

APPENDIX 3

**THE WHITE HOUSE'S NON-COMPLIANCE WITH SUBPOENA REQUESTS
FOR ELECTRONICALLY MAINTAINED DOCUMENTS**

I. INTRODUCTION

As of the date of the filing of this Final Report, the White House has failed to produce all documents to which this Office is entitled. Grand juries in the Eastern District of Arkansas and the District of Columbia between March 4, 1994 and December 10, 1998 issued 216 subpoenas to the White House and its affiliates, which required the search of records responsive to those subpoenas, including all electronic records and e-mails. The Independent Counsel first learned from news accounts in February 2000 that the White House may not have conducted complete searches of records within its custody. It was not until several months later that this Office fully realized the scope of the White House's lack of compliance with lawfully issued subpoenas.

II. THE INDEPENDENT COUNSEL LEARNED IN FEBRUARY 2000 THAT ELECTRONIC RECORDS FROM THE BEGINNING OF THE ADMINISTRATION MAY NOT HAVE BEEN SEARCHED IN COMPLIANCE WITH LAWFULLY ISSUED SUBPOENAS.

The Washington Times published a story on February 15, 2000 that first alerted the public and the Independent Counsel that, due to a glitch in the White House's computer server, over 100,000 e-mails were never searched in response to subpoenas. The Independent Counsel, as well as several Congressional investigations issued these subpoenas to the White House. The Washington Times article reported that Northrop Grumman Corporation ("NGC") contractors working at the White House discovered that one of the four White House Lotus Notes e-mail servers handling the e-mail for about 500 computer users had been mislabeled, preventing these e-mails from being properly managed.¹ The contractors first discovered the problem in May

¹ Jerry Seper & Andrew Cain, White House Accused of Cover-up Ex-Worker Tells of Hidden E-Mails, Wash. Times, Feb. 15, 2000, at A1.

1998 and determined that it affected servers dating back to August 1996.² The problem was not fixed until November 1998 according to the article.³

The White House Counsel sent a letter to the Independent Counsel on March 15, 2000 detailing the problems with its computer system and its failure to capture certain incoming e-mails for certain periods of time.⁴ These records had not been reconstructed, and therefore, White House Counsel Beth Nolan was unable to determine whether any responsive documents to grand jury subpoenas had been affected.⁵ The White House Counsel recently revealed on October 30, 2000 that "incoming e-mail" could include any e-mail not a part of the Executive Office of the President's ("EOP") Automated Records Management System ("ARMS"), such as the Office of the U.S. Trade Representative, the various units which report to the White House Military Office, the White House Access and Visitor Entry System ("WAVES"), any user of the All-in-One system, and the Quorum system.⁶

² Id.

³ Id.

⁴ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Mar. 15, 2000).

⁵ Id. at 6-7.

⁶ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Oct. 30, 2000). The Quorum system was described by Ms. Nolan as a correspondence database system "used by the Correspondence Office and other personnel who dealt with large volumes of correspondence within the White House." Id. at 1. Monica Lewinsky was a likely user of the Quorum system. Id. at 2. The White House Counsel acknowledged that the filing of this Final Report does not prevent this Office from issuing additional subpoenas pursuant to any jurisdictional grants that remain open. Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Nov. 29, 2000). As of the date of the filing of this Final Report, the matter involving allegations of perjury and obstruction of justice by William Jefferson Clinton in connection with his statements in a deposition in Paula Corbin Jones v. William Jefferson

This Office initiated an investigation as a result of the White House's failure to notify this Office of the problems with its computer system and its inability to certify that all responsive documents to lawfully issued grand jury subpoenas have been produced. The investigation continues at the time of the filing of this Final Report. However, this Office has determined that the White House's failure to search all records within its care, custody, and control, in response to lawfully issued subpoenas, could be broken down into seven categories of records:

1. Failure to search reconstructed e-mail for the time period of January 1993 through June 1994;
2. Failure to search incoming e-mails to 526 users for the time period of August 1996 through November 1998;
3. Failure to search incoming e-mails of approximately 200 users for the time period of November 1998 through May 1999;
4. Failure to search over 600 backup tapes of former employees' hard drives;
5. Failure to search incoming e-mail from the Office of the U.S. Trade Representative, White House Military Office, WAVES system, and any user of the All-in-One system;
6. Failure to search a correspondence database system known as Quorum; and
7. Failure to search the internal e-mail system in the Executive Residence.

A. Reconstructed E-Mails for the Time Period of January 1993 through July 1994.

The White House developed the Automated Records Management System in July 1994⁷ in compliance with federal law requiring that federal and presidential records be preserved and

Clinton and Danny Ferguson, No. LR-C-94-290 (E.D. Ark.), a civil lawsuit, and a subsequent federal grand jury appearance, regarding his relationship with Monica Lewinsky, remains open.

⁷ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 2 (Mar. 15, 2000).

archived.⁸ The ARMS system was designed to capture e-mail records sent from or to the Executive Office of the President's e-mail network. ARMS provided the White House Counsel's Office with a searchable computer database to assist in responding to subpoena requests by capturing all e-mail records sent throughout the network.⁹

Those e-mail records made prior to the installation of ARMS, covering the period January 1993 through July 1994, had to be reconstructed from backup tapes and loaded into ARMS.¹⁰ This process was completed by mid-1999.¹¹

This Office was not notified of the late date for the reconstruction of these records until the White House Counsel's March 15, 2000 letter to the Independent Counsel. After it became apparent that these records had not been searched as required by previous subpoenas, on March 22, 2000, this Office insisted upon an immediate search of all e-mails prior to July 1994 and the production of all records contained therein that were responsive to subpoenas issued in connection with the Travel Office investigation.¹² A search using search terms provided by this Office resulted in the production of approximately 3,103 responsive documents by the time of

⁸ 44 U.S.C. §§ 2101, 2201, 2901, 3101, & 3301.

⁹ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 1-2 (Mar. 15, 2000).

¹⁰ Id. at 2.

¹¹ Id.

¹² Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Mar. 22, 2000); Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Association) In re: William David Watkins and In re: Hillary Rodham Clinton Appendix A at x-xii (published Oct. 18, 2000).

the filing of this Final Report.¹³

On July 31, 2000, this Office then requested the search of all e-mails prior to July 1994 and the production of all records contained therein that were responsive to subpoenas issued in connection with this Office's investigation into matters concerning documents in Vincent Foster's office at the time of his death and the handling of documents from his office after his death.¹⁴ A search of those records using search terms provided by this Office has resulted in the production of approximately 10,559 responsive documents by the time of the filing of this Final Report.¹⁵

¹³ Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 8, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 13, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 16, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 20, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 22, 2000); Letter from Michael Bartosz, General Counsel Office of Administration, Executive Office of the President, to Julie Thomas, Office of the Independent Counsel (July 26, 2000); Letter from Kathy Ruemmler, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Aug. 24, 2000).

¹⁴ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (July 31, 2000).

¹⁵ Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Aug. 28, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 5, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 6, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 7, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 11, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 13, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 15, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 19, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 21, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 27, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 29, 2000); Letter from

This Office again requested on October 17, 2000 the search of all e-mails prior to July 1994 and the production of all records contained therein that were responsive to subpoenas issued in connection with this Office's investigation into Madison Guaranty/Whitewater and related matters.¹⁶ A search using search terms provided by this Office resulted in the production of approximately 79 responsive documents by the time of the filing of this Final Report.¹⁷

B. The Mail2 and User-D Problems That Prevented Incoming E-Mails from Being Records Managed.

There were two configuration errors, according to the White House, that prevented two separate categories of incoming e-mails from being recorded in ARMS for a period of time.¹⁸ As a result, these e-mails were never searched for documents responsive to subpoenas from this Office.

The first error affected incoming e-mails to 526 users¹⁹ for the time period of August

Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Oct. 4, 2000); Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Associate Independent Counsel (Nov. 14, 2000).

¹⁶ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Oct. 17, 2000).

¹⁷ Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 12, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 13, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 28, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Jan. 2, 2001).

¹⁸ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 3-5 (Mar. 15, 2000).

¹⁹ Out of the 526 users, 464 users were in the White House Office, 58 users were in the Office of Policy Development, and 4 users were in the Office of Administration. Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 4 (Mar. 15, 2000).

1996 through November 1998. During routine maintenance of ARMS, in August 1996, individual user accounts within the White House Office and some within the Office of Administration ("OA") and the Office of Policy Development were moved to a new server identified as "Mail2."²⁰ However, computer technicians mistakenly coded some of these users as being on "MAIL2," using all upper case letters. The scanning process did not recognize "MAIL2" because ARMS is case sensitive, therefore it did not capture incoming e-mails for these users for records management.²¹ This affected all e-mails to those users that were sent from users outside the EOP.²² This error was first discovered in January 1998, but the full extent of the anomaly was not determined until June 1998.²³ By November 1998, the error was corrected so that all future incoming e-mails to these users would be stored in ARMS.²⁴ Special backup tapes of the server were created on November 20, 1998 to preserve any unrecorded e-mail that had not yet been deleted by the user.²⁵ Potentially, these backup tapes contained additional e-mails dating from 1996.

The second error affected the incoming e-mail of approximately 200 users²⁶ for the period

²⁰ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 3 (Mar. 15, 2000).

²¹ Id.

²² Id.

²³ Id.

²⁴ Id. at 4.

²⁵ Id.

²⁶ Out of the 200 users, 42 users were in the White House Office, 8 users were in the Office of Policy Development, 54 users were in the Office of Management and Budget, 1 user was in the Council of Economic Advisors, 4 users were in the Council on Environmental

November 1998 through May 1999. This problem affected those e-mail users whose first names began with the letter "D." Incoming e-mail to those users had not been ARMS managed as a result of an error made by a computer technician.²⁷ The error was corrected in May 1999, and a backup tape of the server was created on June 1, 1999.²⁸

1. The White House Counsel's Office Performed a "Test" Search and Incorrectly Concluded There Was Not a Compliance Problem.

Virginia Apuzzo, Assistant to the President for Administration and Management, was responsible for the direct supervision of the Office of Administration, White House Operations, and the White House Military Office in June 1998.²⁹ She was briefed by Mark Lindsay, OA General Counsel, about the Mail2 and User-D anomalies, and she asked him to prepare a memorandum outlining the problem.³⁰ Apuzzo sent this memorandum, dated June 19, 1998,³¹ to John D. Podesta, Assistant to the President and Deputy Chief of Staff, and to White House

Quality, 21 users were in the National Security Council, 32 users were in the Office of Administration, 20 users were in the Office of National Drug Control Policy, 6 users were in the Office of Science and Technology, and 3 users were in the White House Climate Change Task Force. Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 5 (Mar. 15, 2000).

²⁷ User accounts are assigned to a "view" based on the first letter of their first name. The letter "D" was omitted and replaced with the letter "J." Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 5 (Mar. 15, 2000).

²⁸ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 5 (Mar. 15, 2000).

²⁹ Apuzzo 8/30/00 Int. at 1.

³⁰ Id. at 1-2.

³¹ Memo 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) (Doc. Nos. EJ-DC-00006256 through 57).

Counsel Charles Ruff.³² Apuzzo immediately recognized the serious nature of the records production problem, stating in an interview with the OIC, "[t]here were holes in the records and legal needed to know."³³

Shortly before his death, Charles Ruff testified in Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C.), that when he was informed of the problem, he was concerned whether or not the integrity of White House's earlier subpoena productions had been affected.³⁴ Despite this concern, no notification was made to this Office regarding the problem.

Instead, OA General Counsel Mark Lindsay, at the request of an unknown Associate White House Counsel, requested that Betty Lambuth³⁵ direct Robert Haas,³⁶ through John Spriggs,³⁷ to conduct a search of four e-mail accounts affected by the Mail2 anomaly.³⁸ Once

³² Apuzzo 8/30/00 Int. at 2.

³³ Id.

³⁴ Tr. at 58-62, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 28, 2000) (testimony of Charles Ruff).

³⁵ Lambuth was a Group Manager on Northrop Grumman Corporation's contract with the Executive Office of the President in the White House. Lambuth 5/3/00 Int. at 1.

³⁶ Haas was a Lotus Notes System Administrator for Logicon (division of Northrop Grumman Corporation) on Northrop Grumman Corporation's contract with the Executive Office of the President in the White House. Haas 3/28/00 Int. 1.

³⁷ Spriggs was a Logicon Senior Systems Integration Engineer on Northrop Grumman Corporation's contract with the Executive Office of the President in the White House. Spriggs 3/30/00 Int. 1.

³⁸ Tr. at 142-43, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 23, 2000) (testimony of Mark Lindsay); Lambuth 5/3/00 Int. at 9; Haas 3/28/00 Int. at 5; Spriggs 3/30/00 Int. at 4. This search included the e-mail

Haas printed the e-mails from the affected e-mail accounts, he delivered them to Betty Lambuth.³⁹ Betty Lambuth then delivered this file of documents to Mark Lindsay.⁴⁰ Lindsay recalled only that he left the documents with the assistant who sat at the front desk in the White House Counsel's Office.⁴¹

Former Associate White House Counsel Michelle Peterson testified in Alexander that she was contacted by then Deputy White House Counsel Cheryl Mills and told there was a problem with the production of documents containing e-mails.⁴² Mills asked Peterson to compare what had been previously produced with what had recently been printed.⁴³ Peterson concluded from her comparison that there was no failure to produce e-mails responsive to OIC subpoenas.⁴⁴ However, Peterson later filed a Third Declaration in Alexander in which she admitted that she "may have been mistaken with respect to one or possibly two e-mails."⁴⁵

account of Ashley Raines, White House Director of the Office of Policy Development and Special Liaison to Management and Administration. Haas 3/28/00 Int. at 5.

³⁹ Haas 3/28/00 Int. at 5.

⁴⁰ Lambuth 5/3/00 Int. at 9.

⁴¹ Tr. at 144, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 23, 2000) (testimony of Mark Lindsay).

⁴² Tr. at 193-94, 197, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 28, 2000) (testimony of Michelle Peterson). Peterson indicated there was a problem with the production of Monica Lewinsky e-mails. Id. at 197.

⁴³ Id. at 192-94.

⁴⁴ Id. at 202-03.

⁴⁵ Peterson 9/27/00 Third Decl. at 2, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C.). Indeed, the protocol entered into by this Office, Campaign Finance Task Force ("CFTF" or "CAMPCON"), and the EOP has resulted in the production of two e-mails from Monica Lewinsky to Betty Currie that were not previously

In addition, none of the e-mails, either incoming or outgoing, from the Office of the Vice President ("OVP") had ever been searched because none of them had been records managed through ARMS.⁴⁶ While most of the OVP e-mail had been preserved on backup tapes, it appears that no one ever attempted to search any tapes in response to subpoenas even though most of the OVP e-mail had been preserved on backup tapes.⁴⁷ Further, no one in the White House ever notified any investigative body that such searches were not taking place. It is still unknown whether e-mail from the OVP, once searched, would contain information relevant to this Office's investigations.

This Office brought the matter to the attention of the presiding judge in Alexander,⁴⁸ the Honorable Royce C. Lamberth, United States District Judge for the District of Columbia, after reviewing the testimony of Michelle Peterson who stated in an evidentiary hearing before Judge

produced. Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000). E-mail from Monica Lewinsky to Betty Currie (Jan. 29, 1997, 19:44:00 PM) (Doc. No. V252F-DC-00000001); E-mail from Monica Lewinsky to Betty Currie (Oct. 24, 1997, 08:24:00 PM) (Doc. No. V252M-DC-00000001).

⁴⁶ Statement of Beth Nolan, White House Counsel, before the House Committee on Government Reform at 7 (Mar. 23, 2000) (Doc. No. ER-DC-00000008).

⁴⁷ Id. at 9.

⁴⁸ Letter from Jay Apperson, Deputy Independent Counsel to the Honorable Royce C. Lamberth, United States District Judge for the District of Columbia (Oct. 5, 2000). This letter and its attachments to Judge Lamberth were filed under seal at the time of delivery. Order, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C., Oct. 5, 2000) (under seal). Subsequently, the Court conducted a hearing *ex parte, in camera* at which time Deputy Independent Counsel Jay Apperson, acting on behalf of the United States, did not object to the release of this material. Order, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C., Oct. 11, 2000). Accordingly, the material was unsealed and provided to counsel for each party in the case. Id.

Lamberth:

[W]ith respect to both Congress and the Independent Counsel, it was unfortunately not that uncommon that documents would turn up after we had made a production, and we would have to produce them and explain why they hadn't been found before. . . . I recall it happening on more than one occasion with respect to [the] Independent Counsel[']s Office.⁴⁹

The practice of the White House Counsel's Office, and Peterson in particular, was to fail to disclose pertinent documents in a timely fashion, and when making productions, to put unrelated materials within those productions.⁵⁰

⁴⁹ Tr. at 264, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 28, 2000) (testimony of Michelle Peterson).

⁵⁰ For example, Peterson was personally involved in the belated production of an important document (the "Hilley memo") that was responsive to a subpoena issued from the Eastern District of Virginia, which compelled the production of all documents and things relating or referring to Monica Lewinsky. Grand Jury Subpoena No. V006 (E.D. Va. Jan. 20, 1998). Once the document was found, Peterson delayed its production for over a week. The "Hilley memo" was found on March 30, 1998 during the search of a file once belonging to Evelyn Lieberman, Assistant Chief of Staff to the First Lady, labeled "Legislative Affairs." Letter from Lanny A. Breuer, Special Counsel to the President, to Robert Bittman, Deputy Independent Counsel at 2 (May 29, 1998). It was later placed among 971 pages of documents, which Peterson produced to this Office pursuant to an unrelated subpoena issued from the District of Columbia. Letter from Michelle Peterson, Associate White House Counsel, to Julie Corcoran, Associate Independent Counsel (Apr. 8, 1998) (Doc. Nos. 1089-DC-00000328 through 29); see also Grand Jury Subpoena No. D1089 (D.D.C. Mar. 17, 1998). This Office wrote to Peterson on May 22, 1998 after discovering the inclusion of the document among others from an unrelated production and requested an explanation. Letter from Solomon L. Wisenberg, Deputy Independent Counsel, to Michelle Peterson, Associate White House Counsel (May 22, 1998). Peterson's superior, Lanny Breuer, Special Counsel to the President, instead wrote this Office the following:

When we discover a previously undiscovered document that is responsive to a prior subpoena we produce the document to you, and often in conjunction with a production related to a subpoena that we subsequently received. Although we provide you with a production log, we do not invariably and explicitly identify a recently discovered document to you in our cover letter.

2. Backup Tapes of E-Mails.

Backup tapes of the servers were created to preserve the unrecorded e-mail at the time that each problem was corrected.⁵¹ Special backup tapes were created on November 20, 1998 shortly after the Mail2 anomaly was resolved.⁵² These backup tapes may have preserved the unrecorded e-mails from 1996.⁵³ As with the Mail2 problem, after the user-D problem was resolved, a special backup tape of the server was created on June 1, 1999.⁵⁴ The White House at this point was obligated, pursuant to outstanding subpoenas, to reconstruct the non-managed e-mail from the backup tapes and to search and produce e-mails responsive to those subpoenas from the Office of Independent Counsel, as well as other investigative bodies. Instead, the White House failed to disclose the e-mail problem and took no steps to reconstruct the missing e-mail and upload it into ARMS or any other searchable database.

The White House explained to this Office that there were approximately 3400 backup tapes containing unreconstructed e-mail.⁵⁵ The White House further stated "[t]he preliminary cost estimate we have received to reconstruct these tapes so that they could be placed on ARMS and searched using keywords is between \$1.8 million and \$3.0 million. This process is estimated

Letter from Lanny A. Breuer, Special Counsel to the President, to Robert Bittman, Deputy Independent Counsel at 2 (May 29, 1998).

⁵¹ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 4-5 (Mar. 15, 2000).

⁵² Id. at 5.

⁵³ Id. at 4.

⁵⁴ Id. at 5.

⁵⁵ Id. at 7.

to take approximately one to two years."⁵⁶

Due to repeated delays and the White House's inability to search the non-records managed e-mail, the Office of Independent Counsel and the Department of Justice Campaign Finance Task Force ("CFTF" or "CAMPCON") entered into an agreement on July 7, 2000 with the Executive Office of the President that would allow access to a representative sample of EOP and OVP computer backup tapes containing e-mail.⁵⁷ This agreement permitted the Federal Bureau of Investigation Computer Analysis Response Team ("FBI CART") to reconstruct and search these backup tapes. The agreement, or protocol, allows FBI CART access to the original tape so that an extraction of the unrecorded e-mail can be performed.⁵⁸ As a result of this protocol, both this Office and CFTF have received documents not previously produced by the White House.

The White House briefed this Office and CFTF personnel on September 12, 2000 about the status of the e-mail restoration project. In that briefing, the White House indicated it was able to perform limited key word searches of e-mail. The White House then reiterated its offer on October 4, 2000, explaining that the searches could be conducted in three ways:

1. A search of one hundred tapes for seventy e-mail accounts using seventy search terms in three weeks;
2. A search of fifty tapes for thirty-five e-mail accounts and thirty-five search terms in two weeks;

⁵⁶ Id.

⁵⁷ Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000).

⁵⁸ Id.

3. A search of all e-mail accounts on a single tape using a single search term within a few days.⁵⁹

The results of these searches would then need to be reviewed by White House Counsel's staff.

On October 12, 2000, this Office proposed that the White House perform extraction of all "Sunrecorded" messages on the backup tapes and turn these over to the review team already in place.⁶⁰ The White House rejected this compromise on October 23, 2000, stating it did not have the technical capability to perform extraction of all previously unrecorded e-mail as of that date.⁶¹ Further, the White House declined to use the search and review options under the protocol stating its belief that a joint review under the protocol stood in "sharp contrast to the widely accepted notion that a recipient of a subpoena is entitled to conduct a review of its documents in order to make responsiveness and privilege determinations."⁶²

The estimated time frame to reconstruct the tapes has recently been amended. The Department of Justice attorney representing the White House in Alexander informed the court on November 2, 2000 that approximately 3,000 of the 3,500 tapes had already been copied and that he believed e-mails could be extracted from these tapes beginning November 15, 2000.⁶³ No

⁵⁹ Letter from Lisa J. Klem, Associate White House Counsel, to Alan Gershel, Deputy Assistant Attorney General, and Julie Thomas, Associate Independent Counsel (Oct. 4, 2000).

⁶⁰ Letter from Julie Thomas, Associate Independent Counsel, to Lisa J. Klem, Associate White House Counsel, and Michael K. Bartosz, General Counsel, Office of Administration, Executive Office of the President (Oct. 12, 2000).

⁶¹ Letter from Lisa J. Klem, Associate White House Counsel, to Julie Thomas, Associate Independent Counsel (Oct. 23, 2000).

⁶² Id. at 2.

⁶³ Tr. at 225-26, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Nov. 2, 2000) (statement of James Gilligan).

responsive e-mails from these tapes were produced by the time of the filing of this Final Report.

C. Contrary to White House Assertions That All Responsive Documents Have Been Produced, the Independent Counsel Learned That Hard Drives of Departed Employees Have Not Been Searched.

The Independent Counsel also learned during the course of its investigation into the Mail2 and User-D anomalies that the hard drives of departed White House employees had not been searched in response to grand jury subpoenas. The Washington Post reported, on April 18, 2000, Deputy White House Press Secretary Jim Kennedy's statement confirming that about 600 backup tapes of the hard drive records of former White House employees had never been searched.⁶⁴ Kennedy was quoted as stating, "a subpoena can ask for the moon, that doesn't mean we have to produce it."⁶⁵ Kennedy further suggested that persons in the White House might unilaterally decide not to search records if they "don't think [the subpoena is] reasonable, given the time and expense."⁶⁶ Other "officials" were quoted as stating that "they have no intention of examining the electronic records -- memos, speeches, drafts, schedules, notes and other items written on the computers of former staffers -- because of the prohibitive costs involved."⁶⁷

This Office, in light of these public revelations, wrote to Beth Nolan, Counsel to the President, seeking an answer as to whether the hard drive records of former employees had ever

⁶⁴ George Lardner Jr., White House Data Unsearched; Hard Drives, Tapes Not Examined for Subpoenaed Records, Wash. Post, Apr. 18, 2000, at A27.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

been searched in response to subpoenas.⁶⁸ On May 5, 2000, the White House acknowledged that other than in three instances,⁶⁹ searching the hard drives of persons who have left the White House was "not done so as a routine matter."⁷⁰

The Independent Counsel and the EOP entered into an agreement on July 7, 2000 to allow production and examination of certain computer hard drive records.⁷¹ These hard drive records include the reallocation tapes for Deborah Gorham, Vincent Foster, and a Pinnacle Optical Disk containing an imaged hard drive which was created by FBI Special Agent Thomas R. Murray and provided to Associate White House Counsel Miriam R. Nemetz on August 11, 1995.⁷² The review of these items is ongoing; however, it appears that none of this information had previously been reviewed by this Office.

The Independent Counsel on October 11, 2000 requested production of additional records from the White House, including all databases showing backup tapes of hard drives of former

⁶⁸ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Apr. 20, 2000); Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Apr. 26, 2000).

⁶⁹ Letter from Sally P. Paxton, Special Associate Counsel to the President, to Solomon L. Wisenberg, Associate Independent Counsel (October 16, 199[7]); see also Grand Jury Subpoena No. D781 (D.D.C. Sept. 19, 1997).

⁷⁰ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (May 5, 2000).

⁷¹ Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000).

⁷² Letter from Miriam R. Nemetz, Associate White House Counsel, to SAC William C. Megary, Federal Bureau of Investigation (Aug. 11, 1995) (Doc. Nos. EL-DC-00000095 through 96); Murray 5/17/00 Int. at 1.

employees, as the documents previously produced were incomplete redactions of the databases.⁷³ The White House had not delivered these records by the time of the filing of this Final Report.

D. E-Mail from the WAVES System, the Quorum System and the Executive Residence.

The White House Counsel recently revealed on October 30, 2000 that e-mail from the Office of the U.S. Trade Representative, the various units which report to the White House Military Office, the White House Access and Visitor Entry System ("WAVES"), any user of the All-in-One system, and the Quorum system, were also not ARMS records managed.⁷⁴ Therefore, electronic records in these systems were also not searched for documents responsive to lawfully issued subpoenas.

1. Executive Residence E-Mail.

On November 27, 2000, the White House provided this Office with a list of current e-mail accounts for the Executive Residence's internal e-mail system.⁷⁵ The users do not include either the President or the First Lady, and primarily consist of those persons involved in the day-to-day maintenance operations of the residence.⁷⁶ White House Counsel Beth Nolan represented in a November 6, 2000 meeting with this Office that the Executive Residence staff had routinely searched for responsive e-mails and that it was her belief that the system was not routinely

⁷³ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Oct. 11, 2000).

⁷⁴ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Oct. 30, 2000).

⁷⁵ Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Chief Associate Independent Counsel (Nov. 27, 2000); List of all e-mail accounts on the Executive Residence Domain (undated) (Doc. No. MGSL-FR-00000030).

⁷⁶ List of all e-mail accounts on the Executive Residence Domain (undated) (Doc. No. MGSL-FR-00000030).

backed up. It was unclear by the time of the filing of this Final Report whether any backup tapes of the Executive Residence e-mail system exist.

2. WAVES System.

During the November 6, 2000 meeting, White House Counsel Beth Nolan also explained that when an individual requests a WAVES pass for a White House visitor via e-mail, that individual will receive an e-mail confirming the receipt of the request. This system that sends confirming e-mail was records managed by ARMS and thus was affected by the Mail2 anomaly. However, the WAVES computer system that tracks entry and exit of White House visitors is maintained on a separate database and therefore not affected by the Mail2 anomaly.

3. Quorum System.

The White House produced to this Office a list of users of the Quorum e-mail system.⁷⁷ The White House is in the process of restoring the backup tapes of the Quorum system in order to conduct a search for responsive documents. At the time of the filing of this Final Report, some responsive documents have been received, however, the search continues.⁷⁸

III. ALLEGATIONS OF THREATS MADE TO NORTHROP GRUMMAN EMPLOYEES TO CONCEAL THE E-MAIL PROBLEM.

In the course of its investigation into possible obstruction of justice by White House officials by their failure to search all records within its custody, care, and control for

⁷⁷ WordPerfect Directory of Quorum e-mail system users (Dec. 18, 1999) (Doc. No. MGSL-FR-00000029). The directory of users indicated that Monica Lewinsky had an account with the Quorum system. Id.

⁷⁸ Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Nov. 27, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 8, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 12, 2000).

responsiveness to lawfully issued subpoenas, and their failure to notify this Office of problems preventing complete compliance with these subpoenas, this Office considered allegations that threats were made to Northrop Grumman Corporation ("NGC") employees to prevent public disclosure of the failure to search thousands of e-mails. At the time of the filing of this Final Report, not all witnesses have been interviewed, and the investigation continues.

A. Background on Allegations of Threats.

On June 12, 1998, Robert Haas was training Yiman Salim, another NGC employee, to upgrade Lotus Notes, a software program used by the White House for e-mail.⁷⁹ Haas and Salim noticed an anomaly in the "holding area" in the Mail2 server. The "holding area," which is only supposed to hold e-mail until scanned by ARMS, was full of e-mail dating back to 1996.⁸⁰ In effect, this "holding area" was not being managed by ARMS for archiving purposes.⁸¹ They subsequently advised their supervisor, Betty Lambuth, about the problem.⁸²

Lambuth's supervisors, Bob Whiteman, NGC Group Manager, and Steve Hawkins, NGC Program Manager, were not in the office on the day she was told of the problem.⁸³ Therefore, Lambuth notified Laura L. Crabtree (later married and referred to as Laura Callahan), Branch Chief for Desktop Systems, of the problem.⁸⁴ Callahan instructed her not to discuss the matter

⁷⁹ Haas 3/28/00 Int. at 1.

⁸⁰ Id. at 1-2.

⁸¹ Id. at 2.

⁸² Id.; Salim 3/28/00 Int. at 2.

⁸³ Lambuth 5/3/00 Int. at 2.

⁸⁴ Id.

with anyone, while she found out how "they" wanted to handle the e-mail problem.⁸⁵

Callahan told Lambuth the following morning that she had spoken with Mark Lindsay about the problem.⁸⁶ Callahan relayed Lindsay's instructions that neither Lambuth, nor her employees, were to discuss this matter with anyone, including Hawkins and Jim Wright.⁸⁷ Furthermore, according to Lambuth, Callahan reported Lindsay's threat that if anyone did talk about it, they would "lose their job, be arrested and thrown in jail."⁸⁸ Callahan also informed Lambuth that they did not want any of this leaking to the press.⁸⁹ Lambuth told Callahan that she wanted to speak with Lindsay directly about this.⁹⁰

The following morning, Lambuth told the members of her team -- Bob Haas, Yiman Salim, Sandy Golas, and John Spriggs -- about Callahan's and Lindsay's statements.⁹¹ According to Lambuth, several members of the team, including her, mentioned that they felt threatened.⁹²

Lambuth later that day had a meeting with Lindsay.⁹³ Lindsay reiterated what Callahan had told her, that they were to speak to no one about the e-mail problem, including their spouses

⁸⁵ Id. at 2-3.

⁸⁶ Id. at 3.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Id. However, reports of interviews of other members of the team reflect that they did not feel threatened until their subsequent meeting with Callahan.

⁹³ Id. at 3-4.

and supervisors.⁹⁴ Lindsay also mentioned that they did not want this problem leaked to the media.⁹⁵ Lambuth recalled Lindsay mentioning that this matter involved national security and therefore, the information should be considered top secret.⁹⁶ Lambuth also was instructed by either Lindsay or in her prior meeting with Callahan, that members of the team were not to e-mail, talk on the telephone, or write anything down about the matter.⁹⁷ Lindsay also repeated that if they did talk with someone, they would lose their jobs, be arrested, and be put in jail.⁹⁸ Lambuth considered Lindsay's comments to be threatening.⁹⁹

A meeting occurred the next morning in Callahan's office with Lambuth and her staff, Haas, Salim, Golas, and Spriggs, and with Lindsay participating by conference call.¹⁰⁰ Lindsay instructed the group not to talk about the e-mail problem with anyone, including their spouses and supervisors, Hawkins and Wright.¹⁰¹ Lambuth recalled Lindsay reiterating the threat of jail if anyone spoke of the matter.¹⁰² Spriggs recalled Lindsay stating words to the effect that "[w]e

⁹⁴ Id. at 4.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id. at 4-5; Spriggs 3/30/00 Int. at 3; Haas 3/28/00 Int. at 2; Golas 3/28/00 Int. at 1-2; Salim 3/28/00 Int. at 3. Salim had no recollection of Lindsay participating by phone. Salim 3/28/00 Int. at 3.

¹⁰¹ Lambuth 5/3/00 Int. at 5; Spriggs 3/30/00 Int. at 3-4; Haas 3/28/00 Int. at 2; Golas 3/28/00 Int. at 2; Salim 3/28/00 Int. at 3.

¹⁰² Lambuth 5/3/00 Int. at 5.

consider this problem very serious to the point that if we have to exercise our rights, they would if they had to" and something about "to the fullest extent of the law."¹⁰³ Spriggs could not recall the context in which this comment was made; yet he did consider it to constitute a threat.¹⁰⁴

Haas stated that after Lindsay hung up, Callahan reiterated Lindsay's cautionary statements and told the employees that if they broke this confidence, "[w]e will use the law to put you in jail, you won't work in this business or in this town again, we will use the fullest extent of the law to prosecute you" or words to that effect.¹⁰⁵ Haas then asked Callahan whether he could tell Virginia Apuzzo if she inquired.¹⁰⁶ Callahan told him that "there will be a jail cell with your name on it" for discussing the problem with her.¹⁰⁷ Haas further asked what would happen if he told his wife.¹⁰⁸ Callahan replied, "[t]hen you'll go to jail for that too."¹⁰⁹ Haas said Callahan did not appear to be kidding and he took her seriously.¹¹⁰

Lambuth confirmed Haas' recollection of Callahan's statement of a jail cell if he told his wife.¹¹¹ Golas recalled that it was probably Callahan that used the word "jail" when speaking

¹⁰³ Spriggs 3/30/00 Int. at 3.

¹⁰⁴ Id. at 3-4.

¹⁰⁵ Haas 3/28/00 Int. at 2.

¹⁰⁶ Id. at 2-3.

¹⁰⁷ Id.

¹⁰⁸ Id. at 3.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Lambuth 5/3/00 Int. at 5.

with Haas.¹¹² However, neither Spriggs nor Salim were able to corroborate Haas' statements about Callahan's threats of imprisonment.¹¹³ Spriggs stated that he had no recollection of either Lindsay or Callahan using the words "jail" or "prosecution."¹¹⁴ Salim also had no recollection of Callahan making any comments about them being fired, prosecuted, or sent to jail if they disclosed the information.¹¹⁵ Salim stated that she did not feel threatened by anything Callahan had said to the group.¹¹⁶

B. Callahan Refuted Allegations of Threats.

Laura Crabtree Callahan explained that she first learned of the e-mail problem in June 1998 from Betty Lambuth.¹¹⁷ Callahan instructed Lambuth to research the matter and determine the scope of the problem.¹¹⁸ Lambuth informed Callahan within a day that part of the problem involved previously unseen e-mail messages.¹¹⁹

The following day Lambuth told Callahan that she was concerned about her staff

¹¹² Golas 3/28/00 Int. at 2.

¹¹³ Spriggs 3/30/00 Int. at 4; Salim 3/28/00 Int. at 3.

¹¹⁴ Spriggs 3/30/00 Int. at 4.

¹¹⁵ Salim 3/28/00 Int. at 3.

¹¹⁶ Id.

¹¹⁷ Callahan 10/12/00 CAMPCON Int. at 1.

¹¹⁸ Id.

¹¹⁹ Id. The previously unseen e-mail messages were between Monica Lewinsky and Ashley Raines. Id. Callahan was surprised to learn about these e-mails because she had not asked for such a search, nor did she believe she had the necessary authority to do so. Id.

gossiping about the problem.¹²⁰ Callahan told Lambuth to refocus her staff and if they had any questions, they should ask either Callahan or Mark Lindsay.¹²¹ Callahan decided that a meeting with Lambuth's staff was necessary since rumors about the e-mail problem continued to circulate.¹²² She informed Lindsay of the gossip and he indicated that he wanted to be present during the meeting.¹²³ Callahan recalled that Lambuth, Haas, Spriggs, Salim, and Golas were present, with Lindsay participating by speakerphone.¹²⁴ According to Callahan, Lindsay emphasized the gravity of the problem and instructed the group not to talk about it.¹²⁵ Callahan and Lindsay both told the group that if they felt the need to go to the media about the problem, that they had to go through the proper channels.¹²⁶ Callahan acknowledged the press coverage of the alleged White House misconduct, but reminded the group that they should focus on fixing the problem.¹²⁷ Callahan could not recall any discussion of consequences if the matter became public, or any mention of national security or jail.¹²⁸

¹²⁰ Id. at 2.

¹²¹ Id.

¹²² Id.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id.

IV. THE WHITE HOUSE'S FAILURE TO PRODUCE ALL RELEVANT DOCUMENTS CONCERNING VINCENT FOSTER.

A. The Unexplained Appearance and Disappearance of Vincent Foster's and Deborah Gorham's Hard Drives and Backup Tapes.

The Office of the Independent Counsel served the White House a grand jury subpoena on May 5, 1994, which, among other things, called for the following:

Any and all documents and/or communications written by, sent to or referring or relating to Vincent Foster, Jr. . . . contained on the fixed hard drive or removable hard disk cartridges of computers used by, or in the office or work space of Vincent W. Foster, Jr. or Deborah Gorham, or contained on any floppy disk or diskette maintained by Vincent W. Foster, Jr. or Deborah Gorham.¹²⁹

This Office served the White House with a subsequent grand jury subpoena on March 20, 1995, which, among other things, called for the following:

Any and all documents and/or communications from or by Vincent W. Foster, Jr., or Deborah Gorham contained on any floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs or any other media capable of storing magnetic coding, microfilm, or microfiche.¹³⁰

No records from the hard drives of Foster or Gorham were produced in response to these subpoenas.

This Office, as a result of the April 18, 2000 Washington Post article, asked the White House on April 20, 2000 for an inventory of all hard drive and "C" drive records.¹³¹

The White House produced on May 5, 2000 an inventory of reallocation tapes composed

¹²⁹ Grand Jury Subpoena No. D33 (D.D.C. May 5, 1994).

¹³⁰ Grand Jury Subpoena No. D210 (D.D.C. May 20, 1995).

¹³¹ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Apr. 20, 2000).

from two separate databases that span the time frame of approximately 1994 to 1999.¹³² These documents reflected the existence of backup tapes of hard drives for Vincent Foster and Deborah Gorham.¹³³ Foster's hard drive was listed as being located on reallocation tape #554, with a creation date of October 16, 1997.¹³⁴ Gorham's hard drive was listed as being located on reallocation tape # 229/231, but showing two different creation dates: November 16, 1993¹³⁵ and September 26, 1995.¹³⁶ This Office recently learned that this reallocation tape database printout supplied by the White House contained only selected fields of information available.¹³⁷ On October 11, 2000, the Office of the Independent Counsel requested additional records from the White House including production of all databases showing backup tapes of hard drives of former employees as the documents previously produced were incomplete redactions of the

¹³² White House FileMaker Pro and Lotus Approach Reallocation Tape Databases (Apr. 28, 2000) (Doc. Nos. V257-00000145 through 267).

¹³³ Id.

¹³⁴ White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000210). Daniel Gunia, former employee of the Information Systems and Technology Department of the Office of Administration, speculated that the creation date of Foster's tape might have been altered when the database was updated or when the date migrated from a pre-existing database to Lotus Approach. Gunia 10/3/00 Int. at 5.

¹³⁵ White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000157). On September 4, 1997, Deborah Gorham left the West Wing of the White House. Gorham 6/7/94 Int. at 2. On November 17, 1993, Gorham then left the White House Counsel's Office and returned to employment in the private sector. Gorham 3/21/95 Int. at 7.

¹³⁶ White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000214).

¹³⁷ Gunia 10/3/00 Int. at 4. Gunia was responsible for maintaining the FileMaker Pro Database that contained the list of former employee's reallocation tapes. Gunia later turned this database, and an accompanying file folder, over to a White House computer specialist from the EOP. The information contained in the database was then subsequently transferred into the Lotus Approach Database. Id. at 2.

databases.¹³⁸ Further, this Office had learned that backup tapes of the "F" drives of departed employees were also made and subsequently also requested these backup tapes.¹³⁹ The White House has not delivered these records by the time of the filing of this Final Report.

This Office throughout the investigation has continued to try to determine the location of Vincent Foster's hard drive and whether any backup tape was created from his computer. Some questions have been addressed, yet many remain unanswered at the time of the filing of this Final Report.

James MacDonald Jr., former Special Assistant to the Director of OA, was responsible for all computer and telephone systems at the EOP.¹⁴⁰ MacDonald contacted Bruce Overton, OA Counsel, after Vince Foster's death about sequestering Foster's computer.¹⁴¹ Overton told him that the White House Counsel's office would be handling the matter.¹⁴² MacDonald learned during his subsequent October 1994 interview with the FBI that Foster's computer had been lost.¹⁴³ MacDonald then began to conduct a personal investigation into the circumstances surrounding Foster's computer.¹⁴⁴ MacDonald matched the serial numbers of the computers with

¹³⁸ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Oct. 11, 2000).

¹³⁹ Id.

¹⁴⁰ MacDonald 9/13/00 Int. at 1.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Id. at 2.

all personnel in the White House Counsel's Office.¹⁴⁵ MacDonald determined that Foster never used his e-mail account, and was told by members of his staff that they observed papers stacked on Foster's computer and it appeared to them that he never used it.¹⁴⁶ He also assessed all the Help Desk records relating to the Counsel's office, but found no record under Foster's name.¹⁴⁷

MacDonald, however, did recall finding a Client Service Action Request ("CSAR") under the name of Thomas Castleton¹⁴⁸ requesting assistance on a computer with the same serial number as the computer that had been assigned to Foster.¹⁴⁹ MacDonald identified a December 3, 1993 CSAR report requesting repair on the computer of Thomas Castleton, an IBM computer, model 8555, serial number 23-1286096 as the same CSAR.¹⁵⁰ The problem with Castleton's computer was summarized on the CSAR as "user is having problems booting up the system."¹⁵¹ William Van Horn, former computer technician for Planning & Research Corporation ("PRC") -- a contractor to the Information Systems and Technology Unit ("IS&T") -- was the technician who responded to the request.¹⁵² Van Horn explained that he was unable to repair the computer

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Thomas Castleton was the former Special Assistant to the White House Counsel. Castleton 5/3/94 Int. at 1.

¹⁴⁹ MacDonald 9/13/00 Int. at 2.

¹⁵⁰ Id.; CSAR Print Request Record (Dec. 3, 1993) (Doc. No. 033-DC-00000740).

¹⁵¹ CSAR Print Request Record (Dec. 3, 1993) (Doc. No. 033-DC-00000740).

¹⁵² Van Horn 9/6/00 Int. at 3.

and instead replaced the hard drive.¹⁵³ He also attempted to restore the information on the hard drive he had removed, but without success.¹⁵⁴ He then sent the old hard drive to the depot in the basement of the New Executive Office Building for destruction.¹⁵⁵ A document entitled "Destroyed Hard Drives," dated April 21, 1994, listed Castleton's hard drive as being destroyed.¹⁵⁶ MacDonald verified that the hard drive removed by Van Horn had been destroyed by asking Mike Saunders, a PRC subcontractor who was in charge of the depot.¹⁵⁷

Van Horn was shown a document entitled "Inventory Tracking Sheet," dated March 31, 1993.¹⁵⁸ Van Horn explained that the document recorded the location and identity of the individual to whom computer equipment was assigned.¹⁵⁹ This document identified an IBM computer, model 8555, serial number 23-1286096, as having been assigned to "Foster V."¹⁶⁰ Van Horn acknowledged that this was the same serial number as the computer he had worked on for Castleton.¹⁶¹

¹⁵³ Id.; CSAR Print Request Record (Dec. 3, 1993) (Doc. No. 033-DC-00000740).

¹⁵⁴ Van Horn 9/6/00 Int. at 3.

¹⁵⁵ Id.

¹⁵⁶ The document includes a handwritten notation, "Last updated 12/17/93." Destroyed Hard Drives (Apr. 21, 1994) (Doc. No. 033-DC-00000741); MacDonald acknowledged the handwriting as his own. MacDonald 9/12/00 Int. at 2.

¹⁵⁷ MacDonald 9/12/00 Int. at 2.

¹⁵⁸ Inventory Tracking Sheet (Mar. 31, 1993) (Doc. No. FOST-DC-00000355).

¹⁵⁹ Van Horn 9/6/00 Int. at 3.

¹⁶⁰ Inventory Tracking Sheet (Mar. 31, 1993) (Doc. No. FOST-DC-00000355).

¹⁶¹ Van Horn 9/6/00 Int. at 3.

MacDonald also conducted a search for the computer with the serial number that had been assigned to Foster.¹⁶² He located the computer on the floor of Castleton's office in the Old Executive Office Building.¹⁶³ According to MacDonald, Castleton had been using Foster's computer until it "crashed" in December 1993.¹⁶⁴

MacDonald did not locate a CSAR request to back-up Foster's computer, whether after his death or at any time while Castleton was using it.¹⁶⁵ MacDonald indicated that a backup tape could only have been made from Foster's computer from the time after his death until the hard drive crashed while Castleton was using it on December 3, 1993.¹⁶⁶

On May 10, 2000, the White House produced an e-mail to this Office that it had found while performing an ARMS search unrelated to the subject matter of the e-mail.¹⁶⁷ The e-mail was dated August 7, 1995, and included two August 4, 1995 e-mail attachments.¹⁶⁸ The subject matter of these e-mails concerned what to do with "Vince Foster's (PC backup) tape."¹⁶⁹ The

¹⁶² MacDonald 9/12/00 Int. at 3.

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Letter from Steven Reich, Senior Associate White House Counsel, to Robert Ray, Independent Counsel (May 10, 2000) (Doc. No. MGSL-FR-00000022).

¹⁶⁸ E-mail from Ranelle A. Lopez to Lawrence R. Jurcich (Aug. 7, 1995, 10:37:00 EST) (Doc. No. MGSL-FR-00000023); E-mail from Sheryl L. Hall to Ranelle A. Lopez (Aug. 4, 1995, 18:08:00 EST) (Doc. Nos. MGSL-FR-00000023 through 24); E-mail from Ranelle A. Lopez to Sheryl Hall (Aug. 4, 1995, 17:52:00 EST) (Doc. No. MGSL-FR-00000025).

¹⁶⁹ Id.

content of the e-mails appears to indicate that on August 4, 1995, Paul Dagenais, Computer Specialist, Customer Service Branch of the Information Systems and Technology Unit of the Office of Administration, secured a Foster backup tape, referred to in the e-mails as "TAPE", and delivered it to Ranelle Lopez, Office of Administration, Executive Office of the President employee.¹⁷⁰ Lopez, not knowing what to do with this tape, provided it to the security office, where Mark Frownfelter, Office of Administration, Executive Office of the President employee, secured the tape in a safe over the weekend.¹⁷¹ Then on August 7, 1995, Lopez and Dagenais "picked up the tape from the Security Office and secured it in the EOP data center reallocation tape repository (file cabinet)."¹⁷²

On October 18, 2000, this Office interviewed Dagenais about the Foster backup tape mentioned in these e-mails. While Dagenais could not recall ever having seen these e-mails before, he recounted how he had come into possession of a copy of a hard drive backup tape marked "Foster." The tape was the same as other reallocation tapes, but did not have a sequential inventory number and had not been logged into the tape cabinet.¹⁷³ Dagenais did not think the tape should be stored in the backup tape cabinet because he thought it was too important and had

¹⁷⁰ E-mail from Ranelle A. Lopez to Sheryl Hall (Aug. 4, 1995, 17:52:00 EST) (Doc. No. MGSL-FR-00000025).

¹⁷¹ Id.

¹⁷² E-mail from Ranelle A. Lopez to Lawrence R. Jurcich (Aug. 7, 1995, 10:37:00 EST) (Doc. No. MGSL-FR-00000023).

¹⁷³ Dagenais 10/18/00 Int. at 3. A Northrop Grumman employee would issue the inventory number, and then Dagenais was responsible for storing the tapes in the EOP Data Center. Id. at 1-2.

not previously been stored there.¹⁷⁴ Dagenais, as a result, gave the tape to Lopez, who was at the time the Acting Branch Chief.¹⁷⁵ Dagenais had no recollection of ever seeing the tape after he provided it to Lopez on August 4, 1995, and did not recall picking the tape up from the Security Center with Lopez on August 7, 1995.¹⁷⁶ Dagenais also could not recall who gave him the tape.¹⁷⁷

Dagenais also explained that sometime in 1998, he observed in the tape cabinet about six hard drives at the bottom of the cabinet.¹⁷⁸ The hard drive on the top had a yellow "post-it" note with the handwritten notation "Foster" and possibly Foster's user ID.¹⁷⁹ The hard drive was from an IBM PS2 computer.¹⁸⁰ Dagenais was not aware that hard drives were supposed to be stored in this cabinet.¹⁸¹ He immediately advised Karl Heissner, then Acting Director of IS&T, because the hard drive had Foster's name on it.¹⁸² Dagenais stated that Heissner did not immediately remove the hard drive from the cabinet.¹⁸³ The next time Dagenais entered the cabinet again was

¹⁷⁴ Id. at 3.

¹⁷⁵ Id.

¹⁷⁶ Id. at 4.

¹⁷⁷ Id. at 3.

¹⁷⁸ Id. at 2-3.

¹⁷⁹ Id. at 3.

¹⁸⁰ Id.

¹⁸¹ Id.

¹⁸² Id.

¹⁸³ Id.

approximately two years later, in April 2000, and he observed that the hard drives were no longer there.¹⁸⁴

On May 11, 2000, this Office requested the original reallocation tapes of Gorham's and Foster's hard drives, as well as the Foster tape referenced in the August 1995 e-mails.¹⁸⁵ The White House responded to this request by asserting that this Office had previously resolved the issues surrounding Gorham's hard drive and they should not be "reopened" at this "late date."¹⁸⁶ The White House supplied an August 11, 1995 letter from Miriam Nemetz, Associate Counsel to the President, to Special Agent In Charge William Megary of the FBI, requesting the FBI to reconstruct Gorham's original hard drive in an effort to recover any previously deleted documents.¹⁸⁷ The White House further asserted, based on this August 11, 1995 letter, that this Office was not only "provided with printouts from Ms. Gorham's hard drive, it actually had physical possession of the hard drive during the reconstruction process."¹⁸⁸

This Office received this August 11, 1995 letter request and subsequent printout from

¹⁸⁴ Id.

¹⁸⁵ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (May 11, 2000).

¹⁸⁶ Letter from Steven Reich, Senior Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (May 16, 2000) (Doc. Nos. EL-DC-00000002 through 5).

¹⁸⁷ Letter from Miriam R. Nemetz, Associate White House Counsel, to SAC William C. Megary, Federal Bureau of Investigation (Aug. 11, 1995) (Doc. Nos. EL-DC-00000095 through 96).

¹⁸⁸ Letter from Steven Reich, Senior Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel at 3 (May 16, 2000) (Doc. No. EL-DC-00000003).

Gorham's hard drive for the first time on May 16, 2000.¹⁸⁹ This Office never requested the FBI to perform a reconstruction of Gorham's hard drive, as this Office was never made aware of its existence. Furthermore, this Office was never in possession of Gorham's hard drive.

Rather, as a result of a recent production of documents by the White House,¹⁹⁰ it was the U. S. Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters that requested the White House to have the FBI examine the hard drive of Gorham's computer.¹⁹¹ As a result of the Special Committee's request, Miriam Nemetz worked with FBI Special Agent Thomas Murray to examine the data on the hard drive.¹⁹² Murray performed the reconstruction of the hard drive at the White House, printed some of the filtered data, and copied some of the files onto Nemetz's computer.¹⁹³ The recent production of documents explained that the data uploaded to Nemetz's computer was the filtered data that was

¹⁸⁹ Attachments to Letter from Steven Reich, Senior Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel at Tab G (May 16, 2000) (Doc. Nos. EL-DC-00000094 through 96).

¹⁹⁰ Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Chief Associate Independent Counsel (Nov. 8, 2000) (Doc. Nos. WHV268-DC-0000009 through 10); Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Chief Associate Independent Counsel (Nov. 30, 2000).

¹⁹¹ Letter from Alfonse M. D'Amato, Chairman United States Senate Committee on Banking, Housing and Urban Affairs, to The Honorable Abner J. Mikva, White House Counsel (Aug. 9, 1995) (Doc. No. MGSL-FR-00000049).

¹⁹² Letter from Jane C. Sherburne, Special Counsel to the President, to Robert Giuffra, Chief Counsel United States Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters (Sept. 1, 1995) (Doc. Nos. WHV268-DC-00000027 through 28).

¹⁹³ Murray 5/17/00 Int. at 1; Letter from Jane C. Sherburne, Special Counsel to the President, to Robert Giuffra, Chief Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters (Sept. 1, 1995) (Doc. Nos. WHV268-DC-00000027 through 28).

too voluminous to print.¹⁹⁴ Murray explained to this Office that Nemetz did not permit anything to remain in his possession after the conclusion of the search.¹⁹⁵

As a result of learning the above, this Office requested that the White House produce the Pinnacle Optical Disk containing 1) the imaged hard disk drive created by FBI Special Agent Murray on August 11, 1995 and 2) the hard copy printout of the filtered slack printed by Murray and provided to Nemetz on that date.¹⁹⁶ This Office and the White House Counsel entered into an agreement on July 7, 2000, to allow production and examination of certain computer hard drive records,¹⁹⁷ including the reallocation tapes for Deborah Gorham, Vincent Foster, and a Pinnacle Optical Disk containing the imaged hard drive which was created by FBI Special Agent Thomas R. Murray and provided to Associate White House Counsel Miriam R. Nemetz on August 8, 1995.¹⁹⁸ The review of these records is ongoing; however, it appears that this Office had previously received none of this information.

The White House informed this Office in July 2000 of its inability to locate reallocation

¹⁹⁴ Letter from Jane C. Sherburne, Special Counsel to the President, to Robert Giuffra, Chief Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters (Sept. 1, 1995) (Doc. Nos. WHV268-DC-0000027 through 28).

¹⁹⁵ Murray 5/17/00 Int. at 1.

¹⁹⁶ Letter from Jay Apperson, Deputy Independent Counsel, to Steven Reich, Senior Associate White House Counsel (June 6, 2000).

¹⁹⁷ Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000).

¹⁹⁸ Letter from Miriam R. Nemetz, Associate White House Counsel, to SAC William C. Megary, Federal Bureau of Investigation (Aug. 11, 1995) (Doc. Nos. EL-DC-0000095 through 96); Murray 5/17/00 Int. 1.

tape #554, which is listed as a backup of Vincent Foster's hard drive.¹⁹⁹ Subsequently, the White House informed this Office on November 15, 2000, that reallocation tape #554 was found in the storage cabinet among the other reallocation tapes.²⁰⁰ This Office delivered the tape to the FBI Laboratory for fingerprint analysis, and to the FBI's Computer Analysis Recovery Team ("FBI CART") for restoration of the data on the tape on November 16, 2000.²⁰¹ The forensic analysis of reallocation tape #554 continues at the time of the filing of this Final Report. The review of data identified as the backup tape of Foster's hard drive appears to have been materials from the Political Affairs Department rather than any work that would have been performed by Foster or anyone else in the White House Counsel's office.

B. Missing Files from Steven Neuwirth's List of Documents in Foster's Office.

On April 24, 1996, this Office identified three files included in Stephen Neuwirth's July 26, 1993 index of Vincent Foster files that were required to be produced to this Office by subpoena, but never were produced.²⁰² At that time, this Office informed the White House that responsive documents had never been produced and sought information as to the location of these files, including an explanation as to how they may have come to be missing.²⁰³ This Office

¹⁹⁹ White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000210).

²⁰⁰ Easley 11/15/00 Int. at 1.

²⁰¹ Letter from J. Keith Ausbrook, Deputy Independent Counsel, to Donald Kerr, Assistant Director Laboratory Division - Federal Bureau of Investigation (Nov. 16, 2000).

²⁰² Letter from John Bates, Deputy Independent Counsel, to Jane Sherburne, Special Counsel to the President (Apr. 24, 1996). The three files listed on the Neuwirth index that were not produced included: "Deborah Gorham;" "Personal File List;" and "Clinton - Health Issue." Id.

²⁰³ Id.

renewed its request for information with respect to these missing files on July 20, 2000.²⁰⁴ The White House responded on August 17, 2000, stating: "Apparently, your office dropped this matter following Mr. Bates' inquiry, and I regret that -- now more than four years later -- I have located no information regarding these files, and can shed no light on this subject."²⁰⁵ On September 25, 2000, this Office again renewed its long-standing request for information as to the missing files identified on the Neuwirth inventory.²⁰⁶ No further information regarding these files has been received from the White House by the time of the filing of this Final Report.

V. CONCLUSION

This Office was unable to confirm that the White House had fully complied with lawfully issued subpoenas in the Madison Guaranty/Whitewater matter by the time of the filing of this Final Report. The White House continues to restore backup tapes and continues to perform searches for responsive documents to these subpoenas.

White House Counsel Beth Nolan agreed on November 29, 2000 that the filing of this Final Report will not prevent this Office from seeking compliance with subpoenas related to the Madison Guaranty/Whitewater matter, nor would it prevent this Office from obtaining responsive Madison Guaranty/Whitewater documents that are generated during the

²⁰⁴ Letter from Jay Apperson, Deputy Independent Counsel, to Steven Reich, Senior Associate White House Counsel (July 20, 2000).

²⁰⁵ Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Aug. 17, 2000).

²⁰⁶ Letter from Jay Apperson, Deputy Independent Counsel, to Gregory Smith, Associate White House Counsel (Sept. 25, 2000).

reconstruction of backup tapes.²⁰⁷ Further, Nolan agreed that the filing of this Final Report would not prevent this Office from issuing additional subpoenas pursuant to any jurisdictional grants of this Office that remain open.²⁰⁸

²⁰⁷ Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Nov. 29, 2000).

²⁰⁸ Id.