

This Appendix sets forth the basic facts concerning the production of the Watkins Memorandum. This memorandum was not produced to any investigative body until January 1996, more than two years after GAO and the Department of Justice first began their investigations of the Travel Office firings. It was the production of this memorandum in January 1996 that led to the expanded jurisdiction of this Office to investigate the statements of Mr. Watkins and Mrs. Clinton regarding Mrs. Clinton's role in the decision to fire the Travel Office employees.

I. The Watkins Memorandum Was Produced to the OIC in January 1996.

The Watkins Memorandum first came to light as a result of a December 19, 1995 memorandum distributed by the White House Counsel's Office to all White House employees in response to a House Committee request for the production of records relating to the Travel Office matter.¹ Nellie Doering, a career government employee who had worked in the White House Office of Administration for 40 years,² saw the December 19 memorandum on December 21, and told Office of Administration Counsel Bruce Overton, "[t]here are White House Travel Office files in Patsy [Thomasson]'s files, and they should be reviewed."³ Doering knew this because in mid-1995 Thomasson had been transferred to a new position within the Administration, and Doering had assisted in archiving and indexing Thomasson's existing records.⁴ Doering recalled placing random documents into folders marked "Travel Office" in

¹ Sherburne, N. Williams, and Yarowsky Memorandum 12/19/95, OIC Bates No. 442-DC-00006608.

² Doering GJ 6/11/96 at 5-6.

³ Id. at 20.

⁴ Id. at 5-7.

July or August 1995.⁵ As a result of Doering's contact with Overton, Thomasson's archived records were eventually reviewed in late December 1995 by Nelson Cunningham, the General Counsel for the Office of Administration and a former federal prosecutor.⁶ Cunningham reviewed one particular series of four folders entitled "White House Travel Office," and realized "that there were documents here that were plainly responsive to the document request."⁷

Cunningham notified Associate White House Counsel Natalie Williams, who reviewed that same folder and pulled out the Watkins Memorandum.⁸ The "Watkins Memorandum" was then produced to the House Committee on January 3 and to the OIC on January 4, 1996.⁹ Although

⁵ Id. at 16. Bruce Overton, a career attorney with the White House Office of Administration, was instructed by the White House Counsel's Office to refuse to answer any questions about the White House Counsel's Office discussions with him regarding the discovery of the Watkins Memorandum. Overton GJ 6/11/96 at 28-29. Lisa Caputo was also instructed by the White House Counsel's Office to refuse to answer any questions on grounds of attorney-client privilege regarding the discussions she and others had with the First Lady about the Watkins Memorandum in January 1996, while Mrs. Clinton was preparing for her national book tour, and her staff was discussing how she should respond to anticipated questions about the discovery of the Watkins Memorandum. Caputo GJ 7/31/96 at 41-42.

⁶ Cunningham GJ 6/11/96 at 12. Overton carried Thomasson's boxes to Cunningham's office with a note saying that "there was at least one memorandum that would be responsive to the request." Overton GJ 6/11/96 at 23-26. On January 2, 1996, Cunningham and Overton discussed the David Watkins document that was found in Thomasson's box for the first time and agreed it was responsive. Id. at 31-32.

⁷ Cunningham GJ 6/11/96 at 12.

⁸ See id. at 12-18. The White House Counsel's Office instructed Cunningham to invoke attorney-client privilege and refuse to answer when he was asked to discuss his interactions with White House Counsel's Office attorney Natalie Williams regarding the Watkins Memorandum. Id. at 19. Likewise, Natalie Williams invoked both executive and attorney-client privileges and refused to answer questions regarding conversations she had regarding the memorandum with White House Counsel's Office attorney Jane Sherburne. N. Williams GJ 6/11/96 at 31.

⁹ Letter from John M. [Jack] Quinn, Counsel to the President, to the Honorable William F. Clinger Jr., Chairman of the House Committee on Government Reform and Oversight 1/17/96, OIC Bates No. 442-DC-00006571 at 6572, 6576.

the "Watkins Memorandum" clearly fell within previous subpoenas and requests for documents during 1994 and 1995 by the OIC, Congress, and the Department of Justice,¹⁰ Thomasson testified that she had forgotten about the memorandum, and consequently did not alert anyone to its existence prior to its discovery in her files.¹¹

After the draft memorandum's production, all related additional drafts and documents were subpoenaed from Watkins and Moore by the OIC and the House Committee.¹² Watkins and Moore, through counsel, asserted attorney-client privilege.¹³ Moore subsequently testified that during the memorandum's preparation he did not have an attorney-client relationship with Watkins.¹⁴ In Moore's view, and despite his admission that he knew that no attorney-client privilege applied, Congress was wrong to hold him and the others in contempt because Congress

¹⁰ See Memorandum from Eggleston to Thomasson 4/5/95, OIC Bates No. 442-DC-00006602 and Memorandum from Joel Klein to all Executive Office of the President staff 9/19/94, OIC Bates No. 442-DC-00006604.

¹¹ See Thomasson GJ 7/24/96 at 149. Watkins shared drafts with only two people in the White House -- Matt Moore and Patsy Thomasson. Moore assisted Watkins in drafting seven and possibly eight different versions of the memorandum. Some time in the Fall of 1993, Watkins gave two of the drafts to Patsy Thomasson to review. Thomasson testified that she looked at the drafts but could not recall ever speaking in detail to Watkins about the memorandum other than to tell Watkins not to write it. Thomasson further testified that she did not tell anyone else about the memorandum. Id. at 222-24.

¹² Grand Jury 95-2 Subpoena No. D572 (May 21, 1996)(issued to William David Watkins demanding any and all versions of the Watkins Memorandum); Grand Jury 95-2 Subpoena No. D573 (May 21, 1996)(issued to Matthew L. Moore demanding the same).

¹³ Moore GJ 4/28/99 at 26.

¹⁴ Moore GJ 6/20/96 at 66.

bore the burden of "trying to resolve the attorney-client privilege."¹⁵ On May 23, 1996, Watkins's counsel agreed to produce all the memorandum's drafts to the OIC, with one exception -- a redlined version containing notes of Watkins's previous counsel, Ty Cobb.¹⁶ The OIC agreed that this production would not constitute a waiver of Watkins's asserted attorney-client privilege with Moore.¹⁷ In the end, Watkins never produced the additional drafts to Congress, although he produced them to the OIC.¹⁸

II. The White House Failed to Produce The Memorandum Until January 1996 Even Though it Was Responsive to Numerous Pending Requests For Production.

At the time the Watkins Memorandum was created, one of the individuals working on its creation, Matt Moore, was also responsible for responding to outstanding document requests from the Department of Justice and the General Accounting Office. In March 1993, Matt Moore went to work for David Watkins in the Office of Management and Administration.¹⁹ Moore had a significant role in gathering White House documents for review by the GAO for its

¹⁵ Moore GJ 4/28/99 at 26.

¹⁶ See Letter from Robert J. Mathias, Esq., to John D. Bates, Esq., Eric A. Dubelier, Esq., and Roger M. Adelman, Esq. (May 23, 1996).

¹⁷ Id.

¹⁸ GJ 95-2 Exh. 69-F is the version of the Watkins Memorandum first turned over to Congress, which was discovered among materials that had been archived from Patsy Thomasson's office. Thomasson GJ 7/24/96 at 147-48. It contains Thomasson's handwriting. Moore GJ 6/27/96 at 59-62; Thomasson GJ 7/24/96 at 142-44. Letter from Jack Quinn, Counsel to the President to the Honorable William F. Clinger, Chairman of the Committee on Government Reform and Oversight 1/17/96, OIC Bates No. 442-DC-00006571 (outlining the process by which the Watkins Memorandum was distributed and to whom). Letter from Robert J. Mathias, Esq., to John D. Bates, Esq., Eric A. Dubelier, Esq. and Roger M. Adelman (May 23, 1996).

¹⁹ Moore GJ 6/20/96 at 7.