

Ms. WETZL. Yes.

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Senator THOMPSON. I guess I am just asking the question—you had these files, you saw them, you saw that there were many, many more than what was appropriate, and simultaneously you had a list that apparently had the same characteristics. It just occurs to me that you might have wanted to compare that list of the files to see whether or not you were holding a list of the files that you were going to have to be going through and working from, and that might have helped you determine what Tony had used to get those files.

Ms. WETZL. Well, at that point, I didn't really—the mistake had already been made. I didn't care what . . . Tony had done . . .

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Senator THOMPSON. The decision as to what to put in the burn bag and what to archive—is that something that you were instructed on or something you made a decision on yourself?

Ms. WETZL. It was something I made a decision on myself.⁴⁰⁹

Although Wetzl testified that her understanding was that “all paperwork that we didn't need anymore that we wanted to put in storage, it all had to go to Records Management.”⁴¹⁰ The materials Marceca was using never went to Records Management. It was destroyed. With that act, Ms. Wetzl eliminated the only real evidence of exactly what Marceca had in his possession when he ordered the hundreds of files on prior Republican administration officials.

2. Process by which the project is completed

Ms. Wetzl testified that after she discovered Marceca's “extra files,” she proceeded with Project Update. She began working off of a list from the Secret Service “of pass-holders” and went through the list to identify names that no longer should have access to the White House complex.⁴¹¹ When Wetzl discovered a name of an individual that was no longer an active passholder, she notified the Secret Service to remove the name from the list. Ms. Wetzl also cross referenced her list with updated lists from supervisors of the departments within the White House complex.⁴¹² Because she thought all of the other lists were “hopelessly outdated,” she simply started over creating her own list.

Unlike her predecessor Mr. Marceca, Wetzl testified that she did not read the new Project Update files that she received for content.⁴¹³ She merely looked at the top of the first page to determine when the individual would need a 5-year reinvestigation and then “filed them.”

⁴⁰⁹ *White House Access to FBI Summaries: Hearings Before the Senate Committee on the Judiciary*, 104th Cong., 2d Sess., June 28, 1996 pp. 167–171.

⁴¹⁰ Deposition of Lisa Wetzl, p. 59.

⁴¹¹ Deposition of Lisa Wetzl, p. 53.

⁴¹² *Id.*

⁴¹³ *Id.*, p. 55.

3. *Extra files are boxed up and archived*

The group of files ordered by Marceca were gathered together by Wetzel sometime between December 1994 and February 1995. Ms. Wetzel testified that she "mentioned it" to Livingstone that files from the previous administration had been ordered and that she may have told him that "Marlin Fitzwater's file is there."⁴¹⁴

These files remained in the White House Security Office vault, separated from the other files for "a long period of time." Ms. Wetzel explained that she left them in the office until she figured out "whose we needed and whose we didn't."⁴¹⁵ At some point, Wetzel placed all of "Tony's files" in boxes to be taken to the archives. She typed up a list of the names of each individual whose file was placed in the box and took the boxes to the Office of Records Management located next door to the Office of Personnel Security. The files remained at the Office of Records Management until they were retrieved by White House Counsel Sally Paxton at the behest of Jane Sherburne on June 6, 1996.

V. WHITE HOUSE COUNSEL'S OFFICE DISCOVERY OF FBI FILES

A. BILLY DALE'S FILE

1. *Office of Records Management responds to subpoena*

On December 19, 1995, White House Special Counsel to the President, Jane Sherburne, Associate Counsel Natalie Williams and Special Associate Counsel Jonathan Yarowsky distributed a memorandum to selected White House staff regarding the committee's request for certain documents relating to the White House Travel Office firings.⁴¹⁶ Shortly thereafter, Williams was notified by Tom Taggart, of the Office of Records Management, that in preparing documents for release to the committee, he had discovered the FBI background file of Billy Ray Dale.⁴¹⁷ In a hand-written note to his file dated December 27, 1995, and signed by Taggart, he memorialized his conversation with Williams regarding Billy Ray Dale's FBI background investigation file:

Today, on 12/27/95, I notified Natalie Williams about Billy Dales FBI (retired) report (background check & vetting) that we received with other files from Craig Livingstone. She said that this file involved personal and personnel privacy issues—would not be sent to the Committee, nor would it be released. She is not interested in seeing file.

/s/ (Tom Taggart, Jr.)
12/27/1995⁴¹⁸

As the note makes clear, while both the White House Counsel's Office and the Office of Records Management knew of the existence

⁴¹⁴ *Id.*, p. 63.

⁴¹⁵ *Id.*, p. 58.

⁴¹⁶ White House document production, CGE 42825-42827. The memorandum only asks for documents "created as of May 31, 1995" to be provided to the committee and provides a limited definition of the "White House Travel Office matter" for purposes of determining which documents are responsive.

⁴¹⁷ Natalie Williams deposition, p. 19.

⁴¹⁸ Handwritten memorandum of Tom Taggart, Jr., December 27, 1995, produced to the committee in a July 18, 1996 letter from Jane Sherburne to Chairman Clinger.

of Dale's background investigation file, neither had any intention of including it in the production of materials to the committee.

2. *White House Counsel determines that FBI file is a personnel file*

In a June 10, 1996 letter to Chairman Clinger, Jack Quinn alleged that he recalled telling the chairman during the meeting that "Billy Dale's personnel file" was among the group of personnel/vetting records being withheld by the White House at that time.⁴¹⁹ Mr. Quinn's statement is not true. The discussion revolved around David Watkins personnel file, a central figure in the Travel Office affair. The committee was never told that Billy Dale's file was among the files being withheld and certainly was not informed that the White House was withholding a December 1993 request for his FBI background investigation file. Moreover, Quinn never distinguished between a "personnel" file and an FBI background investigation file. These are very different files that seem to blend together in the White House's explanation.

Mr. Quinn's letter, however, evidences another contradiction. Although the letter states that he informed Chairman Clinger about the Billy Dale file at a February 15, 1996 meeting, Special Counsel Jane Sherburne deposition testimony conflicts with Quinn's statement. Ms. Sherburne testified that she did not even know about Billy Dale's FBI file until June 4, 1996.⁴²⁰ Ms. Sherburne attended the February 15 meeting with Quinn.

3. *Natalie Williams passes on information to Wendy White*

In an effort to keep documents from the committee, the White House conducted an extensive operation of reviewing documents in order to ensure that damaging information was not released. The White House Counsel's Office hired additional staff just to review, scrutinize, redact, and finally, produce documents the committee requested.⁴²¹

Wendy White was one of those hired to assist in the document review. Ms. White was hired as Special Associate Counsel in mid-February 1996 to assist with the production of materials to the committee. According to White, she learned of the Dale file as soon as she began work at the White House.

Shortly after I started, Natalie Williams, who had been working on the subpoena response, returned to private practice. Before she left, she provided me with certain information I needed in order to complete the production. During this transition period, she advised me that the Office of Records Management maintained a Billy Dale file responsive to the subpoena that should be retrieved from ORM if the committee and White House reached agreement that the file should be produced for *in camera* review or otherwise.⁴²²

⁴¹⁹ Letter from Jack Quinn, Chief White House Counsel, to William F. Clinger, Jr., June 10, 1996.

⁴²⁰ Deposition of Jane Sherburne, July 23, 1996 p. 71.

⁴²¹ White House document DF 780643-654, task list created by Jane Sherburne.

⁴²² Statement of Wendy S. White concerning production of Billy Dale FBI file, July 18, 1996.

In several instances where the White House produced documents in partial compliance with the committee's subpoena, the Billy Dale file was not included.

4. *Wendy White's handling of Billy Dale file*

a. *May 21, 1996—orders the Dale file from OPS*

In early May 1996, after the committee was forced to hold Quinn in contempt, the White House decided to comply with the committee's subpoena of January 11, 1996. Responding to this action, the White House began to prepare documents for release to the committee. Ms. White wrote of this preparation of documents, "On May 21, 1996, I had the Office of Personnel Security retrieve the Billy Ray Dale file from the Office of Records Management. At my direction, the file was then copied and prepared for production."⁴²³ Ms. Sherburne wrote a July 18, 1996 letter to the chairman explaining that she and Ms. White had no discussions about a Billy Dale FBI background file; rather they discussed a personnel file.⁴²⁴ Ms. Sherburne's own letter makes clear that she understood there to be a difference between personnel files and FBI background files, and that she did not know of the Billy Dale FBI background file.⁴²⁵ The White House steadfastly maintains, however, that at the February 15, 1996 meeting they were discussing FBI background files, before Sherburne claims to have known of the Billy Dale file. White House Associate Counsel Natalie Williams also believes she likely told Sherburne about the Billy Dale file.⁴²⁶

White told the staff of the committee, "I gave the original file back to the Office of Personnel Security on May 23, 1996 to be returned to ORM. The White House produced the Billy Dale file to the committee, together with the other documents, on the morning of May 30, 1996."⁴²⁷

B. CHAIRMAN CLINGER'S JUNE 5, 1996 STATEMENT

1. *The committee receives 1,000 pages*

On May 30, 1996, the White House produced 1,000 documents to the committee in order to avoid a vote by the House of Representatives on the contempt citation against Quinn. That production included Dale's FBI background file and the memorandum from Bernard Nussbaum, then Counsel to the President, to the FBI liaison requesting the file. That was the first time the committee learned of the White House improperly requesting, maintaining, and withholding the FBI background file of Billy Ray Dale.

Investigators for the committee were reviewing the White House documents when they came upon memoranda of an extremely personal nature about Dale and his family. Affixed to these documents was a December 20, 1993 memorandum from Nussbaum to the FBI requesting a copy of a "previously requested report" for the background file of Billy Dale. Mr. Dale was dismissed from the White

⁴²³ Statement of Wendy S. White concerning production of Billy Dale FBI file, July 18, 1996.

⁴²⁴ July 18, 1996 letter from Special Counsel to the President Jane Sherburne to Chairman Clinger.

⁴²⁵ *Id.*

⁴²⁶ Williams deposition, p. 18.

⁴²⁷ Jane Sherburne letter, July 18, 1996.

House 7 months before the request, and had no need for White House access.

2. Chairman Clinger's statement on the Billy Dale file

Chairman Clinger first learned that the White House had obtained the FBI background file of Dale from the White House May 30, 1996 document production. He made no public statement on the matter until June 5, 1996.

At a press conference to express his outrage on this matter, Chairman Clinger released the memorandum from Nussbaum requesting the FBI background file of Billy Ray Dale. Chairman Clinger asked, "Can there be any legitimate reason why President Clinton's White House Counsel requested the confidential FBI background checks a full 7 months *after, I repeat after,* Billy Dale was fired and unjustly accused and smeared with allegations of wrongdoing? And yet, for a reason that has not yet been determined, the FBI complied with the request."⁴²⁸

Out of concern for the individuals whose privacy had been violated, Chairman Clinger took steps to commence a full investigation of the White House's improper actions in obtaining this and possibly other FBI background files.

VI. FBI INVOLVEMENT IN THE FILES MATTER

On June 5, 1996, Chairman Clinger telephoned FBI Director Louis Freeh upon discovery of the White House document requesting the background file of Billy Ray Dale. Chairman Clinger, in a press conference, notified the public of this event and released the request form, the document used by the White House to obtain FBI background investigations, from the White House.⁴²⁹ Director Freeh immediately sought a meeting with FBI General Counsel Howard M. Shapiro and Deputy General Counsel Tom Kelley.⁴³⁰ When he could not locate Shapiro, Freeh sought answers from Kelley on how background files of former White House employees could land in the White House.⁴³¹

A. DIRECTOR FREEH INITIATES INVESTIGATION

According to Kelley, Freeh showed him the document that Chairman Clinger released and asked Kelley to undertake an initial investigation of the White House request for Billy Ray Dale's file.⁴³² Kelley told the committee that "[the Director] asked me to come over and he explained to me that this release that Congressman Clinger had made, he showed me a copy of the document and he said he would like to determine how that could have happened, and dispatched me to find out."⁴³³

⁴²⁸ Statement of William F. Clinger, Jr., June 5, 1996.

⁴²⁹ The FBI file, itself, was never made public by the committee. However, before the White House finally released documents to the committee in compliance with the subpoena, it made many of the 1,000 pages of documents available to the press. The committee has been unable to ascertain whether sensitive, background information on Billy Dale was included in the materials made available to the press.

⁴³⁰ Kelley deposition, pp. 22-23

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

1. *Tom Kelley's initial investigation*

Kelley recognized the source of the document as the memorandum used by the White House to request an FBI background investigation and went to discuss the document with the Executive Agencies Sub-unit of the Information Resources Division at the FBI. Kelley spoke with SPIN Unit Chief Jim Bourke, as well as Jan George, and Formy Duvall, of the Executive Agencies Sub-unit of the Information Resources Division.⁴³⁴

David Kitchen, recently appointed Chief of the Executive Agencies Sub-unit, soon became involved in Kelley's inquiry. Mr. Kelley received the background file of Billy Dale from Bourke. Mr. Bourke had already retrieved the file, aware of the controversy surrounding it. Kelley soon learned that the file had been disseminated to the White House on January 6, 1994, in response to a December 20, 1993 request form.⁴³⁵ This was more than 2 years before the White House mentioned the file to the committee.

When background material is released to a Federal agency, it is reviewed by the FBI for information that should not be released. On the back of each page that is released, a stamp is marked indicating that information in the file, or the file, itself, has been released. In addition to the stamp, the date of the release and the initials of the analyst who reviewed the file for release among others, are added. Mr. Kelley noticed that "there were quite a series of [pages] that were transmitted."⁴³⁶

Mr. Kelley learned from Jan George that, instead of putting the White House request for the file in the file, itself, the FBI retained the form in separate files.⁴³⁷ The file of White House requests had been retained only for 1 to 2 years, in response to the growing number of files requested.⁴³⁸ No copies of the White House request forms had heretofore been retained.

Mr. Kelley reported to Director Freeh and General Counsel Shapiro that the file had been sent to the White House. Director Freeh instructed Shapiro to undertake a more extensive investigation into the matter and prepare to release the facts to the public. The Director asked that the report be made to the Director and to the Deputy Attorney General. The Director told Shapiro that the general counsel's office was the best place to conduct the investigation, because only then could the Director ensure that the investigation was done "properly and . . . swiftly."⁴³⁹

When he was first given the task of investigating the dissemination of FBI files, Shapiro asked Director Freeh if he thought that the Office of Professional Responsibility or Investigations Division

⁴³⁴ *Id.*, pp. 23-25.

⁴³⁶ *Id.*, pp. 23-25.

⁴³⁶ *Id.*, p. 27.

⁴³⁷ *Id.*

⁴³⁸ Howard M. Shapiro, *Report of the FBI General Counsel on the Dissemination of FBI File Information to the White House*, June 14, 1996, at cha ts tab 16. According to a report written by Shapiro, in the first year of the Clinton administration, the actual number of files requested by the White House was 10,197, more than 3 times the number requested the previous year by the Bush administration. The average number of files requested by the Clinton administration each month was 850, more than 3 times the monthly average of Bush administration requests.

⁴³⁹ Deposition of Howard M. Shapiro, July 30, 1996, p. 29.