

He then stated that he worked off of the list, not the SF-86 form.³¹⁷ Mr. Marceca then clarified this apparent contradiction by explaining that after the project was not advancing as planned, he began to make lists of names from the "Update list" and systematically circulate those to offices in the White House.³¹⁸ Attached to Marceca's lists of names would be a request from Marceca asking whether any of the individuals listed were holdovers.³¹⁹

4. The "Dead Bin"

In the process of making these requests, Marceca would be informed by the various offices that certain individuals on Marceca's list had left the White House some time ago. Marceca explained:

In some cases those folks, the GSA [General Services Administration] would tell me this person is still here, but these people with GSA, two or three people with GSA left in '87 and they are no longer here. So I would go back to the file then and I would check off on the list and I would not call for an SBI because I knew they were not there.³²⁰

If Marceca had actually gone through the list in this manner, he would not have received any files of individuals who were not currently working in the White House. Instead, he had accumulated somewhere in the range of 500 files which he stashed in the "dead bin."

Marceca defined what he considered his "dead bin:"

That file that the update list sat in was where files were stored that were what I recall dead files, files of people who no longer worked at the White House. They went in that file. They went in that bin. If there was—if the name was not—if the person's name was not on file in that bin, that meant that I had to open a file. But before I opened a file, I checked into file drawers to find out if a file had already been opened. And if there was no file in the file drawer, I got a new file folder, and I opened a new file . . .³²¹

The so-called "dead bin" which Marceca created raises some very troubling questions. It is implausible that, after he received even one file for an individual who was not presently working at the White House, he did not raise any questions about the list which he was using. Apparently he did not question the list after receiving over 400 files of individuals who were not working at the White House.

Mr. Marceca was a career investigator, trained to ask questions and find answers. It is not plausible that Marceca would not be able to determine the reason so many names, with "I's" next to them, no longer worked in the White House. Nor is it plausible that he was unaware of whose files he was requesting. When ques-

³¹⁷ Marceca deposition, p. 65. In his testimony during a committee hearing, Marceca testified that he worked from the list, not from SF-86 forms. *Security of FBI Files*, June 26, 1996, pp. 40-42.

³¹⁸ Marceca deposition, p. 99.

³¹⁹ *Id.*

³²⁰ *Id.*, p. 100.

³²¹ *Id.*, p. 64.

tioned why he requisitioned files on known prior Republican officials, Marceca responded that he had seen a high level Republican in the White House on one occasion. He therefore, did not question whether any other well known Republicans should be on the list as well.³²²

Mr. Livingstone was aware that Marceca was working on the Update Project, but claims that they did not have any conversations about the project: "I don't have a specific recollection of talking to anyone about when Tony started or if Tony was trained properly on it."³²³ Likewise, Ms. Wetzl, a staff assistant at the time, did not know what process Marceca was using to complete the Update Project.³²⁴

Mr. Marceca wrote memos to Livingstone to keep him up-to-date on the status of his projects,³²⁵ and he kept detailed lists of each previous report received from the FBI.³²⁶ Everyone who worked in the Office of Personnel Security, a one room office,³²⁷ testified that they knew Marceca was working on the Update Project, but never asked him about it.³²⁸

All prior employees of the one room Office of Personnel Security are unable to recall what Secret Service list Marceca used for the project, including Marceca.³²⁹ Ms. Wetzl, however, destroyed Ms. Gemmell's list, and testified she does not believe Marceca used it for the Update Project.³³⁰ Wetzl further stated, "Nancy had left all her stuff in one corner and I didn't believe that Tony had used any of that, that he had gotten a new list from the Secret Service and was working on that."³³¹ Ms. Wetzl, Livingstone's 24-year old Executive Assistant, made the decision to destroy the only possible clue as to why the files were improperly obtained.

³²² Marceca stated that one day he saw Marlin Fitzwater, Assistant to the President and Press Secretary for President Bush, in the White House complex.

³²³ Livingstone deposition, June 14, 1996, p. 54.

³²⁴ Wetzl deposition, p. 26. When asked to describe what she observed Marceca doing on the Update project, Wetzl answered, "I knew he was working on it, you know, and we were all in the same office so, you know, I would see him at his work station but I really didn't get involved in the details of what he was doing." (Emphasis added).

³²⁵ Marceca document production, Bates Stamp Nos. 000096, 000155. In the first memo from Marceca to Livingstone, Marceca writes, "White House Staff; 50 Requests for Backgrounds were sent this week and the previous 3 weeks to FBI. 50 Requests for Backgrounds are awaiting to be sent next Monday to FBI. (We are at the 'D' with this project.) Next week; 1 Jan. 94, re investigation begins on GSA; AT&T; NSC; Credit Union; and "White House Staff, for BI's which expire in 1989." In the second memo, under Re-investigations of White House Staff, Marceca writes, "White House Staff Update: 43 Request for Previous backgrounds were this week. 50 each for the previous 5 weeks to FBI. 50 Request for backgrounds are awaiting to be sent next Monday to FBI. 250 Request for Previous Reports sent during this reporting period. (We are at the 'F' with the Staff Update Project.)"

³²⁶ Marceca document production, Bates Stamp Nos. 000004-000081. Lists created by Anthony Marceca dated from September 24, 1993 through February 10, 1994.

³²⁷ Livingstone deposition, June 14, 1996, p. 12. Mr. Livingstone was asked about the layout of OPS, he answered, "In 1993, it was one large room." All of the staff members of the office worked in the same room. *Id.*

³²⁸ See, Livingstone deposition, Wetzl deposition and Marceca deposition.

³²⁹ See, *Security of FBI Files* hearing, June 24, 1996, pp. 40-41. Mr. Marceca explains that he does not have a vivid recollection of the list which he used; Livingstone explained that he was not clear on the details of the Update Project; however, it appeared that whatever list Marceca was using caused the problem. *Id.*, pp. 30-33; Ms. Wetzl testified, "I saw that it was a Secret Service list . . . I didn't look at in detail, so I couldn't tell you what—which format this list was in." Wetzl deposition, p. 34.

³³⁰ *Security of FBI Files* hearing, June 24, 1996, p. 113. Wetzl stated, "I did not work with her list. I threw it out."

³³¹ Wetzl deposition, p. 45.

5. Marceca's other duties

Committee documents show that Marceca's testimony of his responsibilities in the Office of Personnel Security was not comprehensive. Although he apparently did handle the processing of forms for background investigations, he provided additional services as well.³³² Marceca's memoranda to Livingstone show that he was assisting White House employees whose background investigations threatened their jobs. One Marceca memo entitled "Analysis of Personnel Background" contained the following:

1. Subject should first fire the attorney who wrote the letter, for the following reasons:

- (a) The letter is combative and argumentative
 - (b) The letter does not offer explanations, but excuses
2. I suggest the following be included in a new letter:

(a) Subject has paid his/her dues to society, for past mistakes.

* * * * *

(c) The shoplifting incident occurred because the subject needed money to buy food . . .

* * * * *

(e) [I] am very sorry for the mistakes of my past . . . and I believe being fired is unfair and unreasonable.³³³

Why, as these documents suggest, did the Clinton administration employ Marceca to cleanse background problems for employees with criminal histories? How extensive was the problem of employees with background blemishes? Was Marceca hired specifically for that purpose? These questions raise further concerns about the approach taken by the Clinton administration toward security issues.

E. MARCECA'S DETAIL ENDS

1. White House attempts to extend Marceca's detail

Marceca's detail ended in February 1994. Livingstone and Kennedy had attempted to extend his detail;³³⁴ however, there were "unresolved issues" in his background which made Kennedy decide not to renew the detail.³³⁵ Livingstone testified he thought Marceca would have liked to continue his detail; however, he discussed these "unresolved issues" with Kennedy who made the final decision not to renew the detail.³³⁶ Mr. Kennedy explained:

Question. [W]e have been informed by the White House that [Marceca] did leave sometime in February of '94. Do you know why he was not retained at the White House?

³³² Among his other duties, Marceca's calendars show that on at least two occasions he was summoned by Counsel to the President Bernard Nussbaum's secretary to crack open Nussbaum's safe.

³³³ Marceca document production.

³³⁴ See, Wetzl deposition, p. 36. Ms. Wetzl was asked whether there were any attempts to re-detail Marceca to OPS. She answered, "I don't know. There was talk of it, but I'm not—I wasn't involved in it."

³³⁵ Livingstone deposition, June 14, 1996 p. 60.

³³⁶ *Id.*, pp. 60-61.

Answer. Well, I don't remember the timing involved. Okay? I simply do not know when things took place. But if I remember correctly, there were two things that sort of impacted this. One of which is that the White House, I don't believe, wanted to pick up paying for him. That's number one. Number two, Tony's background had come in and there were some problems revealed with it that made me think it might be better if he kind of went back to where he was.³³⁷

A White House document shows that Livingstone and Kennedy requested an extension of Marceca's detail on February 28, 1994.³³⁸ The request is on a non-reimbursable basis starting on February 28, 1994 and ending on June 27, 1994, with Marceca's duties outlined as assisting the Security Office with military adjudication. The form notes that reimbursement would start on April 11, 1994.

This document was signed by Kennedy after Marceca's original detail ended and after the problems in his background were discovered on December 17, 1993. On March 8, 1994, the White House Personnel Liaison contacted Livingstone asking, "Do you know the start date for Tony Marceca?"³³⁹ Mr. Marceca testified that he was unaware of any attempts to have him re-detailed to the White House.³⁴⁰ Messrs. Livingstone and Marceca did discuss the problems which were developed in Marceca's background investigation.³⁴¹ Even after Kennedy and Livingstone had received Marceca's background and knew there were suitability issues, they requested that he be redetailed. A March 17, 1994 letter, only recently produced to the committee, shows that Livingstone had requested, as late as March 3, 1994, a subsequent detail for Marceca. The March 17 letter respectfully withdrew the request. No explanation was given for the change of heart on Marceca working at the White House.³⁴²

Mr. Kennedy stated that the problems in Marceca's background were "not problems that would have led to a termination sort of on the spot."³⁴³ Although Kennedy refused to discuss the specific problems, Marceca did tell the committee that a woman had filed a private claim against him in Texas.³⁴⁴ Marceca testified during a deposition for a civil case he filed, that he was charged with official oppression for misuse of his office.³⁴⁵ In that case, Marceca had brought suit for slander against Justice of the Peace Lilly A. Stephenson, whom the FBI interviewed during Marceca's background investigation.³⁴⁶ Judge Stephenson met Marceca while he was

³³⁷ Kennedy deposition, June 18, 1996, p. 41.

³³⁸ White House production CGE 043810. The document is a form entitled "White House Office PERSONNEL FROM OTHER AGENCIES. It is signed by William H. Kennedy, III and dated February 28, 1994.

³³⁹ White House production CGE 054258. Message from Kelli McClure, White House Personnel Liaison for Management and Administration, to Craig Livingstone, dated March 8, 1994 at 3:40.

³⁴⁰ Marceca deposition, June 18, 1996, p. 150.

³⁴¹ *Id.*, pp. 151-52.

³⁴² Letter from Livingstone to Secretary of Defense Perry, dated 3/17/94; White House production 55749.

³⁴³ Kennedy deposition, June 18, 1996, p. 43.

³⁴⁴ Marceca deposition, p. 152.

³⁴⁵ *Marceca v. Stephenson*, No. A 94-CA-775-JN, p. 10 (W.D. Tx. filed Nov. 1994).

³⁴⁶ *See, Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994), deposition p. 10.

working for the Texas Attorney General's Office, Medicaid Fraud Division. During the FBI interview of Judge Stephenson, she stated, "I would not hire him [Marceca] to serve civil papers from my Justice of the Peace Office . . . he is nothing but a blow hard and [I] could not recommend him for a position of trust and confidence with the United States Government."³⁴⁷

2. Marceca does advance for the Clinton administration

After Marceca's detail ended he remained in close contact with Livingstone and volunteered at the White House. Before Marceca left the White House he had a meeting with Livingstone, Lisa Wetzl and Mari Anderson. In that meeting Marceca agreed to come in on successive Saturdays and work with the others to finish the Update Project.³⁴⁸ Mr. Marceca claimed that he never completed the project because he was sent on a detail to Canada by CID.³⁴⁹ Upon his return, he was named acting Special Agent in Charge of his Washington Fraud Team, and stated he "didn't have the time to do anything like that."³⁵⁰

Although Marceca did not have time to complete the Update Project, apparently he did have time to do advance work for the Clinton administration. On May 18, 1994, Marceca left a message for Livingstone about an advance trip: "He [Marceca] just got off a trip w/ Perry (Sec.) [Secretary of Defense William Perry]. He would [like] to talk to Craig about what he observed."³⁵¹ He had left a message for Livingstone earlier in the month stating that he, "cannot go on [the] trip to Normandy."³⁵² At the end of June 1994 Marceca left a message that, "[he] wants to go to lunch/ also wants to go on trip w/ you."³⁵³ Mr. Marceca appears to have continued to work on advance trips through 1995 and 1996, according to phone messages he left for Livingstone.

In January 1995, Marceca left Livingstone a cryptic message: "If you're going on 'that' trip, he'll see you are taken care of. Otherwise, he'll talk to you later."³⁵⁴ "That" trip was never identified in documents produced to the committee. Mr. Marceca called Livingstone in September 1995 to request assistance getting on the advance detail of a local trip.³⁵⁵ Likewise, in December Marceca asked Livingstone to schedule him for a trip in February or March 1996. Marceca stated that he would be willing to take 2 weeks leave to do a trip.³⁵⁶ These messages suggest that Marceca stayed

³⁴⁷ *Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994), deposition exhibit, FBI 302 dated October 29, 1993.

³⁴⁸ Marceca deposition, p. 153.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ White House production CGE 054252. Message from Tony Marceca to Craig Livingstone, dated May 18, 1994 at 10:25 a.m.

³⁵² White House production CGE 054255. Message from Tony Marceca to Craig Livingstone, dated May 12, 1994 at 9 a.m.

³⁵³ White House production CGE 054254. Message from Tony Marceca to Craig Livingstone, dated June 28, 1994 at 9:05 a.m.

³⁵⁴ White House production CGE 054249. Message from Tony Marceca to Craig Livingstone, dated January 11, 1995 at 1:41 p.m.

³⁵⁵ White House production CGE 054265. Message from Tony Marceca to Craig Livingstone, dated September 13, 1995 at 10:43 a.m.

³⁵⁶ White House production CGE 054248. Message from Tony Marceca to Craig Livingstone, dated December 19, 1995 at 11:43.

in contact with Livingstone and participated in numerous advance trips for the administration.

Mr. Marceca also contacted Livingstone regarding issues with his FBI background investigation. Mr. Marceca visited Livingstone at the Office of Personnel Security on September 11, 1994. During that visit, Marceca reviewed his own FBI background file. He explained that Livingstone did not allow him to read it, rather he accidentally saw it:

Question. How did you happen to see the report?

Answer. I was visiting the White House and I was in Mr. Livingstone's office, and I pulled out a—We were in a conversation. He took a telephone call and turned his back, turned around to his desk. There was newspaper there. He was on the phone four or five minutes. And I reached up and pulled the newspaper out and background investigation spilled on the floor. I picked up the background investigations, and the last background investigation to pick up, put back in the stack, which happened to have been all rolled up, was my background investigation. I opened that up, and when I saw my name—and I saw—I briefly read what the FBI said. I turned a couple pages back, and I saw [Mrs. Stephenson], what she said . . .

I looked at what Mrs. Stephenson said briefly. I read that, and I flipped it back and I saw what Ms. Montag said.

Question. Okay. Now—

Answer. I then put the file back underneath the rest of the BI's and continued to read the newspaper until Mr. Livingstone rejoined the conversation.

* * * * *

Question. And so what you did when you picked up that report, opened it up and read it, you committed a criminal act, did you not?

* * * * *

Answer. No sir, I was cleared to look at background investigations.

Question. But not yours?

Answer. Sir, that was the fickle finger of fate that [report] would fall on the floor.

* * * * *

Question. Is that not a violation of your code of ethics?

Answer. I don't believe so, sir. It was an accidental discovery.³⁵⁷

After Marceca's "accidental discovery" of his FBI file during his visit to the Office of Personnel Security in September, he contacted Livingstone about the FBI again. On October 6, 1994 Marceca left a message for Livingstone stating, "Got a visit from the FBI."³⁵⁸ On December 16, 1994, Livingstone received a message from

³⁵⁷ *Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994), deposition of Anthony Marceca, February 20, 1995, pp. 114-17.

³⁵⁸ White House production CGE 054268. Message from Tony Marceca to Craig Livingstone, dated October 6, 1996 at 12:35.