

a committee in the House of Congress, and therefore, the Privacy Act does not apply to these depositions insofar as an agency may disclose information to us. That does not say that we may then publicly turn around and disclose that information. I am only making a representation as to whether information can be given to us that would be normally within the Privacy Act within the confines of this deposition.

It is my understanding and it is the Chairman's position that this investigation is properly under the White House Travel Office matter and that, in fact, we are authorized under the House Resolution and the committee rule to conduct these depositions, and we have been proceeding as such throughout this investigation of the FBI files matter.

Mr. Goldberg. If I could just make a final statement. The Minority has considered this at length, and I believe that the Ranking Minority Member's own opinion is that this is not excluded from the Privacy Act, and any witness answering questions should proceed at their own peril, having heard the statement of the Majority and the Minority.

Mr. Clancy. Would it be convenient to break for about 10 minutes?

Ms. Olson. Let's do that.

[Recess.]

RPTS STEIN

DCMN HERZFELD

[11:10 a.m.]

Ms. Comstock. Back on the record.

Mr. Clancy. Prior to going off the record, we had some questions that were going in a certain area. There was concern by the agency that there could be a potential violation of the Privacy Act. To that extent we had some discussions off the record, and I called back to my office. Upon the conclusion of that, I want to make this statement which I am making at this time.

We still continue to have some concerns, and those concerns would be when a question, the response to which would require information that perhaps would identify an individual, we clearly do not want to do that at this time because we do have concerns about the Privacy Act. To the extent the questions would be general in nature, asking about perhaps a general perception or general problem or general situation, something of that sort, we will make responses in that regard.

We have also indicated to both counsel, Minority and Majority here, that we respectfully request the Chairman to make a request if there is further information that is needed after this, that they make the request to the Secretary of the Treasury. We will immediately accept a copy from our

individuals here. I don't think there will be delay there. I just propose that for the purpose that the Secretary of Treasury is the leading individual in the Department of Treasury. We are dealing at a fairly high level and want to do everything appropriately.

With that on the record, we can proceed.

Ms. Olson. I have a memorandum from Chairman Clinger dated today's date that discusses the applicability of the Privacy Act to Congress. I will make it a part of this deposition as Exhibit Number 2.

[Undercoffer Deposition Exhibit No. 2

was marked for identification.]

Ms. Olson. The Chairman states that he believes after his consultation that it is clear that a government witness before this committee cannot refuse to respond to pertinent questions put to him on the basis of the Privacy Act.

He also states that he believes that law enforcement officials may disclose matters in a file without a person's consent for purposes of civil or criminal law enforcement.

We understand that the Minority has raised a question whether our questions in this deposition are properly before the Chairman of this committee. Therefore, what the Chairman intends to do is after the questions are asked, if the response is not complete because of Privacy Act concerns, he will address a letter to the individual witness stating his jurisdiction as Chairman of this committee and submit those questions that have been asked in this deposition along with any others to the witness to respond to as Chairman of the committee with proper jurisdiction, and that that witness's responses will go straight to the Chairman.

I believe that I am correct in stating that Minority also believes that the Chairman does have authority once he states his jurisdiction to ask the individual witness those questions, and that the individual witness would not violate the Privacy Act if they respond to those questions to the Chairman.

Mr. Goldberg. As Minority staff, I believe that is an appropriate and reasonable approach to this issue.

BY MS. COMSTOCK:

Q I believe the question that we had outstanding before we broke was in your review of the files, Mr. Undercoffer, when you received them, did you have any situations where you had -- where the Counsel's Office had signed off on a file and sent it to the Secret Service where individuals had not paid their taxes?

A A resolved or an unresolved situation?

Q A situation where it was apparent from the file that there had been unpaid taxes.

A Yes.

Q Do you recall how many times that occurred in files you reviewed?

A A few.

Q Do you know of other situations outside the ones you reviewed where this occurred?

A Specifically? No, not specifically.

Q Had you heard about this being a problem that people hadn't paid their taxes in a number of files that came through to the Secret Service?

A We would discuss cases amongst ourselves. There were a few that I had heard, yes.

Q Were you aware of any situations where individuals were put on some kind of tax payment plan as a result of these issues?

~~A I am not -- I really, truly do not recall as to how the situations were resolved.~~

Q Were there situations where people hadn't paid taxes for numerous years?

A I can't -- I am not being evasive. I know that there was that situation, but I can't recall -- when you read background investigations, they have a tendency to run together after time, and so I can't recall -- I can't recall -- I need to be -- I am trying to frame specific instances in my mind so that I can answer your question in a general way, and I am having difficulty doing that. Can you ask me the question again?

Q Did you have situations where any files that you reviewed were people who hadn't paid their taxes for a number of years? Do you recall any instance where someone hadn't paid their taxes for more than one year?

A More than one, yes, there were some.

Q Prior to those files being sent over to the Secret Service, were there -- were these tax issues resolved in some way?

A I do believe most had been, yes.

Q Would Craig Livingstone or others in the Counsel's Office discuss these issues with you prior to sending the files over?

A No. They were never discussed with me.

Q They would just send the files to the Secret Service, and you would review some of them?

A From my point of view, the files came in, they were assigned to me, I reviewed them.

Q In reviewing the files, did you have instances where you had levels of drug use that went beyond college age, experimental use?

A Yes.

Q Can you -- of the files you reviewed, can you put a percentage of -- any general number of what was beyond college-age experimental drug use?

A There were more than a few.

Q Were there dozens?

A There were probably -- this is a very sensitive question, so I am trying to be as accurate as I can be. I don't want to -- there were a -- I am trying not to be subjective, because when one reviews background investigations, you are glimpsing into somebody's personal life, and it is something I take very seriously, and I, other than somebody in my immediate work environment that does the same thing, we don't discuss it with anybody. Number one, this is not something I am accustomed to doing; and two, I am trying to be as wholly accurate as I can be because I realize the subjective opinions people will form from the information I am giving. So I am trying to be as accurate as I can and be totally objective at the same time.

There were -- you know, I have reviewed literally hundreds of background investigations. I would say more than 30, more than 40, perhaps, had drug usage.

Q And that would be beyond the college-age experimental type of use?

A I am not stalling. Sometimes some individuals went to college well into their thirties. They worked on masters and Ph.D.s.

Q Of the files you reviewed, did you have situations where the drug use was very recent?

A There was some where the drug use was recent.

Q Can you estimate roughly how many files you reviewed were --

A I would say a few dozens.

Q Did there come a time when the Secret Service instituted a particular

program for people who had recent drug use?

A Yes, there was.

Q And could you describe what that program was?

A I only know of it because whenever I would review a file of this nature, it was something I did not want to sign off on, so I forwarded it on to my supervisors.

They did initiate a procedure that was called the "drug letter," and there were -- I don't know the exact parameters of the procedure. I am not familiar with how the procedure was developed other than I knew of its existence.

Q Do you know when this started?

A Sometime in '84. I do believe it was in 1984.

Mr. Goldberg. '84 or '94?

The Witness. I am sorry, '94. Excuse me.

BY MS. COMSTOCK:

~~Q Would this be a letter to your supervisor on putting an individual into a program because of their recent use?~~

A No. The drug letter was a letter between the administration and the Secret Service. I have seen them. I have never sat and read one, but there is various conditions that are agreed upon and then acknowledged by the individual in question.

Q And the individual in question has to sign that agreement?

A Yes.

Q For those individuals, the White House previously provided information back in '94 that there were approximately about 11 -- 10, 11, 12 people in the program in '94. Do you recall that?

A That sounds about accurate.

Q I believe in '95 they said the number was around 18 or so?

A I don't know for sure.

Q Those situations, can you generally tell us what kind of drug use we are talking about, what kind of -- if you can generally give a picture of the extent and recentness of that drug use?

A I have seen cocaine usage. I have seen hallucinogenic usages, crack

usages. I am not -- you know, I am not that familiar with narcotics. I would say those are the big three.

Q And were those, the people who were in this program, was it generally fairly recent use?

A Yes, it was.

Q In terms of whether or not someone had a drug letter or went into this particular program, were there any considerations given; if they had a more senior level position or not, were there considerations given what an individual's duties were?

A I don't know.

Q Were these situations usually ones that you would flag and send on to your supervisor?

A Yes, they were.

Q Do you know who Mr. Cole would then have to speak with about this?

A Typically things work up the chain of command, and so he -- Mr. Cole could probably best answer that question.

~~Q Just to the extent you know.~~

How many other people besides yourself reviewed these files?

A When?

Q You started in '94; correct?

A Yes.

Q While you were there in '94?

A In '94, myself and another agent.

Q Who would that be?

A Rich Stribling.

Q Do you know in '93 who else would have been reviewing the files?

A I wasn't there in '93.

Q Do you know if Mr. Stribling was there in '93.

A Mr. Stribling got there in November of '93.

Q Mr. Wilfred testified -- from the Senate Intelligence Committee testified