

Strzok, Peter P. (CD) (FBI)

From: Strzok, Peter P. (CD) (FBI)
Sent: Friday, April 01, 2016 9:09 AM
To: Page, Lisa C. (OGC) (FBI)
Subject: Fwd: Clinton aides unite on FBI legal strategy - POLITICO

----- Original message -----

From: "Priestap, E W. (CD) (FBI)" [redacted]
Date: 04/01/2016 8:57 AM (GMT-05:00)
To: "Strzok, Peter P. (CD) (FBI)" [redacted]
Subject: FW: Clinton aides unite on FBI legal strategy - POLITICO

b6 -1
b7C -1
b7E -6

Thanks.

This morning, Mike Kortan said Bob Anderson was now weighing-in publicly on the email matter. He didn't say what the media outlet was.

From: Strzok, Peter P. (CD) (FBI)
Sent: Friday, April 01, 2016 6:09 AM
To: Priestap, E W. (CD) (FBI); Jones, Robert A. (CD) (FBI)
Cc: [redacted] (OGC) (FBI); Moffa, Jonathan C. (CD) (FBI); [redacted] (RO) (FBI)
Subject: Fwd: Clinton aides unite on FBI legal strategy - POLITICO

b6 -1
b7C -1

<http://www.politico.com/story/2016/04/hillary-clinton-fbi-strategy-emails-221435>

Clinton aides unite on FBI legal strategy

Four of Hillary Clinton's closest aides appear to have adopted an unusual legal strategy, hiring the same ex-Justice Department attorney to represent them in the FBI's investigation of Clinton's private email server.

Beth Wilkinson, a well-connected former assistant U.S. attorney best known for prosecuting Oklahoma City bomber Timothy McVeigh, is listed as representing three of Clinton's top State Department staffers, according to a congressional letter obtained by POLITICO and dated Feb. 10. A fourth Clinton aide, Philippe Reines, is also represented by Wilkinson, according to sources familiar with their representation.

Story Continued Below

The united front suggests they plan to tell investigators the same story — although legal experts say the unusual joint strategy still presents its own risks, should the interests of the four aides begin to diverge as the probe moves ahead.

The quartet includes Clinton's former chief of staff Cheryl Mills, who counseled Clinton politically and legally; deputy chief of staff Jake Sullivan, whom sources say authored a number of emails to Clinton that are now considered "top secret"; Heather Samuelson, Mills' deputy who initially sorted Clinton's work-related emails from personal messages that were then deleted; and Reines, who served as Clinton's spokesman and also used personal email for work purposes at State.

Wilkinson and the four staffers, as well as the Clinton campaign, did not respond to requests for comment for this story.

The FBI is investigating whether classified information was ever mishandled or put at risk by the former secretary of state's unusual, home-based email arrangement. Mills, Sullivan and Reines all regularly emailed Clinton's personal account.

And following reports that the FBI plans to start interviewing top Clinton staffers in the coming weeks, many expect at least some of Wilkinson's four clients to sit for questioning.

Hiring the same attorney allows Clinton's advisers to have one gatekeeper for most of the DOJ's inquiries — and it likely indicates that they expect to offer substantially similar testimony if they're questioned. Lawyers are barred from simultaneously representing people who may have conflicting interests in an investigation, or who would say something negative or potentially legally harmful about the lawyer's other clients, experts say, although some such conflicts can be waived by the clients.

Thus, the aides' decision to use a so-called "joint-representation" or a "common-defense" strategy suggests the staffers believe they're in this together and are unlikely to turn on each other.

On the other hand, if one of the aides ends up in criminal jeopardy as part of the probe, choosing a "common-defense" strategy could mean trouble for that staffer, who may need to say something adverse about his or her attorney's other clients.

"The premise of employing the same counsel is that they believe there is not likely to be a situation where they start pointing a finger at one another to save their own skins — or perhaps at Secretary Clinton," said Dan Metcalfe, founding director of the DOJ's office of information and privacy. "And there's a sense that if one of them goes down, they all go down. It shows they think they can coordinate the defense to everyone's benefit."

Metcalfe, now a law professor at American University, called it an "optimistic approach": "They must believe prosecutors don't have that much."

Legal experts said it's possible the staffers will change their strategy and decide to get their own, separate legal counsel if they feel like their risks are increasing.

By tapping Wilkinson, the Clinton confidants have selected someone with deep ties to Washington politics and the DOJ. The 53-year-old wife of former "Meet the Press" host David Gregory is a Clinton donor and Democratic contributor, according to Federal Election Commission filings.

She cut her teeth on classification issues early in her career, serving as a captain and assistant to the Army general counsel for intelligence and special operations.

As a former assistant U.S. attorney in New York, counsel to the deputy attorney general and principal deputy to the Justice office on terrorism and violent crime, Wilkinson is the only two-time recipient of the DOJ's highest honor, the exceptional service award.

And she's no stranger to high-profile cases. She prosecuted former Panamanian dictator Manuel Noriega and Colombian drug cartel kingpin Dandeny Muñoz Mosquera for bombing a civilian airliner and killing U.S. citizens.

"They've hired her because she knows everyone in main Justice," said Joseph diGenova, a former U.S. attorney-turned-right-leaning legal commentator. "She has very good personal relationships with all the political and career people in the Justice Department, so that's very smart on their part."

Such joint strategies are typically used in corporate cases by people who share similar job responsibilities but are not the focus of the investigation, said 30-year trial lawyer Dennis Nowak of Rumberger Kirk & Caldwell.

One upside is price: using one lawyer is often cheaper for all the clients because it saves time and is more efficient than hiring counsel for each person.

It is unclear who is paying the legal bills for the four staffers. But Wilkinson just this January left Paul, Weiss, Rifkind, Warton and Garrison LLP to set up her own boutique firm, telling *The Wall Street Journal* that her company would ditch the billable hour setup typically used by big law firms in favor of flat fees that are intended to reward efficiency.

The strategy can also bolster the defense team as a whole, allowing the lawyer to gather information from multiple clients to help benefit another, legal experts said. Wilkinson, for instance, will get an idea of the FBI's line of questioning after her first client's interview, which could benefit following witnesses.

But Bill Kilian, former U.S. attorney for the eastern district of Tennessee, said the strategy "is fraught with danger" for the Clinton aides because "what they did, what they said, what they wrote, what their relationship was with whomever" is going to be different — potentially giving them different levels of legal exposure.

"In my 30 years as a defense attorney, almost 10 as a state or federal prosecutor, I have rarely or ever seen a situation where a lawyer can provide a common defense to multiple people without there being a conflict of interest at some point in some regard," he said. "It's rare that the common defense would in fact be the best defense for all the people under investigation."

Sullivan, for instance, authored now "top secret" emails, sources have told POLITICO — potentially setting him apart from the group. And Samuelson, according to testimony Mills gave to House GOP investigators, sorted Clinton's emails as either official documents or personal issues.

Both, for example, would likely be asked about what kinds of instructions they received, which could involve Wilkinson's other client Mills, who was senior to both.

DiGenova is questioning why the DOJ would greenlight the arraignment in the first place, arguing that it "presents an amazing conflict of interest" and allows for coordination of stories.

"If it's a serious case, you don't run the risk of having all sorts of collusion between people — it's just not done," said diGenova. "If the department has accepted that, that tells me they're walking down the line of not bringing a case, because they're not serious if they have accepted that arrangement ... They've thrown in the towel."

The DOJ did not wish to comment on this issue.

Several lawyers said the legal strategy would certainly benefit Clinton, if not the aides.

"If I were Ms. Clinton, I would want these secondary people to all say the same thing — not turn on one another, let alone me, and having one attorney represent them makes it all a hell of a lot simpler," Metcalfe said.

Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) last November asked Wilkinson, Clinton's attorney David Kendall as well as lawyers for Bryan Pagliano — Clinton's top IT staffer — and Huma Abedin if there was a third-party fee arrangement and joint defense coordination agreement that allowed them to share information.

The letter followed a report in a local Colorado newspaper showing that a company involved in maintaining Clinton's server, Platte River, was planning to bill Clinton's representatives for its legal fees.

"The invoice raises questions as to whether Secretary Clinton has similar arrangements with other people or entities associated with her email server," the letter reads. "In light of this, it is important for the committee to know whether Secretary Clinton and her attorneys are providing financial support, legal support, or other coordination to those associates of hers who are involved in congressional committee and federal law enforcement inquiries relating to her email server."

They declined to answer.

"I am bound by ethical obligations to maintain the confidentiality of information pertaining to my representation," Wilkinson wrote on behalf of Mills, Sullivan and Samuelson on Feb. 10, according to a copy of her reply obtained by POLITICO. "As such, I am unable to address your questions."

Authors:

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