ballroom dancing who made approximately 76,500 copies of ballroom dancing newsletters and calendars on a government copier, on government paper, for his personal use.⁷⁹ It is irresponsible -- and just plain silly -- to compare that conduct to using two sheets of government paper for a memo discussing ideas on government and nongovernment databases.

D. The Allegation of a White House "Infrastructure" to Support DNC

The majority report asserts that the investigation "exposed" a White House "infrastructure" that processed invitations for DNC events at the White House.⁸⁰ The majority fails to mention that the White House Social Office has processed invitations the same way for all outside entities holding an event at the White House, including the Kennedy Center and the

⁷⁵Deposition of Mark Bartholomew, 50-51 (Aug. 15, 1997), 47-48 (Sept. 16, 1997); Deposition of Erich Vaden, 166-67 (Jan. 25, 1998).

⁷⁶Deposition of Erich Vaden, 263 (Jan. 25, 1998).

⁷⁷5 U.S.C. 7234(b)(1).

⁷⁸53 F.3d 1416 (D.C. Cir. 1995); Majority Report.

⁷⁹*Collins*, 53 United States F.3d at 1418.

⁸⁰Majority Report.

Library of Congress. The majority also fails to mention that the system followed in the Clinton White House was based on the precedent set by past Republican administrations.⁸¹ The exclusion of this relevant evidence underscores that this investigation appears to be designed to generate allegations about the Clinton Administration, rather than seriously examine the way White House resources are used.

E. The Allegations Regarding the President and First Lady

The majority claims that the President and the First Lady were “involved in the unlawful conversion of government property to the use of the DNC and the Clinton/Gore campaign.”⁸² The record, however, does not even remotely support the majority’s claim.

First, as discussed above, the conduct at issue in the WhoDB investigation did not violate the “theft” statute. It is impossible to implicate the President and First Lady when a crime did not occur.

Second, as discussed above, the deposition testimony from the relevant witnesses indicates that the President and First Lady were interested in and aware of the database, but were not involved with the details of its planning and use.

The majority cites nine documents to argue that the President and First Lady conspired to steal government property. In this discussion, however, the majority mischaracterizes most of the documents, fails to include any of the substantial exculpatory evidence that the Committee uncovered when questioning witnesses about these very documents, and makes enormous leaps of logic. Despite the majority’s elaborate efforts to demonstrate a link between a scheme to illegally use the WhoDB and the First Family, the record simply does not support the majority’s allegations.

The following are a few examples of how the majority ignores exculpatory evidence, mischaracterizes documents, and makes arguments that strain credulity in order to tie the First Family to an alleged “scheme”:

C Brian Bailey Notes.⁸³ As its strongest evidence, the majority cites to the handwritten notes of Brian Bailey, former aide to Mr. Bowles, which state that “Harold [Ickes] and Deborah DeLee want to make sure WhoDB is integrated w/ DNC database -- so we can share -- evidently, POTUS wants this to.” Although the majority asserts that these notes indicate that the President wanted to transfer data from the WhoDB to the DNC, these notes do

⁸¹See discussion above in Part II.B.

⁸²Majority Report.

⁸³Handwritten notes of Brian Bailey (undated), M033298.

not support the majority's assertion. On their face, the notes do not make clear whether the reference to "sharing" information concerned White House receipt of information from the DNC (which is appropriate) or DNC receipt of White House database information (which might not be appropriate). Moreover, the testimony of all the relevant witnesses conflicts with the majority's assertion. These witnesses uniformly testified that they had a clear understanding that it was inappropriate for the White House to share data from its databases, and had no reason to believe that the White House ever transferred information from WhoDB to an outside database.⁸⁴ In fact, none of the 35 witnesses that testified in the WhoDB investigation said that they believed that WhoDB was inappropriately linked with a DNC or other outside database, or that the President wanted improper linkage to occur.⁸⁵ Mr. Bailey, the author of the notes, himself testified that he had no personal knowledge of what the President wanted with respect to the database, and that the notes likely were based on information he heard in passing and quickly wrote down to himself.⁸⁶ He also testified that he likely spoke with White House counsel on this matter and had no reason to believe anyone at the White House ignored legal advice relating to the database.⁸⁷

C June 28, 1994, Marsha Scott Memo.⁸⁸ The majority claims that this memo from Marsha Scott to Harold Ickes and Bruce Lindsey and "cc'd" to the First Lady "shows that the First Lady was informed of the conversion of government staff and other resources," because Ms. Scott describes her interest in ensuring that the WhoDB is compatible with the DNC database. As discussed above, however, the record does not establish that this memorandum is evidence of an illegal conversion of government resources. In fact, the only wrongdoing that was potentially established was that this two-page memorandum was printed on government stationary.

C WhoDB Requirements Report.⁸⁹ In one of its more bizarre leaps of logic, the majority report points to the language in a WhoDB requirements report that states that the

⁸⁴*E.g.*, Deposition of Brian Bailey, 39, 129-32 (Feb. 6, 1998).

⁸⁵*See, e.g.*, Deposition of Harold Ickes, 61-63, 130-31 (March 12, 1998); Deposition of Brian Bailey, 129-132 (Feb. 6, 1998).

⁸⁶Deposition of Brian Bailey, 129-30 (Feb. 6, 1998).

⁸⁷Deposition of Brian Bailey, 36-37, 129-32 (Feb. 6, 1998).

⁸⁸Memo from Marsha Scott to Harold Ickes and Bruce Lindsey, cc'd to the First Lady (June 28, 1994), M032438.

⁸⁹WhoDB Requirements Report, undated, produced by the White House with no bates stamp number.

President and First Lady requested that a database “containing relevant information about all White House events and contacts be designed and implemented.”⁹⁰ Based on that language, the majority concludes that the document suggests that the President and First Lady “had a particular interest in the Database project, such as the possible political uses of databases.”⁹¹ There is simply no foundation for this inference, however, since the WhoDB requirements report never mentions any political uses of databases.

The only evidence in the Committee record of direct involvement by the President in building any database concerns his occasional practice of passing along names and addresses of individuals to be incorporated into the PeopleBase database. The PeopleBase is the database developed by Malone, Inc., for President Clinton in the early eighties which was used by President Clinton while he was Governor of Arkansas.⁹² President Clinton owns the data within the PeopleBase.⁹³

The majority report states in its opening pages that the President’s conduct was illegal because “the President routinely continued to build PeopleBase with the names and addresses of individuals who communicated with him through the official White House mail.”⁹⁴ There are two fundamental problems with this assertion, however. First, the record does not establish that the President forwarded information from official White House mail to PeopleBase. In fact, the majority report simply ignores the testimony of the Committee witness who actually was responsible for forwarding names and addresses from the President to PeopleBase, and who was the only Committee witness with personal knowledge of the practice. This individual, former White House aide Laura Tayman, testified that she forwarded “business cards and torn-off sheets of paper with [the President’s] actual writing. It was not any electronic information.” She noted that she was generally asked to do this after the President had been traveling. Most importantly, Ms. Tayman stated flatly that she “never” forwarded names from correspondence.⁹⁵

Second, even if the President had forwarded to PeopleBase the names of certain individuals who had corresponded with him, it is not at all clear that this would be illegal. If the practice of occasionally transferring such information were prohibited, then no elected public officials would be able to put names and addresses of individuals they meet on the job into their

⁹⁰WhoDB Requirements Report, undated.

⁹¹Majority Report (emphasis added).

⁹²Deposition of William Percy Malone, 14 (October 1, 1997).

⁹³Deposition of William Percy Malone, 55 (October 1, 1997).

⁹⁴Majority Report (emphasis added).

⁹⁵Deposition of Laura Tayman, 108-10 (March 20, 1998).

personal Rolodexes.

F. The Allegations Regarding Cheryl Mills

Finally, the majority makes unsubstantiated accusations that smear the reputation of White House Deputy Counsel to the President, Cheryl Mills. On September 17, 1998, Rep. McIntosh requested that the Department of Justice investigate Ms. Mills for perjury and obstruction of justice because Rep. McIntosh disagreed with the White House's determination that two documents were not responsive to a request made pursuant to the WhoDB investigation. He also discussed his charges publicly, resulting in a *Washington Post* article containing his allegation that there was "'very strong evidence' that Ms. Mills lied to Congress."⁹⁶ The majority has now reiterated these claims in the majority report.

The majority claims that Ms. Mills committed obstruction of justice and gave false testimony regarding the production of two documents: (1) the June 28, 1994, memo by Marsha Scott,⁹⁷ and (2) the notes of White House aide Brian Bailey.⁹⁸ The White House did not produce these documents in its initial September 1996 response to Mr. McIntosh's August 2, 1996, request. Upon further review of the documents, however, the White House, on its own initiative, produced them to Rep. McIntosh.⁹⁹

The majority believes that the two documents at issue are responsive to the August 2, 1996 request and that the White House erred in failing to produce the documents in the initial September 1996 production. The majority reaches this conclusion after having had the benefit of the testimony of numerous witnesses on these documents, including the authors of the documents, which the White House did not have. The majority, however, is not justified in asserting that this difference in judgment -- and Ms. Mills's subsequent testimony describing what happened -- involved obstruction and lying.

1. The Majority's "Evidence" of Perjury and Obstruction

a. Scott Memo

The majority claims that Ms. Mills made three false statements in her testimony regarding

⁹⁶*Database Criminal Probe Sought*, Washington Post (Sept. 9, 1998).

⁹⁷Memo from Marsha Scott to Harold Ickes and Bruce Lindsey, cc'd to the First Lady (June 28, 1994), M32438.

⁹⁸Handwritten notes of Brian Bailey (undated), M033298.

⁹⁹The White House produced the Scott memo on February 26, 1997, and the Bailey notes on October 28, 1997.

production of the Scott memo. The majority further alleges that these statements are evidence that Ms. Mills, and possibly other White House counsel, committed obstruction by “withholding” the Scott memo “without justification.” The record does not support the majority’s claims.

The Scott memo describes a number of different databases and does not explicitly mention WhoDB. The disputed paragraph of the memo states that “Currently in the White House we are preparing, as you know, to implement a new database system starting August 1. While that system is modeled after the Peoplebase software, it has major differences.”¹⁰⁰ After the document was produced, the Committee learned from its author that the disputed paragraph refers to WhoDB. Ms. Mills, who consulted with her supervisor, the counsel to the President, on the production of documents that included the Scott memo, apparently had a different impression when she reviewed the document in September 1996.

The majority claims that Ms. Mills testified falsely by stating that, when she reviewed the Scott memo in September 1996, she believed that the database referenced in the disputed paragraph was not WhoDB. The main basis for the majority’s conclusion appears to be testimony of other witnesses regarding what they thought the memo meant. The judgments of others, however, cannot be imputed to Ms. Mills, and such evidence therefore does not support any charge that Ms. Mills was lying instead of having a different impression of the memo.

Further, the majority omits testimony received by the Committee that shows that the disputed paragraph was ambiguous and subject to different interpretations. As noted above, the memo does not expressly refer to “WhoDB.” Moreover, it is a confusing document that discusses four different databases. Even Marsha Scott, the author of the memo, testified that the memo lacks clarity:

This is a very poorly written memo, and I am very embarrassed by it. It is one of several that I have encountered 5 years later that embarrassed me greatly. This is one that will go down in my own personal history as being one of the worst that I have ever written . . . So I can see why it is very confusing to you. And on this particular memo, I actually don't mind the questions because I think it is really poorly written.¹⁰¹

When specifically asked about the database referenced in the paragraph at issue, Ms. Scott also testified that her reference to a database was to her concept of WhoDB at the time of the memo, but that it “didn’t happen.”¹⁰²

¹⁰⁰Memo from Marsha Scott to Harold Ickes and Bruce Lindsey, cc’d to the First Lady (June 28, 1994), M32438.

¹⁰¹Deposition of Marsha Scott, 99 (Feb. 19, 1998).

¹⁰²Deposition of Marsha Scott, 91 (Feb. 19, 1998).

In light of these ambiguities, the record does not support the majority's effort to criminalize Ms. Mills's impression of and testimony about this document.

The majority also claims that Ms. Mills testified falsely during questioning about the Scott memo when she stated her view that the WhoDB is not modeled on a computer system known as "PeopleBase." To support this claim, the majority cites to witnesses who do not in fact contradict Ms. Mills. One of these witnesses is former White House aide Erich Vaden. Unfortunately, in his September 17 letter to Attorney General Reno regarding his allegations about Ms. Mills, Mr. McIntosh selectively edited the testimony of Mr. Vaden to exclude statements by Mr. Vaden that support Ms. Mills's testimony.

Mr. McIntosh attached to his letter only the following Vaden testimony discussing PeopleBase: "[W]hat we wanted to use was sort of a list of its functionalities, the kind of data it stored, how it presented the data. You know, just as, I guess, an inspiration, so to speak, of similar type systems." Mr. McIntosh omitted what Mr. Vaden said immediately before the quoted passage. When the quoted passage is put in context, Mr. Vaden's testimony actually indicates that PeopleBase was not the model for WhoDB. Following is the entire relevant portion, with the portion Mr. McIntosh did not include in italics:

Q *So were you in some way trying to use the design of PeopleBase to help you design WhoDB?*

A *We didn't want to adopt the design of the system. It is an old system. It's character-based, as opposed to a GUI-based system, a graphical user interface. So we never went down with the intention of adopting it or adopting anything similar to it. But* what we wanted to use was sort of a list of its functionalities, the kind of data it stored, how it presented the data. You know, just as, I guess, an inspiration, so to speak, of similar type systems.¹⁰³

Rep. Waxman informed the majority of the selective editing over a week before the majority issued its report on the WhoDB investigation.¹⁰⁴ Nevertheless, the majority report still claims that Mr. Vaden's testimony "confirms" that WhoDB was modeled after PeopleBase, and fails to point out Mr. Vaden's statement that "We didn't want to adopt the design of the system. It is an old system." The majority's conduct in discussing Mr. Vaden's testimony on PeopleBase -- both in Mr. McIntosh's September 17 letter and in the majority report -- provides an illustration of the majority's unfair approach to presenting evidence.

The testimony of Mr. Bartholomew, another witness cited by the majority regarding the PeopleBase issue, also does not support the majority's claims. The Committee did not ask Mr.

¹⁰³Deposition of Erich Vaden, 143-44 (Jan. 25, 1998).

¹⁰⁴See Letter From Rep. Henry A. Waxman to Attorney General Janet Reno (Sept. 28, 1998) (cc'd to all members of the Committee) (exhibit 2 to these views).

Bartholomew whether WhoDB was modeled after PeopleBase, nor did he testify one way or the other about this issue. The testimony cited by the majority simply states that PeopleBase was one of several systems identified to “take under consideration” in designing the new database.¹⁰⁵ Therefore, Mr. Bartholomew’s testimony, including the part cited by the majority, is irrelevant to this issue.

Further, the majority omits the testimony of other witnesses that supports Ms. Mills’s understanding that WhoDB was not modeled after PeopleBase. One witness, Jerry Carlsen, was manager of systems integration and development at the White House and tasked to lead the development of WhoDB. He testified that he neither met with PeopleBase staff nor heard any discussions about PeopleBase beyond the fact that it was “somewhat highly inaccurate . . . and that it wasn't necessarily real user friendly.”¹⁰⁶

The third statement of Ms. Mills that the majority claims was “false” concerned her remarks about one of her own memos, a January 17, 1994, memo entitled “Correspondence Department Database Project.” Ms. Mills was questioned on this document during her testimony on the Scott memo. She testified that her “impression” when she wrote the “Correspondence Department Database Project” memo was that it did not concern WhoDB.¹⁰⁷ She also stated that there were many different databases at the White House.¹⁰⁸ The majority claims that Ms. Mills’s testimony regarding her impression of her memo constitutes perjury. This allegation, again, is based on impressions of other witnesses as to whether the memo related to WhoDB, and the majority’s discussion of the allegation omits testimony that supports Ms. Mills.

The “Correspondence Department Database Project” memo does not expressly reference WhoDB. Further, Ms. Scott testified that, at the time the memo was created, there were two other ongoing Correspondence Department database projects.¹⁰⁹ These facts, in addition to Ms. Mills’s own testimony about her own impressions of her own document, underscore the unfairness of the majority’s claims.

b. Bailey Notes

¹⁰⁵Deposition of Mark Bartholomew, 73 (Aug. 15, 1997).

¹⁰⁶Deposition of Jerry R. Carlsen, 65-66 (Aug. 28, 1997).

¹⁰⁷Testimony of Cheryl Mills, *Hearings Before the House Committee on Government Reform and Oversight, White House Compliance with Committee Subpoenas*, 105th Cong., 1st Sess., 105-61, 241 (Nov. 6 and 7, 1997). Relevant excerpts of Ms. Mills’s testimony are attached as exhibit 3.

¹⁰⁸*Id.*

¹⁰⁹Deposition of Marsha Scott, 90 (Feb. 18, 1998).

The majority also claims that Ms. Mills committed obstruction by failing to produce the Bailey notes in September 1996 and lied by testifying that she determined the Bailey notes were “not responsive to the seven enumerated items” requested by the Subcommittee. Similar to their arguments on the Scott memo, the justification the majority provides for these serious charges is that Ms. Mills “could not have believed” that the Bailey notes were not responsive because the document is in fact responsive.

In her testimony, Ms. Mills stated that she “can’t go back and recreate . . . at this time what information I had that led us to conclude that this material was not responsive to any of the seven enumerated items [in Mr. McIntosh’s August 2, 1996 request].”¹¹⁰ She discussed the process she went through, which she said involved reviewing the notes with then-White House Counsel Jack Quinn.¹¹¹ She further elaborated that she “think[s]” that they assumed that Mr. Bailey’s own notes were not responsive to Mr. McIntosh’s request for “communications.”¹¹²

The White House may well have erred by not producing the Bailey notes. However, the Committee record, which includes a deposition of Mr. Quinn, does not support the majority’s serious allegations that Ms. Mills “deliberately withheld” a document she believed to be responsive, or purposely misled the Committee in her testimony. This conclusion is reinforced by the fact that the Bailey notes were part of a large group of documents that were reviewed for responsiveness by White House counsel in a short period of time.¹¹³ It would not be surprising if honest mistakes were made under such time pressure.

In light of these facts, it simply is not responsible to conclude that Ms. Mills committed obstruction and lied.

2. The Majority’s Allegations Regarding Motive

The majority alleges that Ms. Mills had a motive to obstruct the Committee’s investigation and commit perjury because the documents at issue reflect involvement by the President and First Lady in “conversion” of government property and would have been “politically damaging” to release before the November 1996 election. This is a bootstrap

¹¹⁰Testimony of Cheryl Mills, *Hearings Before the House Committee on Government Reform and Oversight, White House Compliance with Committee Subpoenas*, 105th Cong., 1st Sess., 105-61, at 115 (Nov. 6 and 7, 1997).

¹¹¹*Id.*

¹¹²*Id.* at 263.

¹¹³*Id.* at 114. Ms. Mills’s testimony to the Committee indicates that the White House Counsel’s Office produced to the Subcommittee over 27,000 pages of documents for the WhoDB investigation within a short time after the Counsel’s Office received the documents.

argument. As discussed above, the Committee record does not establish that there was “conversion” of government property. In fact, despite the extraordinary investment of resources in the WhoDB investigation, the majority failed to uncover any serious wrongdoing. The majority’s suggestion that the White House had a motive to withhold documents is in direct conflict with the fact that there was simply no wrongdoing to cover up.

Further, not one of the 35 witnesses that the Committee deposed on WhoDB issues questioned Ms. Mills’s honesty or integrity. Ms. Mills also showed these documents to the White House counsel, her supervisor, who agreed with her analysis and interpretation.¹¹⁴

As discussed in more detail in Rep. Waxman’s September 28, 1998, letter to Attorney General Janet Reno,¹¹⁵ these and other facts demonstrate that the majority’s assertions about Ms. Mills are based on selective testimony of other individuals about their impressions of the documents at issue, as well as speculation about Ms. Mills’s motives. It is wrong to base such serious allegations on such insubstantial and incomplete evidence.

All of the majority’s allegations relating to Ms. Mills essentially boil down to a disagreement between the majority and the White House about the relevance of two documents. Disputes between lawyers over the relevance of documents are commonplace and legitimate. What is extraordinary is the majority’s attempt to elevate this run-of-the-mill document dispute into a federal criminal case. Not only do the majority’s accusations lack foundation in fact, but they also set a dangerous precedent: that to disagree with Mr. McIntosh on the relevance of documents is to risk being publicly smeared and called a criminal.

IV. THE COSTS OF THE WHODB INVESTIGATION

Although this investigation of the esoteric subject of a computerized Rolodex did not reveal any serious wrongdoing, it did eat up a great deal of resources and taxpayer funds. The WhoDB investigation began over 27 months ago, on June 27, 1996.¹¹⁶ The Subcommittee spent so much time and energy on this investigation that it did not hold hearings on any topic between June 16, 1997 and March 5, 1998. During those nine months, Subcommittee resources were devoted almost exclusively to the investigation.

¹¹⁴Testimony of Cheryl Mills, *Hearings on White House Compliance with Committee Subpoenas*, House Committee on Government Reform and Oversight, 115, 248-49.

¹¹⁵Letter from Mr. Waxman to Attorney General Janet Reno (Sept. 28, 1998). This letter describes how Mr. McIntosh’s allegations of perjury and obstruction are unsubstantiated and do not warrant further review. The letter also addresses numerous other unfounded statements made by the majority regarding Ms. Mills.

¹¹⁶Letter from Subcommittee Chairman McIntosh to Leon Panetta (June 27, 1996).

The Subcommittee requested information from 14 different entities who produced over 43,000 pages of documents. Over 16 subpoenas were sent and 250 letters written on the subject. In addition, the Committee deposed 35 witnesses for a total of more than 135 hours of questioning on the WhoDB. In fact, about 20% of all of the depositions taken by this Committee in the \$7.4 million campaign finance investigation were limited to WhoDB issues. Although it is difficult to ascertain the exact cost of the WhoDB investigation, it would appear to dwarf the cost of developing and using the WhoDB, which the White House estimates to be less than \$800,000.¹¹⁷

The Committee's first three depositions in the WhoDB investigation illustrate the significant costs that the Committee frequently imposed on witnesses for no tangible benefit. These depositions concerned document production by PRC, a White House computer contractor that provided systems support to the WhoDB. When PRC received a request for documents, it informed the Subcommittee that its contract with the White House required that it obtain White House authorization before providing White House information to the Subcommittee.¹¹⁸ PRC requested and received the necessary authorization,¹¹⁹ and provided the documents to the Subcommittee within three weeks of receiving the request for documents.¹²⁰ Nothing in the record regarding this timely response suggests that the White House obstructed the investigation. Nevertheless, the Committee conducted three depositions to try to determine if the few days it took the White House to authorize PRC to respond was a deliberate attempt to frustrate the Committee's investigation. According to one of the witnesses, PRC, Inc., spent more responding to document requests and attending depositions related to the WhoDB investigation than it did fulfilling the terms of its White House contract.¹²¹

Another witness who was unnecessarily burdened and harassed during the course of the investigation was Marsha Scott, the White House official who supervised the development of the WhoDB. Her unfortunate experiences, which included providing eight days of testimony for

¹¹⁷In September 1998, the Office of White House Counsel estimated that the development and operation of the WhoDB was about \$785,467.

¹¹⁸Deposition of Donald Upson, 66 (Aug. 7, 1997).

¹¹⁹ Letter from the Executive Office of the President to PRC, Inc. (Aug. 15, 1996) and Deposition of Donald Upson, 66 (Aug. 7, 1997).

¹²⁰Letter request from Subcommittee Chairman McIntosh to PRC, Inc. (July 30, 1996); Letter from PRC, Inc. to Subcommittee Chairman McIntosh (Aug. 19, 1996).

¹²¹Deposition of Donald Upson, 61 (Aug. 7, 1997). Mr. Upson testified that the document request and related depositions cost PRC more than it spent on "porting the WhoDB," which he estimated to cost \$40,000-\$50,000.

nearly 40 hours to congressional investigators, are described in detail in the minority views accompanying the Committee's report on the campaign finance investigation.

There are numerous other examples of unnecessary burdens imposed by the Committee during the WhoDB investigation. For example:

- C One witness, Charles Benjamin, former associate director in the White House Office of Administration, estimated that he spent about 1,500 hours -- the equivalent of over 37 work weeks -- between June 1996 and September 1997 responding to requests for information relating to WhoDB. He said that such responses consumed about one-half to three-quarters of his time, and that "quite frequently" he had to work after hours to respond to these requests.¹²²
- C The White House estimated that the computer division of the Office of Administration, which is charged with running the database, devoted over 5,500 hours to answering questions. That's the equivalent of one full-time employee devoting two and a half years to nothing but responding to Committee questions. During just one three-month period in which the White House tracked the cost of responding to this investigation and the related GAO audit, it estimated that the response cost the taxpayers \$155,000.
- C The Committee required Bryan Daines, a former computer operator at the DNC, to fly to Washington, D.C. from Bend, Oregon for 1 ½ hours of questioning in a deposition on issues about which the witness had little substantive knowledge. Prior to the deposition, the witness's attorney informed the Committee that Mr. Daines had little relevant knowledge and offered to make him available for a phone interview. The Committee refused this sensible alternative, forcing the witness to spend between two and three days preparing for and traveling to this deposition.¹²³
- C Even Jacqueline Bellanti, an unpaid volunteer at the White House who is accused of no wrongdoing, was forced to hire a lawyer to represent her at a deposition.¹²⁴

V. CONCLUSION

¹²²Deposition of Charles Benjamin, 130-31 (Sept. 5, 1997).

¹²³Deposition of Bryan Daines, 85-86 (April 6, 1998). The Committee's treatment of Marsha Scott was also inappropriate. This is discussed in the Minority Views to the Committee Interim Report on the Investigation of Political Fundraising Improprieties and Possible Violations of Law (Oct. 8, 1998).

¹²⁴Deposition of Jacqueline Bellanti, 66 (Oct. 7, 1998).

Rep. McIntosh's investigation of the WhoDB is reminiscent of his investigation of the travel practices of SEC Chairman Arthur Levitt. A *Wall Street Journal* opinion piece by Holman Jenkins summarized the Levitt investigation as follows:

Rep. David M. McIntosh has been chasing SEC Chairman Arthur Levitt Jr. all over Planet Washington. He does so in pursuit of a "scandal" that, when we press our x-ray spectrometer up against it, seems to consist of the substance of interstellar space, which is to say, nothing.

Mr. Levitt is accused of flying first class and staying in nice hotels, and digging into his own pocket to pay for it.

It takes a special kind of ingenuity to find something to get outraged about here, but Mr. Levitt did use legitimate government-paid upgrades to defray the cost of upgrading even further. If you stand back and twist your head at a funny angle, you can pretend this means taxpayers "paid" for Mr. Levitt to fly first class. . . .

Perhaps there is a secret McIntosh method here -- a plan to disable the Clinton administration by hassling one of its few grown-ups. But Republicans should remember that someday, perhaps within the lifetimes of our grandchildren, they could conceivably end up the party of government again. Then they might want to coax some grown-ups into service too. The precedent here is not an inviting one. . . .

Life being short, Mr. Levitt entered into a plea bargain with Mr. McIntosh's subcommittee and has agreed to suffer in business class at taxpayer expense rather than loll in first class at his own. We are honestly at a loss to understand what principle of good government is served by this outcome, but that's par for the course. It would be interesting, though, to get a full accounting of how much of the taxpayer's money Rep. McIntosh spent to bring this heroic denouement. The SEC calculates it alone has spent \$187,000 responding to Mr. McIntosh's request for documents and accounting of Mr. Levitt's every limo ride.¹²⁵

Regrettably, much of what Mr. Jenkins said about the Levitt investigation seems to apply with equal force to the WhoDB investigation. Once again, the Committee has been in pursuit of the "scandal" that "seems to consist of the substance of interstellar space, which is to say, nothing."

¹²⁵Holman W. Jenkins, Jr., *Business World: Fly First Class (With the Other Criminals)*, Wall Street Journal (July 15, 1997).