

Question. And did she explain the reason why she was asking you to review the book?

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Answer. While I am not inclined to talk about the process that led to the deliberations on this issue, here is what I feel very comfortable telling you, and that is that I and others were asked to review portions of the book and with an eye towards whether or not there was information that would compromise security in the White House. That was my particular mission. We reported back up the line on this and, to the best of my knowledge, the outcome was that the White House did not take a position one way or the other on what the FBI should do with this matter.⁵³²

The committee has yet to determine the purpose of the White House Counsels' review of Aldrich's book, though not for lack of attempts. The committee subpoenaed all notes and memoranda from the White House related to the matter. However, Special Counsel Jane Sherburne reported that those documents were not "maintained."⁵³³ Why is the White House Counsel's Office "not maintaining" notes? Why were no memoranda created on a project that ostensibly affected White House security? Were there memoranda that were destroyed?

Additionally, why did the review of pre-publication manuscripts fall within the purview of White House counsel "duties"? Was this not more suitably a matter for a security related agency? The White House's lack of response to committee requests continue to be of great concern.

The committee learned on September 18 from the FBI that they refused to accept back from White House Counsel Jack Quinn a copy of Gary Aldrich's book *Unlimited Access*, given to Mr. Quinn by FBI General Counsel Shapiro. The FBI refused to accept the book saying, "Because this is a document in the possession of the White House which you have described as 'responsive' to a congressional subpoena, we believe it would be inappropriate for the FBI to become involved in this matter."⁵³⁴ The FBI and the Justice Department are under subpoena for these documents. Why is the White House playing hot potato with Gary Aldrich's book? It is amazing, but not surprising, that the White House continues to withhold documents relevant to this committee's investigation. Actions such as these increase the skepticism toward this administration. Mr. Quinn should explain his actions in trying to avoid responding to the committee's subpoena.

C. SUMMARY OF 4 YEARS OF POLITICIZATION OF THE FBI

1. *Past procedures for White House utilized the Department of Justice*

In the past, as a result of concerns about the political use of the FBI, White House contacts have been managed primarily through the Department of Justice. The Assistant Attorney General is the

⁵³² Cerf deposition, pp. 89-95.

⁵³³ Letter from Sherburne to committee Chief Investigative Counsel Barbara Olson, September 10, 1996.

⁵³⁴ Letter from John Collingwood to Jack Quinn, dated September 18, 1996.

primary liaison for contacts between the White House and the FBI. The current FBI has abandoned that formality. Why has the FBI general counsel now taken on the role of White House contact? At Director Freeh's request, Shapiro has held a permanent White House pass since 1993. To the committee's knowledge no other FBI general counsel has had such unfettered access to the White House.

2. First Counsel's Office not staffed with agents

In the past, FBI Directors have staffed all offices with career agents within the FBI, agents whose loyalty was to law enforcement, and not to the political winds of 1600 Pennsylvania Avenue. When Freeh was appointed, he appointed three associates from outside the FBI, and created the first Office of the General Counsel. As the person to fill the first general counsel position at the FBI, Freeh chose his long time friend and confidante, Howard Shapiro.

In his deposition before the committee, Shapiro defended Director Freeh's decision to staff the FBI with nonagent attorneys. He said:

And we had—although we had some absolutely, and we still do, some absolutely fabulous agent attorneys who had decided to make a career of it, for the most part I thought we could improve the quality and the experience and the expertise of the office by transitioning from agent attorneys to nonagent attorneys.⁵³⁵

Although Shapiro and Director Freeh may have intended to "improve the quality" of the attorneys at the FBI, they have politicized the FBI, through the actions of Shapiro which indicate the astute political skills and the intent to protect the President and Mrs. Clinton. Shapiro, whether at the behest of Director Freeh or not, has been the most prolific contact with the Clinton administration and the White House—it's ally at the FBI. His permanent White House pass and frequent White House visits allowed and encouraged the spreading of information to the White House as an "affected party."

3. Travel Office, FBI files, and Aldrich book

Evidence of the White House's political use of the FBI can be found in the Travel Office scandal, the improper retrieval of FBI files and the improper dissemination of a manuscript to the White House. In the Travel Office matter, the White House improperly requested that the FBI conduct an investigation into the fired Travel Office employees. The Clinton administration has made liberal use of the FBI and tarnished its reputation in the process.

VIII. SECRET SERVICE EXPLANATION

A. INTRODUCTION

When it was revealed that the White House had inappropriately sought and obtained hundreds of FBI files of former Reagan and Bush officials, the first line of defense adopted by the White House

⁵³⁵ Shapiro deposition, p. 18.

came from Craig Livingstone's attorney and was adopted by the White House.⁵³⁶

Mr. Livingstone's attorney, Randall Turk, who interviewed a number of other former White House employees about the matter when Billy Dale's FBI file was discovered, claimed the matter had a "completely innocent explanation" and blamed the problem on a "Secret Service list that still contained Dale's name as a current White House passholder."⁵³⁷ White House spokesman, Mark Fabiani, immediately adopted Turk's explanations.⁵³⁸ Livingstone's attorney also briefed the White House Counsel's Office on Livingstone's explanations of problems with the FBI files.

On June 7, Mr. Turk refused to reveal the name of the "Army detailee," but his identity was revealed to be Anthony Marceca, an old political friend of Livingstone's, not a low level clerk, as had initially been portrayed. Mr. Marceca did not begin working at the White House until August 1993, long after Mr. Dale's name was removed as a current White House passholder and his Secret Service pass summarily revoked.

Another attorney for Livingstone, David Cohen, claimed that "neither Marceca nor Livingstone noticed at first that the lists included so many names that should have been purged from them."⁵³⁹ Yet an undated memo, which appears to be from March 1993, demonstrates that Livingstone clearly understood that there were some names on Secret Service lists that needed to be removed and Livingstone knew that it was his job to remove them.⁵⁴⁰

There was no list after May 19, 1993 which would have contained Mr. Dale's name as a "current White House passholder," since Mr. Livingstone himself sent a memo to the Secret Service to place Mr. Dale and his colleagues on "do not admit" status at the White House, as of May 19, 1993.⁵⁴¹

Of the hundreds of FBI files that were gathered by Livingstone and Marceca, most of them were *never* "current White House passholders" at any time in 1993. As the Secret Service concluded in the committee's July 17, 1996 hearings on *The Security of the FBI Files*, on any list created in 1993, most of the 476 names of individuals whose files were improperly obtained would have been listed as inactive.⁵⁴² The explanations offered by the White House and Livingstone were implausible from the start but, since the Secret Service is not in a position to publicly respond to such attacks, the assault on the Secret Service served its purpose as a useful tactic to shift blame.

But even Livingstone had a hard time sticking with the "blame the Secret Service" strategy. On June 7, 1996, the very day his attorney was blaming the Secret Service, Livingstone went to Secret Service Agent Arnold Cole to discuss the matter. In his deposition, Agent Cole revealed:

⁵³⁶ *White House Admits Having Background Files*, the Washington Post, June 8, 1996, p. A1.

⁵³⁷ *Id.*, at 1:41 p.m.

⁵³⁸ "White House Admits Having Background Files," the Washington Post, June 8, 1996.

⁵³⁹ "Faretta Offers Apology Over Files Mistake," the Washington Post, June 10, 1996.

⁵⁴⁰ Confidential memorandum from Craig Livingstone to William Kennedy, undated. Livingstone refers to the date on which the green/tan access badges will expire as March 15, 1993. From this information, the committee believes the date of this memorandum to be between March 4, 1993 and March 15, 1993.

⁵⁴¹ May 19, 1993 memo from Craig Livingstone to Arnold Cole, CGE 33034.

⁵⁴² *Security of FBI Files* hearing, July 17, 1996, pp. 46-47.

On June 7, 1996 I received a phone message that Craig Livingstone wanted to see me about a case. On the same day, at approximately 3:45 p.m., I met with Mr. Livingstone outside his office in the Old Executive Office Building. We briefly discussed a temporary passholder case under review.

Unsolicited, Mr. Livingstone asked whether or not I had seen the press release made by his attorney concerning the Billy Dale files. I responded in the affirmative, at which point Mr. Livingstone stated, "We just wanted you guys to know that we weren't blaming the Secret Service. Using an old list was our fault, and we had the current stuff you guys gave us. I don't know what happened."

I told Mr. Livingstone that I did not think he could blame us. Basically the conversation was terminated and I reported to my supervisor.⁵⁴³

Cole testified before the committee that he had clearly briefed Livingstone on the use of Secret Service lists.⁵⁴⁴ At any rate, no combination of errors attributed by the White House to the Secret Service can explain how and why the Office of Personnel Security inappropriately obtained hundreds of FBI files of former Reagan and Bush officials.⁵⁴⁵

In testimony before the Senate Judiciary Committee on June 28, 1996, Livingstone appears to deny talking to anyone in the Secret Service about the matter:

Senator ABRAHAM. Once this was reported, I mean, a few weeks ago, when it became clear that obviously there were some files that were in this category we are discussing, did you talk to the FBI, the Secret Service, or anybody about how this could have happened?

LIVINGSTONE. I remember talking to a lot of people because I was mortified once it became apparent what we had, and I informed counsel. As I recall it specifically, I informed my counsel, and my counsel informed White House counsel later that night, separate from me. The FBI came in immediately and removed the files.

Senator ABRAHAM. You had talked to the FBI then and the Secret Service about it?

Mr. LIVINGSTONE. No.

Senator ABRAHAM. You never did at that point?

Mr. LIVINGSTONE. No.⁵⁴⁶

Livingstone did speak with the Secret Service about this matter. Agent Cole, a decorated Secret Service employee, testified that Livingstone left a copy of his attorney's press release for him in his office and that Livingstone was making efforts to contact him throughout the week.⁵⁴⁷ When Agent Cole spoke with Livingstone, Cole testified that Livingstone did not want to speak in his office.

⁵⁴³ Cole deposition, pp. 41-42.

⁵⁴⁴ *Security of the FBI Files* hearing, July 17, 1996, p. 47.

⁵⁴⁵ *Id.*, pp. 24-41.

⁵⁴⁶ *White House Access to FBI Summaries*; hearing before the Senate Committee on Judiciary, 104th Cong., 2d. Sess., June 28, 1996 p. 111.

⁵⁴⁷ Cole deposition, p. 38.

Cole asked him if he thought his office was bugged and Livingstone "indicated to [Cole] that he just didn't think it was safe to talk in his office."⁵⁴⁸

While the White House continued to place blame on the Secret Service, no one from the White House ever contacted the Secret Service to make any complaints about any problems with Secret Service lists.⁵⁴⁹ When Secret Service Agents Libonati, Undercoffer and Cole testified before the committee on July 17, 1996, it became clear that the Secret Service was not culpable for the "egregious violations of privacy" that took place in the Office of Personnel Security. The Secret Service spent an extraordinary amount of time and resources carefully reviewing the quality of information they provided to the White House. There were no systemic problems for which the Secret Service is responsible that would account for these actions.⁵⁵⁰

B. THE SECRET SERVICE'S ROLE IN OBTAINING WHITE HOUSE ACCESS

The Secret Service maintains the E-Pass system. It is a computerized access and pass holder system that produces hard passes for the White House and computer printouts of pass holders. The lists produced by the E-Pass system are used to show who has and who does not have access to the White House. John Libonati, Supervisory Special Agent with the Secret Service, testified before the committee that "[t]he printouts are not designed, and should not be used for other purposes. The printouts are produced for uses related to access issues."⁵⁵¹

As Agent Libonati testified, "the request for FBI files by any White House administration is made solely for active employees."⁵⁵² The Secret Service provides lists of active employees, inactive employees or a master list which contains the names of approximately 24,000 active and inactive White House passholders for the previous 8 years.⁵⁵³ Letter from William H. Pickle, Executive Assistant to the Director of the Secret Service, to Chairman Clinger, August 23, 1996.⁵⁵⁴

The master List, kept by the Secret Service, includes 8 categories of a File Number; First, Middle, and Last Names; Pass Type; Month, Date and Year, Date of Birth; Status; Month, Date, and Year; and Office Name. The pass type indicates the areas to which the passholder has access. The first listing of month, date, and year is listed only for those whose pass is scheduled to expire, and the date listed is the date of expiration. The office name is the office in which the passholder works. The status is the place where a no-

⁵⁴⁸ *Id.*, p. 184.

⁵⁴⁹ *Security of the FBI Files* hearing, July 17, 1996, p. 44.

⁵⁵⁰ *Id.*, pp. 24-41.

⁵⁵¹ *Id.* Opening statement of Agent Libonati.

⁵⁵² *Id.*, p. 25.

⁵⁵³ *Id.*, pp. 27-28; On August 23, 1996, William H. Pickle, Executive Assistant to the Director of the Secret Service, wrote to Chairman Clinger to explain why the Secret Service retains 8 years worth of inactive passholder records. He wrote, "In April of 1982, a study was conducted by the Secret Service Office of Management and Organization. The study concluded that due to a recurring need for information in these files, an 8-year retention period would be recommended to the National Archives for review. The request was reviewed and approved by Archives appraisers in January of 1983."

⁵⁵⁴ Thus, Secret Service Records would include the names and status of those who held White House passes for 8 years.

tation is made of whether the passholder's access is "active" or "inactive." That status is indicated by an "A" or an "I."

C. THE LISTS USED BY THE WHITE HOUSE OFFICE OF PERSONNEL SECURITY

One of the excuses offered by the White House as to why the Office of Personnel Security improperly obtained FBI background files was that they were updating their files because the previous administration had removed all personnel files from the White House. According to the Clinton administration, the list provided to them from the Secret Service, which they used to find out who should have access to the White House, incorrectly included names of people from previous administrations who should not have had access to the White House. White House officials insistently refer to the Secret Service's list as defective.

Craig Livingstone testified before the committee, "[T]his mistake occurred simply because the passholder list provided to my office by the Secret Service contained some names of former staffers who no longer had access to the White House complex, interspersed among the names of actual, current passholders and others who continued to have access."⁵⁵⁵ Liza Wetzl, now Confidential Assistant to the Secretary of the Army, testified before the committee that, "I . . . concluded that Tony must have ordered previous reports for every person on whatever out-of-date Secret Service list he had been working from."⁵⁵⁶ This was an attempt to shift the blame for improperly ordering hundreds of FBI background files from the White House to the Secret Service. However, we learned that any list that was produced in 1993, would have identified the vast majority of the people whose files were wrongfully obtained as "Inactive."

At the time Livingstone and Marceca testified, the committee did not have the benefit of documents withheld by the White House. When the White House finally produced subpoenaed documents, they revealed that the White House knew that it was required to keep the Secret Service apprised of changes of those with access.⁵⁵⁷ These memoranda demonstrate that the White House clearly knew that to remove names from access lists was their job.

D. THE ONLY LIST THEY COULD BE TALKING ABOUT

Because it had been accused by the White House of providing inaccurate lists for use by the White House Security Office, the Secret Service undertook an exhaustive audit of their E-Pass system and any lists that may have been provided to the White House. At hearings before this committee, the Secret Service spoke in detail about the lists available to the White House.⁵⁵⁸

Agent Libonati described the information which led to the search for mistakes in Secret Service lists. Agent Libonati told the committee, "Upon receipt of two lists which total 476 individuals

⁵⁵⁵ *Security of FBI Files* hearings, June 26, 1996, p. 30.

⁵⁵⁶ *Id.*, p. 47.

⁵⁵⁷ Memorandum from Craig Livingstone, Director of White House Security to Arnold Cole; "Please place the following people on restricted access. They are restricted from gaining access to the White House Complex without written authorization of Mr. David Watkins." Document CGE 33034; May 19, 1993.

⁵⁵⁸ *Security of the FBI File* hearing, July 17, 1996, pp. 24-41.