

after me, wouldn't you? Don't you think that is intimidation?⁴⁸⁹

Members of the committee were concerned with the mere fact that the interview took place, and that it was done after the entire investigation had been turned over to the Independent Counsel. The committee was equally concerned about the way the interview was conducted. Agents telephoned Sculimbrene, told him they were on their way, and soon arrived at his home to conduct the interview.

3. Shapiro made his own assessment that the matter was not within Independent Counsel Starr's jurisdiction

The initial discovery of the information in the Nussbaum interview resulted from Shapiro's staff reviewing files for release to this committee. The files that were reviewed were those of the two figures central to the FBI files investigation being conducted by the committee and the Independent Counsel. The committee's review came at the suggestion of Director Freeh, who was well aware of both the committee's investigation of the FBI files matter and that these files were requested in that matter. Nonetheless, despite overwhelming evidence to the contrary, Shapiro claimed not to know the purpose of the committee's request for these files.

In an appearance before the committee, Shapiro testified that he did not believe that the contents of the Nussbaum interview were related to the FBI files investigation. Chairman Clinger asked Shapiro if he knew the Attorney General had referred the "filegate" matter to the Independent Counsel in response to concerns that any such investigation might provide a conflict of interest for the FBI. Shapiro responded that he was aware of the referral. However, Shapiro testified that he "did not think that this information specifically was at the time part of the Independent Counsel's investigation."⁴⁹⁰ Steven Schiff, vice chairman of the committee, attempted to clarify the matter. Responding to Schiff's question about whether he thought "that Mr. Livingstone's hiring was related to the matters to be investigated by the Independent Counsel," Shapiro replied,

My misunderstanding, if I had one, was whether the question of how Craig Livingstone came to be hired was a matter within the scope of the criminal investigation of the Independent Counsel's Office looking into what I understood to be the criminal investigation, was the request for and acquisition of the FBI files.⁴⁹¹

The qualifications of Livingstone for a position in the White House Office of Personnel Security and whether he was placed there for political purposes is central to any investigation of the White House's improper retrieval of FBI files. According to Shapiro, he did not see the relevance of how Livingstone got his job to that investigation. Members of the committee did not believe that Shapiro could see the need to relay this information to the White House, yet not see the bearing it had on the investigations being con-

⁴⁸⁹ *Security of FBI Files* hearings, August 1, 1996, pp. 91-92.

⁴⁹⁰ *Security of FBI Files* hearings, August 1, 1996, p. 46.

⁴⁹¹ *Id.*, p. 82.

ducted. In a hearing before the committee, Congressman Burton said:

Let me get this straight here. The people you did not advise about this were the Independent Counsel, the Senate Judiciary Committee, or the members of this committee before you advised the White House Counsel, the Deputy Attorney General's office, who has a lot of liaison and connection with the White House. It's widely known that since Mr. Hubbell left the Justice Department, Ms. Gorelick, the Deputy AG, has the most intimate relationship with the White House, both political and otherwise. If you step back and look at the results of your decisions to notify the White House and the Justice Department, the Democrats who needed to perform damage control were made aware but the Republicans and the Independent Counsel investigating the matter knew much later. So we gave the people who were trying to defend themselves a heads up first.⁴⁹²

Many members of the committee were angered over Shapiro's statements that the hiring of Livingstone was not related to the White House retrieval of FBI background files.

Soon after Shapiro notified the White House about the contents in the memorandum of Mr. Nussbaum's interview, private lawyers were notified about that information. It was reported that Mr. Nussbaum was to testify before the Independent Counsel shortly after learning of this information. Showing concern for this series of events, Congressman Gilman posed the following question to Shapiro at the committee's hearing.

In your opinion, how should the Department of Justice react if a representative of the FBI, on his own, shares FBI information with an outside party that bears on the party's possible testimony or other derogatory information or leads that would assist that party in thwarting the government's inquiry? How do you think the Justice Department should react to that kind of statement?⁴⁹³

Shapiro responded that "if the Department thinks that someone at the FBI is interfering with an investigation, it is a matter they should take very seriously."⁴⁹⁴ Later in that hearing, Congressman Gilman asked Shapiro, "[W]asn't there an ongoing grand jury inquiry on the files and on Livingstone at the time you made your telephone calls?"⁴⁹⁵ Shapiro replied, "There—well, I'm obviously not fully aware of what inquiries there are. I understand that the Independent Counsel's office was conducting and is conducting a grand jury investigation into what—into the request for and acquisition of FBI files by the White House."⁴⁹⁶ The fact that Shapiro, a former prosecutor with the U.S. attorney's office, took actions

⁴⁹² *Id.*, pp. 157–158.

⁴⁹³ *Id.*, p. 113.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Security of FBI Files* hearings, p. 114.

⁴⁹⁶ *Id.*, p. 115.

that may have interfered with an ongoing investigation is simply unacceptable for the FBI's top lawyer.

4. Nussbaum's criminal referral

Shapiro knew the clear significance of the information in the FBI background file, which contained contemporaneous notes of an interview of Nussbaum. Nussbaum relayed information about Livingstone to FBI Agent Sculimbrene in March 1993, at a time when Nussbaum had no reason to be dishonest. In addition, Agent Sculimbrene had no reason to attribute any significance to Nussbaum's comments.

Shapiro knew of the controversy surrounding the hiring of Craig Livingstone, which developed in June 1996. In his deposition before the Committee on Government Reform and Oversight, Shapiro first hypothesized about why his staff would have alerted him to the contents of the memorandum in question. Shapiro said:

[I]t was brought to my attention because it referred to a matter which had already been the subject of much public controversy and many articles in the newspapers and on—stories on television about the allegation that there was a connection between Hillary Clinton and the hiring of Craig Livingstone; more specifically, that Hillary Clinton was a friend of Craig Livingstone's mother and had recommended for the job.⁴⁹⁷

In the same interview, Shapiro gave his reason for alerting the White House to this information. He said, "Knowing that was a matter which had already been a matter of considerable public controversy I decided that it was appropriate to advise the White House."⁴⁹⁸

At the June 26, 1996 hearing before the Committee on Government Reform and Oversight, "Security of FBI Background Files," none of the witnesses, including Craig Livingstone, could remember who hired Craig Livingstone. In that hearing, Chairman Clinger asked Bernard Nussbaum, Counsel to the President, "Do you know who hired Craig Livingstone?"⁴⁹⁹ Nussbaum replied, "I don't know who brought Mr. Livingstone into the White House." Later, following Kennedy's statement that he "never discussed Mr. Livingstone with Mrs. Clinton in any way, shape or form," Nussbaum said, "Nor did I."⁵⁰⁰ Several other witnesses denied knowing who hired Livingstone.

At that hearing, Nussbaum was under oath. He swore to tell the truth. He was the White House Counsel while Livingstone was Director of White House Security. Livingstone worked for Nussbaum. When he professed not to know who hired Craig Livingstone, committee members were perplexed. When Chairman Clinger discovered a contemporaneous memorandum written by an FBI agent that shed some light on who hired Livingstone, he was alarmed. Chairman Clinger was disappointed to learn that the document quoted Nussbaum as saying that Livingstone "had come highly rec-

⁴⁹⁷ Shapiro deposition, p. 59.

⁴⁹⁸ *Id.*

⁴⁹⁹ Security of FBI Files hearings, June 26, 1996, p. 57.

⁵⁰⁰ *Id.*

commended to him by Hillary Clinton.”⁵⁰¹ Accordingly, this information “calls into question Mr. Nussbaum’s June 26, 1996 statements made under oath before the Government Reform and Oversight Committee.”

Upon discovering this information, Chairman Clinger believed that it warranted the attention of every Member of the House of Representatives and the American people. He stood on the floor of the House chamber and described the events surrounding the Sculimbrene memorandum. Calling this “a very serious issue,” Chairman Clinger concluded his statement, saying, “This is a matter I will refer to the U.S. Attorney for the District of Columbia. Because Attorney General Reno has designated Independent Counsel Kenneth Starr to investigate potential criminal wrongdoing in the White House Travel Office and FBI Files matters, I am simultaneously forwarding this matter to Judge Starr’s attention.”⁵⁰²

On July 30, 1996, the matter of Nussbaum’s statements to the FBI and before the Committee on Government Reform and Oversight was referred to the Office of the Independent Counsel and the U.S. attorney for the District of Columbia. Chairman Clinger and other members of the Committee on Government Reform and Oversight wrote to Independent Counsel Kenneth Starr and U.S. Attorney Eric H. Holder, Jr., to refer the matter to their offices.⁵⁰³

5. Shapiro edits letter for White House Counsel that is critical of Chairman Clinger

Upon the announcement that Chairman Clinger was making a criminal referral of Bernard Nussbaum, Quinn called Shapiro to request his assistance in writing a letter to Director Freeh. Shapiro testified about this matter in his deposition:

Ms. OLSON. The day of Chairman Clinger’s referral or the day of Chairman Clinger’s Floor statement about the statements by Mr. Nussbaum and the statement that he had read in the file, did you have any conversations with the White House?

Mr. SHAPIRO. Yes, I was called that day by Jack Quinn and Kathleen Wallman—this is prior to the chairman’s Floor speech—advised by them that they had learned from press, who I think they told me had a copy of his speech, that he was going to be making a Floor speech, and they told me that they were writing a letter.

I think what they said is, “The White House is writing a letter to the FBI director,” and they wanted to ask me a couple questions about it, primarily was there anything in the tone of it that we would find offensive that would—that they would sort of be unaware, would hit somebody the wrong way at the FBI, that they would unintentionally offend somebody about.

Ms. OLSON. You mean by the tone of—the tone of the letter?

⁵⁰¹ Sculimbrene memo contained in the FBI background file of Craig Livingstone.

⁵⁰² Congressional Record, July 25, 1996, pp. H8520–H8521

⁵⁰³ Letter to the Honorable Kenneth W. Starr, Independent Counsel, from Chairman Clinger and members of the Committee on Government Reform and Oversight; July 30, 1996.

Mr. SHAPIRO. The letter. They weren't asking me for my opinion on Mr. Clinger's speech. And also whether I had an opinion on who that letter should come from, from the White House.

Ms. OLSON. And so they faxed you a copy of the letter?

Mr. SHAPIRO. No. They read me some language. I told them that as to most of it, I had no opinion and didn't think it was appropriate for me to comment, which is not to say I had no opinion, but didn't think it appropriate for me to comment.

They highlighted one sentence that was in one draft one way and one in the other, and I concurred with their apparent decision that they already were telling me that in the second statement would be taken as less of an accusation against the FBI, and I said—and as to the question about who was appropriate to come from, I asked Jack Quinn, was he suggesting—I believe he asked me, did I think it more appropriate that it come from Leon Panetta? and I said, "If your question is, are you a sufficiently high level Government official to write to the director of the FBI? I think you shouldn't worry about that."

Ms. OLSON. And what was the one sentence?

Mr. SHAPIRO. Let me look at the letter as it was sent, and I might be able to tell you.

In the letter as sent, which we received some time later that evening—first time I had actually seen it—it says—after the first three paragraphs, it says: That is why we are troubled, as we know you must be, by the implication that an FBI background investigation might include a false report.⁵⁰⁴

In the letter that finally went to Freeh, and was released to the public, Quinn wrote:

It is equally troubling that a Member of Congress can publicly reveal confidential information, whether for partisan purposes or otherwise. It should not escape notice that this is done at a time when Members of Congress have expressed worry that employees of the executive branch might have sought out confidential FBI information about certain individuals and planned to somehow use it publicly. While that charge has never been established against anyone in the executive branch, we now witness the same objectionable behavior by the very people who professed to be the guardians of privacy.⁵⁰⁵

The general counsel of the FBI edited a letter for the White House that was harshly critical of the chairman of the Committee on Government Reform and Oversight, who was performing his oversight duties. Shapiro's actions raise questions about the independence of the FBI.

Members of the committee were particularly angered by the participation of the FBI in editing a letter critical of the chairman of

⁵⁰⁴Shapiro deposition, p. 150.

⁵⁰⁵Letter from White House Counsel Jack Quinn to FBI Director Louis Freeh, July 25, 1996.

a congressional committee. Congresswoman Ros-Lehtinen confronted Shapiro about his participation in the drafting of the letter from Quinn to Director Freeh. When Shapiro was trying to belittle his cooperation with the White House regarding the letter, Ros-Lehtinen said:

Based on your testimony, you said that you conversed with this gentleman, talked about who the letter should go to, talked about the tone, and I would say that you had a very direct hand in the drafting of this document.⁵⁰⁶

Congressman Souder told Shapiro he was wrong in editing the letter. He said:

You said you helped edit a letter for the White House Counsel which attacked both our Chairman and your own FBI agents. Now you say it wasn't editing, you were consulted. Almost any definition of "editing," you had the opportunity to edit. You say you made changes. By most definitions, that is editing, and it was a political letter which you should have withdrawn from.⁵⁰⁷

VII. POLITICIZATION OF THE FBI

The FBI serves as the principal investigative arm of the Department of Justice and as such, is charged with gathering and reporting facts, locating witnesses, and compiling evidence in cases involving Federal jurisdiction. The FBI investigates all violations of Federal law except those that have been assigned by legislative enactment or otherwise to another Federal agency.

In response to the politicization of the FBI during the Nixon administration, the Congress passed a law giving the Director of the FBI a fixed term. Public Law 90-351, provided that:

(b) Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, after June 1, 1973, the term of service of the Director of the Federal Bureau of Investigation shall be ten years. A Director may not serve more than one ten-year term.⁵⁰⁸

On the Floor of the Senate, Senator Robert C. Byrd spoke in support of limiting the term of the Director of the FBI and about the importance of FBI independence. Senator Byrd said, "This amendment would aid in insulating the FBI Director against politically motivated manipulation from the executive branch by giving the office a tenure of 10 years." Senator Byrd reasoned that:

A 10-year term is desirable because it would generally overlap the tenure of a two-term President and would eliminate many of the pressures that could be brought to bear on the Director if he were to be reappointed every 4 years. In this way, the Director can be more effectively insulated from political pressures liable to be placed on him

⁵⁰⁶ *Security of FBI Files* hearings, August 1, 1996, p. 137.

⁵⁰⁷ *Security of FBI Files* hearing, August 1, 1996, pp. 176-177.

⁵⁰⁸ Pub.L. 90-351, Title VI, § 1101, June 13, 1968, 82 Stat. 236, as amended by Pub. L. 94-503, Title II, § 203, October 15, 1976, 90 Stat. 2427.