

against self incrimination. Livingstone was kept on in his position as director even after the files matter was uncovered, and was not placed on administrative leave until he personally made the request on June 17, 1996.<sup>37</sup> Mr. Livingstone resigned at a hearing before this committee on June 26, 1996.<sup>38</sup>

#### *10. Secret Service hearings*

The Secret Service provided numerous briefings to members of House and Senate committees and testified at two hearings on this matter. At the Government Reform and Oversight hearing, it was finally resolved that no possible conglomeration of Secret Service lists could have documented what is now believed to be more than 400 individuals as active passholders.

Whatever the reason for the White House's assorted and conflicting explanations, it became clear that the Secret Service was not at fault as evidenced by Livingstone's own statement to Special Agent Cole on June 7, 1996 when he said, "We just wanted you guys to know that we weren't blaming the Secret Service. Using an old list was our fault, and we had the current stuff you guys gave us. I don't know what happened."<sup>39</sup>

The Secret Service spent an extraordinary amount of time and resources carefully reviewing the quality of the information it provided to the White House. Countless hours were dedicated to examining if any material it provided to the White House could have been responsible for the hundreds of improperly requested FBI background files. In the end, the Secret Service could not identify any systemic problems which would explain how this happened.

#### *11. FBI internal investigation and report*

Director Freeh issued a June 5, 1996 press release denying that he had any prior knowledge of the White House's request for Billy Dale's file and announcing that he had tasked the FBI general counsel, Howard Shapiro to conduct an investigation into the matter and report his findings to Independent Counsel Kenneth W. Starr, who had become involved on June 6, 1996, because of links to his Travel Office investigation.<sup>40</sup>

Director Freeh explained that any contacts between the White House and the FBI were governed by the Justice Department's July 3, 1993, post-Travel Office firing policies<sup>41</sup> and the Attorney General's November 15, 1994 policy regarding White House contacts. Director Freeh assured the public that these policies "are adhered to scrupulously."<sup>42</sup>

An official at FBI headquarters informed the press that Director Freeh intended "to make sure that the public's perception is that there's not some cozy relationship between the White House and

<sup>37</sup> See June 20, 1996 letter from Jack Quinn to Chairman Clinger, p. 2.

<sup>38</sup> *Security of FBI Background Files* hearings, June 26, 1996.

<sup>39</sup> Cole deposition, p. 37.

<sup>40</sup> Notification to the court pursuant to 28 U.S.C. § 592 (a)(1) of the initiation of a preliminary investigation and application to the court pursuant to 28 U.S.C. § 593 (c)(1) for the expansion of the jurisdiction of an Independent Counsel.

<sup>41</sup> Memorandum to John Collingwood, Inspector in Charge, Office of Public and Congressional Affairs, FBI, from Carl Stern, Director of Public Affairs; subject: contact with the White House and other executive branch agencies; June 13, 1993.

<sup>42</sup> June 5, 1996 Justice Department FBI immediate release.

bureau executives." Another FBI agent added that Director Freeh "certainly doesn't want the bureau mixed up in this stuff."<sup>43</sup>

On June 13, 1996, the FBI revealed that an additional 71 files of prior Republican administration officials had been requested by and delivered to the White House by the FBI.

On June 14, 1996, the FBI issued its "Report on the Dissemination of FBI File Information to the White House," revealing that 408 files were sought by and delivered to the White House "without justification." Director Freeh noted that "the prior system of providing files to the White House relied on good faith and honor" of White House employees and that "unfortunately, the FBI and I were victimized." Director Freeh noted, "Among the unquestionably unjustified acquisitions were reports relating to discharged Travel Office employees Billy Ray Dale and Barnaby Brasseur." Director Freeh also acknowledged that these were "egregious violations of privacy." Director Freeh promised the American people that "it will not happen again on my watch."<sup>44</sup>

As FBI Director Freeh stated in his report, the process has always relied on the "good faith and honor" of those involved.<sup>45</sup> There are inherent risks involved when, instead of "good faith and honor," political operatives, and inexperienced teenagers are put in charge of this highly sensitive process.

## *12. Attorney General Reno refers FBI files investigation to Judge Starr*

Independent Counsel Kenneth Starr announced on June 18, 1996, that he did not believe his office had authority to pursue the investigation of the files matter without a request from the Attorney General to expand the scope of his authority. In response, Attorney General Reno announced that day that FBI Director Freeh would be asked to conduct a thorough investigation into the matter. Following this announcement, the White House wrote to Chairman Clinger promising to provide full cooperation with the FBI's investigation and announcing changes being instituted in the White House concerning its procedures to obtain and review FBI background investigation files.<sup>46</sup> Subsequently, on June 20, 1996, Attorney General Reno filed a motion with the District of Columbia Federal Circuit Court requesting an expansion of Judge Starr's investigative authority so that he could pursue this improper use of FBI background files. The order was signed on June 21, 1996.<sup>47</sup>

<sup>43</sup> Wesley Pruden, *The Limited Hangout at the White House*, Washington Times, June 7, 1996, p. A4.

<sup>44</sup> Report of the FBI general counsel on the dissemination of FBI file information to the White House, June 14, 1996.

<sup>45</sup> *Id.*

<sup>46</sup> FBI General Counsel Howard Shapiro stated that he did meet with Independent Counsel Starr's office during this short period where he had authority to investigate this matter. Although Mr. Shapiro did not provide the details of this briefing, the Independent Counsel provided highly confidential background information to Mr. Shapiro on the status of its investigation at that time. It is unclear whether Mr. Shapiro in turn relayed this information to the White House as an "interested party" or to the Justice Department.

<sup>47</sup> Notification to the court pursuant to 28 U.S.C. § 592 (a)(1) of the initiation of a preliminary investigation and application to the court pursuant to 28 U.S.C. § 593 (c)(1) for the expansion of the jurisdiction of an Independent Counsel.

### 13. *Improper contacts with the FBI*

The committee's investigation continued. Among the many questions, which the committee sought to answer, was the hiring of Craig Livingstone. Thus, at the request of FBI Director Freeh, Chairman Clinger, on July 18, 1996, went to Bureau Headquarters to review Livingstone's FBI background file. Contained in the file was a 1993 agent interview of Bernard Nussbaum wherein Nussbaum is recorded as telling Agent Sculimbrene that Craig Livingstone had come "highly recommended by Hillary Clinton." The statement is in direct conflict with sworn statements made by Nussbaum in a June 26, 1996 committee hearing. In the hearing, Nussbaum stated that he did not know who brought Livingstone into the White House for the position in the security office. He also stated that he never spoke to the First Lady about Livingstone.<sup>48</sup>

Prior to the chairman's review of Livingstone's FBI background file, FBI General Counsel Howard Shapiro provided the White House with a "heads up" about the highly pertinent information related to Mrs. Clinton's involvement in recommending Livingstone. The committee is greatly troubled by the fact that Shapiro provided advance notice of this information to the White House. The FBI has yet to identify any legitimate purpose in Shapiro's actions. The FBI failed to contact the Independent Counsel, which had clear jurisdiction over this matter. Mr. Shapiro's specious argument is that "the Bureau had a responsibility to advise affected parties."<sup>49</sup> Mr. Shapiro ignored the Attorney General's admonition that any FBI involvement would create a "political conflict of interest." Mr. Shapiro's actions potentially damaged both the committee's and the Independent Counsel's investigations, while exacerbating the already growing perception of politicization of the FBI.

Subsequent to the revelation of the Nussbaum interview, Shapiro dispatched two senior FBI supervisory agents to now-retired Agent Dennis Sculimbrene's home to formally interview him about the Nussbaum statement. Agent Sculimbrene got the impression that the White House was unhappy about his interview report on Bernie Nussbaum. The sending of agents to Sculimbrene's home involved Shapiro in an operational matter, which is inappropriate for the general counsel.

Further conflicts uncovered in Shapiro's testimony before this committee include his hand delivery of former FBI agent Gary Aldrich's book, "Unlimited Access," to White House Counsel Jack Quinn in February 1996.<sup>50</sup> The book was in pre-publication form and in the possession of the FBI solely for its review. Shapiro testified that in giving a copy to the White House he was notifying them of possible security risks posed by information revealed in the book. However, the White House has yet to produce a complete response to the committee on this matter.

Shapiro's frequent contacts with the White House is evidenced by the fact that he is the first FBI general counsel in over a decade to have a permanent White House pass, as well as his assistance to White House Counsel Quinn in drafting a letter to Director

<sup>48</sup> *Security of FBI Files* hearings, June 26, 1996, p. 57.

<sup>49</sup> Letter from FBI General Counsel Howard Shapiro to Chairman Clinger, July 19, 1996.

<sup>50</sup> *Security of FBI Files* hearing, August 1, 1996, p. 33.

Freeh. Incredibly, Shapiro offered his advice on the letter, which attacked both the FBI and Chairman Clinger.

In light of Attorney General Reno's determination that the FBI and the Justice Department refrain from investigating anything related to the White House's acquisition of FBI background files, the committee finds Shapiro's interference in the matter clearly and totally inappropriate. Mr. Shapiro's contacts with the White House appear to be in direct conflict with his position as general counsel of the FBI and suggest a far too cozy relationship between the White House and the FBI.

### C. FINDINGS

The committee, while investigating the matter of the security of FBI background files has made the following findings:

- FBI Background files often include the most sensitive and confidential personal and financial information about the individual being reviewed.
- The White House improperly requested hundreds of confidential FBI background files seemingly without any justification. This was a violation of the constitutional rights and private lives of many upstanding citizens, whose files were requisitioned and reviewed by White House employees. Many of the individuals were political appointees of the Reagan and Bush administrations. This leads to the possibility that the Clinton administration was attempting to prepare a political "hit list" or "enemies list" with the most sensitive and private information possible.
- The White House Office of Personnel Security and the FBI maintained a system of mutual convenience which allowed low level staff to access any file without question by the FBI. The Clinton administration has, on a number of occasions, failed to implement safeguards that would have prevented this lapse in security. Further, the longstanding policy of the FBI, which relied on the honor of White house employees, was exploited by Clinton administration employees.
- FBI General Counsel Howard Shapiro provided confidential FBI law enforcement information about Mrs. Clinton's role in bringing Livingstone to the White House. When Shapiro realized that the information contained in Livingstone's FBI background file could damage Nussbaum and Mrs. Clinton, he immediately contacted the Office of White House Counsel and read verbatim the incriminating contents of Livingstone's file.
- Once White House Counsel Jane Sherburne learned that the information contained in Livingstone's file could damage Nussbaum and Mrs. Clinton, Sherburne contacted Mrs. Clinton regarding the incriminating information.
- Sherburne possibly violated ethical standards by informing private attorneys for Bernard Nussbaum and Craig Livingstone about confidential FBI law enforcement information. On the day before reports of his testimony before a grand jury, lawyers for Nussbaum were told about evidence uncovered in a search of Livingstone's file that contradicted Nussbaum's testimony before the Committee on Government Reform and Oversight. Mr. Livingstone received the same information.

- White House Office of Personnel Security staff failed to properly secure confidential FBI law enforcement files. The committee was provided with testimony and evidence that staff and interns without the necessary clearances had unfettered access to the highly sensitive material in the FBI background files including that of more than 400 former Bush and Reagan administration officials.
- The FBI continued to involve itself in the investigation of the FBI files matter after receiving notice from the Attorney General that a conflict of interest existed between the FBI and the White House concerning this matter. Mr. Shapiro notified the White House about the incriminating contents of Livingstone's background file before the committee was allowed to review it. Shapiro assisted with correspondence between the White House and the FBI regarding the FBI files matter and the investigation by the Committee on Government Reform and Oversight.
- Army Detailee Anthony Marceca was given unfettered access to confidential FBI law enforcement files and allowed to remove confidential information from the White House, despite his own inability to receive White House clearance. Marceca's removal of information in those files from the White House was inappropriate.
- FBI General Counsel Howard Shapiro provided the White House Counsel a pre-publication copy of Gary Aldrich's book, thus allowing distribution of the book to the President's political damage control operation. Mr. Shapiro improperly allowed the White House access to a manuscript provided to the FBI under an employment agreement with a former agent without any valid basis for doing so.
- The White House withheld from Congress responsive subpoenaed documents that further implicated individuals under criminal investigation. The White House began the release of disputed documents only under threat of contempt.
- The White House asserted executive privilege over documents that had no nexus to the President or his need to communicate with his staff concerning issues involving the Presidency or national security. Many of the documents received by the committee, over which the President made an executive privilege claim, contained routine administrative information or communications on issues having no bearing on issues of national security.

#### D. RECOMMENDATIONS

The committee has undertaken a preliminary investigation into the improper release of FBI background files to the White House. This interim report is the result of that investigation. Hearings, depositions, and document review have produced additional questions still under review. The committee is not satisfied that the public has the answers to many of these concerns. It would therefore be imprudent to make recommendations on a set of incomplete facts. The only exception concerns Mr. Shapiro's activities. Even though a complete review of Shapiro's activities has not been completed, it is clear from the evidence available to the committee that

Shapiro's actions were grossly inappropriate and that he should, therefore, resign.

This committee owes it to the individuals whose files were improperly obtained by the White House to continue a thorough investigation of these circumstances to find out what happened to their most private information.

The committee suggests a broad scope for the subsequent stages of this important investigation. It, therefore, puts forward a set of questions for the further consideration of the committee.

1. Who hired Craig Livingstone?
2. What list was used to make up the White House requests for FBI background files?
3. Who reviewed the contents of FBI background files for Reagan and Bush administration officials?
4. Were the contents of the FBI background files ever transmitted electronically to any computer database in or outside the White House complex?
5. What effect do new procedures have on the White House pass process and FBI background checks?
7. What standard procedures are in place to ensure that those without the proper clearances do not have access to material protected by the Privacy Act, which are stored in the White House?
8. What policies should be implemented to ensure that FBI officials do not interfere with ongoing investigations outside the Bureau's jurisdiction?

## II. WHITE HOUSE OFFICE OF PERSONNEL SECURITY

### A. HISTORY OF THE OFFICE OF PERSONNEL SECURITY

The White House conducts some level of background check on every individual requesting access to the complex and on every individual who is being considered for a Presidential appointment. There are several ways in which this background check can be conducted, ranging from a name check to a full field background investigation. Historically, the White House Counsel has been responsible for reviewing the FBI background reports of individuals for suitability purposes. To assist the Counsel in processing the background reviews, the Johnson administration created the White House Security Office.<sup>51</sup> The head of the office, holding the title of Assistant to the White House Counsel for Security, reported directly to the White House Counsel or Deputy White House Counsel.<sup>52</sup>

From its origination up to the Clinton administration, the White House Security Office was responsible for coordinating paperwork to ensure that all of the forms that appointees were required to complete before an FBI background investigation could be initiated were in order. In addition, the office organized and maintained the background files and reports which were sent to the White House from the FBI. The Director of the Security Office was responsible for the initial review of the FBI background reports for any information which should be brought to the attention of the White

<sup>51</sup> Prepared written statement of C. Boyden Gray, Counsel to President George Bush, p. 2, in committee files.

<sup>52</sup> *Id.*