

by a President and he will not be considered a politically oriented member of the President's 'team.'"

After Watergate, the Congress was wary of the President's political influence over the Nation's police force. It sought a way to remove the Director of the FBI and the FBI, itself, from political involvement.

When Louis Freeh was appointed by President Clinton in 1993, he immediately took steps to change the internal structure of the FBI. He eliminated two associate deputy directors and four dozen management positions. Perhaps his most controversial move involved the appointment of his closest aides. An article in the Los Angeles Times reported about some dissension in the FBI ranks about Freeh's appointments:<sup>509</sup>

Some of the controversy emanates from Freeh's appointment of a triumvirate of federal prosecutors he knew when he served in the U.S. attorney's office in Manhattan. He named Robert B. Buckham, 43, chief of staff; Howard M. Shapiro, 34, is the FBI's first general counsel, and Buckham's brother, James R., 32, heads up the new office for ending interagency turf fights. "He may be relying too heavily on the views of a certain group of friends, including their estimates of other people in the organization, creating a clique," worries a former senior Justice Department official.<sup>510</sup>

Howard Shapiro met Director Freeh right out of Yale Law School when he first began his clerkship for Judge Leval and Director Freeh was appearing before the Judge as an assistant U.S. attorney in a major case in his career known as the "pizza connection" case.<sup>511</sup> Mr. Shapiro testified that the "unusually close relationship" they developed during the course of this case led to Freeh requesting he come to work at the U.S. attorney's office in New York. Mr. Shapiro testified that he believed that Director Freeh "assisted him in being selected for the job."<sup>512</sup>

Director Freeh again tapped Mr. Shapiro to join him on a "special assignment by the Attorney General" to investigate and prosecute the December 1989 tragic mail bombing case that killed Judge Robert Vance. They worked closely throughout the course of this case until Director Freeh was sworn in as a Federal district court judge. Mr. Shapiro left the U.S. attorney's office and accepted a teaching position at Cornell Law School but managed to stay in contact with then-Judge Freeh.

When Director Freeh was first asked by President Clinton if he would accept the position of Director of the FBI in the summer of 1993, he sought the advice of Howard Shapiro.<sup>513</sup> Mr. Shapiro testified that he "urged him to take the job and encouraged him to do

<sup>509</sup> Ronald J. Ostrow, *Freeh Reign He's Eliminated Red Tape and Senior Posts, Given Agents More Power and Fewer Desk Jobs, Promoted International Cooperation and His Friends—In Just 17 Months, Louis Freeh has Made a Mark on the FBI as Indelible as J. Edgar Hoover's*, the Los Angeles Times Magazine, Sunday, February 5, 1995.

<sup>510</sup> *Id.*

<sup>511</sup> Deposition of Howard Shapiro, 7/30/96, p. 10.

<sup>512</sup> *Id.*, p. 11.

<sup>513</sup> *Id.*, p. 12.

so.”<sup>514</sup> In return, Director Freeh told Shapiro that he “expected” him to “come down and work for him” at the FBI to which Shapiro agreed and took leave from his teaching position at Cornell. Because Director Freeh had not yet formally created the office of the general counsel and first had to move out the current FBI career legal counsel, Shapiro began working for Director Freeh as his “special counsel” for 2 to 3 months.<sup>515</sup>

After the retirement of the previous legal counsel, Shapiro began to “recreate” the Office of the General Counsel and immediately brought two deputies that work with his at the U.S. attorney’s office. Mr. Shapiro testified that he and Director Freeh believed these outside attorneys “could improve the overall quality of the office” since only career FBI agents had been allowed in these positions before. Mr. Shapiro, deriding their experience, stated that in the past the Bureau tended to promote individuals “based on their prediction of who would be the best agent.”<sup>516</sup> Mr. Shapiro immediately stopped this practice however, and filled the office with former colleagues of his and the Director’s.

As revelations of numerous contacts between FBI General Counsel Shapiro and the White House materialized, concerns about the politicization of the FBI have resurfaced. We learned that Shapiro had his own White House pass allowing him to come and go as he pleased in the White House complex.<sup>517</sup> Director Freeh’s appointment of close friends rather than “the best agent” is at the center of this problem. No longer does the top lawyer for the FBI have an allegiance to the law enforcement agency whose laws he has taken an oath to uphold. Instead the relationships created within the Office of the General Counsel created allegiances to the Director and his allegiances to the White House that gave him his appointment.

Shapiro has protested any political savvy, testifying that he has had only non-political, career, Department of Justice appointments,<sup>518</sup> and that he would therefore not have any political issues in mind when in contact with the White House.<sup>519</sup> Given the great attention paid by the public, the media and the Congress to past indiscretions by the FBI in its contacts with the White House, Shapiro should have been ever aware of the political consequences of his actions. Instead of protestations that he was not “competent” to commit a political act,<sup>520</sup> Shapiro owed his agency and the public to be especially vigilant in his conduct, in matters involving the

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*, p. 13. Mr. Shapiro described this as a “somewhat delicate personnel matter” that Director Freeh had to move out the current Assistant Director who served as the Director of the Office of Legal Counsel Division before Shapiro could “replace” him. Then Assistant Director Joe Davis thereafter retired from the FBI after a long and distinguished career with the Bureau.

<sup>516</sup> *Id.*, p. 15.

<sup>517</sup> Director Freeh sent a letter on May 25, 1994 to Craig Livingstone requesting that Shapiro receive a permanent OGA White House pass. Director Freeh cited the numerous meetings Shapiro attends at the White House complex: “no fewer than 14 meetings within the White House gates, including a meeting with the President” over the past month. We believe that no other FBI legal advisor or general counsel has required such access to the White House complex in the past.

<sup>518</sup> This is not a credible statement, given that Shapiro was a professor at Cornell University before taking a leave of absence to work for his mentor and good friend, Louis Freeh. Shapiro is an SES employee appointed by Director Freeh as a result of his appointment by the Clinton White House.

<sup>519</sup> Shapiro deposition, p. 125.

<sup>520</sup> *Security of the FBI Files*, hearing, August 1, 1996, p. 33.

White House, an inherently political entity. The years that Shapiro spent in law enforcement deny him such flimsy excuses.

A. GENERAL COUNSEL OF THE FBI HAND DELIVERS GARY ALDRICH  
BOOK TO WHITE HOUSE COUNSEL

As a condition of employment at the FBI, agents must sign a contract by which they agree to obtain clearance before publishing information which they gain during their duties at the FBI. When an agent or former agent seeks to publish information gained while in the employ of the FBI, he must first submit the information he seeks to publish to the FBI for its review. Offices within the FBI who are affected by the written materials are asked to review the contents and decide whether its publication would jeopardize the functions of the FBI. While the review is to be completed in 30 days,<sup>521</sup> records supplied to the committee by the Department of Justice show that the process of review by the FBI took almost 6 months.<sup>522</sup>

Former FBI agent Gary Aldrich had written a book about his service in the FBI and in the White House. He submitted a draft of his book to the FBI for its review. Once Shapiro had a copy of Aldrich's manuscript, he waited less than a month to hand deliver a copy to White House Counsel to the President, Jack Quinn.<sup>523</sup> To date, the White House has refused to reveal what it did with the book prior to its publication.

1. *Justifications*

Shapiro's justification for his "heads up" to the White House regarding Bernard Nussbaum's 1993 interview that linked the First Lady to Craig Livingstone's hiring, was that the White House was an "affected party."<sup>524</sup> He did not, either in deposition or hearing testimony, ever indicate the Federal Bureau of Investigation rule or policy he was adhering to by his conduct. Thus, the true purpose of his action has not fully been explained. Similarly, while inquiring into the reason for his White House delivery of the Aldrich book, Shapiro was asked in committee deposition if he "communicated the substance of [the Aldrich] book [to the White House] because they were an interested party?"<sup>525</sup> Shapiro replied, "Yep." But, in hearings before the committee 2 days later, he gave a more rehearsed response for the media.

In his opening statement before the committee hearings, Shapiro gave a more lengthy explanation for his distribution of the Aldrich manuscript.

The first draft of the book was replete with sensitive internal White House information that went to their internal procedures and went to White House security matters, as well as to the—directly to the result of his conduct of his

<sup>521</sup> Letter to Mr. Jay Stephens, attorney for Agent Gary Aldrich; January 4, 1996. OPCA maintains liaison with the authors of the submitted manuscripts—and formally advises them, within 30 working days, whether, or under what conditions, approval for publication is granted (as per responses from the substantive agencies).

<sup>522</sup> Letter to Howard Shapiro, general counsel of the FBI, from Lisa Kate Osofsky, deputy general counsel of the FBI, July 31, 1996.

<sup>523</sup> Shapiro deposition, July 30, 1996, p. 82.

<sup>524</sup> Letter from Shapiro to Chairman Clinger, July 19, 1996.

<sup>525</sup> Shapiro deposition, p. 88.

official business. I delivered a copy of that to the White House Counsel's Office because, as I in fact somewhat presciently advised them, I could not ensure, the FBI could not ensure that Mr. Aldrich would not go forward and publish that book prior to receiving clearance, and in fact that is what he did.<sup>526</sup>

Congressman Burton attempted to obtain a more detailed explanation from Shapiro about why he delivered the book to the White House. Congressman Burton asked:

*Question.* What were they doing [with the book]?"

*Answer.* I knew that Mr. Aldrich could publish that document, as he did, without waiting for our approval, without—without concurring with our objections, and that they should know and have it in their hands before internal White House procedures were disseminated to the world.<sup>527</sup>

First, it is implausible that, in February of this year, Shapiro anticipated that Aldrich would consider publishing his book without FBI concurrence, when Aldrich had adhered to FBI policies in submitting the book for review. Furthermore, it strains credulity to believe that Shapiro delivered the book to Quinn out of concern about White House security. Why would Shapiro go directly to the White House Counsel's Office, which has become a public relations/political entity for the President, rather than the U.S. Secret Service, whose central mission is to protect the security of the President and the White House complex?

In addition to the "security review" being conducted by the White House, the FBI was also conducting a review in accordance with the employment agreement signed by Aldrich upon his employment. Records obtained by the committee show that the FBI had extensive consultation with Jay Stephens, former U.S. attorney, and counsel for Aldrich, regarding the prepublication review of the manuscript by the FBI.<sup>528</sup> Indeed, many of the concerns that the FBI had were allayed in this process. Stephens, on three separate occasions, sent to the FBI revisions in the manuscript that were made at their request.

Shapiro's explanation regarding the White House's security concerns simply does not survive scrutiny. We know that the book was delivered in February, less than 30 days after the FBI's receipt of the manuscript, and the initial meetings between the Bureau and Stephens on the editing process. Why did Shapiro see the urgent need to provide the pre-publication manuscript to the White House, without the permission of the author or publisher, months before its release?

## 2. *Hearing testimony*

To obtain a better understanding of Shapiro's motive for taking the Aldrich book to the White House, Congressman Shays asked

<sup>526</sup> *Security of FBI Files* hearings, August 1, 1996, p. 33.

<sup>527</sup> *Id.*, pp. 58–59

<sup>528</sup> Letter to Howard Shapiro, general counsel of the FBI, from Lisa Kate Osofsky, deputy general counsel of the FBI, July 31, 1996.

Shapiro to define "interested party." In response, Shapiro gave another, detailed reason for sending the book to the White House:

[T]he first draft of his book contained numerous lengthy passages about internal White House procedures, White House security matters and the text of interviews of White House people. Those—I told them that I could not ensure and ultimately was unable to ensure that Mr. Aldrich would comply with our requirements as to what material could be published and what material could not, that it could be published any day without prior notice to us, as it was, and that I thought given how much it divulged about White House processes, they needed to see it.<sup>529</sup>

What Shapiro fails to acknowledge is that he delivered the book in February, well before any fears could have developed that Aldrich would publish without complete FBI approval.

Shays then attempted to pinpoint the reason for taking the book to the White House, rather than other agencies.

Mr. SHAYS. Wasn't it replete with other information that would affect other people? Why did you decide it should only go to the White House?"

Mr. SHAPIRO. Who else do you have in mind, sir?

Mr. SHAYS. Any other interested party?

Mr. SHAPIRO. I'm not sure—Mr. Aldrich wrote a book about his time at the White House, sir, and it was about the White House and the White House and the White House procedures.

Mr. SHAYS. What about all the people that were mentioned, weren't they interested parties?

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Mr. SHAYS. How about the Secret Service, did you notify the Secret Service? I would like an answer.<sup>530</sup>

Shapiro did not answer the question regarding other agencies mentioned in the Aldrich book, but not made aware of the contents of the book before it was published. Moreover, the Secret Service is responsible for the security of the White House. Yet the Secret Service received no notifications or information regarding the Aldrich book from either the FBI or the White House Counsel's Office.

#### B. DISTRIBUTION OF BOOK WITHIN THE WHITE HOUSE

The first people in the White House to see the copy of the Aldrich book were Jack Quinn and Kathleen Wallman. Apparently, the book was divided up among several staff members for their review.

##### 1. Cheryl Mills' review

Cheryl Mills, Associate Counsel to the President, was given a copy of the Aldrich book to review. She was asked about her knowledge of the book in a deposition before this committee.

<sup>529</sup> *Security of FBI Files* hearings, p. 125.

<sup>530</sup> *Security of FBI Files* hearings, pp. 125–126.

*Question.* Were you aware that Howard Shapiro had given Mr. Quinn a copy of Gary Aldrich's book?

*Answer.* Yes.

*Question.* Did you review a copy of that book?

*Answer.* Portions of it.

*Question.* Were you tasked to review that by Mr. Quinn?

\* \* \* \* \*

*Answer.* I think "tasking" is a bit strong, but maybe that is always strong, whenever you are referring to me.

With regard to the portions of the book that I reviewed, the question that I was looking at was whether or not there were disclosures of nonpublic or confidential information within it, and also whether or not—what the impact of these types of disclosures would be on the security personnel process with respect to people's willingness to be candid and open and forthright with regard to the FBI background process; and to the extent that it did have any implications for that process, whether or not these implications were sufficient to be debilitating to people's desire to enter government and serve as a public servant.

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*Question.* Do you know if anyone else in the Counsel's office was given portions of the book to read or given the book to read?

*Answer.* I was only given a portion, so I am sure that others were also probably reviewing with regard to disclosures of nonpublic or confidential information as well as whether or not such disclosures have an impact on the integrity of and the ability of people to provide candid and open and honest information to the FBI in the process of securing or being reviewed for government positions.<sup>531</sup>

Mills could give no additional information about who reviewed the book and why. But Mills is not the only White House lawyer questioned by the committee who was assigned to review the book.

## 2. Christopher Cerf's review

Cerf was asked about his knowledge of the Aldrich book at a deposition before the committee. He told the committee that he had responsibilities for reviewing the manuscript similar to those of Mills.

*Question.* Do you recall the circumstances of your learning about [the Aldrich book], whether it was in a meeting, a counsel office meeting, or outside of that?

*Answer.* It was in the context of my duties in the Counsel's office.

*Question.* Were you asked to review portions of the book or a portion of the book?

*Answer.* Yes.

*Question.* And who asked you to do that?

*Answer.* It was either Kathi Whalen or—it probably was Kathi Whalen.

<sup>531</sup>Mills deposition, pp. 70–80.