

a circumspect life and was not aware of any illegal drug or alcohol problems. He said that the appointee will work at the White House on security matters. He said that in the short period of time that the appointee has worked for him he has been completely satisfied with his performance, conduct and productivity. He recommended the appointee for continued access in his current capacity.<sup>468</sup>

During hearings before the committee on June 26, 1996, witnesses, including Nussbaum, testified under oath that they did not know who was responsible for the hiring of Livingstone. Several members of the committee questioned the veracity of the witnesses. The exasperation of the committee is evidenced in the remarks of Congressman Christopher Shays of Connecticut. When the witnesses could not answer the question of who hired Livingstone, Shays declared, "You know what, anybody can tell you—there's not a person in this room who doesn't know who hired them for whatever job. It's disingenuous for you guys to take so long [to answer the question]."<sup>469</sup> Those reviewing the Livingstone file apparently were aware of the controversy surrounding the question of who hired Livingstone, because Cignoli informed Kelley immediately of the contents of the memorandum, and then Kelley immediately notified Shapiro.<sup>470</sup>

On July 15, 1996, Mr. Shapiro obtained a copy of the page from Livingstone's file once he learned that its contents would be damaging to the White House.<sup>471</sup> He showed the copy to FBI Counsel Larry Parkinson.<sup>472</sup> He discussed the contents of the memorandum with Margaret Owens and John Collingwood, both of the Office of Public and Congressional Affairs. On that same day, he also spoke with Director Freeh about the controversial document. Mr. Shapiro read the incriminating sentence, that Livingstone "had come highly recommended to him by Hillary Clinton," to Dennis Corrigan, Chief of Staff to the Deputy Attorney General at the Department of Justice, and informed Corrigan that he would call the White House with this information.<sup>473</sup>

Immediately after speaking with Corrigan, Shapiro telephoned the White House.<sup>474</sup> Mr. Shapiro called for Quinn and learned that he was away from his office. Mr. Shapiro spoke with Quinn's deputy, Kathleen Wallman.<sup>475</sup> Ms. Wallman notified Special Counsel Jane Sherburne. In other words, almost 1 month after the Attorney General referred the matter to the Independent Counsel, Shapiro relayed information uncovered in an investigation of the FBI files

<sup>468</sup> Special Agent Dennis Sculimbrene, memorandum of interviews conducted between March 1, 1993 and March 3, 1993. The memorandum includes descriptions of interviews of Lori Stalings, Supervisory Personnel Assistant in the White House; Bernard Nussbaum, Counsel to the President; and William Holden Kennedy, III, Associate Counsel to the President. Mr. Kennedy sought assurances from Sculimbrene that any recommendation Kennedy made regarding Livingstone was made "on the short period of time that he has known [Livingstone]." Kennedy also mentioned to Sculimbrene that Livingstone sought the position of head of the White House Military Office.

<sup>469</sup> *Security of FBI Background Files* hearings, June 26, 1996, p. 170.

<sup>470</sup> Interview of Howard Shapiro; U.S. Senate, Committee on the Judiciary; July 29, 1996, p. 11.

<sup>471</sup> Shapiro deposition, pp. 63-64.

<sup>472</sup> *Id.*

<sup>473</sup> Interview of Howard Shapiro; U.S. Senate, Committee on the Judiciary; July 29, 1996, p. 17.

<sup>474</sup> *Id.*, p. 12.

<sup>475</sup> *Id.*, p. 12.

matter to the White House, the subject of that investigation. Shapiro recounted his conversation with the White House in a deposition before the committee:

Answer. [I]n preparing the documents for [Chairman Clinger's committee to review], my staff had identified a page that I thought would be of interest to them because it related to a matter that had already been the subject of substantial controversy. And I read to her that single sentence of the paragraph summarizing the interview of Bernard Nussbaum. And she asked me in what form it appeared. And I described that it was a page that had three paragraphs relating to interviews about three different people conducted over a couple-day period. Again, I read to her that sentence.

*Question.* Did you tell her that it appeared that it had been—the interviews had occurred from March 1 to 3, 1993?

Answer. I believe I did. I am not entirely certain but I think I did. I lost my train of thought for a second.

I told her—well, she asked me what limitations, if any, would there be on the committee's use of that information or further dissemination of it. And I said, you know, I didn't purport to be an expert or a scholar on matters like that; that the Privacy Act did not apply to the Committee as such and that I did not think there would be legal restrictions, or I was aware of no legal restrictions and that it would be used at the discretion of the committee chairman.

*Question.* And just so the record is clear, the sentence that you read to her verbatim was the sentence that [Livingstone] had come highly recommended by Hillary Clinton?

Answer. Yes.

*Question.* Who has known [Livingstone's] mother for a longer period of time?

Answer. Yes.

*Question.* So you contacted the White House before anyone on this committee ever saw that document; is that correct?

Answer. Well, as it turns out. The intent was for it to be essentially contemporaneous, but yes.<sup>476</sup>

Chairman Clinger was alarmed to learn that the White House, the target of the ongoing investigations, had reviewed the documents before he had. In a statement to the public on August 1, 1996, Clinger said, "No one from the FBI called me to read me a verbatim account of the Nussbaum notes. Apparently no one at the FBI read a verbatim account of these notes to anyone at the Independent Counsel's Office. I did not review the file personally until July 18, 1996. I would note the White House and over a dozen present and former staff obtained the information in Nussbaum's

<sup>476</sup> Shapiro deposition, pp. 104–106.

interview prior to my having reviewed the file."<sup>477</sup> Clinger listed numerous people in the White House who were notified immediately of the contents of Livingstone's file.

*a. Sherburne's telephone tree*

Several witnesses have testified before the committee as to the number of people involved in discussions about the Nussbaum interview as relayed by Shapiro. After Shapiro notified the White House on July 15, communications within the White House and outside the White House ensued immediately.

Once Jane Sherburne was notified of the controversial and damaging contents of Livingstone's file, realizing the importance of the damaging information, she made it a point to spread the word about the file to a large number of people on that day. Ms. Sherburne recounted the exact manner in which she contacted people in a deposition before the committee.

*Question.* Did you discuss [the information relayed by the FBI] with anyone else in the White House?

*Answer.* Yes.

*Question.* Who did you discuss it with?

*Answer.* Well, I would have discussed it with my team, with **Kathy Wallman**, with **Evelyn Lieberman**, and **Harold Ickes**; perhaps others, but that would have been the core group.

*Question.* Who on your team—

*Answer.* And **Jack Quinn** as well.

*Question.* Who on your team did you discuss it with?

*Answer.* Certainly **Mark Fabiani**, **Sally Paxton**, and **John Yarowsky**. Possibly others, but those would have been the primary ones.

*Question.* And did these discussions occur on Tuesday after you had received your call from the FBI?

*Answer.* They would have been Tuesday or Wednesday.<sup>478</sup>

The members of the White House staff that were informed by Sherburne of the incriminating information allowed them to prepare answers to questions that were sure to come at the release of this information. More importantly, perhaps, was the fact that Sherburne sought out Mrs. Clinton to relay this information.

*Question.* Do you know if anyone has discussed it with **Mrs. Clinton**?

*Answer.* Yes.

*Question.* And who is that that discussed it with her?

*Answer.* I did.

*Question.* And when did you discuss it with her?

*Answer.* It would have been Tuesday or Wednesday. [July 16 or 17, 1996]<sup>479</sup>

Sherburne continued to list the people she notified of the information contained in Livingstone's file.

<sup>477</sup> Statement of William F. Clinger, Jr., chairman, Committee on Government Reform and Oversight, August 1, 1996.

<sup>478</sup> Sherburne deposition, pp. 222-223.

<sup>479</sup> *Id.*

*Question.* Have you had any discussions of this with anyone outside of the White House other than your attorney?

Answer. Yes.

*Question.* And who was that?

Answer. David Cohen, Jim Fitzpatrick, Larry Pedowitz.

*Question.* Jim Fitzpatrick who is representing Bernie Nussbaum?

Answer. That's right. And I'm trying to remember if I spoke to Randy Turk about it. I may have.

*Question.* Were you aware that Bernie Nussbaum was going to go into a grand jury appearance shortly after you had your conversations with his attorney?

Answer. No.<sup>480</sup>

Ms. Sherburne contacted people in and outside the White House. Those in the White House contacted by Sherburne included officials in the White House Counsel's Office and the Chief of Staff's Office. Kathleen Wallman is the Deputy Counsel to the President. Evelyn Lieberman is the Assistant to the President and Deputy Chief of Staff for White House Operations. Harold Ickes is the Assistant to the President and Deputy Chief of Staff. Mark Fabiani, Sally Paxton, and John Yarowsky are Special Associate Counsels to the President.

Once she had notified officials within the White House, Sherburne began to contact lawyers for different individuals who were the subjects of a variety of investigations into the White House Travel Office and the FBI files controversy. Sherburne contacted David Cohen, a lawyer with Miller, Cassidy, LaRocca & Lewin, who represents Craig Livingstone. She contacted Jim Fitzpatrick, a lawyer with the firm of Arnold and Porter, and Larry Pedowitz, a lawyer with Watchell, Lipton and Associates, both of whom represent Bernard Nussbaum. The subjects of the investigation into the FBI files matter were privy to the machinations of the investigation, itself.

In a hearing before the committee, members expressed dismay at the level of closeness between the White House and the FBI. In his questioning of Shapiro, Congressman Stephen Horn made clear the nature of his concerns:

Mr. Shapiro, I will tell you what makes me very curious. You are a very bright young man, you are obviously very sophisticated, you have conducted a major prosecution, and suddenly you get some information, and you pick up the phone and call the White House. Did you want to curry favor with them . . . ?<sup>481</sup>

Shapiro once again denied the impropriety of informing the White House of information uncovered in an investigation of the White House. Horn continued:

What bothers me is that with Mr. Freeh coming in, we were assured that the FBI would be independent. Then we have the Vincent Foster press release bit, and it looks like

<sup>480</sup> *Id.*

<sup>481</sup> *Security of FBI Files* hearings, August 1, 1996, pp. 93-94.

the FBI is trying to curry favor with the White House. I don't think the FBI should curry favor with anybody. I think they should be independent, call them as they see them, but they shouldn't be playing one side where they are giving them all the cues as to what is in the file, and it bothers me that that has occurred on several occasions.<sup>482</sup>

## 2. *Shapiro dispatches agents to interrogate Sculimbrene*

In addition to notifying the White House about details of the committee's investigation, Shapiro sent two agents to interrogate Agent Sculimbrene at his home early on July 16.<sup>483</sup> Agent Sculimbrene interviewed Bernard Nussbaum in the course of preparing Livingstone's background investigation, and recorded Mrs. Clinton's involvement with Mr. Livingstone. Because some at the White House had questioned Agent Sculimbrene's information, Shapiro claims that he wanted to confront Sculimbrene with the discrepancies.<sup>484</sup> FBI Agents searched Sculimbrene's work station and papers that day.

Shapiro and Kelley made the decision to send Duncan Wainwright, an Assistant Inspector, and Special Agent Jennifer Esposito to interview Sculimbrene. Inspector Wainwright had been assigned to work with Shapiro on the FBI files investigation. Special Agent Esposito, the wife of William J. Esposito, Deputy Assistant Director of Financial Crimes, Public Corruption, Civil Rights, and Operational Support, was sent because, according to Shapiro, she was "from [Wainwright's] squad."<sup>485</sup>

Inspector Wainwright telephoned Agent Sculimbrene to inform him of Shapiro's intent to send agents to Sculimbrene's home on that day to interview him. Agents Wainwright and Esposito arrived at Sculimbrene's home at approximately 11 a.m. on July 16, 1996.

Sculimbrene reviewed the memorandum in question and said that it appeared to be written by him. Although Sculimbrene could not remember the precise interview with Nussbaum, he described the process by which he recorded his interviews. Sculimbrene performed thousands of interviews in the normal course of his work at the White House. The memorandum written by Esposito and Wainwright describes their interview with Sculimbrene:

SA [Special Agent] Sculimbrene stated that his interview report should accurately summarize Nussbaum's comments concerning Livingstone. He noted that he took pride in his work and sought to make his reports accurate and complete. SA Sculimbrene noted that it was his general practice to prepare his interview reports on the same day that an interview took place. He followed this practice because it caused him to prepare his reports while the information was fresh in his memory.<sup>486</sup>

<sup>482</sup> *Id.*

<sup>483</sup> Shapiro deposition, pp. 70-71.

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*, p. 72.

<sup>486</sup> Supervisory Special Agent Duncan J. Wainwright and Special Agent Jennifer Esposito, Federal Bureau of Investigation 302 Interview of Special Agent M. Dennis Sculimbrene, Washington, DC, July 16, 1996.

In addition to recounting the procedures he used to record interviews, Sculimbrene stated that he did recall a significant fact regarding Livingstone. Agents Wainwright and Esposito wrote that, "SA Sculimbrene does recall being told by Livingstone that Livingstone's mother was a friend of Hillary Clinton."<sup>487</sup> Clearly, the information from this interview buttresses the information found in Sculimbrene's original memorandum of the interview of Nussbaum.

In his statement regarding Shapiro's actions surrounding the improper contacts with the White House, Chairman Clinger said:

On July 16 there was another unusual occurrence. Two senior headquarter FBI agents appeared at the home of FBI agent Dennis Sculimbrene to talk with him about this interview of Bernard Nussbaum and ask for his notes of the interview. According to Mr. Shapiro, this action was taken at his direction and without any consultation with the Independent Counsel. Why after the Attorney General had clearly stated that these matters would be handled by the Independent Counsel because they presented a conflict of interest for the Justice Department and the FBI, did Mr. Shapiro take this disturbing action?<sup>488</sup>

This action perpetuated the feeling among members of the committee that the FBI was wrongly involved in protecting the White House. The FBI wasted resources to hide the embarrassing facts contained in Sculimbrene's memorandum. Some saw the FBI's tactics as heavy handed. Regarding the choice of agents to conduct the interview, Congressman Horn engaged in the following colloquy:

Mr. HORN. Who picked the particular agents that interviewed Mr. Sculimbrene?

Mr. KELLEY. I did.

Mr. HORN. How did you happen to pick them?

Mr. KELLEY. Actually, the one I picked was Duncan Wainwright. I picked Duncan Wainwright for several reasons. First, he used to work for me, and he is very steady and reliable and intelligent.

Mr. HORN. How about the second agent?

Mr. KELLEY. May I finish? The second agent was picked by Duncan Wainwright.

Mr. HORN. Did one of the agents have a spouse who worked for the FBI?

Mr. KELLEY. Yes.

Mr. HORN. And what did that spouse do?

Mr. KELLEY. The spouse is the assistant director of the Criminal Investigative Division.

Mr. HORN. A fairly high position in the FBI.

Mr. KELLEY. Yes, it is.

Mr. HORN. Now, if somebody with that relationship showed up on my doorstep, and I am an FBI special agent, as Mr. Sculimbrene was, I would worry that somebody is

<sup>487</sup> *Id.*

<sup>488</sup> Statement of William F. Clinger, Jr., chairman, Committee on Government Reform and Oversight, U.S. House of Representatives, August 1, 1996.