

Statement of Anne L. Weismann
Citizens for Responsibility and Ethics in Washington

Before the Oversight and Investigations Subcommittee
of the Committee on Energy and Commerce

“White House Transparency, Visitor Logs and Lobbyists”

May 3, 2011

Mr. Chairman, Ranking Member DeGette, and Members of the Subcommittee, thank you for the opportunity to testify today about White House transparency, visitor logs and lobbyists. I am Chief Counsel for Citizens for Responsibility and Ethics in Washington (CREW), the plaintiff in the litigation that led to the White House decision to voluntarily post White House visitor logs online. Prior to joining CREW, I worked at the Department of Justice for 20 years supervising, among other areas, government information litigation, including the Freedom of Information Act, Presidential Records Act, and Federal Records Act. No one has a greater or more vested interest than CREW in ensuring the White House follows through on its commitment to make the visitor records publicly available. Although recent news accounts have suggested otherwise, the White House has lived up to that commitment

Some complain the visitor logs lack critical information, such as who the visitor is meeting with, and that requests for clearance were made by low-level staff in order to conceal the true nature of the visit. These criticisms reflect a fundamental misunderstanding of the nature of these logs and the purpose they serve. The White House visitor logs are not the equivalent of calendars or date books and, as every court to address this issue has found, are the records of the Secret Service, not the president. The Secret Service creates these records in furtherance of its statutory mission to protect the president, vice president, and their families, which necessarily extends to protecting the White House complex.

Because these records are created to serve the protective function of the Secret Service, they contain only that information the Secret Service needs to ensure no visitor to the White House poses a risk to the safety or security of any of its occupants. That information includes identifying information about the prospective visitor – name, social security number, and date of

birth – as well as the date, time, and location of the planned visit, and the name of the White House pass holder requesting clearance for the visitor. In performing its protective function the Secret Service does not need the identity of the individual or individuals the prospective visitor will see, nor does the Secret Service need or require the name of the individual with whom the visitor has an appointment. Simply stated, this additional information is neither relevant nor necessary to clear visitors for access to the White House from a security standpoint.

It is therefore not surprising that many of the posted visitor logs do not identify the White House individual with whom the visitor had an appointment. Nor is it surprising or troubling that top White House officials such as the chief of staff did not personally perform the ministerial task of requesting clearance for their visitors. The Secret Service requires only that the person requesting clearance be a pass holder able to provide the required information, and there is no suggestion this White House has not complied with that requirement.

Moreover, the nature of the information in the Obama White House visitor logs mirrors that of previous administrations, including the frequent omission of such details as the identity of the person with whom the visitor has an appointment. This reinforces the fundamental purpose of these Secret Service records – enabling the Secret Service to fulfill its statutory mission of ensuring no visitor to the White House presents a threat to the president, vice president or their families. They are not, nor were they ever, intended to provide details about who White House officials meet with.

To be clear, CREW disagrees with the legal position of the White House that these records are presidential and therefore not publicly accessible under the Freedom of Information Act. Nevertheless, we settled our litigation, which began under the Bush administration and

continued under the Obama administration, over access to these records when the Obama White House offered to not only provide CREW with its requested records, but to post on the White House's website on an ongoing basis nearly all visitor records, subject to very limited and reasonable exceptions. Through this bold initiative, President Obama fulfilled his campaign promise that "the White House is the people's house and the people have a right to know who visits," and reversed the policy of secrecy practiced by his predecessor.

The disappointment many may still feel stems in part from the inherent limitations of the visitor logs. As I have explained, they are agency records of the Secret Service that serve that agency's needs, but are not an analog to the appointment books or calendars White House officials otherwise maintain. Nevertheless, these records may reveal valuable information, such as the level of influence an outside individual has on a particular administration. For example, as part of our settlement of the Secret Service litigation, CREW received visitor logs of nine leading conservative Christian leaders during the Bush presidency. Those records revealed an astonishing number of White House visits by some individuals; Andrea Lafferty, executive director of the Traditional Values Coalition, alone made 50 visits to the White House during a seven-year period, including six to President Bush. While the records say nothing about what was discussed in any of those visits, one can reasonably infer this particular visitor had a level of access and influence not enjoyed by many others. Others have reached similar conclusions regarding the Obama records. In October 2009, the *Wall Street Journal* found then-President of the Service Employees International Union Andy Stern had made 22 visits to the White House.

Beyond making White House visitor logs publicly accessible, this administration has launched a government-wide effort – the Open Government Directive – to implement President

Obama's day-one promise to bring more transparency and accountability to government. Intended to institutionalize a culture of open government, the directive promises unprecedented public access to a wealth of information on how our government functions. In implementation of this directive, agencies have posted a wide range of data sets on a wide range of topics and have established processes intended to promote public participation and collaboration.

But the Open Government Directive is not without flaws. Lacking particular requirements and relying instead on laudable goals, the directive contains no concrete metrics by which to measure agencies' success. It ignores the request of groups like CREW and others in the access community that the administration implement a data floor requiring all agencies to post certain frequently requested data sets common across all agency lines, such as calendars for top agency officials and correspondence with Congress. So while the Open Government Directive's heavy emphasis on posting data sets has led to a proliferation of publicly available data, this data often is of questionable utility and does not necessarily include information the public is most interested in receiving.

With this directive the White House also declined an opportunity to link these efforts to the responsibilities each agency bears under the Freedom of Information Act. President Obama launched a new era in executive branch transparency through two memoranda he issued on his first full day in office addressing the FOIA and transparency and open government. The president's January 21 FOIA memorandum imposed a new presumption of disclosure and recognized the profound importance of the FOIA to government accountability. This was followed in March by a memorandum from Attorney General Eric Holder urging agencies to make discretionary releases under the FOIA, to approach all decisions under the FOIA with a

presumption of disclosure, and to refrain from invoking exemptions to cover up information that might embarrass an agency or agency official.

Even with these memoranda in place, however, transforming the dominant agency culture from one of secrecy to one of transparency remains a significant challenge. The president's commitment to transparency has yet to trickle down to agency staff charged with implementing open government mandates such as the FOIA. The huge gap between the administration's aspirations and actual agency practices is evidenced by the near-daily decisions agencies make under the FOIA to deprive the public of key information, ranging from why the Department of Justice refused to let certain members of the media interview convicted lobbyist Jack Abramoff while in prison, to evidence of pressure brought to bear on health care providers working for the Veterans Administration to under-diagnose post traumatic stress disorder as a cost-saving measure. Further, the Department of Justice has supported this agency recalcitrance, continuing its practice under the prior administration of reflexively defending virtually all agency withholding decisions challenged in court. Today under the Obama administration CREW is forced to litigate as many agency refusals to produce records as it litigated under the Bush administration.

Transparency in those who lobby the federal government also is a laudable goal that is far from a reality. The answer here lies primarily with Congress, which to date has opted to impose fairly minimal disclosure requirements on lobbying firms and organizations through the Lobbying Disclosure Act. Although that Act requires registered lobbyists to disclose lobbying contacts, the level of disclosure may be as minimal as identifying contacts with "the Senate" or "the White House Office," with no detail as to which particular office or member was contacted.

A task force of the American Bar Association has released a report to which CREW is a signator that includes a series of recommendations to increase transparency, such as amending the Lobbying Disclosure Act to require disclosure of money spent on grassroots lobbying and expanding who has to register and what has to be disclosed. We urge Congress to consider these recommendations with a view toward enhancing the accountability that comes from fuller disclosure.

Finally, any consideration of transparency and the White House must include a recognition of the protections the Constitution affords the president, including the right to consult in private with individuals both inside and outside of the government. Not simply a matter of constitutional prerogative, this protection provides a president the flexibility needed to privately explore a range of options that have the potential to substantially affect the public. Of course, the White House should be encouraged to be as fully transparent as possible, but we must also recognize the constitutional limits to forcing the White House to reveal certain communications.

Through his policy initiatives, President Obama has put in place many of the critical components for government transparency. But they are only a first step, not an end in themselves. Without question, further work remains and we hope and trust Congress will join with the administration to help achieve a truly open and accountable government. CREW welcomes the opportunity to work with this Committee to make that happen.

**Summary of Testimony of Anne L. Weismann
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Committee on Energy and Commerce, May 3, 2011**

- The White House has fulfilled its commitment to make virtually all visitor logs publicly available.
- The visitor logs are created by the Secret Service in furtherance of its protective function and therefore contain only that information the Secret Service needs to clear visitors for access to the White House.
- Necessary information for clearance includes personal identifying information about the prospective visitor – name, social security number, and date of birth – as well as the date, time, and location of the planned visit and the name of the White House pass holder requesting clearance for the visitor.
- The Secret Service does not need to know who the visitor is meeting with in order to clear visitors, and therefore, it is neither surprising nor troubling this information is missing from visitor logs.
- The Secret Service requires only that the person requesting clearance for a visitor be a pass holder able to provide the required information. Therefore, it is neither surprising nor troubling that top White House officials do not personally perform the ministerial task of requesting clearance for their visitors.
- The White House visitor logs were never intended to function as calendars or appointment books of White House officials.
- Beyond posting the visitor logs online, the Obama administration has launched a government-wide effort – the Open Government Directive – to bring more transparency and accountability to government.
- This directive has led agencies to publicly post a wide range of data sets on a wide range of topics, but this data does not necessarily include information the public is most interested in receiving.
- Transforming the dominant agency culture from one of secrecy to one of transparency remains a significant challenge. Through his policy initiatives, President Obama has put in place many of the critical components for government openness. But the president's commitment to transparency has yet to trickle down to agency staff charged with implementing open government mandates, such as the Freedom of Information Act (FOIA). Further, the Department of Justice has supported this agency recalcitrance, especially in its reflexive defense of virtually all FOIA agency withholding decisions challenged in court.