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HEADLINE: Justice delayed and justice denied in the file search case

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BODY:

People passing by the State Department can be forgiven if they think they are hearing the sound of splintering wood and twisting steel.

Those are the sounds that represent the final destruction of the legislative wall once known as the Privacy Act, a barrier erected over 20 years ago to keep Big Brother and others from disclosing information about ourselves from confidential government records. This month marks the first anniversary of Clinton officials' illegal search of Bush State Department political appointees' personnel files. And the administration still refuses to take the matter at all seriously.

It is understandable if the public does not quite remember the events surrounding this particular scandal. With Whitewater, controversy surrounding the president's sexual conduct, the lawsuit over Hillary's health care task force violating federal meeting laws, authorities probing the cozy arrangement between Agriculture Secretary Mike Espy and Tyson Foods Inc., not to mention Travelgate, Americans have been forced to keep track of many boats on what has become a sea of political filth. According to the latest opinion polls, even the bilge pumps at the White House cannot keep the president's rickety ship of public confidence afloat. This is a truly remarkable achievement for an administration that came charging into office swinging a self-described sword of ethics and morality.

The State Department files scandal is a case study in the double standard the Clinton administration seeks to operate under, imposing its view of the law on others while operating above the law it professes to uphold. This particular case began when the director of State's White House liaison office, Joe Tarver, mysteriously had the personnel files of Bush political appointees pulled out of cold storage a half year after Clinton took office. It was not long before information from these files began appearing in the press.

In a column written last year by Washington Post reporter Al Kamen, information from Elizabeth Tamposi's and Jennifer Fitzgerald's files was splashed across the newspaper. Divulging any information from a personnel file is a direct violation of the Privacy Act and a criminal offense. Senate Minority Leader Bob Dole and Kentucky Sen. Mitch McConnell, among others, forced the administration to investigate the leak. Shortly thereafter, State Department Inspector General Sherman Funk issued a report that found unambiguous evidence of criminal misconduct.

In particular, Mr. Funk identified Mark Schulhof, a staff aide to Assistant Secretary for Public Affairs Thomas Donilon, as one of the people involved in disclosing information from the personnel files to Mr. Kamen. During the course of his inquiry, Mr. Funk found that evidence directly relating to the case was deliberately destroyed by another Clinton appointee, and other officials were responsible for "acts of omission or commission" in this crime. Mr. Funk stated to Senate Republicans he briefed on his investigation that "criminal violations of the Privacy Act provable beyond a reasonable doubt," occurred.

The administration immediately sought to distance itself from both Mr. Tarver and Mr. Schulhof, calling their actions unsupervised, rogue operation. Mr. Funk could not establish a credible reason why the files were brought back to State from their storage area because Mr. Tarver has offered explanations that range from unbelievable to ridiculous. Mr. Donilon, who is widely regarded as Warren Christopher's lifeline to the White House, swore that he knew nothing of Mr. Schulhof's calls to Mr. Kamen and characterized Mr. Schulhof as a low-level gofer prohibited from speaking to the press - someone whose only responsibilities were answering phones and ordering cars from State's limousine service.

Yet according to the report, State telephone logs record that after learning of the files, Mr. Schulhof placed 45 calls to Mr. Kamen's direct line. This amounts to one phone call every two working days from the point at which Mr. Schulhof found out about the files to the publication of Mr. Kamen's article. Mr. Funk even documents Mr. Schulhof using Mr. Donilon's private line to call Mr. Kamen. In addition, he received testimony from Mr. Donilon's executive secretary, who stated she heard Mr. Schulhof talking to Mr. Kamen.

Mr. Donilon denies knowing anything. Yet reporters who cover State claim Mr. Schulhof was Mr. Donilon's right-hand aide, someone they had routine contact with and who was comfortable enough to place telephone calls from the assistant secretary's personal office. It is a long, hard stretch of the imagination to believe that Mr. Schulhof did not at some point mention to Mr. Donilon what was upstairs in Mr. Tarver's office. Either Mr. Donilon is so detached from his office that he has no idea what his charges are doing or he has a case of selective memory.

The question remains: Why would anyone go through all the trouble to recall and review the files. The simple answer is that these personnel records contain sensitive information - such as financial reports, medical histories, job-performance evaluations, and most important, a background check conducted by State's own investigative service. In short, the files represent an A-to-Z repository of a person's entire life. This information was, and still could be, used to embarrass, humiliate and destroy Bush political appointees.

Mr. Funk completed his findings and turned the information over to Janet Reno's Justice Department for action. Despite overwhelming evidence, Justice announced that it declined to prosecute in this matter. The case, the administration hoped, was closed - buried under the collective weight of the White House, State and Justice departments.

Fortunately, they are wrong. As damning as the Inspector General's report was, it raised other serious questions that now demand answers. Among them:

- * Why did Mr. Donilon withhold information from White House presidential adviser Bruce Lindsey? When Mr. Lindsey called Mr. Donilon the evening the story broke to find out what was going on, Mr. Donilon told Mr. Lindsey about Mr. Tarver's involvement in this episode. However, Mr. Donilon was clearly aware of the major role that his assistant, Mr. Schulhof, had in leaking the information. Yet none of this was brought to Mr. Lindsey's attention.

- * Where was Mr. Donilon? Margaret Donovan, a deputy assistant secretary in State's legislative affairs branch, asked Mr. Schulhof to represent the public affairs office at a high-powered meeting held by Assistant Secretary for Administration Patrick Kennedy, where two other deputy assistant secretaries and State's legal advisers were gathered to discuss Mr. Kamen's article. If people felt comfortable enough to ask Mr. Schulhof to represent his office, it contradicts Mr. Donilon's claim that Mr. Schulhof was some low-level clerk. It also raises questions why Mr. Donilon, State's chief mouthpiece, was not asked to attend.

- * How many files were pulled and examined? Mr. Tarver estimated that there were from 350 to 425 files. Mr. Kamen cited 160 in his article, State investigators took possession of 197. Evidently, Mr. Schulhof and Mr. Tarver had access not only to political appointees' files but also to Ambassadorial files. How broad their access was needs to be answered.

- * Did the Clinton administration pull personnel files from any other government agencies?

* Did the White House or any Clinton official at Justice play a role in blocking indictments from being handed down? And why did Justice refuse to prosecute this crime?

Since Janet Reno abdicated her role in upholding the public trust, the ball now is passed back to Capitol Hill. Republican lawmakers can and should call for an independent counsel investigation of this matter. It is the only avenue left to restore credibility and integrity to the Privacy Act.

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