

"Marvin:" Will send over file on Marceca.³⁵⁹ No last name is indicated on the message; however, Marvin Krislov was an Associate Counsel to the President in December 1994. It is odd that Livingstone would have Marceca's file sitting out on a table in the vault 8 months after his detail ended.

Mr. Marceca admitted under oath that he had read his own background investigation after he no longer worked in the Office of Personnel Security. The information which he read in his background file was the basis for the lawsuit he filed on November 14, 1994 against Judge Stephenson.³⁶⁰ Marceca's actions exemplify why it is imperative that the Office of Personnel Security employ only individuals who are professional, circumspect and have demonstrated a sense of responsibility and discretion.

After learning more about the backgrounds of the individuals in control of the function of requesting FBI background files, it is all the more difficult to believe that the unauthorized ordering of hundreds of FBI files of prior Republican officials was an innocent mistake. Mr. Marceca's explanations and excuses are not credible, and his actions merit more investigation.³⁶¹

IV. INITIAL DISCOVERY OF "TONY'S FILES"

Although the public did not learn of the White House's unauthorized request of over 400 FBI background files until June 1996, White House employees knew about it since the fall of 1994. Lisa Wetzl, Livingstone's 22 year old Executive Assistant, discovered "an awful lot of" extra files which Marceca had ordered while preparing to complete the Update Project.³⁶² There was a general understanding in the office that the bottom row of files in the vault, was "Tony's row."³⁶³ Ed Hughes, assistant in the Office of White House Security, explained that he questioned Wetzl about the files, "I think Lisa had explained that they were simply Tony's files. They were files that she was not sure what they were doing there, but they were just kind of there, taking up space."³⁶⁴

When Ms. Wetzl began looking through "Tony's files," she recognized that some of the files had been mistakenly ordered after identifying Marlin Fitzwater's name.³⁶⁵ She knew that he did not work at the White House anymore.³⁶⁶ Ms. Wetzl told Livingstone about her discovery: "I said, 'Craig, Tony ordered all these files of previous administration people that we don't need.'" ³⁶⁷ Ms. Wetzl

³⁵⁹ White House production CGE 054271. Message from "Marvin" to Craig Livingstone, dated December 16, 1994 at 11:42.

³⁶⁰ *Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994)

³⁶¹ Mr. Marceca's own handwritten notes show that he was aware that he was responsible for instructing the Secret Service to deactivate prior administration staff. Marceca document production (unnumbered). Handwritten notes of Anthony Marceca, dated August 9, 1993.

³⁶² Wetzl deposition, pp. 41-43. Ms. Wetzl knew about the row of files which the office referred to as "Tony's row" or "Tony's files." She was not aware that the files were of prior Republican administration officials until she began to review the files in the fall. *Id.*, p. 67.

³⁶³ Wetzl deposition, p. 65. Ms. Wetzl stated, "The row after row 15 was separate. That was Tony's stuff, Tony's project. We called it Tony's row."

³⁶⁴ Edward Hughes interview, August 13, 1996, p. 17.

³⁶⁵ Marlin Fitzwater was President Bush's Press Secretary and Deputy Press Secretary to President Reagan.

³⁶⁶ Wetzl deposition, p. 43.

³⁶⁷ *Id.*, p. 63.

testified that Livingstone had no reaction to her statement, nor did he instruct her to do anything with the files.³⁶⁸

Mr. Livingstone testified that he knew that his office had requested Billy Dale's file within "the last year or possibly two." He also believed that he produced Dale's file to Associate White House Counsel Neil Eggleston in response to the GAO investigation of the Travel Office, which was completed on May 2, 1994. Mr. Livingstone admitted that he had read the contents of Billy Dale's file, but stated that it was in the course of responding to the GAO inquiry. Mr. Livingstone testified that he saw the request dated December 20, 1993 for Billy Dale's FBI report, at that time.³⁶⁹ Mr. Livingstone was therefore aware that Dale's file was requested 7 months after he was fired from the White House Travel Office.³⁷⁰

Ms. Wetzl set about her task of completing the Update Project, leaving the files in the vault so that she could refer to them if she discovered a name she might need.³⁷¹ She never consulted with anyone else nor did she ever contact the FBI regarding the files on former Reagan and Bush officials. According to Ms. Wetzl, the entire row of approximately 430 Republican FBI background investigation files in "Tony's row" simply remained in the office vault.

Sometime between December 1994 and February 1995, Wetzl boxed up the files and archived them with the Office of Records Management (ORM).³⁷² These boxes remained in ORM until ORM analyst Tom Taggart reviewed the documents in response to the committee's December 1995 request. Mr. Taggart notified Associate White House Counsel Natalie Williams that Billy Dale's FBI background file was among the documents archived by the Office of Personnel Security. Ms. Williams testified that she never reviewed the file or notified the committee that Billy Dale's FBI background investigation had been archived by Livingstone's office in December 1995.³⁷³ The document was not produced until May 30, 1996, under threat of a contempt vote against White House Counsel to the President, Jack Quinn.

A. LISA WETZL'S BACKGROUND

1. Ms. Wetzl, who had no experience, should not have assumed the amount of responsibility she undertook

Prior to the Clinton administration, Jane Dannenhauer, the former Director of the Office of Personnel Security, never allowed detailees from outside the White House or interns to work in the Security Office because of the sensitive nature of the files and paperwork.³⁷⁴ As with the majority of Livingstone's assistants, Lisa Wetzl came to the Office of Personnel Security as one of the first interns in June 1993 after graduating from college in May of the same year.³⁷⁵ Initially, Wetzl provided general office support, answering phones and typing forms.³⁷⁶ She quickly assumed the re-

³⁶⁸ Livingstone deposition, June 14, 1996, pp. 81-83.

³⁶⁹ *Id.*, p. 81.

³⁷⁰ *Id.*, pp. 81-83.

³⁷¹ Wetzl deposition, p. 66.

³⁷² Wetzl deposition, pp. 67-68.

³⁷³ Williams deposition, July 31, 1996, p. 24.

³⁷⁴ *Security of FBI Files* hearing, June 19, 1996 p. 81.

³⁷⁵ *Id.*, p. 7.

³⁷⁶ *Id.*, p. 10.

sponsibility of checking the Standard Form 86 (SF-86) for accuracy and notifying White House staff of any errors.³⁷⁷ Only 2 months later, Wetzl was hired as a full-time staff assistant in the office.

Ms. Wetzl testified that her responsibilities "didn't significantly change except that I was now there for the long-term so I could, you know, really get to work on things that needed to get accomplished."³⁷⁸ She continued to "help to correct and to submit to the FBI the Standard Form 86 for new employees."³⁷⁹ Before Ms. Wetzl came to the White House, she had never even seen an SF-86, however, once Livingstone hired her, she was correcting them for the FBI.³⁸⁰

Ms. Wetzl testified that Nancy Gemmell, a holdover employee in the Office of Personnel Security, trained her to read SF-86 forms.³⁸¹ Ms. Gemmell, however, had never read an SF-86 before the Clinton administration took office.³⁸² Ms. Gemmell only recently learned the procedures to follow in checking an SF-86 for completeness. In prior administrations, only the Director of the office was permitted to review the FBI background files and SF-86 forms.³⁸³ Ms. Dannenhauer, however, was not retained on staff for a sufficient amount of time to train the new Director and employees, as she was during the transition from the Ford to Carter administration.³⁸⁴ Ms. Dannenhauer explained, "[Mr. Livingstone] was not there really long while I was there. I only worked with him probably part-time. He would come in and maybe be there a half a day . . ."³⁸⁵

Mr. Livingstone did not have the proper training necessary to run the Office of Personnel Security. He was certainly not capable of training his staff in procedures that he himself did not know. Without practical work experience or training, Ms. Wetzl should not have been placed in a position of decisionmaking in an office which handled sensitive information. The fact that nobody in the office even thought to return the improperly obtained files to the FBI shows the lack of knowledge required to work in the Office of Personnel Security. Mr. Livingstone testified that the reason he did not contact the FBI about the binful of files on prior Republican administration officials was, "We were never instructed to return materials back to the FBI."³⁸⁶ Neither Livingstone nor Wetzl had the ability to think on their own and make the determination that a Democratic administration should not have hundreds of Republican administration files.

³⁷⁷*Id.*

³⁷⁸*Id.*

³⁷⁹*Id.*, p. 14.

³⁸⁰*Id.*, p. 15. After Lisa Wetzl left the Office of Personnel Security, Jonathan Denbo, a recent college graduate, took over the responsibility of reviewing the SF-86 forms. Jonathan Denbo interview, September 4, 1996, p. 5.

³⁸¹*Id.*

³⁸²*Security of FBI Files* hearing, June 19, 1996 p. 46.

³⁸³*Id.*

³⁸⁴*Id.*, p. 38. During the Ford/Carter transition, Ms. Dannenhauer and one of her assistants remained for 2½ months to train the new staff members and await a new Director, thereby ensuring a smooth transition.

³⁸⁵*Id.*, p. 82.

³⁸⁶*Security of FBI Files*, hearing, June 26, 1996 p. 138.

2. Limited inquiry

Ms. Wetzl's FBI background investigation was completed and the results were provided to the White House on September 3, 1993. For reasons unknown, the Counsel's Office did not submit her report to the Secret Service for adjudication until 7 months later, on April 11, 1994. She received her White House permanent pass shortly thereafter, on April 25, 1994. Mr. Livingstone requested CIA "compartmented clearance" for Ms. Wetzl and she received three clearances above the level of top secret in August 1994. The committee never received any explanation for these delays. Ms. Wetzl continued to work in the Office of Personnel Security throughout the year processing and correcting incoming SF-86 forms, processing pass requests and maintaining the weekly access and pass extension lists.³⁸⁷

On April 10, 1995, Livingstone notified the FBI of an "apparent discrepancy between information on Ms. Wetzl's Standard Form (SF) 86 and the information provided during her initial interview with the FBI Special Agent."³⁸⁸ Special Agent Gary Aldrich testified that he was the "lead agent on the Wetzl investigation." A "limited inquiry" was initiated by the FBI and the results provided to Craig Livingstone on May 26, 1995.³⁸⁹ FBI general counsel advised the committee that the reason for the "limited inquiry" was "a discrepancy regarding drug usage."³⁹⁰ Mr. Livingstone then asked the CIA to review Ms. Wetzl's new limited inquiry results, and her three CIA compartmented access clearances continued without further inquiry. Ms. Wetzl left the Office of Personnel Security in September 1995, to take the position as the Confidential Assistant to the Secretary of the Army, the Honorable Togo D. West, Jr.³⁹¹

The committee has not been able to determine, due to Livingstone's refusal to appear at a deposition, why Mr. Livingstone suddenly ordered a limited inquiry on Ms. Wetzl's "discrepancy" that had apparently been in her background for 18 months. During these 18 months, she had top secret and CIA clearances to review

³⁸⁷ White House document production, CGE 54939.

³⁸⁸ Letter from FBI general counsel, Howard Shapiro to Chairman Clinger, July 24, 1996.

³⁸⁹ White House document production, CGE 54392.

³⁹⁰ Deposition of Gary Aldrich, 7/18/96, p. 53. In response to committee questioning, Agent Aldrich described an instance in which:

There was a staff member who contended that the information on the FBI summary was incorrect. It was on a case that I completed, and communication was made to me first about this, I think. This individual worked in the Security Office. . . .

Well, there was a contention, about information that I had submitted, that the information contained in the report was incorrect. I was asked to—essentially, I was asked to go back and review this in the context that if I could—if I could see that it could be possible that it was incorrect, could I change it? This was spoken to me by Craig Livingstone.

I never had a request like this before, and so I went back to my—to the case file and I pulled the report. I reviewed whatever material was in the file that could help me make a determination. After I reviewed the material, I could not determine that I had made an error, and so I reported back to Mr. Livingstone that I had reviewed the material; I didn't think I made an error.

He then spoke to—either spoke to Jim Bourke or to Tom Renaghan or both about this, contending that the matter, in his opinion was not settled.

I was then contacted by my supervisor, Tom Renaghan, who asked me once again to review it. I reviewed it. I suggested to him that there was no change that I could make, and that is the—that was the end as far as I knew. I have since learned that an agent was directed to come to the White House to reinterview the person. . . . Agent Greg Schwarz. And I can't tell you what happened after that, but I do know that this person had since moved shortly thereafter to another agency. Aldrich deposition, pp. 68–69.

³⁹¹ Wetzl deposition, p. 8.

the most sensitive information, apparently without concern by the White House Counsel's Office. Then, 4 months before her departure to take on a position requiring the utmost confidentiality, Mr. Livingstone undertakes the review of her background to clear up the "drug usage discrepancy."³⁹²

B. LISA WETZL DISCOVERS "TONY'S FILES"

1. Wetzl to complete "Update Project"

Originally, Marceca planned to return to the White House and complete the Update Project with the assistance of others in the office.³⁹³ Mr. Marceca however, never completed the project and it fell by the wayside for close to 10 months until Lisa Wetzl took it upon herself to finish it.³⁹⁴ Ms. Wetzl did not feel comfortable undertaking the Update Project while she was only a staff assistant.³⁹⁵ She stated, "I started—when I was promoted to executive assistant is when I, you know, felt I could start this project on my own and get it over with, because I knew it had to be done. That was in the fall of '94."³⁹⁶

2. Marlin Fitzwater, or too many files

Once Wetzl looked into what Marceca had been working on, she realized that there were problems.³⁹⁷ She described what she discovered when she began looking through the bin in the vault which Marceca used:

Tony had separated his files from the rest of the files, I assume for easier access for him. I looked at those stacks of files and I—first thing I realized was that there were an awful lot of them, considering they were only A through G. And just working for the office—it had been a couple of years at least—I didn't think that there were that many holdovers.³⁹⁸

When Wetzl began looking through the names on the files, she realized that some of them were "mistakenly" requested.³⁹⁹ Ms. Wetzl recognized Marlin Fitzwater's name on a file and knew that he did not work at the White House anymore.⁴⁰⁰

Ms. Wetzl described her first reaction as that of exasperation when she realized that she would have to remedy the problem.⁴⁰¹ Ms. Wetzl never stated that she was alarmed or concerned that files had been ordered on individuals who were not seeking access to the White House.

Similarly, when Wetzl approached Livingstone about the unauthorized files, he had no marked reaction.⁴⁰² Ms. Wetzl testified that she told Livingstone that, "Tony ordered all these extra files,

³⁹² July 24, 1996 letter from Howard Shapiro to Chairman Clinger.

³⁹³ Marceca deposition, p. 153.

³⁹⁴ Wetzl deposition, p. 66.

³⁹⁵ Wetzl deposition, p. 66.

³⁹⁶ *Id.*

³⁹⁷ *Id.*, p. 41.

³⁹⁸ *Id.*

³⁹⁹ *Id.*, p. 43.

⁴⁰⁰ Wetzl deposition, p. 43.

⁴⁰¹ *Id.*

⁴⁰² *Id.*, p. 58.

what a pain.”⁴⁰³ The only thing she can remember Livingstone saying was, “Oh, Tony,” or a statement to that effect.⁴⁰⁴ Mr. Livingstone and Ms. Wetzl were the two most senior staff members in the office and neither of them found it notable that hundreds of files were ordered on prior administration officials, alleging that they had no idea that they ought to return the files.⁴⁰⁵ Mr. Livingstone described one situation where the office would return files to the FBI:

Sir, if I could be specific, often—not very often but often, we would get—for John D. Smith, we would get John S. Smith’s report sent to us by mistake by the FBI. Now, that we would send back to the FBI if we knew that we were requesting John D. Smith versus John S. Smith, assuming they had no business ever at the White House.⁴⁰⁶

Livingstone’s attempts to make a distinction between the FBI sending the wrong file and the White House requesting files improperly are in conflict. It is disingenuous for Livingstone to maintain that he believed that the two situations called for a different response.

C. THE “UPDATE PROJECT” IS REDONE BY LISA WETZL

1. Wetzl destroys the Secret Service list

Ms. Wetzl testified that upon discovering the unauthorized files ordered by Marceca she began to look around the vault for the materials which both Marceca and Nancy Gemmell used in the course of the Update Project.⁴⁰⁷ Ms. Wetzl found a list which she believed had been left by Nancy Gemmell, she explained, “I knew immediately that it was out of date. It was extremely long and appeared to contain hundreds of names from past administrations.”⁴⁰⁸ Ms. Wetzl proceeded to destroy that list, the only evidence which might have provided some explanation as to why all of these files were ordered.

Wetzl was questioned about why she would have destroyed the list in a hearing before the Senate Committee on the Judiciary:

Senator THOMPSON. All right, so it could have possibly been the same list that Mr. Marceca used to obtain all those improper files? Is it possible?

Ms. WETZL. Anything is possible, yes.

Senator THOMPSON. So you had the files there and you had the list there, the Gemmell list?

Ms. WETZL. Yes.

Senator THOMPSON. And you decided to destroy the Gemmell list, or put it in the burn bag. Is that correct?

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁶ Wetzl deposition, p. 59. Ms. Wetzl testified, “Nancy, like I said before, had briefly tried to explain to me before her impending departure how to do everything, and it was my understanding that we wanted to put in storage, it all had to go to Records Management; *Security of FBI Files* hearing, June 26, 1996, pp. 137–138. Mr. Livingstone testified, “Sir, I am glad you asked that question. The only information that I ever got—and I can’t speak for the rest of the people here, of course—the only information I ever got about what we were to do with FBI files was to safeguard them, ensure that they were remanded to Records Management at the end of the administration . . . We were never instructed to return materials back to the FBI.”

⁴⁰⁵ *Security of FBI Files* hearing, June 26, 1996, p. 138.

⁴⁰⁷ *Security of FBI Files* hearing, June 26, 1996, p. 46.

⁴⁰⁸ *Security of FBI Files* hearing, June 26, 1996, pp. 46–47.