

time. Ms. Sherburne testified that Livingstone was "as confused and puzzled by it"<sup>9</sup> as she was.

5. *The General Accounting Office caused the problem—June 6, 1996*

By June 6, the White House issued another explanation for the improper possession of the FBI files. The White House stated that a "low-level file clerk" was not in fact at fault; rather, that the General Accounting Office ("GAO") might have "triggered" a request for these files in the course of its investigation of the White House Travel Office matter. The GAO immediately denied any involvement or request of FBI files.<sup>10</sup>

6. *"An innocent bureaucratic mistake"—June 7, 1996*

The committee soon learned that, in addition to Mr. Dale's improperly sought FBI file, the White House had obtained at least 338 other FBI files of prior Republican administration officials.<sup>11</sup> One of Livingstone's lawyers, David Cohen, who had been conducting his own investigation, telephoned Sherburne, and gave her the "bad news" that the White House had ordered a lot of other files beyond Dale's. Ms. Sherburne learned that files on former Republican administration officials were also ordered.<sup>12</sup> White House Counsel and "Travelgate" spokesman Mark Fabiani, immediately labeled this matter "an innocent bureaucratic mistake."<sup>13</sup>

Fabiani told the Associated Press on June 7, that Livingstone's attorney's discovery provides "a completely innocent explanation."<sup>14</sup> Fabiani also told the New York Times that the "detailee" whom he still refused to identify "was mistakenly given an outdated list of White House employees dating back to the Reagan Administration," and that "no one in the White House ever reviewed the files."<sup>15</sup> Further, Fabiani informed the Associated Press that the ordering of numerous other files was proof positive "that Mr. Dale's file was not singled out."<sup>16</sup> Chairman Clinger sent a letter to the White House on June 7 requesting all official information on this matter, including the name of the "mystery" detailee.

7. *The Secret Service caused the problem—June 10*

In a June 10, 1996 letter, Sherburne stated that the FBI background files were assembled in the White House Office of Personnel Security "as a result of a mistaken understanding" that these prior Republican administration officials "continued to have access to the White House compound after the start of the Clinton Admin-

<sup>9</sup> Sherburne deposition, p. 73.

<sup>10</sup> The GAO spokesperson stated that it "never asked presidential aides for the FBI background file of fired Travel Office director Billy Dale" and generally disclaimed that the GAO ever asked for or was allowed to review any FBI background files. Pete Yost, *White House Struggles to Explain Why it Obtained Dale's FBI File*, Associated Press, June 6, 1996.

<sup>11</sup> Jane Sherburne later testified that the White House learned of this information on June 6, 1996, through Mr. Livingstone's lawyers, Randy Turk and David Cohen of the Washington law firm of Miller Cassidy, LaRocca & Lewin. Sherburne deposition, July 23, 1996, pp. 74-75.

<sup>12</sup> Sherburne deposition, p. 85.

<sup>13</sup> Pete Yost, *Dale FBI File Part of Larger Effort to Recreate White House Files*, Associated Press, June 7, 1996.

<sup>14</sup> *Id.*

<sup>15</sup> Neil E. Lewis, *White House Says Requests for FBI Files Was Wider*, New York Times, June 8, 1996.

<sup>16</sup> Pete Yost, *Baker, Fitzwater, Brady Among 330 FBI Files White House Got*, Associated Press, June 7, 1996.

istration.”<sup>17</sup> Ms. Sherburne attached to her letter a sworn statement of Anthony Marceca, the detailee who ordered the files. Marceca stated that he based his requests to the FBI on Secret Service lists of White House passholders. Contrary to Fabiani’s statements to the New York Times that “no one in the White House ever reviewed the files,”<sup>18</sup> Mr. Marceca revealed in his statement that he, in fact, did examine the contents for inconsistencies. Marceca told Livingstone’s lawyer that he, in fact, read all of the files in order to pass on any “derogatory information” to Livingstone.<sup>19</sup> Sherburne later explained that Livingstone’s lawyer met with Mr. Marceca on Sunday, June 9 at his law firm’s offices. Mr. Marceca dictated a statement to Livingstone’s attorney in the presence of Livingstone.<sup>20</sup>

The frequently changing explanations in the early days show that the White House was quick to avoid accountability by passing the blame. It engaged in a public strategy of excuse-making. However, each time the blame was shifted elsewhere, the explanation was discredited. The White House continued to cling desperately to the explanation of blaming the Secret Service, even though it, too, was debunked in the committee hearing with the Secret Service. In the final analysis, the White House must take full responsibility for this fiasco and stop trying to lay blame elsewhere.

It is unconscionable that the White House shifted the blame from its own incompetent appointees to those of the U.S. Secret Service. The White House mounted a stealth campaign consisting mainly of background statements attributed to unidentified sources, to blame the Secret Service. The Secret Service initially refrained from defending itself, following its tradition of not making public statements about White House matters. Eventually, Secret Service witnesses were summoned before the committee to explain the charges leveled against them. Their testimony, and their extensive audit of the White House’s systems, showed that no single “faulty” Secret Service list could provide justification for how Anthony Marceca obtained hundreds of FBI background files of former Reagan and Bush officials.

The *only* list from which Marceca could have obtained all of the names released by the White House to date, is a master E-Pass list, which lists all “A,” active and “I,” inactive passholders for approximately the past 8 years. Mr. Marceca testified that he thought the “I” next to the name on the list indicated an individual was an intern.<sup>21</sup> Mr. Marceca would have had to deliberately order the files of people identified as “inactive” in order to have utilized this list. Mr. Marceca would have us believe that he ordered the FBI background files of such notable figures as Ken Duberstein, A.B.

<sup>17</sup> See June 10, 1996 Special Counsel to the President Jane Sherburne, letter to Chairman Clinger, p. 1.

<sup>18</sup> Neil E. Lewis, *White House Says Request for F.B.I. Files Was Wider*, New York Times, June 8, 1996.

<sup>19</sup> John F. Harris, *White House Admits Having Background Files*, Washington Post, June 8, 1996.

<sup>20</sup> Mr. Marceca stated in his sworn deposition that he met Craig Livingstone earlier that day at a local flea market and they went to Craig Livingstone’s house nearby. After Mr. Livingstone telephoned his lawyer, they both went to his lawyer’s offices where Mr. Marceca was questioned and delivered a sworn statement. Marceca deposition, p. 114.

We do not know why Mr. Marceca’s attorney was not present or when his attorney received the copy of the sworn statement that was handed to the White House the following day.

<sup>21</sup> Marceca deposition, p. 152.

Culvahouse and Tony Blankley, without any recognition of the names, or that they were not "holdover interns." The committee is especially skeptical of this conclusion given Marceca's vast political experience.

#### 8. *Procedural safeguards against "innocent snafus"*

In an attempt to get to the bottom of the cause of the FBI files issue, the committee held its first hearing on June 19, 1996. In that hearing, we learned how the very sensitive matters of confidential background checks and security clearances were handled by prior White Houses, both Democrat and Republican.<sup>22</sup> In the past, the President has appointed only professional, circumspect and highly responsible people to be put in charge of these most sensitive matters.

In this hearing, former Counsels to the President and Livingstone's predecessor in the White House Office of Personnel Security testified to the careful, and painstaking process that was followed in order to ensure the confidentiality of these sensitive files. We learned that this function was never handed over to political operatives, or detailees from outside agencies, and certainly not to teen and college age interns lacking security clearances, such as occurred in the Clinton White House.<sup>23</sup>

We further learned that for the past 30 years, the White House has engaged in a careful process of performing background checks and granting or rejecting security clearances on individuals to determine their suitability and stability for working at the White House and throughout the executive branch. The clearance and background processes exist to protect the President as well as the national security. The case of convicted spy Aldrich Ames is a painful reminder of the kind of problem that can arise when vigilance in national security matters is lacking. Given the necessity of sound procedures to guard against breaches of security, those who oversee security procedures themselves must be carefully selected and always above reproach.

Nancy Gemmill, former staff assistant in the Security Office since 1981, testified that at the beginning of the Clinton administration Livingstone had numerous teenage interns working inside the security office and even in the vault. The interns did not have background investigations, security clearances, or proper supervision. They had access to all confidential FBI background files and a photocopier machine stood nearby.

It is clear that supervision and accountability are imperative to such a sensitive process. As Washington Post editorial chief Meg Greenfield pointed out, "[E]ven if the accident rationale holds up, it was a plenty serious and inexcusable accident. Neither that material nor that responsibility should ever have been placed in those hands."<sup>24</sup>

It is troubling, both to the Congress and the public, to think the President could allow such inappropriate staff to oversee security matters in such a careless fashion. A brief review of the Clinton ad-

<sup>22</sup> *Security of the FBI Files: Hearing before House Committee on Government Reform and Oversight*, 104th Cong., 2d Sess., June 19, 1996.

<sup>23</sup> *Id.*

<sup>24</sup> Meg Greenfield, *The White House Wants*, Washington Post, June 24, 1996.

ministration's history of handling security issues shows other evidence of irresponsibility.

In March 1994 the problems and delays in obtaining White House passes and security clearances came to light, when congressional inquiries delved into why hundreds of White House staffers did not yet have background investigations completed. Associate Counsel William Kennedy was assigned responsibility for overseeing security matters, including the issuance of passes and security clearances. Kennedy was subsequently relieved of his responsibilities in this area; yet Livingstone, who was directly in charge of managing security, was not.

Later, in August 1994, Senator Dennis DeConcini, then Democratic chairman of the Subcommittee on Treasury, Postal Service, and General Government of the Committee on Appropriations, which provides funding for the White House, concluded an investigation of reported problems in Livingstone's office. Chairman DeConcini wrote to the President<sup>25</sup> suggesting specific changes that were sorely needed in the Personnel Security office. Those changes included replacing Livingstone with a career professional who had a security background. Chairman DeConcini's recommendations were considered but not implemented by the White House, and for some reason, Livingstone remained in charge.<sup>26</sup>

It is clear that security procedures are only as effective as the professionals who manage them. Following the committee's first hearing, two points became evident. First, there were serious security problems at the Clinton White House; second, those responsible for White House security under the Clinton administration were hardly professional and were a stark departure from past administrations.

### *9. Livingstone and Marceca*

Among the foremost questions the committee sought to investigate regarding how and why the White House obtained these FBI background files, was, "Who is Craig Livingstone?" "Who recommended him?" "Who hired him?" and given his background, "Why was he put in charge of such a sensitive job at the White House?" These are seemingly simple questions, but complete answers to them are still not forthcoming.

Livingstone did not have the professional background necessary to perform the sensitive functions of the Personnel Security Office. Yet he was put in charge of that office, and then managed to remain in that role despite the frequent turnover of White House Counsels. Conventional wisdom would suggest that management turnovers bring staff reorganizations. Instead, over a 3-year period, he enjoyed a 40 percent salary increase by touting his record as a

<sup>25</sup> Letter from Chairman DeConcini to President Clinton, August 11, 1994.

<sup>26</sup> Hearing testimony also illuminated other complaints against Livingstone during his tenure at the White House. Specifically, Livingstone was reprimanded by Evelyn Lieberman, Assistant to the Chief of Staff for the First Lady, for discussing the details of a background investigation with a young female staffer. It is not clear why the First Lady's staff was in the chain of command to reprimand Craig Livingstone, who reported to the Counsel's Office. Livingstone also had a police report filed against him in November 1993, when he threatened a female neighbor because her dog was barking. Livingstone reportedly said he would "beat her face in" if she did not quiet her dog. Livingstone admitted to the police officer that he did make the threat. *Security of the FBI Files: Hearing before the Committee on Government Reform and Oversight*, 104th Cong., 2d Sess., June 26, 1996.

"team player"<sup>27</sup> while keeping bankers' hours.<sup>28</sup> Numerous questions still remain about who brought Craig Livingstone into the Clinton inner circle as security chief. The committee has yet to piece together a clear picture of who is responsible for Livingstone working in the White House after the inauguration. Given the information available, did former White House Counsels Bernard Nussbaum, Lloyd Cutler, Abner Mikva and present Counsel to the President Jack Quinn really believe that the political advance man and ex-bouncer was the best individual for this sensitive position?

Mr. Nussbaum testified before this committee that he does not know who hired Livingstone. Instead, he suggested that the Chief of Staff's office may have been involved.<sup>29</sup> Mr. Livingstone's supervisor, Rose law firm partner William Kennedy, said in all committee depositions, as well as hearings, that he could shed little light on who brought Livingstone into the White House. Mr. Livingstone testified to the committee he does not know who recommended him. He gave an arguably tortured explanation of his journey into the White House as a permanent employee. Those who previously heaped high praise on Livingstone, such as the President's senior advisor George Stephanopoulos, virtually denied knowing him to the press. President and Mrs. Clinton's denials of hiring, or participating in the hiring of Craig Livingstone is in direct conflict with statements from their own senior staff to career FBI agents.

Both Livingstone and Marceca had extensive histories as campaign advance men and political operatives. Marceca was hand-picked by Livingstone for his White House detail through his personal request for Marceca to then-Associate Counsel Kennedy. Sworn testimony by Dennis Casey, a former Gary Hart campaign consultant who worked with Livingstone and Marceca on the campaign in 1984, shed some light on their possible motives for gathering information on Republican officials and fired Travel Office workers. Casey testified that both Livingstone and Marceca in the past had endorsed the utilization of personal information to manipulate support for their political candidate.

Documents show that Livingstone worked in "counter-events operations" during the 1992 Clinton-Gore campaign, and deployed partisan "tricks" to disrupt Former President Bush's campaign for re-election.<sup>30</sup> Livingstone's police record shows a report filed against him during his tenure in the White House where he was alleged to have physically threatened a female neighbor. Annoyed at her barking dog, Livingstone threatened to "beat her face in."<sup>31</sup> The Officer who questioned Livingstone reported that he admitted to managing the threat. Mr. Marceca has had his own brushes with the law in previous jobs in Texas and Pennsylvania.

In the committee's second hearing, we learned that Marceca left the White House compound with computer disks, which included details of the confidential files of National Security Council staffers

<sup>27</sup> See letter from Livingstone to then-Counsel to the President Abner Mikva, "It would be wrong not to approve my request . . . I apologize for my tone, but this is my last try to remain part of the team." August 28, 1995, White House document, CGE 48058.

<sup>28</sup> White House documents, CGE 47858-47860. Times of Livingstone's entry and exit White House complex.

<sup>29</sup> Committee deposit on of Bernard Nussbaum, July 11, 1996, p. 21.

<sup>30</sup> Resume of David Craig Livingstone, White House document DGE 46320-46234.

<sup>31</sup> Montgomery County, MD Department of Police, Event Report, Report of Simple Assault, November 7, 1993.

and other White House employees.<sup>32</sup> Documents produced by Marceca also indicated that his duties in the White House encompassed more than just filling out forms. Marceca's memoranda to Livingstone included analyses of the backgrounds of individuals who could not pass muster on security issues.<sup>33</sup> Mr. Marceca appeared to be providing legal advice to facilitate the "cleansing" of background problems. Although Marceca's detail at the White House was not renewed after his background investigation exposed some problems, he continued frequent entry both as a volunteer and as a visitor with access until June 1996. Documents produced by the White House suggest that Marceca played a larger role in White House security matters than the Clinton administration has admitted to the public.

Further, in late 1993 and 1994, Livingstone was attempting to obtain a Presidential appointment for Marceca, either as an Inspector General or a U.S. Marshal. Even after Marceca's background investigation, completed in December 1993, exposed suitability problems, attempts to employ Marceca continued. When that endeavor failed, Livingstone again tried to detail Marceca to the Personnel Security office, contrary to Associate Counsel Kennedy's testimony that he thought Marceca should just "go back to where he was."<sup>34</sup> Strangely, on March 17, 1994, it appears Livingstone withdrew his request to Secretary of Defense Perry for Marceca's detail.<sup>35</sup>

However, that was not the end of Marceca's work for the White House. Phone messages Marceca left for Livingstone and other documents show that Marceca was employed by the White House on a number of advance trips for President Clinton and other officials. One message from Marceca stated that he had just returned from a trip with Secretary Perry, and wanted to talk to Livingstone about what he had observed. Another message asked if Livingstone wanted to "be an agent working for Tony."<sup>36</sup> Why were individuals with questionable backgrounds travelling with the President? Was Marceca asked to make observations of his trip with Secretary Perry? What information was he sharing with Livingstone? Such documents raise serious questions about the White House's discretion in employing individuals with highly questionable backgrounds for important security positions.

In addition to the dubious backgrounds of Livingstone and Marceca, their various sworn statements about the requisitioning of the files appear inconsistent both within and between their own statements. Additionally, their statements conflict with sworn testimony provided by the FBI, the Secret Service and a former veteran employee of the Security Office, Nancy Gemmell. Furthermore, since Marceca's appearance at the committee hearing on June 26, 1996, he has refused to provide further testimony to the House of Representatives or the Senate, pleading his fifth amendment right

<sup>32</sup> *Security of the FBI Files: Hearing before the Committee on Government Reform and Oversight*, 104th Cong., 2d Sess., June 26, 1996.

<sup>33</sup> Memorandum from Marceca to Livingstone, undated, Marceca document Bates Stamp No. 117.

<sup>34</sup> Kennedy deposition, June 18, 1996, p. 41.

<sup>35</sup> Letter from Livingstone to Secretary Perry, March 17, 1994, White House document CGE 55749.

<sup>36</sup> White House document DBI 54256.