

SECURITY OF FBI BACKGROUND FILES
AUGUST 1, 1996

HEARING
BEFORE THE
COMMITTEE ON
GOVERNMENT REFORM
AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION

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AUGUST 1, 1996
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THURSDAY, AUGUST 1, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 9:10 a.m., in room 2154, Rayburn House Office Building, Hon. William F. Clinger, Jr. (chairman of the committee) presiding.

Present: Representatives Clinger, Gilman, Burton, Hastert, Morella, Shays, Schiff, Ros-Lehtinen, McHugh, Horn, Mica, Blute, Davis, McIntosh, Tate, Gutknecht, Souder, Flanagan, Bass, LaTourette, Sanford, Collins of Illinois, Waxman, Lantos, Wise, Spratt, Slaughter, Kanjorski, Condit, Peterson, Thurman, Maloney, Barrett, Norton, Moran, Green, Fattah, and Cummings.

Staff present: James Clarke, staff director; Judy Blanchard, deputy staff director; Kevin Sabo, general counsel; Jonathan Yates, associate general counsel; Edmund Amorosi, director of communications; Judith McCoy, chief clerk; Barbara Olson, chief investigative counsel; Barbara Comstock, special counsel; Joe Loughran, investigator/professional staff; Laurie Taylor, Kristi Remington, investigators; Michael Donohue, press assistant; and David Jones, staff assistant.

Mr. CLINGER. Good morning.

We are going to have a panel from the FBI with us this morning to discuss a number of matters, and as we have proceeded in full committee hearings of this nature in the past, I will give an opening statement, to be followed by an opening statement by Mrs. Collins.

We will then go to the witnesses to hear their statements and comments, and then members who have opening statements may use their 5 minutes to make them or may submit them for the record, either one.

Back in the wake of the May 1993 Travel Office firings and the White House's struggle to explain why it had called in the FBI to investigate the employees, the White House called the FBI Communications Director to the White House for a press strategy meeting. Mr. Collingwood amended the FBI statement and the White House promptly reported the FBI was initiating a criminal investigation. The White House and the FBI were properly chastised by Congress, the press and subsequent reviews of this matter for this abuse of the FBI.

Justice Department spokesman Carl Stern in a memo written in May 1993 observed, "once Collingwood arrived at the White House

and found the President's lawyers, (three of them!) attending the communications huddle, shouldn't he have backed out and called for reinforcements?" Even at that time, the administration's Justice Department spokesman recognized the FBI needed reinforcements to resist politicization by this White House.

Upon taking the reins at the FBI, Director Freeh observed, quote, I want to cite the lessons that must be learned from an event that occurred shortly before I became FBI Director. It concerned a White House official calling directly to the FBI with instructions to investigate alleged wrongdoing by employees in the White House Travel Office. It was an unfortunate incident and an example of matters that we will avoid at all costs. When I was asked to become FBI Director, I told the President that the FBI must maintain its independence and have no role in politics. President Clinton fully agreed, no politics in the FBI, no exceptions. Close quote.

But the Travel Office firings were not the end of this White House's attempts to use and, in my view, abuse the FBI. On June 14, 1996, following an initial review of the Filegate matter, the FBI Director issued a report stating the FBI had been "victimized" as a result of relying upon the good faith and integrity of the White House. Today we will further explore the practices and policies that led to what the FBI Director called, "egregious violations of privacy."

On June 14—the June 14 FBI report demonstrated the FBI engaged in a practice in which it deferred to the White House and didn't ask questions. But clearly questions had been raised. The FBI had a background report on Craig Livingstone which we now know had raised questions for the Secret Service. The FBI had even more information about Livingstone.

Why didn't anyone raise questions about the person in charge of this sensitive position or at least alert staff to be on guard?

Of course Ms. Larson, who headed up the Name Check Unit, couldn't be expected to know about Mr. Livingstone. The fact that Ms. Larson and others trusted White House officials should of course not be held against her. We would hope that career officials throughout the Government would not have to be suspect of shady characters in positions of trust at the White House. It has been pointed out repeatedly over the last 2 months that neither the FBI files nor the responsibility for handling them should have been entrusted to Craig Livingstone.

After the June 14th report was completed, Attorney General Reno briefly requested a full investigation by the FBI. However, on June 20th, she turned over the investigation to Independent Counsel Starr in order to avoid a conflict of interest. Attorney General Reno stated:

"I have concluded it would constitute a conflict of interest for the Department of Justice itself to investigate the matter involving an interaction between the White House and the FBI, a component of the Department of Justice."

As we proceeded to take depositions in this matter, FBI Director Freeh requested the committee allow the FBI to provide the background, FBI background files themselves instead of questioning the agents. Dennis Sculimbrene, the agent who conducted Craig Liv-

ingstone's background investigation, was deposed by the Committee on Government Reform and Oversight on July 15, 1996, but in keeping with the FBI's request, Agent Sculimbrene did not disclose information from Mr. Livingstone's background file.

On this same day, my Chief Investigative Counsel, at the suggestion of Director Freeh, had scheduled a meeting at the FBI to review the FBI background files on Mr. Livingstone and Mr. Marceca. Apparently in preparation for this anticipated review of Mr. Livingstone's file, the FBI reviewed the file and came upon the interview notes which state that Mr. Nussbaum claimed that Craig Livingstone came "highly recommended" by the First Lady, Hillary Clinton. FBI General Counsel Shapiro was informed of this information and shortly thereafter, we understand, gave the White House a heads-up, reading the notes verbatim over the phone to Deputy White House Counsel Kathleen Wallman.

Prior to doing so, he contacted Deputy Attorney General Gorelick's office and notified her chief of staff and told him he was going to pass it on to the White House. Ms. Wallman notified White House Special Counsel Jane Sherburne.

Ms. Sherburne then spoke with FBI Deputy General Counsel Tom Kelley and put out what appears to have been an all-points-bulletin to people throughout the White House and interested parties outside. The following is a listing, perhaps still incomplete, of the people who were alerted by the White House to this information by Ms. Sherburne or her associates: The First Lady, the First Lady's Chief of Staff, Maggie Williams; White House Deputy Chief of Staff, Harold Ickes, to whom Ms. Sherburne reports; White House Deputy Chief of Staff Evelyn Lieberman; two attorneys for Bernard Nussbaum; two attorneys for Craig Livingstone; Senior White House Advisor George Stephanopoulos; White House Damage Control Spokesman, Mark Fabiani; and other White House Associate Counsels, including John Yarowsky, Sally Paxton, and "perhaps others," according to Ms. Sherburne.

On July 16, 1996, my Chief Investigative Counsel reviewed the FBI background files on Craig Livingstone and Anthony Marceca. No one from the FBI called me to read 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. And I did not review the file personally until July 18 of this year.

On July 16, there was another unusual occurrence. Two senior headquarter FBI agents appeared at the home of FBI Agent Sculimbrene to talk with him about this interview of Bernard Nussbaum and asked 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, I can only characterize it as, disturbing action?

On July 18, when I reviewed Mr. Livingstone's FBI background file, I inquired as to whether or not any of this information was going to be communicated to the White House. On July 19, Mr. Shapiro wrote claiming that he had indeed informed the White House about the information because quote, it was determined that

the Bureau had a responsibility to advise affected parties, close quote. Since some of these so-called "affected parties" were individuals who were being called before the grand jury in a matter that the FBI was designated to stay out of, why did Mr. Shapiro, a former prosecutor, think it appropriate to give the White House a heads-up?

And now we learn that this was not Mr. Shapiro's first heads-up to the White House. On February 21, 1996, Mr. Shapiro personally delivered to the White House Counsel Jack Quinn a copy of a draft manuscript of the book written by retired FBI Agent Gary Aldrich, a full 4 months before it was published. For what official purpose was this action taken? And since Mr. Shapiro claims to have attempted to do things in a nonpartisan manner, who else did he provide copies of the book to?

Today we will also learn Mr. Quinn's recent letter to FBI Director Freeh attacking the credibility of FBI agents and attacking me personally, was first read to Mr. Shapiro to get his opinion on the tone and content of the letter. Is this in keeping with Director Freeh's wishes to keep the FBI independent and out of politics?

So we have the heads-up FBI General Counsel notifying the White House about book publications, the Nussbaum interview and being called by the White House Counsel for editing consults. I would note the White House and over a dozen present and former staff obtained the information in Mr. Nussbaum's interview prior to my having reviewed the file. Yet we have the dismay expressed by some regarding disclosure of the information regarding the notes on Mr. Nussbaum's interview on the House Floor in the course of my legislative duties.

Is it the President's position that the White House Counsel's Office and individuals of its choosing, such as Bernard Nussbaum and Craig Livingstone, are the only people who had the right to this information? Were all of these White House officials who were notified of this information notified—against the President's direction?

Unfortunately, I believe this is just one in a long line of actions taken by the White House Counsel's Office in which it has adopted the role of adjunct defense attorneys instead of the institutional role of Counsel to the Office of the President. We have learned that the White House has been regularly briefing and debriefing attorneys of individuals being called before congressional committees as well as the grand jury. We don't need the FBI General Counsel contributing to these troubling activities.

As I made clear in my statement on the House Floor last week, I was very troubled by the discrepancies between the various statements regarding who was responsible for Craig Livingstone's hiring. I did not make, I repeat, I did not make a determination of the veracity of the statements but rather referred it and the issue to the proper authorities to do so, which is exactly what the FBI should have done in light of the Attorney General's admonition.

Clearly the White House has its own reasons for adopting Mr. Nussbaum's representations, as it has on many other occasions, but I would hope that the White House would not continue the pattern of attacking career civil servants in order to shift the focus from questionable activities of political appointees past and present. Just last week in our hearing we learned that the White House's at-

tempts to use the Secret Service as a scapegoat in the Filegate matter were misplaced and highly unfair to these dedicated public servants whose mission it is to protect the President.

I also note Mr. Nussbaum has disputed the accounts of many individuals regarding statements he has allegedly made and actions he has allegedly taken. He has differed with the recollections of events given by everyone from his own staff to the former Deputy Attorney General.

Mr. Nussbaum also claimed that on July 22, 1993, during the review of Vince Foster's office, that he showed everyone in the room the Vince Foster Travel Office notebook, yet no one there recalls seeing it that day and the only reference to something regarding the Travel Office in notes taken that day was a cryptic reference to the White House Management Review which was not part of Mr. Foster's Travel Office file.

Further, Mr. Nussbaum's own staff claim he never told them about the notebook or showed it to them. He didn't even show it to the individuals at the White House who were responsible for producing documents in the various Travel Office investigations. We now learn from reviewing the 2,000 pages of White House notes that the committee has subpoenaed but not yet physically received from the White House, that Mr. Nussbaum didn't inform anyone at the White House about the Travel Office file until after a grand jury appearance in May 1994.

Also in the 2,000 pages of documents are notes which indicate the White House investigated whether or not Nussbaum told anybody about the Foster Travel Office notebook. The Counsel's Office learned that nobody but Mr. Nussbaum knew about the Foster Travel Office notebook for close to a year. Are we going to hear similar denunciations of White House staff, misrepresenting Nussbaum's statements or are such denunciations only reserved for career law enforcement officials who conflict with Mr. Nussbaum's account of events?

I understand why the White House may have wanted to keep quiet the information regarding Mr. Nussbaum's statements about Craig Livingstone and who recommended him from the public. But given the dissemination of this information throughout the White House before I even had an opportunity to review the file and long before I discussed this information on the House Floor, the White House objections ring hollow and hypocritical, and I trust the public and proper law enforcement authorities can and will discern the facts in this matter.

[The prepared statement of Hon. William F. Clinger, Jr. follows:]

PREPARED STATEMENT OF HON. WILLIAM F. CLINGER, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA

ANOTHER "HEADS UP" TO THE WHITE HOUSE

Back in the wake of the May 1993 Travel Office firings and the White House's struggle to explain why they had called in the FBI to investigate the employees, the White House called the FBI Communications Director to the White House for a press strategy meeting. Mr. Collingwood amended the FBI statement and the White House promptly reported the FBI was initiating a criminal investigation. The White House and the FBI were properly chastised by Congress, the press and subsequent reviews of this matter for this abuse of the FBI.

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Also in the withheld 2000 pages of documents are notes which indicate the White House investigated whether or not Nussbaum told anybody about the Foster Travel Office notebook. The Counsel's office learned that nobody but Mr. Nussbaum knew about the Foster Travel Office notebook for close to a year.

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I understand why the White House may have wanted to keep quiet the information regarding Mr. Nussbaum's statements about Craig Livingstone and who recommended him from the public. But given the dissemination of this information throughout the White House, before I even had the opportunity to review the file and long before I discussed this information on the House floor, the White House objections ring hollow and hypocritical. I trust the public and the proper law enforcement authorities can and will discern the facts in this matter.

Mr. CLINGER. I am now pleased to recognize the gentlelady from Illinois, Mrs. Collins.

Mrs. COLLINS OF ILLINOIS. Thank you, Mr. Chairman.

We continue our hearings on the FBI files. As I have noted at previous hearings, we all agree that the requests for files on former employees were wrong. The issue for these hearings continues to be whether the files were requested with an intent to get the dirt on the former employees or a result of errors.

So far there is no evidence that the individuals who requested the files had been ordered to purposely obtain them by higher-ups in the Clinton administration, nor is there evidence that anyone higher than Craig Livingstone was aware that the files had been improperly requested. Even more importantly, we have no evidence that the files were improperly disclosed to anyone outside the White House Personnel Office.

Ironically, the only public disclosure of an FBI background file to date has been our chairman's disclosure of the contents of the FBI's file which he recently reviewed on Craig Livingstone. Contained within this file was a summary report by Special Agent Dennis Sculimbrene that White House Counsel Bernard Nussbaum told him that Craig Livingstone had the backing of the First Lady, who was a friend of Livingstone's mother.

Now this tidbit was the first item of news from our investigation and hearings on the FBI files that the chairman deemed important enough to take to the House Floor.

Your Special Order, Mr. Chairman, insinuated that Bernard Nussbaum, Craig Livingstone, William Kennedy, and the First Lady must have lied because they had denied this allegation. Now, perhaps you were just raising the issue for investigation, but that could have been done by a letter to the Independent Counsel.

So as I see it, the clear purpose of the Floor statement was to plant in the mind of the American people the unsubstantiated thought that the First Family and all of their lawyers were lying

about this matter. Indeed, after your Special Order, who wouldn't think they were lying and raise the question of why an FBI agent would write this note if it weren't true?

Well, just like every other time that there has been a wild unsubstantiated accusation hurled at the occupants of the White House, only half of the facts were released. In this case, neither my colleagues on the Floor, nor the public who was watching, were given information on the credibility of the agent who had written the note. That apparently will be left to me and the members on this side of the aisle to point out today and in the future.

The allegation that Mrs. Clinton was behind the hiring of Craig Livingstone and knew his mother was hardly news. Agent Gary Aldrich, a friend and colleague of Mr. Sculimbrene, had made the charge in the Wall Street Journal and in his book, Unlimited Access.

Now, for those of you who might not have been paying attention to that book, it has been widely discredited from all sides. The allegation has also appeared in the Wall Street Journal on June 25, but in this case, Mr. Sculimbrene was reported to have attributed the remark not to Mr. Nussbaum, but to William Kennedy and Craig Livingstone.

Then on July 15, in what the chairman described in his letter to me, as something called a sworn interview, and not in a deposition under Rule 19 of our committee rules, which requires 3 days written notice, Mr. Sculimbrene told the majority staff that it was Mr. Livingstone who actually told him this fact. He also said he didn't put the statement in Mr. Livingstone's background file.

So now it turns out that Mr. Sculimbrene has told numerous stories about how he came to know these so-called facts. We might have never known about the discrepancies in Mr. Sculimbrene's statements to the majority staff in his interview if we hadn't insisted on getting the transcript.

In assessing Agent Sculimbrene's credibility, we must also look at a very important FBI memo in the committee's possession in which Special Agent David Brasseaux stated that Mr. Sculimbrene's behavior was quote, abnormal and indeed irrational, end quote, during a conversation with him. Agent Sculimbrene, who is described in the memo as a close personal friend of fired Travel Office head Billy Dale, is recalled as quote again, voicing very bitter political feelings against the Clinton White House, end quote. Agent Brasseaux expressed his concern that Sculimbrene, who appeared as a defense witness at the Dale trial, might, again quoting, "provide erroneous testimony."

And, Mr. Chairman, I can't help but wonder why if this allegation was truly troublesome, the committee's investigators didn't just go to Craig Livingstone's mother, Gloria, to ask her directly whether or not she knew the First Lady. Of course, she has subsequently denied that she does. Perhaps a cursory review of her background could have revealed—if there were any truth at all to the allegations.

So I suspect the reason was obvious: They knew she would deny it and they knew that the more they investigated the matter, the more implausible the allegation would become.

Now let me briefly turn to the issue of whether the FBI should have told the White House about the existence of this summary in the file, although I'm sure we will probably deal with the issue at length during today's hearing.

First, I suspect that most of us here know that the reason the other side of the aisle is upset about the notification is simply that the White House had an opportunity to present its side of the story at the same time the chairman went to the Floor, as opposed to a day later. I doubt any of us believe that this information would not have been released by the chairman and become available to the White House.

When asked by the FBI, the Independent Counsel had no problems about Congress reviewing the files, nor did they ask that any conditions be placed upon its release, which could have included release to the White House. They didn't even want to know—or didn't even want to review the file as a matter of fact. To the extent Mr. Nussbaum would have been testifying to a grand jury, the issue would not have been who hired Craig Livingstone.

Finally, Mr. Chairman, your Floor statement criticized two FBI agents for going to Agent Sculimbrene's home and telling him that the White House was unhappy with what he had written about Mr. Nussbaum's interview. Once again, the question is what type of investigation did the committee do to determine the veracity of this charge against the two agents before making these public charges?

At a sworn deposition, Mr. Shapiro testified that the agents in question denied the allegation. Therefore, it appears that this may be one more case in which Agent Sculimbrene's account of a conversation is disputed.

The concern of the FBI that in light of the denials Agent Sculimbrene's report may have been inaccurate was a real one. Let's keep in mind that just recently FBI Agent Halbert Harlow was convicted of falsifying over 50 White House interviews.

All of us on occasion have had cause to criticize the FBI. It is clear to me that the FBI has been caught in a crossfire between congressional Republicans and the White House and has been attempting to act in a fair and impartial manner. They have certainly given this committee broader access to their files than I have ever seen in the past 23½ years that I've been a Member of this body. Whether the FBI acted prudently in telling the White House about the existence of this document is more of a political call than a legal one.

As the FBI has already testified, what seemed a nonpartisan decision at the time may appear different after the fact. When this committee began its hearing into the FBI files, I noted that I fully concurred. I want to get to the bottom of how and why the files were requested and what was done with them.

However, it appears to me that our investigation is increasingly coming to the conclusion that the requests were, in fact, a bureaucratic error and not a sinister plot. The committee hearings keep shifting their focus. The issue of who hired Craig Livingstone is an unfortunate diversion from the true issues involved in this affair. I sincerely hope that we will soon get back to seeking the answer to the pertinent questions of, one, why the files were requested and, two, what was done with them.

And I yield back the balance of my time.
 [The prepared statement of Mr. Waxman follows:]

PREPARED STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS
 FROM THE STATE OF CALIFORNIA

I would like to express my appreciation to our witnesses for appearing before us and providing us with testimony today.

I want to take time to discuss some matters that I raised in a letter to you, Mr. Chairman, on July 26, to which you have not yet responded. They are important matters for our committee and deserve our immediate attention.

In my July 26th letter to you, I strongly objected to the committee's procedure, which is in violation of our rules, regarding the deposition of Dennis Sculimbrene.

Mr. Sculimbrene gave his deposition—or whatever it was since the Minority was not present—on July 15. On July 25—a full ten days later—I attempted to obtain a copy of that deposition. My staff was first told I could not have one. Later, indeed ten minutes before you began your Special Order to disclose information in Craig Livingstone's FBI file, I was told I could have a copy of that deposition. When I attempted to get a copy later that night, however, I was again told I could not get one. I was told that I must take my request up with you, but you were "out of pocket."

My letter requesting Mr. Sculimbrene's testimony was delivered to you the next day, July 26. On July 30—15 days after the interview was conducted—you made his testimony available to the Minority.

I object to this violation of Minority rights.

Secondly, since you have relied exclusively on Mr. Sculimbrene's account of events regarding a supposed relationship between Mrs. Clinton and Craig Livingstone's mother, Mrs. Gloria Livingstone—an account which is contrary to the accounts of the people who have first-hand knowledge—I asked in my letter that Mr. Sculimbrene be called to testify before the committee to clear up this matter before any other hearings were held. Today, I renew my request that he be called to testify.

Finally, I asked you in my letter to verify that you had no evidence that Mrs. Clinton and Mrs. Livingstone knew one another at all and that you had made no effort to obtain such evidence. A simple phone call to Mrs. Livingstone would have been a good start to get to the bottom of this matter.

This committee's FBI file investigation began with wild charges about a White House enemies list. When that proved to be a dry hole, the committee went in search of other theories to explain preconceived notions of wrongdoing by the White House. The latest theory was that Mrs. Clinton was responsible for Craig Livingstone's hiring because she was friends with his mother.

Everyone now knows that was not true at all. So now the committee is off on something else. I have been told that the issue now is not whether Mrs. Clinton and Mrs. Livingstone were friends, but whether Mr. Nussbaum thought they were, and that led to Mr. Livingstone's hire.

And I have been told that the issue is no longer a friendship between the First Lady and Mrs. Livingstone, but discrepancies in Mr. Nussbaum's statements about a friendship.

Let us be clear. Mr. Nussbaum's statements, some under oath, do not contain discrepancies. The discrepancies are that Mr. Sculimbrene's statements conflict with Mr. Nussbaum's.

That is why Mr. Sculimbrene should be called to testify before the committee.

It is certainly clear by now that the committee's investigation is not aimed at getting to the truth. It is aimed at getting—at any cost to fairness—the President and First Lady.

If this committee were trying to get to the truth, it would find the time to get evidence before it publicly and wrongly accuses people of lying. It would get evidence before it publicly and wrongly suggests potential criminal misdeeds. It would place a phone call to Mrs. Livingstone to simply ask her if she knew Mrs. Clinton before the chairman took to the issue to the House floor on a Special Order.

These investigations are intended to hurt the President. He can take care of himself. He will continue to answer your questions, as he has stated repeatedly that he will do. In trying out your untested theories in public, however, you are hurting innocent people. They do not deserve this mistreatment. I ask you to refrain from making any more public allegations against people without evidence to back them up. And I ask that you respond to the matters I raised in my July 26 letter.

Mr. CLINGER. I thank the gentlelady.

With unanimous consent, I would ask the deposition transcripts of our witnesses today be placed into the committee record and made available to the public.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, I object.

Which one is this?

Mr. CLINGER. This is the first one. The first one. These are just the depositions of the witnesses that are testifying today.

Mrs. COLLINS OF ILLINOIS. Give me the names of those, please.

Mr. CLINGER. These would be the witnesses on our witness list: Ms. Larson, Mr. Shapiro, Mr. Kelley and Mr. Thornton.

Mrs. COLLINS OF ILLINOIS. OK.

Mr. CLINGER. Without objection, no objection heard.

Well, the ones we have are Ms. Larson, Mr. Shapiro and Mr. Kelley.

Mrs. COLLINS OF ILLINOIS. Those are the ones. No problem.

[The information referred to follows:]

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C.

IN THE MATTER OF: WHITE HOUSE TRAVEL

DEPOSITION OF HOWARD M. SHAPIRO

TUESDAY, JULY 30, 1996
Washington, D.C.

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 1:30 p.m.

Appearances:

Present: Representative Peterson.

Staff Present for the Government Reform and Oversight Committee: Barbara Olson, Chief Investigator; Barbara Comstock, Investigative Counsel; Laurie Taylor, Investigator; Kevin Sabo, General Counsel; Ronald Stroman, Minority Deputy Staff Director; and David Schooler, Chief Counsel.

From FEDERAL BUREAU OF INVESTIGATION:

LARRY R. PARKINSON, ESQ.

Federal Bureau of Investigation
Ninth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Ms. OLSON. We are on the record this morning—this afternoon for the deposition of Howard Shapiro, which will be administered under oath.

I would like to identify the people who are present in this room. Mr. Shapiro is here, with FBI Deputy General Counsel, Larry Parkinson. Ron Stroman for the Minority is present, as well as Barbara Olson and Laurie Taylor for the Majority.

I would like to give you some background, before you are sworn in, concerning this investigation and your appearance here. Pursuant to its authority under Rules 10 and 11 of the House of Representatives, the Government Reform and Oversight Committee is investigating the White House Travel Office matter.

This matter refers to all events that lead to the May 19th, 1993, firings of the White House Travel Office employees and includes all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1, 1993, to the present.

Our investigation also encompasses the activities of Harry Thomason, Darnell Martens, and Penny Sample at the White House, as well as all allegations of wrongdoing concerning the Travel Office employees.

The committee investigation is reviewing all actions taken by the FBI and the Justice Department, both prior to and after the firings, which include any actions by field office personnel and any White House involvement in coordination or attendance of interviews. This investigation also includes the FBI files which were received by the White House in the fall of 1993 and the spring of 1994.

The investigation includes, but is not limited to, the investigation and prosecution in the United States v. Billy Ray Dale case and all investigations and subsequent

reviews of the Travel Office firings by any agency including, but not limited to, the White House Management Review, the FBI and Justice Department reviews and reports, the IRS and Treasury internal reviews and reports, the GAO review, as well as the proposed United States House of Representatives Resolution of Inquiry, which was considered and voted on in the House Judiciary Committee in July of 1993.

Although we recognize that you may not have information about many of these subjects, do you understand that you should not purposefully exclude any information which you presently have on these matters?

Mr. SHAPIRO. In response to a question to which it would be responsive, yes.

Ms. OLSON. The committee has been granted specific authorization to conduct this deposition pursuant to House Resolution 369, which was passed by the House of Representatives on March 7th, 1996. Pursuant to Committee Rule 19, which has been provided to your legislative affairs person, Maggie Owens, both Majority Counsel and Minority Counsel, will be afforded an equal opportunity to pose questions to each witness.

Committee counsels will proceed with equal rounds of questions, each lasting up to 1 hour, until both counsel have completed their questioning. The only exception to this will be if a member of this committee is present and wishes to ask questions of you. If so, the Member will be allowed an immediate opportunity to ask their questions, and after they are finished we will resume our questioning.

You are here today voluntarily and not by subpoena, is that correct?

Mr. SHAPIRO. That's correct.

Ms. OLSON. And you understand this deposition will be under oath. You will be allowed to confer with your attorney. If you do not understand a question, tell me and I will try to rephrase the question.

I do ask that all objections raised by your attorney be stated for the record with the reason for the objection clearly stated. At that point, committee Majority Counsel will review the objection to determine whether it is proper before this deposition. If counsel believes that the objection is not proper, I will confer with Minority Counsel and ask that they express their views on the record. Ultimately, an objection outstanding may be presented to the Chairman or his designee for resolution. The Chairman has agreed to confer with the Ranking Minority before making any final determination on an objection.

At the close of this deposition, you will be given a 5-day time frame in which you and your attorney may review your deposition once it has been transcribed to correct any technical problems that you perceive might have occurred in the transcription, as well as to clarify any matters you feel need to be clarified.

Do you understand that?

Mr. SHAPIRO. I do. I should note that Mr. Parkinson is not my attorney; that he represents the FBI and is here in the role of an advisor, but I am here without an attorney.

Ms. OLSON. Okay.

With that, have you made a determination whether or not you need a personal attorney? And are you satisfied that you wish to go forward with this deposition without a personal attorney?

Mr. SHAPIRO. For now, yes.

Ms. OLSON. Okay. Certainly if that changes at any time, since you are here without a personal attorney at any time you feel as though you do, we will stop this deposition.

Mr. SHAPIRO. I don't anticipate that. You would know better than I.

Ms. OLSON. But that is something I want you to understand. We have few witnesses who come here without attorneys and the understanding is always if they do feel they need an attorney or want to stop questioning in an area, we will do so.

Mr. STROMAN. Some come with tape recorders.

Mr. SHAPIRO. I hadn't thought of that.

Ms. OLSON. One of the things I did want to tell you is that since we are going to have a hearing on Thursday, you are a witness, your deposition will be used in that hearing and will likely be made public at that time. The court reporters have been giving us a very quick turnaround and so—

Mr. SHAPIRO. I am sorry, will be made public without redaction?

Ms. OLSON. We will give you a period to review the deposition but unfortunately we are in a very short time period. We are not going to have the 5 days. All depositions are scheduled to become public Friday. Since you will be testifying at the hearing, we will try and will make time for you and Mr. Parkinson or whomever you would like to come in and review your deposition so you can make any corrections you would like to.

Mr. SHAPIRO. Beyond the question of technical corrections, there are certainly questions which I can imagine your asking me here that I—in a continuing effort to be as cooperative as possible, I would want to answer for you, but which I wouldn't think you would think, and I certainly wouldn't think, would necessarily be appropriate to be made public. Will any effort be made to redact personnel information about certain individuals that we might get into or on matters like that?

Ms. OLSON. Yes. The Chairman does review that and before they are made public they will be reviewed for that, and certainly since you have highlighted that I will make sure I mention it. Thank you.

Mr. STROMAN. Although, if there are particular—if I may interject, if there are particular areas that you believe are getting into areas that you would like redacted, if you can just point that out, that way it would be easier to take that into consideration.

Mr. SHAPIRO. Sure. If I can keep that in mind at the same time I am doing everything else.

Ms. OLSON. At this time, I will have the court reporter swear you in.

THEREUPON, HOWARD M. SHAPIRO, a witness, was called for examination by counsel, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MS. OLSON:

Question. I would like you to state your full name and give us some of your background, leading up to you coming back into the FBI.

Answer. Sure. Could you identify for me who is present?

Question. Yes, Barbara Comstock of our committee, is also present.

Answer. We did meet once, briefly.

Howard M. Shapiro. How much background do you want?

Question. Let's go from law school. If it's really long, we can shorten it.

Answer. Okay. It's not really long.

I attended Yale Law School, graduated in 1985, clerked for United States District Judge, now Circuit Judge, Pierre N. Leval; from December of '85—some things before but that's the main point, December of '85 until June of '87, when I moved over to the United States Attorney's Office for the Southern District of New York where I was an Assistant United States Attorney.

I remained in that position, although I had a number of special assignments while I was in that position, but I remained in that position in the employ of the United States Attorney's Office through December 31st of 1992.

Starting immediately thereafter, I took the position of an Associate Professor of Law at Cornell Law School, and also maintained, while I was at Cornell, a special appointment to the Department of Justice to handle a particular ongoing matter.

On August 30th, I was—still of 1993, I was sworn in to the FBI and severed my—no, I did not. I am sorry. Continued to finish up teaching a semester there at Cornell, which I went on leave from at the end of that semester, and I have been in this position as general counsel of the FBI since that time.

Question. Okay. Did you know Director Freeh before you came to the FBI?

Answer. Yes.

Question. Can you just describe how you met him and your knowledge of Director Freeh?

Answer. Sure. I first met him when I came to clerk for Judge Leval. Director Freeh, then an Assistant United States Attorney, was the lead attorney in what was commonly known as the "pizza connection case" that was then going on before Judge Leval. So in a way that a law clerk gets to know an attorney appearing before a judge, which is somewhat distant and formal but in other respects—as well as an unusually close relationship, particularly in a case that lasts 17 months, I came to know him somewhat.

He encouraged me to apply to the United States Attorney's Office, which I did. I believe he assisted me in being selected for the job.

I joined the office, as I said, in June of whenever that was, '87, and at that point we became colleagues, though I did not have all that much to do with him at first. He was either by then or shortly thereafter the chief of the organized crime unit. I started in general crimes. I went through narcotics and on one of my early trials Mr. Freeh assisted me, second seated me, in the—in my trial. But I had fairly limited contact with him. It was always cordial but limited. We were not then and frankly aren't now social friends.

Until sometime in May of 1990, almost exactly just under 3 years when I was in the office, when he came and asked me if I would join him on a special assign-

ment by the Attorney General to investigate, and if there was a case there, to prosecute those involved in the mail bombings of December 1989 that had killed United States Circuit Judge Robert Vance, and civil rights attorney Robbie Robinson.

After a day or so, I agreed to do that, and from about May 10th of 1990, through the final day of what became a trial of one person on June 28th of 1991, we worked as closely together as any two attorneys who are working a case together do.

We commuted weekly back and forth from New Jersey, where both of our families reside, to Atlanta, where the case was based. Eventually, the judge moved the venue of the trial to St. Paul, Minnesota, and we stopped commuting and moved up there and tried the case.

The day after the case ended, Mr. Freeh was sworn in as a United States District Judge and left me to follow up the remainder of it.

I had limited but occasional contact, always very cordial and positive, with him after he was sworn in as a judge. I attended, for instance, his swearing in reception. I remained an assistant in the office while he was a judge, as I noted earlier, until I left to become Associate Professor of Law at Cornell. At some point, during the summer of '93, I had some conversations with him about the fact that he was being considered for and he was considering whether to accept the position of FBI Director.

At some point during those conversations, after I had urged him to take the job and encouraged him to do so, for a large number of reasons why he should, he told me that if he—he expected me to follow the same logic and come down and work for him, and I did.

Ms. OLSON. I wanted to say who has joined—Kevin Sabo, who is the general counsel of the committee, has joined us.

The WITNESS. Hi, Kevin.

EXAMINATION BY MS. OLSON:

Question. In August of 1993, when you joined the FBI, what was the position you came in?

Answer. Well, I was hired as general counsel. I think technically on the personnel records it would say special counsel because it took them about 2 or 3 months, since they had never had a general counsel before and there was a somewhat delicate personnel matter, that there was still then at that point an assistant director of the Legal Counsel Division who I was brought in at first over and then ultimately replacing. I think it may have been October before the title was officially changed to general counsel, but for all practical purposes I was brought in to the job and title that I now have.

Ms. OLSON. I would also like to put on the record that Minority Counsel, David Schooler, has now joined us.

The WITNESS. Thank you.

Mr. STROMAN. Quite a crowd, Mr. Shapiro.

The WITNESS. Is that good?

EXAMINATION BY MS. OLSON:

Question. There was a change in the way the general counsel and the counsel's office operated in the FBI under Director Freeh, and I was wondering if you could just describe the changeover where outside attorneys were brought in that had not previously been FBI agents?

Answer. Sure. I suppose in many respects I was the first of those outside attorneys brought in, and I immediately brought in a couple deputies who had been former assistant United States attorneys to work with me in what was then a small office of the general counsel, and began considering and negotiating and working out the conflation of those two offices into a renamed and somewhat recreated Office of General Counsel from what had been my small office in the Legal Counsel Division.

As part of that, though I guess logically independent of that, a decision was made to—by me and the Director—it would be hard for me to identify who was the driving force on that but it was certainly jointly, to move primarily, although not exclusively, to a staff of nonagent attorneys.

In the past and up to the point I came in there, all attorneys in the Bureau were agents. It was a not-too-distant legacy of the policy that all positions of any responsibility were held by agents. There were not professional support people, with very limited exceptions, prior to Director Freeh.

We changed that for two reasons. In one part, it was part of Director Freeh's larger initiative to reduce the number of agents who were assigned to headquarters to get agents doing agent work, investigative work, back out in the field and to not

have what was at that point something just under 10 percent of the agent population assigned to headquarters. So there was a general initiative to streamline the headquarters' agent complement. In fact, that was quite successful in reducing it from somewhere over 800 to slightly over 500.

In addition, I thought, and the Director concurred, that we could improve the overall quality of the office; that it was not an ideal way to run a law office the way it had been done before, because given agent careers—the way the Legal Counsel Division functioned was the Bureau would hire people not selected for who was the best attorney but select people based on their prediction of who would make the best agent. Those people would then be trained as agents for 15 or 16 weeks, would go out and operate as agents and some time later, 2 or 3 or 4 or 5 years later after not having practiced law, they would be recruited back into the Legal Counsel Division.

They would have to—even if they were very fine attorneys, they would have been away from it for some time. They would have to put in a lot of time and effort getting back up to speed and that they would—it was also just a career development step on the path for most agents who would come in, do it for 2 years or, at most maybe 3, and then move on back out to the field. And so we had a limited amount of retained expertise.

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. And I am proud to say, I think that we have accomplished that.

Question. You said you brought in some deputies from the U.S. Attorneys's Office. What deputies did you bring in?

Answer. Two, initially. Stephen Robinson, who was an Assistant United States Attorney with me in the Southern District of New York, though he had left there and gone on to Kroll Associates as a manager/director, and Stephen is with a "p-h," and Andrea Symington from the Southern District of Florida, who I had not known previously but who sent in a letter and recommendations, and I interviewed and was very impressed with and brought her in.

Question. Did you review these nonagent lawyers to see if they had any particularly active political background or any political connections?

Answer. No, not at all. I would have thought that inappropriate. These are career and nonpolitical positions. I think—it may not be unlawful but it's certainly inappropriate to ask someone being hired for a career government job what their political affiliation is or their political activities are. So I couldn't tell you what their politics were either in a general or certainly not in a specific sense.

Question. Are you a career slot?

Answer. Yes. Every slot in the Bureau, other than the Director's, is a career slot. I hold a career SES position.

Question. Excepted service?

Answer. Yes.

Question. Had you participated in political campaigns before coming to work at the FBI?

Answer. Well, for the—not since I was in college in 1980. I had been Hatch-Acted almost continuously since I—it's an interesting question whether the Hatch Act applies to a judicial law clerk, but certainly the Judicial Canon of Ethics make that inappropriate. So since December of 1985 until this date, with essentially no exception, I have been Hatch-Acted.

Question. While you were—I thought you left the U.S. Attorney's Office in December of '92.

Answer. I did, but even at that point I held a special appointment at the Department and, again, I might have technically not been covered but I would have thought it inappropriate.

Question. Did you have any discussions with prior general counsels or was there any guidance provided to you concerning the requirements of the job? Or what did you do?

Answer. Requirements of my job?

Question. What did you do as a nonagent coming into a position that had basically had agents fill?

Answer. Well, I got a lot of guidance from Joe Davis, who was the assistant director of the Legal Counsel Division, and remained in that position for, I believe, approximately 9 or 10 months between when I came, before he retired.

I received a lot of guidance from, for instance, Tom Kelley, who had been a deputy assistant director in the Legal Counsel Division for several years before I arrived and who, as you know, I have kept on as a deputy general counsel.

I received guidance from other people in the Bureau at different levels, both people who had had different levels in the Legal Counsel Division and also importantly from our clients in the Bureau and their views on ways in which the Legal Counsel Division maybe could be improved.

So I talked to all of them. I talked to some people who had previously been in the Director's office under earlier directors, and Webster in particular.

Question. Bill Webster?

Answer. Under Judge Webster, yes.

Question. Who?

Answer. Mark Matthews, who is at the Department of Justice. I talked with—I apologize. I am blanking on his name, but one of—someone else who had been there for Judge Webster and then went over to be general counsel of the CIA.

Question. Are there any guidelines that you're aware of written in the FBI that discuss contacts with the White House or contacts between FBI, Department of Justice, and the White House?

Answer. Well, that's a very broad question. In some areas, I'm certainly aware that they are there. I addressed some of those in my report dated June 14th about the provision of FBI file information and in more detail than I could right now, not having focused on that for the last 6 weeks.

There are no—there are also guidelines issued by the Department of Justice and the White House Counsel's Office which are also referenced in this report relating to contact on pending criminal matters.

There are no—I mean there is, you know—for instance, there are guidelines relating to the provision of foreign intelligence and counterintelligence information. There are guidelines relating to information relating to U.S. persons in various types of investigations. There is an abundance of guidelines; I'm more familiar with some than with others.

Question. The guidelines about contact on pending criminal matters, does that include matters that are under the jurisdiction of an independent counsel?

Answer. Well, I'd have to go back and read it specifically on that. I think—whether it does by its terms, it would in sort of general outline.

Question. My question just goes to whether an independent counsel investigation is considered to be under the umbrella of guidance provided about any other criminal matter that's being conducted in Department of Justice or U.S. Attorney's Office. Is that your understanding, that it is—

Answer. Yes. I think—yes.

Question. That it is within that umbrella?

Answer. That is within the scope of an independent counsel's investigation—since their investigation is a criminal investigation, would be within the scope of those guidelines.

Question. I wanted to go on to the subject of the previous reports that were ordered by the White House in October, November, and December through January and February of 1994.

When did you first learn that the White House Office of Personnel Security had ordered previous reports? I guess the first one was Billy Dale that we discovered, and I guess I want to know when your first notice of—I assume it was Billy Dale; if not, the improperly ordered report.

Answer. Yes. On what I believe was June 5th when Chairman Clinger held a press conference about the finding, the Billy Ray Dale, the request for the previous reports relating to Billy Ray Dale, or whatever exactly he said—I don't specifically recall—I didn't see it at the time. But that afternoon, it was brought to my—I was actually out of the office at a meeting, lunch meeting, and was paged to return to the office.

Question. Do you recall who first discussed this with you?

Answer. I don't for sure. It was either—I called on the way back in and talked, I believe, to my secretary, who said that the director had been looking for me and—it was one of the secretaries in the front office; actually, whether it was my secretary or not, I don't recall—and the director had been looking for me and that Tom Kelley had gone over to cover a meeting. When I came back in, I simply don't recall whether I went directly to the director's office or whether I found Tom Kelley first.

Question. Okay. Can you just tell us what discussions you had about the Billy Ray Dale file at that time?

Answer. Well, I can't really with any specificity. I can tell you that I was advised that Chairman Clinger had found and had announced that there was a request for Billy Ray Dale's files some months after he had left the White House; the request was attributed by Chairman Clinger to Bernard Nussbaum; that the question of why this was made and why we complied with it was immediately risen.

I understood that the director had, I believe, already spoken with Chairman Clinger about it, possibly spoke to him before the press conference. Since I wasn't there, I don't have the exact sequence. But either immediately before the press conference or afterwards, there had been conversation between Chairman Clinger and the director.

I understand the director said that we, the FBI, would look into this, and I don't know whether he told Chairman Clinger who the "we" was, but he fairly promptly told me that the "we" was me.

Question. Okay. And if you will just describe what you did after being asked by Director Freeh to look into the Billy Ray Dale file matter.

Answer. Well, this was the afternoon of June 5th. I believe I obtained a videotape of Chairman Clinger's press conference to see what was said, or perhaps I saw it re-broadcast on C-SPAN or something, but I saw it and watched it.

Tom Kelley was already taking some steps in response to taskings he had received, I guess—I presume from the director prior to my return—and to pull up the Billy Ray Dale file and to see if we could determine exactly what had been disseminated to the White House and when. Paul Cignoli, who is the—that's C-I-G-N-O-L-I, who is the chief of our Civil Discovery Review Unit—

Ms. OLSON. For the record, Congressman Peterson from our committee is present. Congressman, if you have any questions whatsoever, I'll immediately stop if you would like to—

Mr. PETERSON. No.

Ms. OLSON. At any time if you would like to ask any questions, please just tell me and I'll stop.

EXAMINATION BY MS. OLSON:

Question. You are saying you contacted Paul Cignoli.

Answer. No, I did not contact him. I was advised by Tom Kelley that Paul Cignoli, on what I believed to be, or at least took to be, his own initiative, decided to determine whether the background investigation files of any of the other fired Travel Office employees had also been requested and/or disseminated to the White House. And some time that afternoon, he identified that the file of Barnaby Brasseux, B-R-A-S-S-E-U-X, had also been disseminated to the White House.

I believe Mr. Cignoli told Mr. Kelley for whom he works, and either one or both of them told me. I advised the director, who immediately thereafter, and not in response to any request, picked up the phone and advised Chairman Clinger.

Question. And this was advising Chairman Clinger that Barney Brasseux's background previous report had been ordered by the White House after the period when Mr. Brasseux also worked at the White House.

Answer. Yes, and had been disseminated.

Question. And what was the basis of Director Freeh calling Chairman Clinger? And my question is, was Director Freeh aware of the investigation that we were conducting and the general parameters of our investigation?

Answer. You would have to ask Director Freeh. He obviously to some extent was aware of it; we all were. We have been cooperating with it for years. We have put in thousands of hours of people producing documents and thousands of pages of records, almost unprecedented.

And so sure, we all knew there was an investigation, and we knew that particularly the day that Chairman Clinger had announced this as part of his investigation, and Director Freeh, as part of his effort and policy to ensure that we are and we are seen to be both cooperative and impartial in what I think is fair to say at least some had termed a partisan dispute, wanted to ensure that we weren't handling it at all as a partisan matter and would advise the committee immediately upon finding—

Question. You made two statements I wanted to ask you about. You said it was unprecedented. What's your basis for saying that, "Our requests were almost unprecedented in the history of the FBI"?

Answer. Well, there's a lot of things to that. And I said "almost." Let me clarify. I did not say "your request;" I said "the level of our cooperation."

Question. Okay.

Answer. The number of pages that were produced, the number of hours that were put in by FBI paralegals and others going through those pages, I believe has—has exceeded only by the Waco and Ruby Ridge investigations.

Question. And those are the only investigations that you've personally been at the FBI.

Answer. Oh, no. There's investigations all the time.

Question. I'm just trying to find out, your background, you came into the FBI in 1993, and I didn't know if you had gotten a review of congressional requests and if you had any basis. A lot of time the agents that work up into a General Counsel Office will have 10, 15 years of sort of background.

Answer. Right. And my deputy has 27 of them.

Question. Is he the one who told you it was almost unprecedented cooperation by the FBI?

Answer. Well, I discussed it with him. I discussed it with John Collingwood, who is the head of Congressional Affairs.

Another answer to that question is, not to jump too far ahead of the story, no one at the Bureau ever recalls allowing any Member of Congress not involved in the nomination process to come in and review a background file.

Question. Was that request made to the chairman, or that offer made to the chairman by your director himself?

Answer. Yeah. As a further example, I think, of sort of unprecedented cooperation.

Question. You also said that some have called it partisan. Where's that term come from?

Answer. You've never heard that allegation?

Question. I'm just asking your basis of knowledge if this is a partisan—

Answer. No, I did not say it was a "partisan," and I'm certainly not making that statement. I'm saying that some had already termed this, immediately afterwards there were responses from the White House; there were responses that this was politically motivated; there were charges and countercharges. That was in the air from the beginning.

Question. Is—does the FBI consider the inquiry into the FBI files matter a partisan inquiry?

Answer. No. The FBI considers it a congressional oversight matter, which is why we cooperate.

Question. In the very beginning, when you were first notified that the Billy Dale file had been ordered and had been, in fact—appeared to have been sent over to the White House, did you have any knowledge at that time whether there was any wrongdoing within the White House or the FBI involved in the ordering and/or receipt of the Billy Dale file after he had left?

Answer. Well—

Question. And at that time, I mean on the date.

Answer. On June 5th.

Question. Yeah.

Answer. Well, I mean I immediately recognized, as I suppose everyone else did, that it at least had untoward appearances.

I knew at the time virtually nothing about the process of providing FBI file information to the White House or the Congress or other agencies, and so I did not specifically know whether this comported with whatever guidelines or rules or regulations were in existence, nor did I know if there was some other legitimate purpose for the request. But it obviously raised immediately the question about whether this was appropriately—

Question. And with those questions raised, did—was it ever brought to your attention or did you ever consider that OPR might be a more appropriate party to be investigating this matter rather than the General Counsel's Office or the director himself?

Answer. You mean the FBI OPR?

Question. Yes.

Answer. I did consider that at one point. I asked the director if he wanted us to do it, or Inspection Division, or OPR. He advised me that he wanted the inquiry to be conducted by people working for and overseen by me because he believed that, that way, it would be—he said to me that he believed, that way, he would be sure that it was done properly and it was done swiftly. And he had either that day—I believe that day before I ever talked to him—he had promised Chairman Clinger that we would get to the bottom of it rapidly and have a report by the end of the following week, which was—

Question. And did that preclude an OPR—FBI OPR investigation of this matter rather than a general counsel's investigation?

Answer. I don't know that it precluded it. I just said what I understood to be his considerations.

Question. The—

Answer. I believe he believed that I would do it faster and—and better, frankly, and that's why he came to me.

Question. If, in fact, there had been allegations of wrongdoing concerning the Billy Dale file by an agent, would that have been within the scope of OPR's jurisdiction?

Answer. If there were allegations, the standard for OPR, as I understand it, is an allegation of serious misconduct by an FBI employee. Had there been such, it would have been and would typically have been handled that way.

The—it was—again, we did not know when it first came to our attention, but it was not—it fairly quickly emerged, at least in broad outline, it took much longer—well, I only had a week and a couple days, but it took days longer to emerge in specific outline that the—well, that the FBI employees who complied with this request were following, without much consideration, frankly, routinely, a sort of routine policy.

It would not—I did not uncover even at the end of the investigation what I would term "serious misconduct" by an FBI employee.

Question. And I understand that. I'm just wondering if there's some policy at the very initial point where you don't know who is at fault here and it's possible if an OPR investigation is begun or if that is something within the jurisdiction for the very reason that it is possible that it was an FBI rather than a White House act.

Answer. That's a matter—I mean as I said, again—I don't want to be repetitive—generally those are matters that would be handled by OPR. The director made the determination in this case he wanted it handled by me.

Question. What is the jurisdictional difference between an OPR investigation at FBI and OPR investigation at Department of Justice? Is it your knowledge they do overlap somewhat?

Answer. There is an order by the Attorney General or a memorandum that sort of divides up the responsibilities of OPR in both the FBI and DEA, which are the only two Justice Departments that pertain to OPR, OPR Justice and of the DOJ inspector general. And I couldn't recite it to you. The gist of it is that in the first instance and absent a decision to the contrary by the deputy attorney general that the FBI OPR will investigate allegations relating to FBI personnel.

Question. So Justice OPR would not be brought in unless Jamie Gorelick had made a determination that it should be Justice rather than FBI OPR?

Answer. Generally that's correct. If it related to—if the actions of the FBI employees were intertwined with actions of Department of Justice attorneys or related to a prosecution, then it might go there in the first instance. Or—and I'm sorry, I was just going to add, from time to time when FBI OPR recuses itself for whatever reason, the DOJ OPR handles it.

Question. Do you know if the area of FBI contacts with the White House are an area of recusal when the FBI is being investigated as to their actual contacts with the White House concerning, for instance, a Billy Dale file?

Answer. Wouldn't be an area for recusal. Every allegation the OPR investigates relates to an allegation of some FBI employee doing something wrong. If each one of them related to a recusal, there would be no work for FBI OPR.

Question. My question was because the White House was the other party that was involved with that made a difference whether it came from the Justice Department.

Answer. I can't imagine why it would.

Question. After the notice was given to you about the Billy Dale file, did there come a time when you learned that there were actually more files than just the Billy Dale that had been improperly ordered from the FBI and sent back over to the White House?

Answer. Yes.

Question. Can you describe how you found out that?

Answer. Yes. In the evening of June 6th, at about, if I recall correctly, 6:15 p.m., I received a call from a Jane Sherburne at the White House Counsel's Office, who told me on the telephone that they had identified additional—I don't—I don't remember and I'm not purporting to recite her exact language, but that they had identified additional files which had been requested by the White House and provided by the FBI for which—which seems related to people who were not currently employed there and that they wanted to return them to us.

Question. Did she tell you how she had found this out?

Answer. I do not recall whether she told me how she found it out. She told me that they had retrieved from their archives—by which I understood to be their internal archives, not the National Archives—a couple boxes of material.

I believe that she subsequently told me, though possibly it was in the same phone call, that this was something that Lisa Wetz—I'm not sure I was told her name at the time, I may have only learned that through hearings—that an employee of the Office of Personnel Security had compared a list of files they had with something, a list of active badge holders, and had found that there were a lot of files they had that did not relate to their credentials. She either told me that in that phone call or we spoke on a couple of occasions the following day. She may have followed up.

In any event, she said they had these files and they didn't want them anymore, and I—after some further conversation, I dispatched my deputy, Tom Kelley, along with the section chief in the Information Resources Division with responsibility for files management, whose name is David Kitchen, and they went over.

Some two or plus hours later—I was still in the office working on other matters—they returned with what turned out to be three boxes, two boxes of files and a box of miscellaneous material, which, I guess because of the lateness of the hour, they had all decided that rather than looking through on the spot they would turn over to the Bureau because it might be Bureau material and that we would look at and send back if it wasn't.

Mr. PETERSON. Could I ask a couple questions?

Ms. OLSON. Oh, of course.

Mr. PETERSON. I've been down talking to people down there.

The WITNESS. Yes, sir.

Mr. PETERSON. And I was—they were describing to me that these boxes were taped up when they found them. Is that how they came to you?

The WITNESS. No, sir. By the time they came to me, they were open. They had gone through—I was advised.

Mr. PETERSON. Who is "they"?

The WITNESS. I'm about to tell you. I was advised by Tom Kelley, my deputy, that he and David Kitchen, together with Jane Sherburne, another attorney in the White House Counsel's Office, and two people from the White House Office of Records Management had gone through file by file in those boxes to create an inventory of what the White House was turning over to the FBI. So by the time they arrived back at the FBI, those boxes were open and the files were in them.

Mr. PETERSON. What—were they just when your people got there, they were just in boxes?

The WITNESS. Yes. And I don't precisely recall, but I believe I was advised that they were not sealed even when—when Tom Kelley and David Kitchen first arrived there.

Mr. PETERSON. Now they—are they still at your office?

The WITNESS. No. They were physically in my office for sort of overnight the first night, locked up in there. They were stored in a secure FBI file area for approximately two to three weeks thereafter, and after the Independent Counsel's jurisdiction was expanded on June 21st to include the investigation into the dissemination of this file information, we turned all of these originals over to the Independent Counsel's Office.

Mr. PETERSON. So they have them now?

The WITNESS. They have them now. That's my understanding.

Mr. PETERSON. This list that I've seen that there apparently is a list of these files that's got fairly big type and it says—you know, it's got 478 names on it or whatever—I've got it up in the office—are you familiar with that?

The WITNESS. Well, I'm actually familiar with several different lists.

Mr. PETERSON. This is just a typewritten list that—

The WITNESS. Just has names on it.

Mr. PETERSON. Doesn't have all the names. It was explained to me by the Secret Service that these are the files that were in the vault, I guess.

The WITNESS. I am familiar with a couple different lists. There's a list that I believe Ms. Olson has in her hands.

Mr. PETERSON. Then the Secret Service put a bunch of stuff on it, so there is a bunch of hand scratching on there that is there, information.

The WITNESS. I don't believe I've seen that list.

Ms. OLSON. For the record, we are going to bring up some copies of the different lists I think you're referring to.

Mr. PETERSON. Anyway, my question is: Do you know, was this list made up by these people that went through this box at that time, or was the list already there? Do you have any idea?

The WITNESS. I'm advised that there was a list already there, an inventory of those boxes, and that what in fact Tom Kelley and Dave Kitchen were doing with the White House personnel—

Mr. PETERSON. Going through it?

The WITNESS. Going through and checking off as they went through to see if each one was there or not.

Mr. PETERSON. Who made up this list, do you know?

The WITNESS. I don't know the answer to that. At the time, from the very beginning, in discussions I had had with the Independent Counsel's Office, we had decided that I would limit the scope of my inquiry to actions by FBI employees and I would not inquire into or investigate actions by White House employees. So there

were a lot of questions that were—that came to mind and that were logical follow-ups which I did not ask because we had divided the world that way.

Ms. OLSON. This was June 5th time frame?

The WITNESS. This was by the evening of June 6th, yeah.

Mr. PETERSON. So they went through this list, and you never—you never saw this list, so you wouldn't know what it looked like?

The WITNESS. Well, I did, sir. In the boxes there was a copy of that list with check marks and notations that a few had been charged out and to whom they had been charged out.

I don't believe I saw a list that had Secret Service notations on it.

Mr. PETERSON. The list I saw didn't have anything like that on it, so—

The WITNESS. I was just going to say, I then had my office prepare yet another list which had much more information on it, the columns that included the date the request was made, the date it was responded to, what was provided. So—

Mr. PETERSON. All that stuff is now at the Independent Counsel?

The WITNESS. Yes, sir.

Mr. PETERSON. You guys don't have any more of this stuff at all.

The WITNESS. Well, I would hesitate to say yes to that.

Ms. OLSON. We have copies.

The WITNESS. We do have copies, and there are—and depending on exactly what this stuff refers to, but the originals of the files have been given to the Independent Counsel.

Mr. PETERSON. Has anybody looked at them? Has Mr. Clinger looked at them, all this stuff?

The WITNESS. I'm advised that Minority staff looked through them, or at least some of them—I'm sorry, Majority staff, at a point in the—

Mr. PETERSON. They looked through the files?

The WITNESS. Yes. They were given access to the files. I wasn't present. I don't know exactly what.

EXAMINATION BY MS. OLSON:

Question. Can you clarify that? Were you advised that I actually looked through the files?

Answer. I didn't say you.

Question. I was the one there going through the files? Were you advised I actually went through the files?

Answer. I was advised, as far as I recall—and I don't recall. The Majority staff was there, was given access to the boxes, and I don't—I don't know specifically what you or anyone else looked at.

Ms. OLSON. For the record, I was in the presence of Maggie Owens who was there the whole time. I never went through a single personnel file. I went through a box which had lists from the Secret Service, rather, and other agencies. I never went through a single fact-finding investigation file.

The WITNESS. That would be the third box.

Mr. PETERSON. Are these files called personnel files? Is that what they're called? I thought they were FBI files.

The WITNESS. This is the list.

Mr. PETERSON. This is the list I was referring to, the Secret Service.

Ms. OLSON. We'll mark that as Deposition Exhibit No. 1.

[Shapiro Deposition Exhibit No. 1 was marked for identification.]

Mr. PETERSON. They had put some other information on it.

The WITNESS. That's what I was referring to as some sort of list like that.

Mr. PETERSON. This here is saying where this went.

The WITNESS. This particular instance on the first page, I believe that's just a file that had not been typed.

Mr. PETERSON. An extra one.

The WITNESS. But, for instance, on the third page where it says, "Out, Lisa Wetzl," that date—

Mr. PETERSON. She signed it out.

The WITNESS. I was told that file was signed out to Lisa Wetzl on that date. There are some other indications on the following date. Lisa Wetzl—

Mr. PETERSON. Lisa Wetzl was checking out?

The WITNESS. I didn't know, and I didn't ask.

Mr. PETERSON. But—so you were there, but there has been no Member of Congress that's gone through these files?

Ms. OLSON. I don't have knowledge whether any other Members have come up.

The WITNESS. No, sir.

Ms. OLSON. The chairman asked me to come up and look at the third box which— and make sure what the stuff looked like, and there was a box that just had Secret Service lists in it and various outdated lists.

Mr. PETERSON. Nobody from the staff, no members have gone through the actual files?

Ms. OLSON. Not to my knowledge, and I—

Mr. PETERSON. So nobody really knows what's in these files.

Ms. OLSON. Yes, people do know.

The WITNESS. Some people at the FBI do.

Mr. PETERSON. Yeah. But there has been no member of this committee or staff that has actually seen the physical insides of one of these files to know what's in them other than just have seen copies.

The WITNESS. I don't believe so. I will double check with Professional Affairs.

Mr. PETERSON. Is it possible for us to see one of the insides of one of these files?

The WITNESS. Yes, if the committee makes a request. It is obviously material that's ordinarily governed by the Privacy Act; but the Privacy Act, as you well know, permits disclosure to a committee of Congress in connection with an oversight investigation and if a request is made—

Mr. PETERSON. If somebody decided they wanted to see the actual files and actually look at what's in these files, that probably could be done?

The WITNESS. It probably could. I would just add the caveat that at this point, as to those files—

Mr. PETERSON. The Independent Counsel would have them.

The WITNESS. We would make sure they had no objection to the request.

Ms. OLSON. For the record, also, these are the files of the prior Republican administration officials that were obtained by the White House. So what you would be looking at—

Mr. PETERSON. Well, no, they are not obtained by the—I mean, at least from what I understand of this system, these files were all kept there and they were updating some of them.

Ms. OLSON. Right. These are the previous reports that were requested by the White House in October, November, December, January, and February of 1994.

Mr. PETERSON. Right.

Ms. OLSON. They are—the files that were sent over to the FBI are actually the ones that were not of Clinton administration individuals but were of the files of the prior Republican administration officials.

The WITNESS. Well, actually, if I could clarify, many of them are career, nonpolitical—

Mr. PETERSON. Right.

The WITNESS [continuing]. Neither Republican nor Democratic administration.

Ms. OLSON. They were career during a Republican administration.

The WITNESS. And some of them—for instance, Billy Ray Dale and Barnaby Brasseux and some others on the list—were holdovers who had departed before October, November, December of 1993.

Ms. OLSON. I should say non-Clinton administration officials.

Just for the record, we do have one of the files. The White House did produce the entire Billy Ray Dale personnel file. So that is in your possession.

Mr. PETERSON. Not the actual—you just have copies of the file.

Ms. OLSON. You have a copy of everything that was in his White House—

Mr. PETERSON. But you don't have the file.

Ms. OLSON. The real original.

Mr. PETERSON. Right.

Ms. OLSON. No, it is not in our possession.

Mr. PETERSON. You have never seen the real original file.

Ms. OLSON. That's correct.

Mr. PETERSON. All you have is what they say is the copies of the file.

Ms. OLSON. The only thing we have is what the White House has produced to us.

Mr. PETERSON. So the committee has not made a request to look at these files?

Ms. OLSON. No, sir.

Mr. PETERSON. I thought the chairman was down there looking at files the other day. When I was there on Wednesday of last week, I was told he was at the FBI looking through files or something. Is that not true?

The WITNESS. The chairman was given access to the background files, the complete files, not just the summaries that would have been contained in the material provided to the White House but the complete files of Craig Livingstone and Anthony Marceca at his request.

Mr. PETERSON. Just those two?

The WITNESS. Yes, sir.

Mr. PETERSON. But he did not look at the file—was there a file on those two in this bunch? There wasn't?

The WITNESS. No, there was not.

Mr. PETERSON. Again, he didn't look at these files?

The WITNESS. No, not to my knowledge; no, sir.

Mr. PETERSON. And the Independent Counsel, I thought that somebody told me that they had completed their work and that maybe they were done with these and they are back or something. That's not true?

The WITNESS. That's—not—I'm not aware of that.

Ms. OLSON. Our information was that they had sealed the White House Office of—Security Office, and that that had been under seal in the White House and was going to be unsealed shortly, but we don't have information whether it's still under seal, but the investigation is ongoing, based upon knowledge that we have about the Independent Counsel's work. It has not been completed.

Mr. PETERSON. Is there some reason why you haven't asked to look at these files?

Ms. OLSON. The chairman has a directive to us have us go look at the background investigation files on those individuals. It was represented to us what was in them by the White House and we've asked suggestions with the FBI as to what is contained in them.

When I went down there, Ms. Owens, who works at the FBI, told us and walked us through what actually is in the files, because we didn't want to look at the personal data, and actually walked us through the type of information.

Chairman Archer from Ways and Means has also had some communications about the income tax information in those files, but the chairman's not asked us to actually go and look at the information on those individuals.

The WITNESS. But they have asked some of their committee staffers to look at information.

Ms. OLSON. Who is "they"?

The WITNESS. Chairman Archer from Ways and Means.

Mr. PETERSON. Did they look at some of these files?

The WITNESS. You know, sir, I will find out the answer to that. There was some back and forth, and I don't know exactly how it ended up as to what they saw. There was a request at one point, and I'll get the answer.

Ms. OLSON. I believe those with 6103 authority have. And that is certainly one of the concerns, is, we were informed by the FBI that there was income tax information contained in those files, and that requires a 6103 authority to even look at it and can be a criminal violation.

So I know that we certainly, based on those representations, no one wanted to violate any laws. But I do believe the Ways and Means individuals with the Tax Code 6103 authority have looked at those.

The WITNESS. To clarify for the record, we identified two files out of the 400-plus that had what appeared to be tax information.

Mr. PETERSON. So they might have looked at those raw files—the files?

The WITNESS. Yes, sir.

Ms. OLSON. They may have looked at others, because the FBI said they didn't know whether there was other income tax information and we're not going to take their representations that, in fact, there was not other income tax information.

I think based on that, Ways and Means was going to look, because the FBI, at least Legislative Affairs, said, "I looked, but I can't be held responsible if there's not other information."

Mr. PETERSON. Well, I would be interested to know if they've—

The WITNESS. Yes, sir, we'll get you that answer.

Mr. PETERSON. Thank you.

EXAMINATION BY MS. OLSON:

Question. You said the box—

Answer. I'm sorry, can I just, because we have been on the record before your visit, there was also, and I don't know what they looked at, but obviously a visit by your colleagues to review something that we had, and I don't know if that should be on the record also as to Ms. Comstock.

Question. I believe Maggie Owens was also present during their visit, too, and they did not look at any background and investigation information whatsoever.

You said that the boxes were not taped when they got through in your office. Did Mr. Kelley tell you that they were not taped when he arrived at the White House with Jane Sherburne?

Answer. As I said to Congressman Peterson, I don't actually recall what he said to me about that. It's the impression I have that they were not, but I don't have a very specific recollection.

Question. You said that you asked him to call Jane Sherburne. Do you know why you chose Jane Sherburne to be called about this matter rather than the White House counsel, Jack Quinn?

Answer. I don't believe I said anything like that. I said Jane Sherburne called me.

Question. Oh, okay. Did she explain why she was calling you rather than the White House counsel?

Answer. Well, I had spoken the night before to the White House counsel, Jack Quinn, to tell him that I was undertaking this investigation and asking him who would be a point of contact in his office in case I needed to obtain information from them or—well, that was why, or so I would know if somebody called me. He identified to me Jane Sherburne as the person who would be handling this matter for the White House Counsel's Office.

Question. You talked to Mr. Quinn on June 5th?

Answer. Yes, late at night on June 5th.

Question. Did you have any other contacts with the White House?

Answer. When?

Question. After you had learned of the Billy Dale file.

Answer. On this subject?

Question. Other than to Jane Sherburne and Jack Quinn. And this is up to the period, obviously, when Jane Sherburne called you.

Answer. No, not between—I spoke with Jack Quinn on the evening of June 5th. I received a call from Jane Sherburne earlier in the evening of June 6th, and there were no contacts in-between.

Question. Had you contacted the Department of Justice about this matter at this time?

Answer. I don't recall at this time being—as of the evening of June 6th?

Question. Uh-huh.

Answer. I don't recall. Fairly early, some time during that week, either the 6th or the 7th, I understood from the director that he had spoken with the Attorney General and that I would make my report both to the director and through the deputy attorney general to the Attorney General.

And I speak daily typically, usually several times a day, with people in the Department of Justice, particularly with Merrick Garland in the Deputy Attorney General's Office, and I suspect by this point I advised him or made reference to the fact that I was—that this investigation had—internal investigation had been assigned to me and that I was—and that I was doing it.

But I don't have a specific recollection about any particular conversation. It would have been in sort of routine, everyday course of business. In one of our telephone conversations, I would just have mentioned it.

Question. Do you know if Director Freeh had made any official contact with the Department of Justice at this time to tell them about the matter, not only of the Billy Dale file but also of the other files that had been received by the White House?

Answer. Well, now we're after the call from Jane Sherburne. The following day, on Friday, the 7th, by which point I had in my hands 330-some-odd files, again, I don't have a specific recollection of a particular phone call, but I'm fairly confident that I advised the Department of that.

Question. Do you know who you advised at the Department?

Answer. I don't, because I don't have a specific recollection. It would typically have been Merrick Garland, but I do not specifically recall. And I believe at some point in that time frame, I believe either on the 6th or the 7th, he told me to ensure that I stay in touch with and consult with John Bates at the Independent Counsel's Office.

Question. I want to go back to June 6th when Ms. Sherburne called you and then you sent Mr. Kelley and Mr. Kitchen over to the White House. Did they report to you any information about how Jane had discovered these 330 files in addition to the Billy Dale?

Answer. I don't believe so. I believe, in fact, to the best of my recollection, I asked Mr. Kelley if he—if any explanation was given, and he said that none was offered.

Question. On the list that has been marked as Deposition Exhibit No. 1, there is—if I could show the witness—there is a listing for Billy Ray Dale's file, and next to the listing it says "out" and then says "6-6-96," which is the date they were there, and says "Craig Livingstone."

Answer. Yes.

Question. Did anyone report to you about the status of the Billy Ray Dale file which has "6-6," Craig Livingstone's name next to it?

Answer. Yes. And I don't remember exactly when, but by certainly no later than during the day of June 7th, I was aware that the Independent Counsel's Office had come and retrieved that file.

Question. Had come and retrieved that file from where?

Answer. From the White House.

Question. And was it your belief that they had retrieved it prior to you taking control of the files?

Answer. I was certain of that, because it was not in the files that were turned over to us, and when I asked that question—and I don't remember whether I was first told that—I don't remember who I was first told that by, but I did ultimately confirm that with the Independent Counsel's Office, that they had possession of that file.

Question. Did Mr. Kelley tell you that he specifically asked Jane Sherburne if she knew what that meant, that the Billy Ray Dale file had been checked out on 6-6-96 by Craig Livingstone?

Answer. I don't recall.

Question. Do you have any knowledge or information why Craig Livingstone's name is next to checking out the Billy Ray Dale file?

Answer. Well, my understanding, which is maybe something short of knowledge or information, is that the Independent Counsel's Office came and asked for it, and having also seen Chairman Clinger's statement about the acquisition of this file, and that when they came and asked for it, that Craig Livingstone, as the head of that office, went and retrieved it.

But I don't—I don't know whether I just assumed that's what happened or if somebody ever told me that.

Question. Do you know who told Craig Livingstone to go retrieve that file for the Independent Counsel?

Answer. I do not know, and, again, I didn't ask those questions.

Question. Do you know if the Independent Counsel was asking for it to be retrieved in order for a fingerprint test to be done on that file?

Answer. I don't know. I wouldn't—I would never ask the Independent Counsel a question like that.

Question. When you handled the files, did you instruct the agents to wear gloves so that they didn't get fingerprints on the files that were remaining?

Answer. I either instructed them or they told me they would, and I thought that was a good idea.

We—we did, the short answer is, we all handled those files in a way to preserve any possible fingerprint evidence in case either we or the Independent Counsel or whoever uncovered evidence that—of criminal wrongdoing, for which that would be an appropriate step to take.

Question. Was a copy provided to the White House of the documents that they gave to you? And by "the document," I mean those three boxes of—

Answer. No.

Question [continuing]. Of documents?

Answer. No. Well, not at that time. He, at some point later on, I believe considerably later on—and I could find out the day for you, but I don't know—it was determined that the vast majority, if not all, of the documents in that third box were not FBI documents, and they were returned, or at least copies of them were returned to the White House.

Question. By "the third box," do you mean the first page of Deposition Exhibit 1 which lists U.S. Secret Service access lists and name checks?

Answer. I don't believe I've ever seen the first page of Deposition Exhibit 1.

The way I received this, it was in a different form. It had a page with the signatures of Tom Kelley, David Kitchen, Jane Sherburne, one of her assistants, and two people from the Office of Records Management as a—constituting a receipt for the information.

Question. Is this signature page you're referring to a document, which I will make a part of Deposition Exhibit No. 1, dated June 6th from—on White House letterhead?

Answer. Yes. Yes. Sally Paxton—I'm sorry; that's the name of Ms. Sherburne's assistant. You can see it bears the signatures of Tom Kelley and David Kitchen. And this page may have been attached to this; I simply don't recall. I recall that there was—my attention was primarily drawn to the list of names, which I knew.

Question. The list of names were in two box; is that correct?

Answer. Yes. The—the documents referred to in the list of names were in two boxes.

Question. And the third box contained what kind of documents that you determined were not FBI files?

Answer. For instance—and it would seem to comport with what's on this first page—various computer runs, various documents. It took us a while, and I'm—I'm not sure I was ever advised in detail what it was. I was advised that I didn't need to worry about it was because it wasn't FBI information. It was like NCIC computer checks and things like that.

Question. The page—the first page that I just showed you dated June 6th from the White House lists four boxes, and your people only came back with three.

Answer. Yes.

Question. Do you know why?

Answer. I recall that I asked that question and—well, it does say that only three boxes were transferred to the custody of the FBI. I don't recall specifically. I believe I was informed that the fourth box that they looked at didn't have any—they were able to determine it was not FBI material. But I actually don't have a very specific recollection, though I do recall noticing the same thing.

Question. So you only received—they only took the boxes that they believed to be FBI material, and then ultimately there was only the two boxes that were FBI material.

Answer. Yes, ma'am.

Question. Okay. Did there come a time where you did make a copy of everything or a copy of the materials that were in your possession that they had picked up on that evening of July—of June 6th?

Answer. Of everything, yes.

Well, first of all, as I noted before, we made a copy of that third box to return that to the White House, although I believe they retained a copy of that; at least for some time we did.

We then, for our own purposes, made a copy of all of the—what was in each of the personnel files so that the investigators could handle them without worrying about wearing gloves and getting fingerprints on them, for instance. So that was done. But no copy, to my knowledge, was returned to the White House other than of the documents we determined to be White House documents.

Question. And that third box that you determined to be White House documents, the original was returned to the White House and you retained a copy, or do you know if you retained the original?

Answer. I don't know.

Question. At one point there was a request by the committee, and members of the Majority staff went down and went through this third box which had the various lists at the FBI, tabbing certain documents and requesting copies of them from these computer lists that you all had.

Can you just describe if it was your direction to Mr. Kelley that they were not produced from the FBI or at whose direction Mr. Kelley acted when he refused to provide copies to the committee?

Answer. Well, you might have to give me more information. Is that when he refused on the basis that they were White House documents?

Question. [Nods.]

Answer. At some point it was brought to my attention that the White House was claiming that we were turning over White House documents over which it was inappropriate for third agency rule reasons to do that. And I had a conversation with Mr. Kelley, and we both agreed—I'm not sure I would say it was my direction, but we agreed—and I'm his boss, so I guess in some respects that makes it my direction—that documents that were White House documents should be—that we had temporary custody of, requests for those should be processed by the White House because they were White House documents.

Question. You said that the White House knew that we were asking for these documents from that third box. Did you contact the White House, or are you aware of anyone in the FBI being directed to contact the White House about our review of documents?

Answer. No, I didn't say that, though I am not disputing that. I said the White House became aware that some document was turn over to them that was a White House document. I don't recall—I don't recall how that happened.

I believe it's because it was made public in some respect, and then the question was asked of us why we turned that document over, but I don't recall. These would not have been conversations I had. These were conversations between Tom Kelley and Jane Sherburne or—through other channels, though that was basically the channel of communication.

So when the request for these documents came to my attention, as I recall, and I was advised that they were White House documents, we decided that the request would be referred to the White House.

Question. But these—and these were the White House documents that they had requested that you take custody of; is that correct?

Answer. To determine if they were FBI documents, and, if not, to return them.

Ms. OLSON. Okay. I think the Minority has some questions.

Mr. Stroman, I'm sure I've taken an hour. Yes, I have.

EXAMINATION BY MR. STROMAN:

Question. Yes. Mr. Shapiro, did there come a time when the FBI contacted the White House about the contents of Craig Livingstone's FBI file?

Answer. Yes, sir.

Question. Can you explain to us the circumstances around that contact.

Answer. Yes. On July 15, I was advised by Ms. Owens, the chief of the FBI's Congressional Affairs Office, that Chairman Clinger's committee had requested an opportunity to review the Livingstone and Marceca background files.

I was simultaneously advised by Ms. Owens that she had checked with the Independent Counsel, that they did not have any objection to those documents being provided to the committee, and that she had offered the documents to the Independent Counsel and that they had declined, had advised her—at least she advised me that they said they weren't interested in them, at least not at that time.

Sometime that afternoon—again, still on the 15th—it was brought to my attention—a particular page from that file was brought to my attention, which—

Question. The—go ahead.

Answer. It related to—it's with an FBI investigative insert which on one page summarized three interviews with three different people, one of whom was Bernard Nussbaum conducted over a 3-day period, and the interview of each was summarized in a single paragraph. This is not an FBI 302, which goes into much greater detail and which is a signed, dated document. This was neither signed nor dated.

Ms. OLSON. It was not dated?

The WITNESS. No. It indicated that the investigation was taking place. It did not indicate the date of the—that the page was prepared. And it 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. So that was brought to my attention.

Knowing that was a matter which had already been a matter of considerable public controversy, and that this was in an investigative file that the FBI had produced and created at the request of the White House for the White House background, and that the committee staff was due to come over at some time that afternoon to review it—I believe the time I was told was 4:00—I decided that it was appropriate to advise the White House that we would be providing that information to committee staff and attempted to make a sort of roughly contemporaneous notice, simultaneous notice, to the White House and to the committee of the information.

As it turned out, shortly after I notified the White House, I learned that the committee staff had cancelled for that day and were not coming till the next day.

Because I was equally concerned not to have notified the White House without having notified the committee of the information I knew that they would find relevant, just as I had been concerned about notifying the committee and not the White House, I instructed Ms. Owens—or “instructed” I suppose is maybe the wrong word since she doesn't work for me. But early the next morning we discussed and both agreed that it was important that she make a call to the committee staff urging them to come and review this file and telling them that there was information in the file that they—they would be interested in seeing. She told me she did that.

I see Ms. Olson shaking her head, but so I was advised. And subsequently that day, the Majority staff of the committee came and—or at least Ms. Olson came—I don't know actually who else came—and reviewed those same two documents.

The following day, we were advised that Chairman Clinger was going to come, himself, to review the two files. We were told it would be some time after 3 p.m. on that day, the 17th. Somewhere after that, we were advised that having, I believe, presided over hearings all that day, he decided to prefer to come the following day, and then he did and returned the following day.

Again, I was advised by Ms. Olson.

EXAMINATION BY MR. STROMAN:

Question. I think you just indicated that you were told it was appropriate to contact the White House. Is that—

Answer. No, no. That was—that was my decision.

Question. Why did you think it was appropriate to contact the White House?

Answer. Well, I thought it was appropriate in the same manner that we had—in fact, the director had personally advised Chairman Clinger earlier, back.

We talked about earlier, on June 5th, of information we had come across there, knowing it would be of interest to him—for instance, the Barnaby Brasseux information or the communication I had asked to be made on June 7th advising committee staff that we were in custody of these 330-plus files because of our effort to ensure that both the White House and the Congress on this, to the extent permissible by law, were kept informed and, frankly, so that we not be caught in between.

The question in forming my decision in that regard was the fact that I had been advised that the Independent Counsel, A, had no objection to this being provided to the committee, and, B, that they didn't want the files themselves, and so I was operating under the assumption that this matter, this sort of background files that went into their hiring, was not a matter that they were actively investigating.

Question. The Independent Counsel did not say that they would—the Independent Counsel indicated it did not mind providing the information to the committee. It didn't indicate that it didn't mind providing it to the White House.

Answer. No; you're right; they did not. I made that assumption, and that was—

Question. That was yours.

Answer. Perhaps in error.

Question. That was your assumption. Are there any laws or regulations that you are aware of that would govern communication of this type of information to the White House from the FBI?

Answer. Well, there's the Privacy Act, and that governs the dissemination of information—of personal information about an individual. The personal information about the individual contained in this file, and the only part that I disseminated, was the fact that he had come recommended, or allegedly had come recommended, to the White House by Hillary Clinton, who was a friend of Mrs. Livingstone's. That fact could hardly have been more public at that point.

Question. Right.

Answer. Or at least that allegation could hardly have been.

It has been hotly disputed, as you're no doubt aware, but that was in newspapers and in television stories, and for the weeks before that it had been reported in Gary Aldrich's book about the White House, and it had been apparently testified to by agent Dennis Sculimbrené in an interview by the Senate Judiciary Committee, portions of which subsequently appeared in newspaper accounts.

So going to your question, it is not a Privacy Act violation to disseminate information which is publicly available.

Question. Aside from the—just the—

Answer. I should say it was also my impression at the time—it turns out to be erroneous—that that page, that information, was part of what had been previously disseminated to the White House and that this was sitting in the White House's files. Turns out that that's not correct.

Question. Aside from the legality, were you concerned at all about the appearance of this, that you would be—it could be alleged that somehow you were providing information which is confidential to the White House which is the subject of the committee's investigation and at least may have some—the Independent Counsel may have at least some interest in that? Did that—

Answer. Well, the answer is, I obviously should have been more attentive to that. In retrospect, it was quite clearly a mistake to not have been more concerned about the appearances.

The dissemination was to—well, it was intended to be to Jack Quinn or Jane Sherburne. I ended up talking to Kathleen Wallman, Jack Quinn's deputy.

As far as anyone I've been made aware of, none of those people are in any way the subject of any investigation about the dissemination of FBI file information, either by the Independent Counsel's Office or—nor about the—none of them were in their positions at the time of the dissemination of FBI file information that was the subject of our June 14th report or the firing of Billy Ray Dale or any of those matters.

But as I said, I obviously was insufficiently attentive to those. Had I been more, I wouldn't have done it.

Question. Excuse me. Some time shortly after your FBI contacting the White House about this issue, FBI agents apparently went to discuss with Agent Sculimbrené his interview of Mr. Livingstone. Are you familiar with—

Answer. Of Mr. Nussbaum.

Question. Yes.

Answer. Yes, I am.

Question. Can you describe the circumstances?

Answer. Sure.

The following day, July 16th, Tom Kelley, my deputy, and I had a conversation where he recommended that we send an agent or two agents—I don't recall exactly what he said—to interview Agent Sculimbrene about whether he had any recollection whatsoever and/or any notes that would corroborate what is contain in that one-paragraph summary on the unsigned, undated investigative insert, because Mr. Kelley told me this is a matter which had been disputed by numerous people, including among them the First Lady and the President, that this didn't happen. And he expressed to me the concern that this was going to become not an FBI issue or—I mean, not a White House issue or congressional issue but it was going to quickly become an FBI issue, that we had unfortunately had a regrettable history at—in some of the accuracies of our reporting from the White House.

We had an agent, just last year, who admitted to fabricating 50 reports in connection with background investigations, who was assigned to the White House. We'd had Agent Aldrich who published his book, which I think it is fair to say significant questions have been raised about the veracity of some of the information reported in there. There are certain controversies about all of that.

We have been criticized that institutionally—and by this committee or a joint committee made up in part of the subcommittee of this committee in the Ruby Ridge hearings—for our reporting not being accurate, and this information being so contested, we wanted to see if, for entirely internal reasons—whether the agent would back up, recall, say anything about this, this interview that he'd apparently conducted. So he recommended it and I approved it.

Question. Do you know how many agents—

Answer. Two agents.

Question [continuing]. Went to talk with Mr. Sculimbrene?

Answer. Two agents. They called Agent Sculimbrene.

Question. Do you know what the circumstances were leading up to them going? Did they—

Answer. Tom Kelley talked to Duncan Wainwright, who was—is an agent in the Washington field office and had been one of the—he's also—this is sort of an FBI internal inside baseball, I guess, but he's assistant inspector in place, which means he works on some inspection-type matters. He had been one of the agents assigned to me to conduct the FBI files review, and he's exceedingly professional and careful.

And I don't know exactly what Tom Kelley said to him, but he dispatched him after suggesting to me that that's who we should send, and I agreed with that, and Agent Wainwright chose a second agent from his squad to accompany him, a woman, Jennifer Esposito.

Question. Do you have any knowledge of what they asked?

Answer. Well, I've spoken with both of them. I spoke with both of them in response to Chairman Clinger's statement on the Floor of the House that the agents went and told Agent Sculimbrene that the White House was unhappy with them—with him, with his reporting. They both categorically deny that. They—

Question. Can you just tell us what they told you?

Answer. Yes. They said that was absurd, and those were one of the views, that they would never make a statement like that, that they didn't—Jennifer Esposito said to me, "How the hell do I know what the White House thought about his report?" And that they said it was, despite what has been said afterwards about it, a remarkably cordial and casual encounter, that they called him in advance, that they asked him when they could come out to see him, that he advised them of the best time.

They told him the general subject matter about what they wanted to ask him before they went out, that he said that he would—thank you, sir—that he had taken down the mailbox in front with the numbers to his house, I guess, because of press inquiries, but he would put it back up for them to ensure that they could find their way.

Should I wait?

[Ms. Olson leaves the room.]

Question. No, go on.

Answer. That they went out there. They had a very limited inquiry into whether he recalled that interview and whether he had any notes of that interview; that after obtaining that information from him, they got up to leave and he urged them to stay to discuss other matters with them and they told him that wouldn't be appropriate, that this was all they had come to do, and they talked about—he showed off his dog in the back yard and then they left, under what they perceived to be at the time entirely cordial feelings on all sides.

They also, by the way, when they first got there, took a call from an attorney who represents Agent Sculimbrene, and they told him precisely what they wanted to interview him about and why, and they reported back that he advised that that seemed reasonable to him and that they should go ahead.

Question. Did Chairman Clinger or anyone from the Minority staff call you or anyone else at the FBI, to your knowledge, to attempt to find out what the agents thought about the interview prior to Chairman Clinger's statement on the Floor?

Answer. No, not to my knowledge. And I am sure I would have heard from either of the agents if they had received a call from Chairman Clinger or a member of his staff.

I should say we then got the results of that interview. We did not disseminate that to the White House or anywhere else, that when Chairman Clinger came with Ms. Olson on the morning of the 18th, that I advised Ms. Owens to ensure that they advise Chairman Clinger and Ms. Olson that we had interviewed Agent Sculimbrene and that he had—and the results were that he had no specific recollection of that interview but that he—that the form of the document and everything was consistent with how he normally did it. She told me that she did so. I wasn't present.

Question. Did your agents indicate whether or not Agent Sculimbrene objected to the interview?

Answer. Not only did he not object, as I indicated, they spoke first with his attorney who they said indicated that he thought it was appropriate and he had no objection, and that they then spoke, as I mentioned to you, after they asked their very limited number of questions about whether he recalled this because once he didn't recall it there wasn't much to say, or whether he had notes from it, that he asked—indicated an interest in discussing other matters with them, other issues he has with the Bureau, other concerns, and that they declined.

Ms. OLSON. Can I make a record right now. You have asked questions about what Chairman Clinger did in his telephone calls and those have been—

Mr. STROMAN. No.

Ms. OLSON [continuing]. Strictly off the record. I understand Congressman Peterson did ask a lot of questions about communications between a Member of Congress and the FBI, and certainly I didn't object in deference to a Congressman asking those questions. However, I think at a staff level you all have been the first to make sure we understood that all communications with a Congressman and the White House, that we couldn't even go near that. As a matter of fact, the White House has claimed executive privilege.

I would just ask, before you start asking the FBI to tell you communications between the Chairman and the FBI, that you get some clearance from your members that you want to then waive that entire privilege so that we can now go into all the communications the Minority Members have had with the White House and the FBI.

I would just like to put it on the record, if you are going to continue to do that, I am going to certainly report to the Chairman that there's obviously been a waiver of any privilege or any agreement the Chairman has made not to go into communications of your members and the White House.

Mr. STROMAN. Thank you.

EXAMINATION BY MR. STROMAN:

Question. At any point during the discussion with the agents, as far as your agents' report to you, did Mr. Sculimbrene ever ask that the interview cease or stop?

Answer. Oh, absolutely not; to the contrary. As I have said, they both advised me independently that he wished to go on talking to them about other topics and that they indicated that that was not appropriate; that they were there for a very limited purpose and, as I said, they ended up and he was showing off his, I am told, showing off his dog in the back yard, pictures of his property or something like that. I didn't get it precisely.

Question. The decision to send the agents, the actual recommendation came from Mr. Kelley; is that right?

Answer. Yes, and I concurred in that.

Question. What did Mr. Kelley say to you when he approached you about sending the agents?

Answer. Well, I don't remember the exact words, but the gist of it was, we are going to have—this is going to become an FBI issue, one more example about whether the—one more question will be raised about the accuracy of our reporting which particularly at the White House has come into—I mean, he didn't have to rehearse for me. I knew what he was referring to. I knew about the agent who admit-

ted fabricating reports. I knew about Agent Aldrich's book. I knew about some other concerns that had been raised, and I agreed with him.

Question. Okay. You mentioned Agent Aldrich. Are you familiar with Agent Aldrich?

Answer. Never met him. I have seen him on television.

Question. Let me ask you this question: Are you aware of requirements by—or contracts with FBI agents with regard to their publishing of any books that may happen after they leave the FBI?

Answer. Yes, sir. Whether while they are at the FBI or after, every FBI employee signs an agreement, a contract, at the time that they are brought on board, at least for the last 20 years, which says that you are not to make public through, and this is not precisely what it says, but says, in essence, that you are not to make public in either written or oral form what you learn in the course of your official duties, and that—or other private investigative information, without at least submitting either the text of or a proposed transcript of what you are going to say, first for pre-publication review and clearance by the FBI.

Question. When you say "pre-publication clearance," can you just explain the process?

Answer. Yes. This is further detailed, again, in the contract. But the way it works or is supposed to work, if someone complies with it, and many agents do, both on board and retired, is submit a draft of the document to the FBI. It comes into the Office of Public Affairs. They typically disseminate it to those divisions having responsibility for or knowledge of the underlying issues.

For instance, a book on the Unabom case would go to the criminal division. A book on Oklahoma City would go to the National Security Division because it was handled as a terrorism case. A book on the laboratory would go to the laboratory division.

Question. I am sorry. The laboratory division of?

Answer. Of the FBI.

Question. Of the FBI.

Answer. And they all read it to say whether, to their mind, there is a disclosure of information here which is either improper on its face, for instance, it's information governed by rule 6(e) for grand jury material or by the statutes relating to electronic surveillance or which would otherwise be damaging to an investigation, or more generally to the FBI's ability to conduct investigations because it reveals, for instance, an investigative technique or something like that.

Question. And what's the purpose of the contract?

Answer. The purpose of the contract is to ensure that information gathered in the course of FBI investigations, both criminal, national security, and background investigations, as well as techniques used and people who assist the Bureau and cooperate with the Bureau, that that not be disseminated publicly without a chance to ensure and review that no damage will come from such disclosures.

Question. Are you aware, has damage come from disclosures previously, that you know of?

Answer. That's a difficult question for me to answer because we have matters pending in litigation.

Question. Okay.

Answer. But I would say, it is certainly the opinion of the FBI that some of our investigative techniques have been compromised and, frankly, that some books and their willingness to impart publicly information which was provided to the FBI in confidence, undermine the entire ability of the FBI to do its job, because 90-plus percent of the time we operate on the voluntary cooperation of the American public. And if they don't think that what they tell us will be handled professionally and kept confidential, except for official purposes, that entire process is put at risk.

Question. Are there sanctions which are available for not complying with this requirement?

Answer. There sure are, for on-board employees. We have much less limited opportunities to sanction retired employees. Essentially, the only sanction available is to sue for breach of contract and to seek constructive trust. We did that last year with an agent who retired. He settled the case for quite a large payment of \$500,000 in fact, because he had failed to comply with the pre-publication review requirements. That was, I believe, the first time we had actually—I am not sure it is the first time we initiated a suit but it's the first time we completed one and actually received—insisted on payment of—disgorgement of profits.

Question. And existing agents?

Answer. Well, with existing agents, depending on what they disclose and how they disclose it or whether they have complied in part or at all, it's a matter that can result in various forms of discipline, up to discharge. In, I believe, January of '94,

Director Freeh issued what's come to be known in the Bureau as the "bright line teletype" that says—

Question. Bright line teletype?

Answer. Yes, sets sort of a bright line that there are certain things that will not be tolerated by FBI employees that perhaps we have punished too weakly in the past. In short, it's lying, stealing, and cheating. But it also includes the unauthorized disclosure of classified or sensitive criminal investigative information. So the sanctions available could go from, you know, a letter of censure or an oral reprimand to firing and everything in between.

Question. Are you familiar with a book written by former agent, Gary Aldrich?

Answer. I am somewhat familiar with it.

Question. And as a former agent, Mr. Aldrich would have had to submit a draft or a manuscript of his book to the FBI for review?

Answer. Yes. He was required to do so and, in fact, he did, though he did not fully comply with the process.

Question. When you say he did not fully comply with the process, can you elaborate on that?

Answer. He submitted his book for the Bureau to review. There's some question in a variety of ways whether he fully complied. There's indications that while the Bureau was reviewing it, he was already shopping copies to various publishers, which would be in violation of the agreement.

But there were a series of meetings, one of which I attended, with an attorney representing him, Jay Stephens. There was—and members of my staff, going back and forth recommending portions that should be—in our opinion, were not appropriate to be published, for one of the reasons of the sort I described before.

They made a series of changes in response to our request and didn't make other changes that we had requested. They sent it back to us at one point and said, we think we have changed all that we intend to change, or words to that effect. We wrote back saying we still have a serious problem with, I believe it was six areas in this book, which we have objected to from the beginning, and we don't believe it's appropriate that they be published and you are not presently authorized to do so, and he nevertheless did so.

Question. How would you characterize the problem areas? Are they minor areas?

Answer. I am not sure I can at this point. I mean, I would say that we tried to be very accommodating with Mr. Aldrich and I don't think there were any minor areas that we objected to.

Question. After you indicated—after they came back with their—with Mr. Aldrich's review, you then—was it by letter or—

Answer. Yes. One of my deputies, who was handling this matter, responded to Mr. Stephens about it, and, frankly, even before I was aware of it. This was all happening the week I was testifying at the Senate Judiciary Committee about the FBI files matter. I was frankly a little bit out-of-pocket. And so the last couple of exchanges happened between Mr. Aldrich's attorney and my deputy, Lisa Ososky, and I only learned of it after the fact.

Question. Again, was there correspondence?

Answer. Oh, there certainly is.

Question. So if the committee requested copies of the correspondence, we could presumably—we could have that?

Ms. OLSON. Under what jurisdiction? Can you just state, since we are spending a long time about Gary Aldrich—I am just asking for the record if you would state the jurisdiction?

Mr. STROMAN. No, I am not going to state what the jurisdiction is. I am asking my questions.

Ms. OLSON. Okay. I don't blame you.

The WITNESS. The answer to the question is if the committee submits a request in writing, we would comply with it.

EXAMINATION BY MR. STROMAN:

Question. After the letters indicated that you had serious problems—or had problems that changes weren't made—

Answer. Or continuing objections.

Question. Continuing objections, thank you, what was the response of Mr. Aldrich and/or his counsel?

Answer. The next I learned of it was when the book was published. There was no response, other than the publication of the book.

Question. Again, I just want to be clear about this. There's a letter indicating objection to certain areas; is that correct?

Answer. Yes, sir.

Question. And then there is no response from—

Answer. If I'm not mistaken, and again I was not handling this matter directly, but my understanding is the next thing we heard from Mr. Aldrich or his attorney was the publication of the book, in which it states in its preface or forward that he had tried to comply with the FBI's pre-publication review process but he had grown impatient or didn't have enough time, words to that effect.

Question. Okay. Had there been subsequent discussions with Mr. Aldrich?

Answer. I believe there has been some limited contact between members of my staff and Mr. Aldrich's attorney. I'm not sure it would be appropriate for me to go into those.

Mr. STROMAN. Okay. I may have some additional questions later but that's all the questions I have.

The WITNESS. I wonder if I could have a 5-minute break?

Ms. OLSON. A 5-minute break is in order.

[Brief Recess.]

EXAMINATION BY MS. OLSON:

Question. We are back on the record after a brief break.

I wanted to first go back through a few of the items that were covered by Minority Counsel, not to repeat them but a few items. And I guess I will start with the last issue, which was a long Q&A on the Gary Aldrich book. And while those questions were being asked, I had a couple of questions that came to my mind.

How long did you all keep the book before it was published? Or how long were you—was the FBI in possession of the book under review?

Answer. I don't know. I would have to check the correspondence.

Question. More than 6 months?

Answer. Oh, I don't believe so.

Question. Okay.

Answer. Certainly it was less than 6 months from when it first came to my attention.

Question. I am asking when it first was submitted to the FBI.

Answer. I know. And I don't know the answer to that but I can find out. That, of course, doesn't entitle someone to disregard their legal obligations.

Question. I am not implying anything. I was just asking a simple question about how long you had it.

Answer. And I am just making a statement.

Question. It just sounded defensive.

Answer. Oh, okay. We are going to start characterizing?

Question. No. I mean, I didn't ask if you should have avoided your obligations or done anything you shouldn't have done. I wanted to know if you had it over 6 months?

Answer. It wasn't our obligation. It was Agent Aldrich's obligation.

Question. Was any information from that book communicated to anyone outside of the FBI by FBI agents in possession of that book?

Answer. Well, I don't know. By FBI agents in possession of that book?

Question. No, I mean by—I assume that you had a copy of the book. I assume your deputy that you assigned to do the work on—

Answer. And the personnel division had copies of the book.

Question. Do you know if anybody communicated the contents of that book outside of the FBI?

Answer. I did.

Question. Who did you communicate it to?

Answer. To the White House.

Question. And when did you do that?

Answer. I have the date. I don't recall off the top of my head.

Question. And did you communicate the substance of that book because they were an interested party?

Answer. Yep.

Question. Okay. Do you know who—who did you speak to at the White House? Was that Jane also?

Answer. No. It was Jack Quinn.

Question. Okay. Was there anybody else you communicated the substance of that book to?

Answer. I believe Kathy Wallman was present.

Question. Maybe if you would just describe the communications that you had with the White House concerning the contents of Mr. Aldrich's book.

Answer. I delivered a copy of it to Jack Quinn at a time when Kathy Wallman, I believe, was present.

Question. How long ago was this?

Answer. I don't recall. I could get the exact date for you. I just don't recall.

Question. If you would, certainly by our hearing.

The WITNESS. Are you making notes of these things I am supposed to be getting?
Mr. PARKINSON. Yes.

EXAMINATION BY MS. OLSON:

Question. So you went over to the White House with a copy of the book?

Answer. Yes.

Question. At whose request?

Answer. Well, I called and advised Jack Quinn that there was a book in draft that had been given to us for review that—and asked—we were in the process of reviewing, though based on our prior experience we could not ensure would not be published before we completed our review of it. And I believe, if my recollection is correct, that I asked him if he wanted to have a copy of it.

Question. Okay. And he said yes, I assume?

Answer. And he said yes. And I delivered it.

Question. Okay. Did anybody from the FBI go over there with you?

Answer. No. I was there for an unrelated meeting, and I brought a copy with me and stopped by his office.

Question. Did you have any later discussions with Mr. Quinn about the contents of the book?

Answer. Well, I didn't have any discussions with him about the contents of the book at that time. And I did not have any later discussions with him about the contents of the book.

Question. Okay. So other than giving him a copy, it was never mentioned again to anyone at the White House?

Answer. I didn't say that.

Question. Okay.

Answer. I answered your question.

Question. Okay. Can you then tell me if there were any other conversations about the Gary Aldrich book with anyone at the White House?

Answer. Yes. Approximately a week or so later, and I could give you the exact date for this, too, Mr. Quinn called me to advise me that they did not want to have anything to do with the review process; that they were glad the FBI was handling this; that they knew we would do so professionally and effectively; and that they would stay entirely out of it. I hadn't ever thought that that was a question, since I hadn't invited them to have anything to do with the review process.

Question. That was my follow-up, is why would he ask not to be a part of something?

Answer. But I guess he wanted—I don't know what he wanted. But I said, thank you. I said, you know, I will advise you of any significant developments, by which I meant when we learned that the book is going to be published, or if—as it turned out, he advised me that the book was published.

Question. How did he advise you that the book was published?

Answer. I was in the Beth Israel Hospital in Boston in the waiting room while my father was having open heart surgery and I was paged to the FBI command center. I returned the call. They said, Jack Quinn from the White House is looking for you.

Not much you could do when you are waiting for 9 hours while your father is having open heart surgery so I returned the call. And they said, Jack Quinn from the White House is looking for you. And I, frankly, was somewhat distracted. I can't tell you exactly what he said but he said this Aldrich book is out. Did you all approve it?

And I said—I don't know exactly what I said, again, but—and that's not a quote of what he said.

Question. I understand.

Answer. I said something like, you know, I have been out of it for a couple of weeks both devoting full-time to conducting the file review and then the following week testifying before the Senate for approximately 4 hours, and then immediately thereafter leaving to go up to Boston for my father's surgery. But my understanding was that we had not authorized its publication and that I would have Lisa Osofsky, my deputy, get back to either him or Kathleen Wallman.

Question. So at that time you only knew of Mr. Quinn's and Ms. Wallman's knowledge of the book or of information in the book?

Answer. At the White House?

Question. Uh-huh.

Answer. Well, I think at that time, if I remember correctly, that Jack Quinn advised me that George Stephanopoulos had obtained a copy of the book and that it said in—he was relating to me that it said in the preface to the book that he had grown frustrated with or tired with waiting for the FBI clearance process and had gone ahead and published without it, which I guess is what prompted him to reach out to me so I could confirm if that was true. So at least at that point I knew once the book was published that Mr. Stephanopoulos had obtained a publication copy.

Question. Prior to the book being published, do you have knowledge if anyone else in the White House was told about the contents of Mr. Aldrich's book?

Answer. I don't believe so, although there may have been the day that I dropped off the copy, Cheryl Mills, who is in that office, may have also been present. Frankly, it was—I was just in and out. I might have been in for 2 or 3 minutes but it was pretty much a drop-off. I was there, as I said, for another meeting.

Question. Is there any standard for going through command to get in touch with someone like you? I mean, when Mr. Quinn is trying to find you, is that an automatic thing, that it goes to the command center to find you? Or is it a matter that the publication of Gary Aldrich's book was risen to the level of going through the command center to track you down at your father's open heart surgery about Gary Aldrich's book being published?

Answer. I don't believe Mr. Quinn knew I was at my father's open heart surgery and I, frankly, didn't tell him at that point feeling all I would end up doing was making him feel guilty.

Question. Do you have to give a reason to go through command center, that it's urgent?

Answer. I believe if you call and say that you are the White House counsel and could they find Mr. Shapiro that they won't question it.

Question. It's automatic?

Answer. That's my understanding. I have had a number of people, including some who I had no interest in hearing from, who have found me in all sorts of places because the FBI command center patched them through. I don't think that there's a lot of discretion exercised in that. They do say, when they get ahold of you, there is a Mr. X who wants to talk to you. And you can always decline.

Question. But you don't believe they have to say it's an urgent matter or I want you to find him wherever he is?

Answer. No, I don't believe so. I guess you would have to say, they called, learned that I am out-of-town and they would say, can you find him?

Question. Right. Did Mr. Quinn or anyone ever tell you that they had brought the contents of this book copy you had given them to Jane Sherburne's attention?

Answer. I don't believe so. I don't have any recollection of that.

Question. Did anyone ever tell you whether or not this was brought to the attention of the First Lady?

Answer. No. No one has ever mentioned the First Lady to me.

Question. Okay.

Answer. On that or any other official subject.

Question. Well, since you said that, that leads into a question having to do with—

Answer. I take it even if I didn't, it would have.

Question [continuing]. Mr. Kelley coming to you with the two pages of—

Answer. I am not sure—

Question [continuing]. Mr. Aldrich's interview.

Answer. I am not sure if he came to me with two pages or a single page.

Question. Okay. And I think you said, when the Minority asked you questions, was it had been, all the information had been public.

Was there a discussion about the fact that the reason this was important was because the First Lady had had a press conference and categorically denied even knowing Craig Livingstone prior to finding out that there was this interview in the file? Oh, I am sorry, Sculimbrene. I had Aldrich on the mind. Strike that.

Answer. There wasn't a discussion of that. In fact, I didn't know, until I think someone mentioned it to me earlier today, that the First Lady had a press conference. But Mr. Kelley did say to me that he had heard the President and he thought the First Lady specifically deny it.

Question. Okay. So you knew, when you were shown these pieces of paper, that this was going to be an issue of conflict between what the First Lady had said and possibly even what the President had said about Craig Livingstone?

Answer. Yes.

Question. Okay. You were asked about if you thought there were any laws against you providing this information. I think there was a discussion of the Privacy Act.

Had you been informed or given any information about who is or who isn't the subject of Independent Counsel Ken Starr's current investigation into the White House Travel Office matter and now the file matter?

Answer. I am not sure I can answer that question yes or no. I have had numerous conversations with the Independent Counsel's office. As to the file matter, I am fairly familiar with that and the contours of it, and at one point there was, as you may recall, a 1-day period when the investigation of that was going to be conducted by me.

Question. I believe that was the 18th of June.

Answer. I believe it was the 19th.

Question. Okay.

Answer. But I think it was from the evening—it was primarily the 19th.

But in any event, during that day, I had a meeting with the Independent Counsel's office and I was made aware to some extent of the investigation that they had already undertaken in connection with the files matter, which now looked like it would be turned over to me, only to be, as you know, quite quickly turned back. So I did have some understanding. I don't—I am not sure that I would have claimed to have a complete understanding.

Question. Has the Independent Counsel ever told you whether or not the First Lady has been notified of being a subject of any investigation?

Answer. No. No, they haven't told me one way or the other. About the FBI files or you mean about anything?

Question. I am talking about their investigation which would involve the Travel Office matter or the FBI files issue.

Answer. No. I have never heard in the course of any of this any allegation about the First Lady's involvement in the request for FBI file information.

Question. But you had heard clearly that everyone was saying she was involved because you just told Minority, am I correct, that—

Answer. No. I had heard clearly that everyone was saying that she was involved in the hiring of Craig Livingstone, not that she had anything to do with the subsequent actions by Craig Livingstone and Anthony Marceca in obtaining FBI files.

Question. Did you catch—did you believe that there was any relationship—that the reason that they were asking who hired Craig Livingstone was to see who brought him into the White House to find out if perhaps he was under someone's direction?

Answer. Who is "they"?

Question. The people you said you had heard from that they were saying that the First Lady perhaps had hired Craig Livingstone?

Answer. Well, I had heard that there were those allegations and there was a discussion about that. I was told to some extent by your committee in questioning Mr. Livingstone and Mr. Marceca, as to who brought them there and who was responsible for them.

Frankly, there are a number of possible explanations as to why people would be interested in that. Again, there is—it is, after all, an election year and among other matters, I am certainly not suggesting this about Chairman Clinger, but people have on both sides, partisan sides, made allegations back and forth about this and everything else.

Question. You have brought up no less than three times that this is partisan, it's an election year. Is that one of your considerations that you made when you took actions?

Answer. That what is partisan? What have I brought up no less than three times?

Question. About the partisan nature of hearings and testimony.

Answer. I don't believe I have said the hearings were partisan in nature. I think that's a mischaracterization of my testimony.

Question. It's just surprising to have a general counsel continue to talk about partisanship in a deposition and to talk about being an election year is interesting—and I am asking does that enter into any of the decisions you make?

Answer. Only in the sense that I said before, that we were aware that this was a very controversial matter and that we had to be particularly careful to not be wrapped up in anyone's allegations of partisan conduct.

Question. Okay.

Answer. And I don't think that there is anything surprising about our need to try and avoid that appearance.

Question. And I don't mean to imply that there is anything wrong.

Answer. You didn't imply it. You stated it.

Question. I stated that I keep hearing you talk about a partisanship existing.

Answer. No.

Question. I don't want to misstate you.

Answer. I have never once said that. I have said that some have made that allegation about certain aspects.

Question. Some have?

Answer. Some have. You are not disputing that, are you?

Question. I am just wondering why it's in this deposition whatsoever, what some have said.

Answer. Well, I think I have answered that question.

Question. In that same vein, you had discussed, in response to some questions, that Mr.—Director Freeh had called the Chairman about Mr. Brasseux's file and that was an attempt to similarly give us information in a nonpartisan way as the communication had been to the White House.

When Director Freeh called the Chairman about the fact that Barney Brasseux's file had been ordered by the White House and that the report had been sent over after Mr. Brasseux left the White House, did you have a knowledge that we were investigating that matter and that there was an investigation ongoing by this committee and had been for some period of time concerning the Travel Office employees?

Answer. Concerning the firing of the Travel Office employees? Yes.

Question. Well, and other issues related to the firing, that it was much broader than just the actual firing?

Answer. I am not sure I had a specific awareness that it was much broader than the actual firing.

Question. In fact, Director Freeh was informing the Chairman about Mr. Brasseux's file based upon the fact that it was within the scope of our investigation.

Answer. I can't say that as I sit here today. I assume that was his—he certainly knew it would be a matter of interest to the Chairman. Whether it was already within the scope or whether it was something likely to become within the scope, I wasn't privy to their conversations, either the one before that about Billy Ray Dale or that one. So I don't know. But surely he wasn't calling some other Congressman or Senator.

Question. Or just calling to give us some good dirt, right? He was calling, I assume, with a specific reason that he knew this was a committee with jurisdiction that had a long-standing investigation into a matter which he had knowledge?

Answer. I suspect it's more simple than that; that he was calling because this seemed like a logical follow-up on the Billy Ray Dale issue, and that he didn't go through a lengthy analysis of it.

Question. Okay. Well, you have analogized it with your call to the White House; that it was similar in nature to tell the White House about the contents of Bernie Nussbaum's interview back in March of 1993.

Were you aware at the time, when you made that telephone call, if the White House had any legitimate investigation going on into the matter?

Answer. Investigation?

Question. Uh-huh.

Answer. I didn't know one way or the other.

Question. I think—I mean, I think they had said publicly that they weren't going to investigate when you were authorized to investigate it for the day.

Do you recall that the White House said they were not going to investigate the matter? I think their press person had said that they had learned not to investigate anything because any notes they create might be discovered?

Answer. That's right, and in that respect I was certainly aware of it.

Question. You had a general awareness that there wasn't going to be an investigation?

Answer. Yes.

Question. So since you knew there wasn't an investigation into what Bernie Nussbaum had said, the call to the White House was, I think as the letter says, was for—that they were an interested party in the matter; is that correct? Or affected party? I am sorry, an affected party.

Answer. Yes.

Question. They clearly were an affected party because I assume you were aware that we were looking into actions of the White House Counsel's Office concerning the file matter and how that happened.

Answer. Well, of the previous occupants of the White House files's office—of the White House Counsel's Office, not of Jack Quinn nor Kathleen Wallman who, of course, weren't present at the time those files were obtained.

Question. You weren't aware that our investigation goes up to present day with actions that have occurred in the counsel's office regarding the way they have handled the document productions and their responses to investigations?

Answer. Well, I guess I was aware, although I didn't think about it at the time, that there had been a—I don't know if "dispute" is the right word, but some discussion back and forth between Mr. Quinn and Chairman Clinger, and that there was a threat of contempt and there was a discussion about the provision of files.

I was not aware that that was a subject of the committee's investigative interest as opposed to the committee, Chairman Clinger in particular, had expressed some frustration or unhappiness about the counsel's office providing documents that had been requested and threatened to hold Mr. Quinn in contempt. I did know that.

To my mind, those are two different things, but if you tell me that they are also the subject of the committee's investigation, that's the first I am aware of that.

Question. Okay. Now, the information that you actually gave to Kathleen Wallman, can you describe what you told her—

Answer. Yes.

Question [continuing]. When you called her?

Answer. I don't recall specifically. I recall that I told her that shortly, or essentially at roughly this time or whatever, that staff from Chairman Clinger's committee were going to be present at the Bureau to review the background files of Craig Livingstone and Anthony Marceca, and that in preparing the documents for that, 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 am sorry. 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 he had come highly recommended by Hillary Clinton?

Answer. Yes.

Question. Who has known his 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.

Question. Okay. Did you tell her not to contact anyone else?

Answer. No.

Question. Did you advise her whether or not it was smart to contact Bernie Nussbaum?

Answer. I don't give advice to the White House Counsel's Office.

Question. You were aware, though, that it was an interview with Bernie Nussbaum?

Answer. Yes, and I made her aware of that, too.

Question. Had you read the papers that Bernie Nussbaum was about to do a grand jury appearance before the Independent Counsel before you told that information?

Answer. No.

Question. Did you have any other knowledge that Bernie Nussbaum was going to be appearing before an Independent Counsel grand jury?

Answer. No. I would assume—well, I would assume that the White House Counsel's Office was more in touch of, with and on top of what a former counsel to the President was doing.

Question. I am just asking as you are relaying this information, did you provide any warnings about the information? I understand that the counsel's office asked if we could use it in Congress, but did you provide any warnings to them whether the Privacy Act might apply if they go out and tell people in the public?

Answer. I didn't think I had to. She seemed to be fully aware of the Privacy Act. Similarly, I didn't provide any advice or warnings to the committee on how they could use it.

Question. Subsequently, I believe Mr. Quinn told us that Kathleen Wallman did nothing with the information but told Jane Sherburne. Are you aware of any other contacts with Jane Sherburne to give her this information firsthand or whatever hand it was from the FBI?

Answer. From us?

Question. Yes.

Answer. Jane Sherburne the following day called Tom Kelley, I am aware of that.

Question. Okay. Did Mr. Kelley talk with you before he told Jane Sherburne or talked about this?

Answer. Well, he knew—I mean, we had—he knew that I had already called and disseminated this to Kathleen Wallman.

The next—we are now on the 16th, when she called Mr. Kelley? At that point—I don't believe he told me beforehand. At some point, I believe it was on the 16th, I walked into his office while he was on the phone with Jane Sherburne.

Question. And was he discussing the contents of that file with her at that time?

Answer. He was discussing—this was after we had already dispatched agents to Dennis Sculimbrené's house. I believe he was—she was relating to him, or so he told me that the facts—the allegations in that paragraph had been disputed by everyone involved; that Mrs. Livingstone had denied it, that Hillary Clinton had denied it and that Bernie Nussbaum had denied it.

Question. So you had knowledge that she had already gone to Hillary Clinton by the time Mr. Kelley talked to her?

Answer. Well, that was in the paper on June 26th. I don't know that she had—that someone had gone to Hillary Clinton well before this about the allegation and that she had publicly denied it.

Question. Did Jane Sherburne tell Mr. Kelley and/or you that she immediately went to the First Lady with this information?

Answer. I have not spoken with Jane Sherburne since, I believe June 20th, and I don't—if she told Mr. Kelley that, he did not tell me that.

At one point, I asked him after the fact, "Is this"—"Do you know whether she"—"they've gone out and done this investigation now, or is this based on earlier investigations?" and he said to me he did not know.

Question. So you didn't know if they had called Craig Livingstone's mother to get the statement as a result of your phone call or if they had done it previously?

Answer. The month previous, when this had been the focus of much public attention.

Question. And similarly for the First Lady, you didn't know if they had immediately gone and asked her for a denial or it was just her statement in the press where she denied knowing Mr. Livingstone previously.

Answer. And I don't know to this day.

Question. But there were no warnings or any caveats given with the information telling them not to go beyond any of the individuals that were involved.

Answer. I believe they know what their obligations are. I did not rehearse for them what various rules or regulations would apply to their handling of the information.

Question. And I think you said you thought that Mr. Kelley was talking to Jane on the day that the agents were sent out to Mr. Sculimbrené's office—I mean Mr. Sculimbrené's home. I think the agents were sent out to Mr. Sculimbrené's home on Wednesday, July 17th.

Answer. I thought it was Tuesday, the 16th. I can tell you, if you would like.

Question. Please.

Answer. My notes say the 16th.

Question. Okay.

Answer. Let me see if I—I believe I've got the—

Question. Because they arrived, I think, at 10:00 a.m. in the morning, which would have been before I had even reviewed the file.

Answer. And?

Question. Well, I'm just asking if that, in fact—if your belief is that the agents arrived at Mr. Sculimbrené's home at 10:00 a.m. on July 16th.

Answer. Well, of course all the agents showed to Mr. Sculimbrené the report that he had prepared. But yes, the 16th, not the 17th.

Mr. PARKINSON. Just for clarification purposes, do you know whether it was at 10:00 as opposed to—

The WITNESS. I have no idea what time of the day it was. I can probably sit and try to reconstruct that at some point, but I—

EXAMINATION BY MS. OLSON:

Question. Well, they had called that morning to his office—is that correct?—and found that he wasn't there at the office——

Answer. I don't know.

Question [continuing]. And then called him at home.

Do you know if they called him at home?

Answer. They told me they spoke to him before, and I understood that to be when he was at home and had made an appointment.

Question. Were you aware that the day the agents were dispatched to Mr. Sculimbrene's home that there was an OPR interview with him that very afternoon?

Answer. I was subsequently made aware of that. When they came back, they told me or I learned—I don't think they told me directly when they came back; I somehow learned that they had to schedule their interview between an OPR interview.

Question. Did the agents express any concern about what they were doing in light of the fact that he was obviously under some pressure because the FBI was having an OPR interview at that same time period?

Answer. He was not obviously under any pressure. He was not being interviewed as the subject of an OPR investigation; he was being interviewed as the complainant in an OPR investigation. And they asked him beforehand, and he welcomed them to his house, and, as I mentioned before, when they got up to leave, he urged them to stay and to discuss other matters and then got into the discussion of personal details about his life.

So he was not under any pressure, either from these agents or otherwise.

Question. Is there a reason you didn't call his attorney before these agents were dispatched or direct someone to call his attorney?

Answer. Why would we have called his attorney? He is an employee of the FBI being asked about his actions as an FBI employee. He does not have an attorney relating to those matters.

Question. Oh, he certainly had an attorney relating to those matters.

Were you aware he had already been before a grand jury with the Independent Counsel on this matter?

Answer. On what matter?

Question. On the file issue before Independent Counsel Ken Starr in a grand jury appearance before you sent agents to his home to take down a 302 statement about him.

Answer. About the question of whether Hillary Clinton had recommended Craig Livingstone?

Question. You act like that's not related to the whole file issue. Craig Livingstone was the head of the office who ordered the file issue, and an entire hearing in Congress was trying to find out who hired Craig Livingstone to find out if anyone directed him to order Republican files.

So yes, he was in a grand jury appearance on the file matter, and that comes from his own attorney's letter that was written to you, I believe.

Answer. Which is full of inaccuracies, which he has subsequently admitted, I am told, to Mr. Kelley.

Question. I don't think I asked that, but I'm glad you added that his attorney's full of inaccuracies.

Answer. Is there some reason——

Question. No. I would like you to state what inaccuracies his attorney is full of.

Answer. Well, his attorney, if I can get the letter—do you have it?

Question. I don't have them up here with me.

Answer. I think I do.

Question. I wasn't aware they were full of inaccuracies.

Answer. Well, now you are.

His attorney, Mr. Hauser, wrote a letter July 22nd. It says, first of all, that Special Agent Sculimbrene was unexpectedly visited at his home. That's inaccurate, since an appointment was made, and there was nothing unexpected about it.

Question. The appointment was made. Was an appointment made, or were the agents calling him to say they were on their way?

Answer. They called—I am advised that they called and asked whether they could come and he said yes.

Question. So that was the appointment that was made, is that they called and asked if they could come immediately to his home.

Answer. The point is, there was nothing unexpected about it. That is an inaccuracy.

Question. Was the attorney expecting the visit?

Answer. No, I don't believe so. It doesn't say unexpected to me. It says the agent—it says he submitted to the interview after receiving assurances that the subject of the interview was not related to either Travelgate or Filegate affairs. The agents say they told him specifically that it was related to his interview of Nussbaum about Craig Livingstone.

Question. Which is related to Filegate, obviously.

Answer. Well, at least you've been telling me that.

Question. Have you asked Mr. Sculimbrene if he thinks that the agents said that?

Answer. I have not asked Mr. Sculimbrene. I've received quite a bit of criticism for asking Mr. Sculimbrene anything. I thought it was perhaps—

Question. Just thought I would ask.

Answer [continuing] Imprudent to go back and ask him some more.

Question. I might agree.

Answer. That's the second inaccuracy.

I was surprised to subsequently learn what the focus of your questioning was.

That's the third inaccuracy, since the agents in fact spoke to Mr. Hauser before they conducted the interview. They told him exactly what they were going to ask him, and Mr. Hauser acknowledged that and said he understood.

Question. I think Mr. Hauser in a later letter said he doesn't quite remember that with the specificity that your agents do.

Answer. That's different than denying it and different than making the allegation it didn't happen. That's just saying he doesn't recall.

Question. Because your agents have sworn it's true; is that correct?

Answer. Yes, and you are now questioning their integrity?

Question. No. I'm just asking if they put—I'm not questioning your integrity, Mr. Shapiro, or the agents. I am just saying the agents have sworn on the 302 that, in fact, they told Mr. Hauser the purpose of that interview with Mr. Sculimbrene.

Answer. I don't know that I would say they swear when they put it out under a 302, but they sign to it and put their initial on it.

Question. Attest to its truth.

If Mr. Sculimbrene doesn't—was standing there listening to his attorney and doesn't recall that, there would be a conflict there; would you agree?

Answer. There might be. If he—of course it's hard when you only hear one side of a conversation.

Question. Has that 302 been turned over to the Independent Counsel?

Answer. Yes.

Question. I'm sorry. Any other inaccuracies from the lawyers?

Answer. Those are at least three. I believe that was the three I had in mind.

It was subsequently a letter—Mr. Kelley spoke to Mr. Hauser; after he got from the agent the detailed description of what had happened, sent a letter back. I don't know if you have that—a letter Mr. Kelley sent back to Mr. Hauser. I don't know if you're interested in that.

Question. No. I would like to have copies of them if we could get—we've asked for a lot of other documents. If we could have just copies of those communications between Mr. Hauser and—is it the agent or you?

Answer. Tom Kelley—neither.

Question. Your deputy.

Answer. In any event—

Question. Were you aware that Mr. Sculimbrene had sat here and been deposed under oath for about 6 hours the day before you sent agents out to see him on the file matter?

Answer. I don't recall being aware of that. I knew at an earlier stage that he was interviewed by—I'm not sure "deposed" is the right word, but by the Senate Judiciary Committee.

Question. On the file issue.

Answer. Yes. I don't recall being aware, certainly before, that he was interviewed or deposed by this committee, either the day before specifically—I don't recall being aware of that.

Question. Do you have any knowledge that Mr. Hauser was his attorney in the interviews that he had before the Senate as well as any interviews we would be having with him concerning the file matter?

Answer. I had never heard of Mr. Hauser before I received this letter from him.

Question. Well, surely you heard of him when the agents told you they had talked to his attorney.

Answer. The agents didn't tell me. I heard that—again—indirectly.

Question. I thought they put that in the 302.

Answer. Well, if they did, then the name didn't mean anything to me. They did tell me they talked—they did say they talked to the attorney. I don't believe I asked

or was told the name of the attorney. I'm not sure, though I could tell you, whether his name is in the 302. It may well be.

Question. I haven't seen the 302.

Answer. In fact, it is. So I must have overlooked that. But I—

Question. We have made a request for the copy of the 302.

Answer. I don't know Mr. Hauser. Mr. Kelley does know Mr. Hauser and I guess knew that he was in—that he was representing Agent Sculimbrene.

Question. But are you aware of any conversation about whether or not to contact his attorney before agents go out there or whether it would be appropriate to see if he had an attorney on the Filegate matter before agents went out there?

Answer. No.

Question. Is it the normal policy of the FBI to contact attorneys if they're aware that agents are currently being represented by an attorney on the matter?

Answer. If—it depends if we're questioning them about the subject matter of their representation. Then the answer would be yes.

Question. Okay. By the time you had talked to Kathleen Wallman and Mr. Kelley had talked to Ms. Sherburne, had Director Freeh been notified of this matter?

Answer. Not at the time I talked to Kathleen Wallman. He was out of the office that day, the 15th.

By the time Mr. Kelley spoke to Ms. Sherburne, who of course already had the information before she talked to Mr. Kelley, so I don't believe there was any new dissemination at that point—by that point, I believe Director Freeh knew of this information.

Question. How did he know of it?

Answer. I had told him.

Question. Can you describe when you met with him and who was present when you talked with him?

Answer. I didn't meet with him. I believe what I—I talked to him on the phone sometime late afternoon/early evening on the 15th. He was out of the office that day. I believe he was on a cellular phone at Six Flags amusement park where he took two of his children who had birthdays that week.

And in the course of bringing him up to speed about a lot of different matters, I believe at that time I advised him that this had been located in the—in the file—that it was being provided to the committee and that I was also—I had also advised the Department of Justice and the White House Counsel's Office.

Question. Okay. Let's see; this was Monday evening?

Answer. Yes.

Question. Did he make any recommendations to you or make any comments about your advising the Department of Justice and the White House?

Answer. No—not either. I should say, his being at Six Flags amusement park, I'm not sure he was entirely focused on the matter at the time.

Question. When did you notify the Department of Justice?

Answer. Immediately prior to calling Kathleen Wallman.

Question. And who did you speak to there?

Answer. Dennis Corrigan, the chief of staff for the deputy attorney general.

Question. That is Jamie Gorelick?

Answer. Yes.

Question. Can you just describe why you called over to the Department of Justice before you called the White House?

Answer. Yes. I guess there are two reasons. One is, when I advised John Collingwood of this information on that Monday, he said to me, "Have you told the Department of Justice and the White House?" and I said not yet but I was intending to.

I had a brief conversation with him about who at the Department would be the appropriate person to contact.

And so that, frankly, as a practical matter—that is probably why it was immediately in my head at that time. But also it is not unusual, since the deputy attorney general's office has, at least with respect to the FBI, the primary liaison with the White House Counsel's Office—they meet weekly; they address a lot of issues much more often than I do—I advised them just sort of as a matter of course beforehand that I was going to advise the White House Counsel's Office.

Question. Is there any concern or any suggestion that you would tell the Department of Justice and let them decide if they want to advise the White House of this matter?

Answer. I could have done that. I advised them, and they made no objection to my advising the White House.

Question. But this is just the chief of staff, not Jamie Gorelick; am I correct?

Answer. That's right.

Question. Did you ever talk to Jamie Gorelick before advising the White House—

Answer. No.

Question [continuing]. To see if she would give approval for that?

Answer. I did not.

Question. You said that Mr. Collingwood suggested the White House, and he's a person that has come up a lot in our White House Travel Office investigation. In fact, he was over at the White House having a meeting on press briefings in the Travel Office. That became a big issue and was investigated and reported on.

Do you know why Collingwood would suggest that you call the White House about this? Did he say?

Answer. I wouldn't say he suggested it. He asked me, "Have you advised the White House and the Department of Justice of it?" and my understanding was, he did not say—the short answer was, my understanding was, for the same reasons that I was thinking of doing it, that this was going to be a matter of public controversy and that it was a matter that had already been focused and that we should ensure that we treated everybody in an evenhanded manner.

Question. That all the affected parties were notified?

Answer. Yes.

Question. Why did you tell Mr. Collingwood of the contents of this interview?

Answer. He's the director of congressional affairs. It was information being turned over to your committee. I keep him informed.

It's an unusual situation we have in this matter after my files investigation that I'm at all involved in these relations with the Congress, which normally his office, through—primarily through Maggie Owens and others but often through him, himself, are handling. So I keep him advised of anything.

Question. And so all of these calls were made before anyone from this committee had ever reviewed the file?

Answer. As it turns out.

Question. And I think it wasn't until Tuesday at noon when I came to the FBI on an appointment to review the file.

Answer. After having cancelled from the previous afternoon.

Question. Right.

Do you know if the conversation with Jane and Mr. Kelley occurred before noon or after noon?

Answer. I do not know, and I have no independent knowledge of when you were at the FBI.

Question. Okay.

Answer. I do know, as I testified earlier, that I asked Maggie Owens that morning to ensure that someone from the committee came over and advised that there were matters of interest in the files that you would want to see.

Question. Yeah, and, as a matter of fact, Maggie did tell me that, and my response was, I thought that was an inappropriate notification.

That's sort of like a hot tidbit there.

The chairman had just asked to review the file, not, "There's something here you need to see," and I know Minority counsel said they were notified similarly.

Was she told—she was told to do that on your advice, to give us a heads-up that there was something there we should see?

Answer. Not those specific language, but to ensure that you did, in fact, come and review those files, so that we wouldn't be in the position of having, although attempting to make simultaneous, evenhanded notification to the Congress and the White House, of having advised the White House and then not have the Congress ultimately come.

Question. Which did happen. I mean, at least a day.

Answer. For 18 hours.

Question. I believe earlier there were some conversations, that Mr. Kelley talked with Jane Sherburne about issues concerning this file matter. That was his point of contact; is that correct?

Answer. Yes. I don't mean to suggest that happened routinely or regularly, but he had talked to her previous to her call back. He talked to her about three or—I don't recall how many times.

I was aware he talked to her on two or three or four occasions over the intervening weeks, for instance about the question of whether the White House was objecting to our providing some information to the committee directly. They had, as I understood it, a back and forth about that. In fact, they had met on that first evening, June 6th.

Question. At the White House?

Answer. I've never met Ms. Sherburne.

Question. Are you aware of who Ms. Sherburne reports to within the White House, formally?

Answer. From my understanding, was that she reported to Jack Quinn.

Question. She does not.

Answer. I took that understanding from the very first conversation that I told you about that I had with Jack Quinn that night when I said, "Who in your office will handle this matter?" and he said, "Jane Sherburne."

Question. Were you ever told that Jane Sherburne's job within the White House is to manage the investigations and the productions in all of the various investigations that are going on of the White House?

Answer. I don't believe I was told that. I certainly knew that she had that role as to the file matter because—

Question. That's who you talked to.

Answer. That was who I talked to. And until this moment that you're advising me, no one's ever told me that she reported to someone other than Jack Quinn.

Question. So you were never provided any information that she had a reporting—formal reporting outside of the White House Counsel's Office?

Answer. No. I believe she had the title "Special Counsel to the President."

Question. Uh-huh; she does.

Is there a reason that Jack Quinn wasn't the one who was notified—

Answer. Yes.

Question [continuing]. As counsel to the President?

Answer. I called him. I was advised he was out of town that day. They said, "Would you object to speaking to Kathleen Wallman?" I said, "Of course not."

Question. So you directed your call to Kathleen Wallman?

Answer. I directed my call to Jack Quinn.

Question. Then—

Answer. The office directed me to Kathleen Wallman.

Question. Did anyone tell you that Kathleen was just walking by a phone and picked it up and it was you?

Answer. No.

Question. Do you know if Mr. Quinn knew that your call was then directed to Kathleen Wallman after you couldn't reach him?

Answer. I have no idea.

Question. You haven't had any conversation with Mr. Quinn about—

Answer. That question? No. I didn't—to me, there was no mystery about it. Whoever answered the phone said, "He's out of town today. Do you mind speaking to Katherine Wallman?" I said, "No." He said, "Let me see if I can find her." The next thing I heard, she said, "Hello."

Question. You don't believe Kathleen was just walking by some phone ringing and picked it up?

Answer. Oh, please.

Question. Unless she was walking by her phone?

Answer. I certainly wouldn't say I don't believe that. I'm saying I was not aware of that. If she was walking by a phone when someone said, "There's a call for you"—

Question. It may have rang.

Answer. Yeah.

Question. Did anyone ever bring up the issue of contacting the Independent Counsel during these initial few days where the White House is receiving this information?

Answer. No. We were operating under the assumption that this was not a matter the Independent Counsel was interested in.

Question. I want to go through sort of what the assumptions were. You had been given the investigation on June 19th, or I guess late the 18th and had it for June 19th; is that correct?

Answer. Well, I had been given the internal investigation on June 5th, completed that report on June 14th, continued to do some follow-up.

I was advised that on June 16th or thereabouts that the Independent Counsel had written a letter to either the Attorney General or the deputy attorney general expressing some reservations about their continuing with this, with the White House side of this, and I was advised on I think the evening of—I've lost my days again, but the evening of the next day—sorry, the evening of the 18th, that this was a matter that was going to be assigned to me.

Question. For a thorough investigation?

Answer. For a complete investigation of the White House end of this as well—which I—

Question. And when did that change, that you no longer were going to have that investigation?

Answer. At 9:00 a.m. on the morning of the 20th, the Attorney General released a statement that she was going to refer the matter to the court to be added to the jurisdiction of Mr. Starr. So there was the day, the 19th, when I thought that I would be conducting this.

I, frankly, was also—it was also, that day was the day before my testimony before the Senate Judiciary Committee. So I was primarily focused on trying to write an opening statement and figure out what I was going to say about that.

Question. For one day you had the entire investigation. Now, when the Attorney General notified you—and I think it was a formal notification too that was made public—do you recall within the Attorney General's statement that she believed there was a conflict of interest with the FBI investigating its contact with the White House?

And it may have been in her press statement rather than in her—

Answer. In fact, what I was aware of is that the official document said that an investigation by the Department of Justice of whether Mr. Marceca violated Federal criminal law in making the request to the FBI would constitute a political conflict of interest.

Question. Right. It would be a political conflict of interest for that investigation. And so you stopped all investigation, including Mr. Livingstone, at that time; is that correct?

Answer. I had essentially never started it.

Question. But you knew everything was stopped by 8:00 or whenever you read that—

Answer. 9:00.

Question. 9:00 on Monday?

Answer. That's right. I received a call before I read it.

Question. And that Ken Starr had been given jurisdiction.

Answer. Yes.

Question. Over the issues connected to the FBI files.

Answer. Well, over what I just read to you.

Question. Over Mr. Marceca only?

Answer. No. In regard to questions relating to violation of Federal criminal law relating to the FBI files.

Question. Which would include anyone who might have violated the criminal law.

Answer. Sure.

Question. Now, when you read the Nussbaum interview and knew that there was some inconsistencies there—

Answer. Between what and what?

Question. Between statements that had been made—numerous statements that had been made that Hillary Clinton did not recommend Craig Livingstone—

Answer. Uh-huh.

Question. And the fact in the statement it said Hillary Clinton recommended Craig Livingstone.

Answer. Uh-huh.

Question. Did you have an understanding that those inconsistencies might be a violation of Federal law if any of them were made under oath or to any individual that were looking into this matter?

Answer. Well, if you're asking me, do I have an understanding that lying under oath is a violation of Federal law? the answer is yes.

Question. Or if those—the people you knew had made other statements.

Answer. Well, I knew, for instance, that Mr. Nussbaum had both been deposed and had testified before the committee.

Question. Okay.

Answer. I did not know specifically what he said about this, but I knew that whatever he said, he had already said; that it was taken under oath and he had said it.

Question. And you knew that he hadn't said Hillary Clinton recommended Craig Livingstone.

Answer. I don't know what he said in his deposition, but I made the assumption, which I will assume you will correct me. But had he said that, we would have heard that in the public hearing.

Question. And so I'm just trying to get—with all that knowledge, there still wasn't any recognition in your mind that Ken Starr might have interviewed these people and that if Bernie Nussbaum had sworn under oath that Craig Livingstone had not been recommended by Hillary Clinton or that he didn't know who, that there might be a violation of criminal law or at least a question whether or not?

Answer. The short answer to you is yes, as astounded as I can tell you are by your voice, that as shocking as it may seem, at the time that I—the sort of moment I devoted in the course of everything else on this, initially on this decision, I did not have that in mind. If I had, I would not have done it.

I will say that to the extent that he had testified under oath to the contrary, he had already testified under oath to the contrary; that our advising the White House counsel of all things wouldn't let him undo what he testified under oath, and if it was inconsistent with this matter, it was inconsistent with this matter.

Question. Unless he hadn't gone before a grand jury and testified again under oath.

Answer. Even if he had. If he testified under oath on this matter to the contrary, he was already liable for it.

Question. But you can be liable for—

Answer. More than one crime, sure.

Question. As you well know. You were a prosecutor for years, and I'm sure you still think like one to a certain extent.

Answer. I'm not sure I can comment on the last part. But I was a prosecutor for years; I am aware of—I am also aware, as a prosecutor for years—and I know you were too, and I can tell you still think like one—that if a witness locks themselves in under oath in two previous things, it is fairly unusual for them to change that when they then testify under oath a third time. So that doesn't seem like more than a theoretical concern.

Question. That, in fairness—I mean, we had Mr. Marceca testify before our committee and then take the Fifth Amendment before the Senate. So there have been sort of unusual occurrences with statements made and then privileges taken. So that's probably more relevant to our experience that we've had in this matter.

And the same question with the visit to Dennis Sculimbrene. I assume, similarly, no one had any discussion of contacting Ken Starr.

Answer. You're right. It's really the same decision. Had I focused on, as I should have, the fact that this might have been a matter within the purview of the Independent Counsel, we would not have done anything.

It's really a single decision; it wasn't two decisions. It was a single oversight. And had I recognized it the first time, I wouldn't have done either of that. Having not recognized it, didn't have it in my mind, I did both.

Question. Did you have any concerns that contacting the White House would require those individuals to make contacts of other people just on a political basis?

Answer. No, but—

Question. Because they do answer to another type of boss in the White House.

Answer. They do, and I'm insufficient—

Question. I mean legitimately so, they answer—

Answer. They do, and I'm not—I'm not practiced in that. I don't have—I've only had nonpolitical career Department of Justice appointments, and so I didn't have those issues in mind.

Question. I mean, it's something that AUSA's in Washington are aware of because they are within this area—

Answer. Right.

Question. And they know that contacting the White House doesn't quite—doesn't have the confidentiality that a law enforcement agency has.

Answer. In both the Southern District of New York and on various assignments elsewhere, I had never contacted the White House or had any contacts with the White House Counsel's Office prior to my present job.

Now, I would comment on the last—well, no, I won't.

Question. During your one day of investigation with this and/or at any time, were you ever made aware of Anthony Marceca's going in and out of the White House prior to his detail, I think close to about 100 times?

Answer. No. This is the first time I'm hearing it. Certainly if anyone ever mentioned it to me, it never made an impression on me, but I think that's something I'd remember.

You mean in and out as a visitor?

Question. He was on a regular access list.

Answer. I don't know. I would say that—let me just say, if you're going to get into this area that I was made—given access to in the course of that day information which I don't think would be appropriate for me to talk about because it is now, again, within the Independent Counsel's investigation, and I was only given access because it looked for that period of time that I was going to be running a criminal investigation—

Question. And this was concerning Anthony Marceca.

Answer. Well, I'm—I don't think I want to say what it was concerning, period. I just want to say, if you're going to go into a line of questioning what I've been made—given access to or made aware of; but the answer to the question you just asked me is no, I've never been aware of that.

Question. Well, it's a similar question to an individual that's being investigated. Not only Craig Livingstone's background file was reviewed by the chairman, but also Anthony Marceca's file was reviewed. And I guess my question—were any issues concerning Mr. Marceca brought to your attention during the period of your review?

Mr. PARKINSON. Barbara, just for clarification purposes, I'm not sure whether you followed—

Ms. OLSON. I may not.

Mr. PARKINSON [continuing]. What Howard is talking about, which is, during that one-day period there were discussions with the Independent Counsel.

The WITNESS. Yes.

Ms. OLSON. Okay.

Mr. PARKINSON. If we can parse the question so we don't get into those discussion, fine.

EXAMINATION BY MS. OLSON:

Question. Let me parse out the Independent Counsel. What I'm trying to get out—did anybody look at Anthony Marceca's file and go "and tab number 2"?

Mr. PARKINSON. Other than the Independent Counsel.

EXAMINATION BY MS. OLSON:

Question. Other than the Independent Counsel. Other than conversations you had from the Independent Counsel concerning Mr. Marceca.

Answer. Yes.

Question. And did you communicate those issues to anyone else outside of the Bureau or the Independent Counsel?

Answer. No.

Question. To your knowledge, has anyone communicated those issues to the White House?

Answer. Not as far as I'm aware.

Question. So you have no knowledge of any communication to the White House of any of that information by anybody in the FBI that may have reviewed it.

Answer. Right.

Now, of course we haven't specified what that information is, but at least what I'm thinking of, no, I'm not aware of anyone having advised anyone other than the Independent Counsel.

Question. And I'm including anything that's in his file.

Answer. Yeah. I'm not aware of it. The answer is, I'm not aware of it.

Question. We had a situation where we were notified that there was a limited inquiry done on Lisa Wetzel who had been in the White House Office of Personnel Security and in fact was the individual who discovered the mistake and put the files away. And this limited inquiry was in May of 1995, and she left that office and went to go work for the Secretary of the Army.

Are you aware of any instances where the background summary was questioned by someone in the White House and asked to be changed and that they asked the FBI to review it and perhaps change it because they'd made a mistake?

Answer. I don't believe I am aware of anything like that.

Question. Did Craig Livingstone call and ask someone to look—take another look at Lisa's background to see if her discrepancies maybe didn't happen?

Answer. Well, let me say as to that, I have been recently advised by Maggie Owens that there was a dispute about information obtained about Lisa Wetzel and a dispute about whether somebody had or had not said something and that she was at the time, whenever this was—well, previous to—I learned of this in the last week or so—that at the time that she was—she was either afforded a second interview or something like that.

Question. Is that unusual?

Answer. I guess I don't have enough experience with the background process to know. I would hope it is unusual that someone believes that what they—that what's being attributed to them in an FBI investigative report is other than what they have said. And I believe it's unusual, but I don't—I can't really quantify.

Question. Do you know if she was allowed to read her own background investigative report?

Answer. I don't know.

Question. Do you know how she would know that it was not correct, what was being attributed to her?

Answer. I didn't—I don't—I don't know the details about this to know whether she knew or whether, as you put the question to me, Craig Livingstone called.

Question. Well, let me put this in perspective and see if you can shed any light on it.

Lisa Wetzel had her background interview, and it was all completed—'94 it was finished; she got her pass. And then, all of a sudden, there is a discrepancy, that is brought to the FBI's attention in May of '95, a year later, right before she's about to leave and go take a job requiring quite a high level of security clearance. Her background was done by Gary Aldrich.

Answer. The first time?

Question. And then all of a sudden, a year later, Craig Livingstone's telling the FBI, at least by the letters we received, that there is some discrepancy and they need to relook at it, take another look at it again.

Answer. In May of '95.

Question. A year later. Do you know why this was done?

Answer. No.

Question. Did you assign any agent, or do you know who assigned a new agent to reinterview her?

Answer. That's not a process that I ordinarily have anything to do with.

Question. I'm asking if it was brought to your level. It may not have been.

Answer. And it was not until over the course of last week when—or last week or two, when Maggie Owens made general reference of it to me, and I didn't, frankly, get into the details with her.

Question. Do you have any idea why, or do you have any information now, as you sit here, why a year later this was brought to the FBI's attention, that there had been some discrepancy back years ago made in an FBI interview?

Answer. No, I don't really. What I understood or maybe just assumed was that some comparison was made between a statement or statements at different times and that there was an inconsistency, but I—

Question. But this would have been brought to your attention a full—at least a full year after she's gotten her past.

Where—if there are inconsistencies, aren't they formally brought to your attention in the whole process of background investigation?

Answer. I don't know. I just don't know. I don't know how long it usually takes before, for instance, the White House Office of Personnel Security, particularly under Craig Livingstone's management, took to sit down and compare the various information they had.

Question. She had had her hard pass, though.

Mr. PARKINSON. Just for clarification purposes, when you say "brought to your attention," you're talking about the FBI.

Ms. OLSON. The FBI.

Mr. PARKINSON. And not Mr. Shapiro's attention personally.

Ms. OLSON. Thank you. I was trying to see if it had gone up to his level or if he has any information, because right now we just have questions and you may not have the answers.

The WITNESS. I don't.

EXAMINATION BY MS. OLSON:

Question. But you're sitting here.

Answer. I don't have any of the answers on that subject.

Question. Do you know if Gary Aldrich was asked back, when he was with the FBI, to review his investigation of her and, in fact, did review it, and whether his supervisor was called by the White House to review Gary Aldrich's investigation?

Answer. I don't know anything about it.

Question. I'll go on to another topic.

In the very beginning when the Billy Dale file was discovered and Chairman Clinger made his statement, there was a large issue about Bernie Nussbaum's name on the form that went over to the FBI, and it later became apparent through testimony in other hearings that Mr. Nussbaum, in fact, had no knowledge—personal knowledge—that those forms had gone over.

Answer. And I recall him being quite upset about that.

Question. But his name was on the form that went over.

Answer. It certainly was.

Question. Now, the background investigations that were submitted to Bernie Nussbaum for Craig Livingstone and for Anthony Marceca have a letter submitting them to Bernie Nussbaum from Larry Potts. Are you aware?

Answer. From him or with his name on it?

Question. With his name on it.

Answer. Are you aware of a procedure in the FBI that background investigations are then submitted to the White House Counsel's Office with people's name on it and they have no idea that that's being submitted?

Answer. I'm aware of a procedure in the FBI, that has driven me crazy since I've gotten there, that it is a time-honored practice, no doubt going back to Mr. Hoover, that when a communication comes out of a division of the FBI, that it have the head of the division's name on it.

Answer. As the head of a division, I have found this very troubling, because there are documents all over the world that say "from Howard Shapiro" that I've never seen.

I have internally changed that practice in my office with some, but not complete, success because the people who have been trained for 20 years to do it that way have occasionally lapsed back into it. And I've told people if they think that they have the authority to sign it out, that they should sign it out in their name rather than mine, and if they think it needs my name, then I should see it.

But I am aware that that, unfortunately, is the sort of—has been the practice at the Bureau. It does not surprise me.

Question. Why did you change that procedure? What did you see a problem with people signing your name on documents all over the world that you didn't know?

Answer. The problem is the problem that Mr. Nussbaum felt, being—having matters attributed to him that he didn't know about. I mean, it's a trouble anyone would have that—

Question. Well, any lawyer especially?

Answer. Any lawyer especially.

Question. That you don't know what's going out under your name?

Answer. Right.

Question. Or haven't approved it?

Answer. Right.

Question. And even seen it.

Answer. Obviously, I had the experience, as I believe you have had, as an assistant United States attorney, where I would sign over the name of the United States attorney, under the name of the United States attorney, but it would indicate by whoever. And that was a practice I was comfortable with. Having people attribute things to me that I'd never seen was not a practice I was comfortable with.

In the—getting back to Larry Potts, he was the assistant director of the Criminal Investigative Division at, I think, the relevant time, and at that time, unlike today, the background unit was in the Criminal Investigative Division. In fact, I remember when he asked and succeeded in having that transferred out from under him, and I would imagine that there were innumerable documents that said "Larry Potts" on it that I would not expect, as assistant director, he would ever have seen.

Question. I think every unit chief under him was allowed to sign his name to any document as well as others that had titles.

Answer. That's not inconsistent with what I know about Bureau practice.

Question. And isn't it true, another problem with that, especially as an attorney, if you authorize people to sign your name, you have some sort of responsibility then for what they do? Would you agree with that, if it's a direct authorization?

Answer. I would. The only reason I'm hesitating is because I have some sort of responsibility for what any of my people do. But I have obviously greater authority—greater responsibility, the more I've authorized.

Question. Is that procedure now changed in the other departments within the FBI?

Answer. Not as far as I'm aware. But it—

Question. Because I think the White House did change. Jack Quinn did change the procedure, that nothing went out under his name on these forms, that now the individual who is requesting them is going to put their name on them.

Answer. He did. We sort of jointly worked on a new form—on new procedures. It requires the actual signature of an attorney from his office and of the person requesting the information and of the person whose information is being requested. So—

Question. But that hasn't been done on the same side for transmittals from the FBI to the White House, as far as you know?

Answer. Well, it certainly should be. I'm glad you brought that to my attention.

Question. Well, I mean one of the things that happens is, we did bring in Mr. Potts, obviously, because his name was on these and then realized—

Answer. He said, "I ain't never seen this;" right? Yeah. Yeah.

Now I would say I think it is Bureau practice, though, that at a minimum, if you're signing someone else's name, that it should have said "L-A-P," slash, somebody else's initials.

Question. In fairness, I don't remember if there was a slash with the initials. Mr. Potts was someone who was involved in our Travel Office matter—not involved, but he was obviously in a chain of command—

Answer. Sure.

Question [continuing]. And was notified. So when his name was also on the Craig Livingstone and Anthony Marceca background files, his name struck—you know, rang a bell.

Answer. Right.

Question. So that's why he was asked.

I want to move forward a little bit in time. 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?

Answer. 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.

Question. You mean by the tone of—the tone of the letter?

Answer. 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.

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

Answer. 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."

Question. And what was the one sentence?

Answer. 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.

I don't remember the way it was in the alternative version, but it said something like—it stated as a fact that an FBI background investigation was falsified.

Question. Did you have any information that there was any falsification of Dennis Sculimbrene's background investigation?

Answer. No. And I mean, I—well, I knew there were allegations by all of the other people who would have knowledge that it had not happened and that it did not happen.

We had, as you well know, sent agents to ask Agent Sculimbrene, and he said he had no specific recollection about it but attested to the general form.

So if the question is, do we have evidence that it had been falsified? the answer is no. And when they—I didn't really—in truth, I didn't have to express much of an opinion on this because I think Jack said to me, "We think it's better in this other form," and I said, "I'd agree with that."

Question. How many background interviews would you estimate Dennis Sculimbrene has done since March of 1993?

Answer. Oh, I'm sure hundreds and possibly more than that.

Question. Did any of the agents find it unusual that he didn't remember—

Answer. No.

Question [continuing]. Some of the comment?

Answer. No. And part of the—the other—there were two purposes of the interview, because sometimes they remember, and it surprises you what they remember. The other was whether he had any notes or was aware of where they would be, and he described how he normally maintained notes and when he routinely destroyed them. There was nothing inappropriate about that. But it seemed worth inquiring so that we could—because it was already a matter being hotly contested.

Question. And, in fact, Mr. Sculimbrenne said that he types up his interviews from his notes pretty concurrent with taking the interviews or—

Answer. I think he said that. I don't remember exactly what he said, but it was something to that effect.

Question. So was there any reason to believe that the public confidence would be shaken in the accuracy of FBI investigations based upon what Mr. Sculimbrenne had written in March of 1993?

Answer. I guess it depends on how the story ends.

Question. Right.

Answer. And—

Question. But based upon what you knew, did you have any belief—

Answer. Well—

Question [continuing]. On the facts?

Answer. I hadn't formed a final belief. I did have concerns, given that everybody else said it absolutely, adamantly didn't happen. That raised a question in my mind. It didn't resolve the question in my mind, but, sure, I had concerns.

Question. Do you have any evidence or any knowledge of any conspiracy going on in March of 1993 to put something in that file—

Answer. No.

Question [continuing]. About Hillary Clinton that might in 1996—

Answer. No.

Question [continuing]. Be a problem?

Answer. No, absolutely not. And I don't—I have barely—I have not even entertained the thought that this is something Agent Sculimbrenne would have intentionally falsified. I have entertained the thought that he could have gotten it wrong, that he did do this—it was an investigation conducted over at least a 3-day period, after which he went back and typed this up—that he could have transposed what one person said into another's.

Question. So it could have been Kennedy, not Nussbaum?

Answer. Or it could have been Livingstone, not Nussbaum. In fact, he said in his interview, "I don't recall this. I do recall Livingstone telling me that his mother knew Hillary Clinton."

And so it seemed to me that it was—it was a distinct possibility, but I'm certainly not equipped with enough information to find that in the face of the vehement denials that he had transposed the information from one interview to another.

Question. Do you have any evidence that there is anything inaccurate there internally? Do you have any evidence that Mr. Sculimbrenne misquoted his notes or wrote the wrong thing down?

Answer. No, we don't have the notes, and the only evidence for it at all is the vehement denials by everybody.

Question. Okay.

Answer. The only other thing I would say about that at all is, it struck me as an odd and somewhat unlikely thing for Bernard Nussbaum, counsel to the President, to say to an FBI agent. I don't know him very well, but, you know, it just struck me that—you know, I may be completely wrong about that.

Question. Did Mr. Sculimbrenne ever describe Mr. Nussbaum's demeanor in interviews or anything to you?

Answer. Certainly not. I've never talked to Agent Sculimbrenne.

Question. Or to the agent?

Answer. You know, I ought to go back and review the 302. I don't recall that he did. He did say he did interview Mr. Nussbaum on numerous occasions.

Question. And were you aware of Mr. Nussbaum previously disputing FBI agents' accounts, in the Vince Foster matter and other matters, that this isn't the first time this has transpired?

Answer. I don't have a present recollection of that. But if he did and it was public, I'm sure I was aware of it at the time.

Question. This letter on July 25th that we were talking about also discusses—after the sentence that you said was in contention, it talks about this matter being especially worrisome as it comes on the heels of published reports of the conviction of one of the agents that did background interviews at the White House.

Since Mr. Quinn put this in his letter, maybe you can tell us where he got that information?

Answer. I don't know.

Question. Did you give it to him?

Answer. No.

Question. Do you think Mr. Kelley did?

Answer. I don't think Mr. Kelley has ever spoken to Mr. Quinn. It was in the draft that he read to me, and there was no communication about that.

Question. Did you ask him about that?

Answer. No. I assumed that there had been published reports of it. I'm not aware of any published reports about it, and I frankly—

Question. Was Agent Sculimbrene in any way implicated in this matter of the agent who did background checks?

Answer. Not that I'm aware of, no.

Question. You're not aware of any connection?

Answer. What I understood the point to be was not that that implicated Agent Sculimbrene but that the confidence in the FBI's reporting from the White House had already been put into question and that this, too, he was saying, in the face of these denials, would add to that, which is what I take that sentence to mean, not that Sculimbrene was at all implicated in that other matter.

Question. When Mr. Quinn wrote the next sentence that discusses how it's equally troubling that a Member of Congress can publicly reveal confidential FBI information whether for partisan purposes or otherwise, did Mr. Quinn know that they had received that information a week, a full week, before the chairman actually saw the information and 2 weeks before the chairman ever did any statement on the Floor?

Answer. Well, 2 and a half days before the chairman saw the information. And I am sure he knew when they received it. I didn't ask them.

What I said when he got to that paragraph or something—some draft of that paragraph is, "You can't imagine that I am going to comment for one instant on what you say about the Congress."

Question. Okay. Did you ask Mr. Quinn if they had publicly revealed that information prior to the chairman going on the Floor of the House?

Answer. I didn't ask him. I knew I had not seen it in any published reports.

Question. But did you ask if his press people perhaps had been told and outside attorneys had been told about this information?

Answer. I didn't ask.

Question. Do you know today whether or not outside attorneys were told of this information?

Answer. No. I take the suggestion from your question, but I did not—I do not know as I sit here.

Question. Well, I think the White House confirmed with one of the wire services that they did, in fact, contact Bernie Nussbaum's lawyer. They have not confirmed any other lawyers.

Answer. As hard as this may be to believe, I don't actually read everything on this subject. There have been a few other things going on in the last couple of weeks.

Question. Okay. Were you ever brought into any issues or made aware of any problems that the White House agents were having at getting background clearances completed with White House staff during the early part of—I guess the later part of '93 and the early part of '94?

Answer. I mean, it's hard for me to remember what I know from where.

Mr. Aldrich addresses that at great length in his book, and I certainly heard those allegations. And I remember when I was preparing the report that I read a GAO study that related to the length of time that it was taking. And so I have heard from all sorts of different sources.

I was certainly not involved in any official capacity in the issue of how long it was taking to get background interviews done or investigations completed. At least, I have no present recollection of it. I would be surprised if I was.

Question. You said you reviewed the GAO report when you were preparing your June 14th report.

Answer. Yes.

Question. In what context, do you recall?

Answer. Yes. "Review" may be a bit strong. I read a section of it that related to whether—and, in fact, I quoted in my report—if you will give me a second, it will refresh my recollection as to what part of it I looked at.

Here, it is on page 26 at footnote 30. It says—I said in my report, now reading from the end of the rollover paragraph on page 26, it is noteworthy that the United States Secret Service also lacks any ability, quote, to verify an individual's continued need for a White House pass, end quote.

And then, going on to the next sentence, according to a report of the General Accounting Office in October 1995, quote, Secret Service officials stated that they rely on the White House to notify them when an individual leaves or a pass should be terminated.

So that was—my interest in this was whether there were other means by which I could have FBI employees independently verify whether somebody was in need of a pass and, therefore, whether we should return, and this made it seem somewhat more problematic by saying that even the Secret Service doesn't know.

Question. Outside of Mr. Aldrich's book—and I know there is sort of a problem of trying to figure out where the information came from—we have deposed a lot of FBI agents that were at the White House, and some people recall doing memos and various letters to their supervisors, and I am wondering if any of those made them up to you and if you still have any of that information?

Answer. No, no, and no. Well, no, and, therefore, no.

Question. And the same question, there were problems discussed about recent serious and repetitive drug use by individuals that the background investigations were being done on before they started at the White House, and I think one was 24 hours before they filled out their SF-86 and one was, someone at the Inaugural had done drugs.

Did any of that information make its way up to you?

Answer. No. I am sure I would have remembered. In fact, that's the first I am hearing of either allegation.

Question. Okay. Did you receive any memos or letters concerning those kinds of allegations or problems that the agents were having at the White House getting the current staff administration through their backgrounds?

Answer. I don't believe so. Particularly when I first came into the Bureau, the end of '93, when I was briefly located in the director's office, I was copied on almost everything—on anything that went to the director, and, you know, there were a million pieces of paper that came in, so I wouldn't say to you absolutely not, but I can say I have no recollection of it, and I don't believe anything was ever addressed to me about it or that I was ever expected to either look into it further or take any action about it.

Question. Okay.

Answer. I have solved that problem, by the way. No longer every piece of paper comes to me that goes to the director.

Question. It goes to the director instead?

Answer. No longer ever piece of paper that comes to the director comes to me.

Question. Since we are talking about your report, there is a description of the people who actually processed the previous reports, and then there's some discussion about what I am going to call the SPIN Unit that Mr. Bourke has.

Answer. Now SIGBIU.

Question. SIGBIU.

Answer. S-I-G-B-I-U.

Question. There is no discussion of the supervisors that Peggy Larson and the other people in that name check that were doing the previous reports directly reported to.

Answer. Sure, there is.

Question. Where?

Answer. In fact, they are criticized fairly harshly.

Question. Her direct supervisor?

Answer. Yes.

Question. Who are they?

Answer. Vern Thornton; he is identified in this report; and John Harding, the section chief, is identified in the report; and, in fact, I say in the conclusion of the report, if I might—it has been some time since I looked at this, but page 29: "While Ms. Larson and her subordinates have worked tirelessly and with admirable success in managing the constant dam bursts of incoming requests, this inquiry has revealed a complete abdication of management responsibility at the level of her immediate superior, the unit chief, and the executive level management above him." And earlier in the report it identifies who that is.

Question. Do you know where it does? And I apologize, because that was something that we spent weeks trying to discover the names of.

Answer. If you just asked.

Question. We did. Maggie Owens worked for 2 weeks to tell us who all had been there.

Answer. Here is 24—this is not the first time he is mentioned since it doesn't give his full name, but it says, "Both Ms. Larson and Unit Chief Thornton say they were made aware of." I am sorry you worked for weeks. It is laid out in the report.

And there is at least one—here we go. Page 21 at the very top, it says, “From March 1991 until August 1995, retired Special Agent Vernon Thornton was chief of the Executive Agencies Personnel and Administrative Support Unit and, therefore, Ms. Larson’s nominal supervisor.”

Question. Is that still your information, that he was the chief from March '91 to August of '95?

Answer. Well, let me put it this way. Since June 14, I haven't continued to try and verify it, but nothing has ever come to me that suggests that it was wrong.

It then goes on—that full paragraph is about Vern Thornton, and the entire following paragraph is about the Section Chief John Harding, or at least portions of the next paragraph.

Question. Right.

Answer. That's page 21.

Question. Who was chief of the relevant section of Information Resources Division from November of '93 to February of '96.

Answer. Yeah.

Question. Is it your understanding that Mr. Harding was Mr. Thornton's supervisor?

Answer. For—yes, that is my understanding, for that portion which they overlap; yes.

Question. Okay. And I notice on page 24, there was the conversation that Ms. Larson was told that the White House was simply updating their files.

Did you ever find out who contacted the White House?

Answer. No, and not for want of trying. We asked everybody, and nobody could come up with a name.

Question. And, in fact, there are people in the White House Security Office that even remember a meeting. They may be wrong but have some—

Answer. Yeah, it doesn't surprise me.

Now, recall that I was disabled from interviewing anyone at the White House.

Question. Certainly.

Answer. And they make some reference to there being a meeting at the beginning of—I don't know if I reported this because there wasn't much to it, but that when they—when this administration took over, that there was some meeting between some people at the FBI but not about this issue.

Question. Not about a problem?

Answer. Right.

Question. And I think Mr. Marceca even came to the FBI to meet the people and see how things were done.

Answer. Yeah. I didn't know that.

Question. But you have not found out who contacted the White House when this influx of previous reports was coming in?

Answer. No. We interviewed anyone we could think of, and they either said no or they didn't recall.

Question. Okay. Was the White House given a copy of that report before it was finalized?

Answer. No. Nobody was given a copy of the report before it was finalized, other than the Attorney General.

Question. Okay. Did anyone outside of the—

Answer. I am sorry—and the deputy attorney general.

Question. Okay. Did anyone outside of the FBI assist in any of the drafting or any of the editing of the report?

Answer. Other than a 4-page section, every word in that report was written by me, sitting at my desk. That 4-page section was written by one of my unit chiefs on the Privacy Act which I substantially revised and reedited. No one else assisted.

I would say that when I had a near complete draft, somewhere about 6:00 a.m., Friday morning, on the 14th, I had the agents who had assisted me in preparing this, and Tom Kelley read—and my secretary read through the whole thing, both looking for errors and for any style suggestions. But that's it. This was produced by hand the old-fashioned way.

Question. Okay. And then after it was completed, I guess on the 14th, the version went to the Attorney General and Jamie Gorelick to review for final approval to put it out?

Answer. Well, not so much for that, because the recommendation for changes went to them for approval, and they made the reasonable point that it was hard to know if these changes were appropriate without reading the underlying document, which I immediately acceded to and provided the underlying document.

Question. Were there any significant changes that you recall made from the Department of Justice?

Answer. No. I do not believe they changed a word in the report, except that the deputy attorney general embarrassed me by finding a typo.

Question. Okay.

Answer. And I did make that change. The Attorney General herself was, in fact, out of town and called back to say she didn't realize this was going to be a 31-page report and she didn't have enough time to read through it before we released it.

Question. Okay. In Director Freeh's statement that he made, he makes a statement that the FBI was victimized by this whole matter, and there were some changes or revisions made to the statement after it was put out publicly. Are you aware of the circumstances of those changes?

Answer. I believe I am. I was not directly involved in it. What I understand is, after that statement went out—it was a 5-page statement of which there was a single sentence. Nonetheless, perhaps predictably, that was the sentence that led every evening news show and all the newspapers.

What I am advised is that George Lardner from The Washington Post called and asked further questions about that and that the clarification was given in response to Lardner's questions.

Question. Do you know if there was any communication with the White House concerning the press release before it was put out?

Answer. No. I am quite certain there wasn't.

Question. Do you know if the Department of Justice approved the press release before it was put out?

Answer. No. In fact, I know they didn't.

Question. Okay. How do you know they didn't?

Answer. Because I know that it went out with just the FBI having signed off on it.

Question. And other than Mr. Lardner calling Mr. Freeh, do you know if he received any other pressure to explain that "victimization" statement?

Answer. Prior to his clarification?

Question. Yes.

Answer. No. I wouldn't characterize Lardner's call as pressure.

Question. Well, did he receive pressure?

Answer. I do not believe he received any pressure that lead him to clarify that statement.

Question. Do you know of any calls that came in to him from the White House regarding that prior to his making—

Answer. The impression I got was that no one at the White House was interested in speaking to Director Freeh after that statement went out.

Question. Do you know if Jamie Gorelick called him after release of that press statement?

Answer. I believe they spoke over the weekend. The statement was issued Friday. The clarification was made Friday night.

Question. Do you know if they spoke regarding this immediate release on June 14th?

Answer. Did they speak on June 14th?

Question. Did they speak about the subject of the press release?

Answer. I don't know for sure. I think it was my understanding that they did, among other things.

Question. And were the other things involving the FBI files matter?

Answer. I think other things about the FBI files matter, but I think also other completely unrelated—

Question. What I am trying to find out and getting at with all of these questions is, what is Jamie Gorelick's involvement and input in this matter with the FBI?

Answer. Well, prior to its release in final form, it was very limited. She—on Thursday afternoon, June 13th, I went over and briefed her on the sort of—in headline form about what I had found and what I was intending to write.

On Friday morning, somewhere around—gosh, I don't know, but somewhere around 10:00 a.m., I would think—9:00 or 10:00 a.m.—I provided her with a copy of the report.

Question. And that's Thursday, June 14th?

Answer. No. This is Friday, June 14th.

Question. So it's Thursday—

Answer. It was Thursday afternoon, June 13th, that I briefed her and advised her that we were going to be making some recommendations to either her or the Attorney General; asked her for whether she wanted them to come—whether the Attorney General wanted them to come to the Attorney General or to the deputy attorney general, knowing that the Attorney General would be out of town the next day. So that was a brief conversation.

And the morning of the 14th, I provided her with the final draft of the report. It just wasn't yet in bound form. I pointed out that she found a typo, which she corrected—which I corrected. And that was the extent.

I did not speak with her—well, I went over and dropped off—I believe I went over or I sent somebody over, but I believe I went over, and dropped off actually four or five bound copies at the time it was being publicly released. I then went home and went to sleep, having not done that for either of the previous two nights.

Question. Was she involved in your initial—your one, one-and-a-half-day of investigation of the FBI matter or involved in your investigation leading up to the report in any significant manner, that you know of?

Answer. No. No. I should amplify in one respect that I did speak with her—more with her about the final form that the recommended changes would take place, and she made some suggestions about that. You know, there is that separate document dated June 14th. That's it.

Question. Which is a memorandum to the director from H.M. Shapiro dated June 14th?

Answer. Right, to which a cover was then appended forwarding it from the director to her, the deputy attorney general. And we had some conversations about some of the recommendations, and she made some minor suggested language changes.

Question. There came a time when we received a letter that was written to the Independent Counsel concerning a review that was done of the October and November period, and additional file requests for previous reports were discovered. Can you just tell us how that came to be and why your report just included a certain period of time?

Answer. Yeah. I think I can, if I can reconstruct it. The answer to the second question is, my report was limited by two things: One, that I was given essentially a week to do it; and, two, that it was responsive to Chairman Clinger's discovery of the Billy Ray Dale file. All I was purporting to do, attempting to do, and trying to do, was to determine whether that request was part of—was a single incident or a part of a larger series, and I explained that in here.

In doing that, and in reviewing the computerized purged logs, which we provided both to this committee—you will no doubt recall that you and I had a conversation about that late one evening, and you wanted them that night before the next day's hearing, and also to the Senate—we continued to, as we were—well, let me try to get the sequence right.

I think at some point before June 14th, before I was completely finished, an agent working for me, and me by myself, had independently identified what sort of looked like there might be another series.

And just to take a second, I had discovered this series by myself, looking through those pages, because I noted that there seemed to be a pattern, in a certain time frame, that you could cull out, distill from all the noise and traffic, that, you know, there would be a series of requests that appeared to be in alphabetical order that were from the same entity, requesting the same information, for the same reason. And that's what we focused on and, frankly, well near killed ourselves trying to get it done by the deadline that had been announced.

But in doing that, we at least sort of, you know, almost in peripheral vision, noticed that there looked like some other clumps of requests that would warrant further examination and investigation and really didn't even focus on them at the time, frankly.

But afterwards, the next week or a week after that, one of the agents sat down to try to do some further analysis of those 22,000 requests and identified another alphabetical series or what—I guess I should say what had the marks of another series. And that is what lead to this June 25 letter—

Ms. OLSON. And I have marked that as Deposition Exhibit No. 2.

[Shapiro Deposition Exhibit No. 2 was marked for identification.]

THE WITNESS [continuing]. From me to John Bates at the Independent Counsel's office, and copied to everybody that we could think of: Senators Hatch and Biden, Chairman Clinger, Ms. Collins, and Jack Quinn at the White House.

EXAMINATION BY MS. OLSON:

Question. And so you submitted that material over to the Independent Counsel as part of their investigation that they were doing on the file matter?

Answer. Yeah. I mean, I probably wouldn't have phrased it just that way, but, yes. The question obviously arose in two ways, whether this was another series of requests about which questions of propriety could be raised or, on the flip side, whether this, together with the earlier requests, just made a single series that seemed less troubling.

And as I think I said—I did say, I express no opinion at all about the propriety of these requests.

At that point, I didn't know if this was something that would be part of the files request.

Question. Subsequent to us receiving the initial list during our hearing, Mr. Marceca testified and the day before our hearing he produced all kinds of lists, that were on his disk, of documents that had apparently been ordered from the FBI, and he listed the date the report was received. So we do believe that they were sent to the White House, and the White House's office has been sealed, so we haven't been able to look at those.

Have you all created the definitive list?

Answer. No. We stopped—I mean, I think we just stopped, frankly.

Question. Well, this committee has requested the definitive list, if it can, because our understanding of your computers is that they could print a single list that begins in January 1, 1993, and just lists all the previous reports that were ordered; not name checks, not, you know, everything else, but just every previous report that was ordered, that that has been inputted into a computer.

Answer. Yeah. I don't know. Actually, as to that question—I didn't understand that to be your question. I don't know if we already—we may already have that in a form somewhere.

Question. And I just wanted to see if someone could check on that to see if that has been prepared, and it would probably facilitate all the members to have one list when they are discussing these issues at the hearing so that they are not working from the Marceca list, the Wetzl list, the Shapiro list.

Answer. Right.

Question. If there could just be the single printout of every previous report that's been ordered by this administration on any individuals.

Answer. I think the answer is, if it has already been done, we can certainly provide it. If it has not been done, I suspect it won't get done by Thursday morning.

Question. If you could just, or somebody could just, check on that to see the status. I know it was a request quite awhile ago, and there have been a lot, and I am sure the people are overwhelmed. But that appears to be one of the things that would probably help a lot of our members.

Answer. I have never seen—by the way, this is just for your purposes—I have never seen the Marceca list or the Wetzl list.

Question. Well, I think the Wetzl list is Deposition Exhibit No. 1.

Answer. Okay.

Question. That was attached to the boxes from the information we had. She made that list when she sent it to Records Management, and they pulled it from Records Management and gave it to you all with her list on it.

Answer. All right.

Question. At least that's our understanding at this time.

Was it ever brought to your attention, or were you ever notified that the FBI agents were having trouble interviewing Tony Lake concerning the background investigations of his staff at the NIC?

Answer. No.

Question. Were you ever made aware, or do you have any knowledge, of reinvestigations that were asked to be performed by the FBI out of their normal time frame on individuals that were working in the White House residence and/or the Usher's Office?

Answer. I read Mr. Aldrich's article in the Wall Street Journal making such allegations.

Question. Outside of that?

Answer. No.

Question. Do you have any independent knowledge or documents that were given to you during that period?

Answer. No. I know that at one point at least our—after that article appeared, our Office of Professional Responsibility, or the Inspection Division, somebody internally, was asking those questions, and at some point somebody advised me in passing that at least as to—many of the requests, in fact, were appropriate in time, that some were sent back as being inappropriate and were not done, and they were trying to isolate whether there were some that were inappropriate at the time and were done. And I don't think I ever heard the end of that.

Question. Do you know if that's ongoing or if they have also turned that over to the Independent Counsel?

Answer. I don't know the answer to that. I can say I haven't heard a thing about it for awhile.

Question. Do you have any knowledge or were you ever made aware that Agent Sculimbrene was sent to the Tysons Corner field office and that since April he hasn't had anything to do? By "anything to do," he has had no assignment; he is collecting a paycheck at taxpayer expense without being given anything to do.

Answer. The short answer to that is, no. There has been some references in the press to him being involved in a dispute about work assignments. I've been aware of that. But I didn't know nor did I inquire about what the details of it were. I understand that he has been—although on active duty, has been absent for extended periods of time because of sickness, physical issues.

Question. Has anyone told you that he is just using up his sick pay and leave time because he has nothing to do in his office but sit at an empty desk?

Answer. No one told me that.

Question. Do you know or have any information why Agent Sculimbrene's White House pass was pulled after the Billy Dale trial ended?

Answer. I didn't even know that his White House pass was pulled.

Was he no longer working at the White House at the time?

Question. I know he was transferred, and the information was that his pass was pulled.

Answer. I don't know. I assume—this doesn't specifically address it, but I assume the agents who get White House passes because they are conducting interviews at the White House, when they are reassigned off that squad, turn in their passes.

Question. Do you know of any written directions to Mr. Sculimbrene that exist to even tell him that he has been reassigned in writing from the White House?

Answer. I don't know the first thing about that. I took that from your earlier question.

Question. Well, I mean, his reassignment is just a physical—he is no longer at the White House. He is physically to report to Tysons Corner. But our information is that he has never been able to get anything in writing that he has been reassigned.

Were you ever told or do you have any knowledge of his—one of his supervisors, Agent David Bowie, telling him that Billy Dale would have pled guilty to the Government's charges if it hadn't been for those rich Republicans giving him money?

Answer. No.

Question. I mean, it goes without saying, I assume, that FBI supervisors and agents are not supposed to take political positions, regardless of who is in the White House.

Answer. In the course of their official duties.

Question. Exactly.

Answer. They are free to take whatever political positions they want in their private lives.

Question. But certainly in the course of their official duties, in dealing with their subordinates?

Answer. Yeah, or with the White House.

Question. Exactly. Do you know of any retribution that has been directed at Agent Sculimbrene after he testified at the Billy Dale trial?

Answer. No, but neither have I inquired.

Question. Okay.

Answer. I do know that there was that allegation.

Question. There was a memo that Agent Sculimbrene wrote at the request of White House Counsel Bill Kennedy to suggest how to make the FBI work better and to be a better place. Did that memo ever come up to you, or were you ever made aware that Agent Sculimbrene had written a memo?

Answer. I don't believe so. The only reason I am hesitating, at one point in preparation for one of these hearings Tom Kelley advised me that there was a request from one of the committees—I don't recall whether it was this committee or the Senate Judiciary—for some memos written by Aldrich and/or Sculimbrene—I don't even recall—and that we were unable to locate them or at least at that point were having difficulty locating them. They weren't in the zero files where you would have expected them to be.

So I was told that at some point. That's all I know about it.

Question. All right. Are you familiar with the random drug testing program for the FBI agents within the FBI?

Answer. Well, yes and no. I am familiar that there is such a program. I was drug tested before I joined the Bureau, and I know that I am subject to random testing.

Question. Have you been tested since?

Mr. STROMAN. I object to the question. That's not relevant to the committee's investigation.

Ms. OLSON. Okay. I don't want to know if you have been tested.

EXAMINATION BY MS. OLSON:

Question. But do you know how often agents are tested on an average?

Answer. I don't know. I don't know. It's not a—it's just not a policy that I have had occasion to look into.

Question. Were you ever informed that Agent Sculimbrene was drug tested immediately before he testified at the Billy Dale trial?

Answer. Not until this moment.

Question. And that Agent Sculimbrene said he had never been drug tested in the course of the random drug testing program?

Answer. I am not sure which way that cuts.

Question. I am just asking if you have any knowledge—

Answer. I don't.

Question [continuing]. Of any of that being directed at him.

Answer. I don't.

Question. Okay. During the course of the interviews of Agent Sculimbrene, was it ever reported to you that Agent Sculimbrene did say that Craig told him that his mother knew Hillary Clinton?

Answer. Yes.

Question. Rather than through Bernie, that Craig actually said?

Answer. I believe when the agents went out on the 16th to interview Sculimbrene, that the report that came back was that while he had no specific recollection of the interview with Nussbaum, that Craig Livingstone—he did recall Craig Livingstone telling him that his mother knew Hillary Clinton.

Question. And did you—were you ever made aware that Craig Livingstone had told others in the White House that his mother knew Hillary Clinton?

Answer. No, unless—there's an allegation similar to that; I am not sure it's exactly that—in Aldrich's book. But other than that, I am not aware.

Question. Other than Gary Aldrich's book, which I don't want to ask you about, but were you ever made aware that Bill Kennedy had told Agent Sculimbrene and/or Agent Aldrich that putting Craig Livingstone in that Personnel Security Office was a done deal because the First Lady, or Hillary, had wanted him to be there?

Answer. It says precisely that in the Aldrich book, but I have not heard it anywhere else.

Question. Okay. And obviously that's what I am asking, if you had any other information that had come to you through other investigations.

Answer. I have not.

Ms. OLSON. Mr. Stroman.

EXAMINATION BY MR. STROMAN:

Question. Just one—I think just one question. I believe you testified that the Independent Counsel did not object to the FBI providing information from Craig Livingstone's background file to the committee. Is that correct?

Answer. Did not object to providing access to those files.

Question. Yes.

Answer. Both files, Livingstone and Marceca.

Question. To the committee?

Answer. To the committee.

Question. Did the Independent Counsel advise you that you should not provide any information to the White House with regard to information in those files?

Answer. No. I take it you mean at that time?

Question. At that time, that's correct.

EXAMINATION BY MS. OLSON:

Question. Did you mention to them that you were going to do that?

Answer. No.

Question. Okay. Also, when the Independent Counsel—you said earlier that you had asked the Independent Counsel if they wanted to look at the Gary Aldrich—I am sorry. Look at the—

Answer. Livingstone.

Question [continuing]. Craig Livingstone and Anthony Marceca file, and they said that they didn't.

Do you know if they had already been up there and seen it at an earlier time? By "they," I mean their FBI agents.

Answer. Let me just clarify two things. That was not a conversation I had with them. That's a conversation Maggie Owens had with them. She reported back to me that they declined.

Question. At that time?

Answer. And it is—I believe I would know. I believe the answer is that, no, they had never seen Livingstone's file, but I believe they had seen at least the summaries of Mr. Marceca's file.

Question. What's your—

Answer. I may be wrong on that.

Question. Because I would like your basis, because I believe they had already viewed the files.

Answer. They may have. I mean, I can't say they haven't. I can just say it wasn't brought to my attention, and almost all of those types of requests were brought to my attention. So the fact that I wasn't aware of it made me think that it had not happened.

Question. And I want the record to be clear. We talked about Director Freeh's knowledge of you contacting the White House. Did he have knowledge that there were agents going out to see Agent Sculimbrene?

Answer. Not beforehand.

Question. He was told afterwards?

Answer. Yes.

Question. Did he raise any concerns or problems that he saw at that time?

Answer. Afterwards?

Question. Yes.

Answer. He expressed some concern about how it would appear to others.

Question. And that was before, I take it, that the chairman had made a statement on the Floor about this matter?

Answer. Oh, it was certainly before the statement on the Floor. Whether it was before the chairman or you had raised questions that prompted my letter of the 19th, I'm not certain it was before that, but it was certainly before it had been publicly criticized.

Question. And just to make the record clear, the questions that were raised by the chairman were to find out if anyone had been given—could be given any knowledge about the contents of Craig Livingstone's file in the White House. Obviously, the chairman had no idea that people already knew. I was just asking if in the future anyone could see.

Answer. Right, and we voluntarily offered the information that we had already told the White House.

Question. By the letter?

Answer. Yes.

Question. To the White House and Justice Department?

Answer. Yes.

Question. Did you discuss the matter with Deputy Attorney General Jamie Gorelick before the chairman's Floor statement, that you had heard from Jack Quinn?

Answer. No.

Question. And if you called her before the chairman did his Floor statement?

Answer. No, no. I believe I advised the director.

Question. Do you know if the director called over to the Justice Department about that?

Answer. I would be very surprised if he did.

Ms. OLSON. Okay. I think we are done. Thank you very much for coming in. I know it's been very long. I apologize for it going on so long.

The WITNESS. That's okay.

Ms. OLSON. Thank you very much. The record is down.

[Whereupon, at 5:45 p.m., the deposition was concluded.]

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 BOX 1 84 0EOB

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- ✓ MASTER ACCESS LIST '93 (VOLUME 2)
- ✓ ACCESS LIST (VOLUME 1) 1993
- ✓ ACCESS LIST (VOLUME 2) 1993
- ✓ FBI RECEIPTS-1993
- ✓ INTERN NAMECHECK LISTS-1993
- ✓ IRS RETURNED MARCH-APRIL 1993
- ✓ NCIC LIST 8-93 - 12-93
- ✓ NCICs (VOLUME 1) '93
- ✓ NCICs (VOLUME II) '93
- ✓ NCICs (VOLUME 3) 1993
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- ✓ SECURITY INTERVIEWS VOL (1) 1993
- ✓ SECURITY INTERVIEWS VOL (2) 1993

Read in ORN by Terry Hood on 12/11/94

ENCLOSURES FILED OVERSIZE ATTACHMENTS

1 copy filed 12/2/94

CF 159

Tex 1

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 ✓ FLETECHER, LEE
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 ✓ FONG, JESSIE TSUI-SHIH

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UPDATE PROJECT AS OF 1/94-MARCECA

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C. P. Telephone

CIA

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Misc. Dir. for Non-Government Employee

White House Staff Personnel

Diversified Reporting

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update ledger 88-8



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 25, 1996

BY COURIER

Mr. John D. Bates
Deputy Independent Counsel
Office of the Independent Counsel
U.S. Department of Justice
Suite 490-North
1001 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. Bates:

I am writing to advise you that since the release of my report on June 14, 1996, and my testimony before Congress last Thursday, I have discovered another alphabetical series of requests from the White House to the FBI for previous background reports. This series is dated between October 29 and November 26, 1993, spans the alphabet from Fr to Yo and includes approximately 216 requests, in addition to the 480 requests addressed in my report.

As you know, the focus of my initial inquiry was limited to the series of requests apparent from the request for the file for Billy Ray Dale. That analysis encompassed the December 1993 through February 1994 timeframe and the letters Aa to Go.

In my continuing effort to identify any similar series of White House requests for FBI information, we have conducted further analysis of the computer records reflecting the approximately 22,000 requests submitted to the FBI since January 1993. As noted above, this process revealed another series of requests, all seeking copies of previous reports and providing as justification "access." In deference to your request, we will not conduct any further investigation of the White House requests for FBI file information at this time.

D Ex 2

Mr. John D. Bates

I have attached to this letter a listing of names we have identified as being part of this series of requests. As with the names I provided to the White House on June 11, 1996, there is no way to determine from FBI records whether the White House had a legitimate need for these reports at the time these requests were made. Consequently, I express no opinion at all about the propriety of these requests.

Sincerely,



Howard M. Shapiro
General Counsel

Enclosure

- 1 - Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C.
- 1 - Honorable Joseph R. Biden
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C.
- ① - Honorable William F. Clinger, Jr.
Chairman
Committee on Government Reform
and Oversight
House of Representatives
Washington, D.C.
- 1 - Honorable Cardiss Collins
Ranking Minority
Committee on Government Reform
and Oversight
House of Representatives
Washington, D.C.
- 1 - Mr. John M. Quinn
Counsel to the President
The White House
Washington, D.C.

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
1	FRANCIS, ANDREW JAMES	10/29/93	YES
2	GAMBLE, ALICE MAE	10/29/93	YES
3	GARDNER, CRAIG JAMES	10/29/93	YES
4	GARNER, SONJA HELENA	10/29/93	YES
5	GARRETT, CHARLES HENRY	10/29/93	YES
6	GETER, THELMA D	10/29/93	YES
7	GIBSON, FANNIE	10/29/93	YES
8	GILBERT, MICHAEL LOUIS	10/29/93	YES
9	GILLESPIE, REVES LANE	10/29/93	YES
10	GRACE, KENNETH EARL	10/29/93	YES
11	GRANADOS, JUAN RAMON	10/29/93	YES
12	GRAVES, EULA DEAN	10/29/93	YES
13	GREEN, ANNIE MAE	10/29/93	YES
14	GREEN, EVA HARMON	10/29/93	YES
15	GREEN, GALEN HOMER	10/29/93	YES
16	GREEN, KENNETH JAMES	10/29/93	YES
17	GREENWELL, MILDRED ETHEL	10/29/93	YES
18	GRIER, OPHELIA LOUISE	11/23/93	YES
19	HALL, CLEO ELIZABETH	10/29/93	YES
20	HALL, RICHARD LEE	10/29/93	YES
21	HAMMONDS, KENNETH LESTER	10/29/93	YES
22	HAMPTON, EDWARD ARNOLD	10/29/93	YES
23	HANDELAND, LARRY EUGENE	10/29/93	YES
24	HARLING, SALLIE IDA	10/29/93	YES
25	HARMAN, MICHAEL EDWARD	10/29/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
26	HARRIS, DELORES ANN	10/29/93	YES
27	HARRIS, GREGORY DARNELL	10/29/93	YES
28	HARRIS, ROSCO	10/29/93	YES
29	HASH, ROBERT LEE	11/03/93	YES
30	HAWKINS, GLADYS BEULAH	11/3/93	YES
31	HAYS, RICHARD PAUL	11/3/93	YES
32	HEAD, MARY LEE	11/3/93	YES
33	HEARD, CLAYTON LEMUEL	11/3/93	YES
34	HERR, CHARLES FRANCIS	11/3/93	YES
35	HILL, MILDRED JUANITA	11/3/93	YES
36	HILLIARD, LOYCE	11/3/93	YES
37	HOLMAN, ARTHUR JOEY	11/3/93	YES
38	HONEMOND, CLARIA ELIZABETH	11/3/93	YES
39	HOOD, LUVENIA PALMER	11/3/93	YES
40	HOSKINS, DORIS SHARON	11/3/93	YES
41	HOWE, MORRIS EMANUEL	11/3/93	YES
42	HUDLEY, CORNELIOUS	11/3/93	YES
43	IMES, WILLIAM LEONARD	11/3/93	YES
44	ISOM, CHARLES CARNEL	11/3/93	YES
45	ISOM, DARYL CLINTON	11/3/93	YES
46	JACKSON, BETTY LEE	11/3/93	YES
47	JACKSON, CYNTHIA DENISE	11/3/93	YES
48	JACKSON, DARRELL CLEVELAND	11/3/93	YES
49	JACKSON, RAYMOND GILBERT	11/3/93	YES
50	JOHNSON, AIREL	11/3/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
51	JOHNSON, BARBARA JEAN	11/3/93	YES
52	JOHNSON, CELESTINE COLEMAN	11/3/93	YES
53	JOHNSON, ROGENIA TOMINES	11/3/93	YES
54	JOHNSON, SELENA VIRGINIA	11/3/93	YES
55	JONES, HAROLD JACKSON	11/3/93	YES
56	JONES, MARGARET MARIE	11/3/93	YES
57	JONES, WILLIAM	11/3/93	YES
58	JULIAN, DOMINADOR TEODORE	11/3/93	YES
59	KEEL, MILDRED CHANDLER	11/3/93	YES
60	KELLERMAN, EDWARD FRANCIS	11/3/93	YES
61	KELLY, JOSEPH LOMAX	11/3/93	YES
62	KENNEDY, THOMAS	11/3/93	YES
63	KILGO, DELORIS JACKIE	11/3/93	YES
64	KINSMAN, LINDA KAY	11/3/93	YES
65	KITCHINGS, MAXINE CHRISTIANNA	11/3/93	YES
66	KRAUSE, WALTER GEORGE	11/3/93	YES
67	LAGANA, JOSEOH SALVADOR	11/3/93	YES
68	LAMAR, PATRICIA ANN	11/3/93	YES
69	LANDIS, ALLAN LEROY	11/3/93	YES
70	LANGLEY, AGNES LEOMA	11/3/93	YES
71	LATTIMORE, BESSIE MAE	11/3/93	YES
72	LEACRAFT, MATTIE OREE	11/3/93	YES
73	LEE, DORA	11/3/93	YES
74	LEWANDOWSKI, TIMOTHY WILLIAM	11/10/93	YES
75	LINDSAY, NICOLE RENEE	11/9/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
76	LINES, WILLIAM FULLER	11/3/93	YES
77	LITTLETON, RAYMOND THOMAS	11/3/93	YES
78	LOS, MARKK DAVID	11/3/93	YES
79	LOWERY, JANES ARTHUR	11/3/93	YES
80	MARSH, JOHN CHARLES	11/10/93	YES
81	MARTINEZ, THOMAS	11/3/93	YES
82	MATTHEWS, ARTHUR SYLVANUS	11/10/93	YES
83	MCCAULEY, DEAN WILLIAM	11/10/93	YES
84	MCCRAY, FREDERICK HERBERT	11/10/93	YES
85	MCCREADY, JOHN BERKELEY	11/10/93	YES
86	MC GEE, THELMA	11/10/93	YES
87	MCINTYRE, ROBERT LEE	11/10/93	YES
88	MCKENZIE, BERTHA ROSS	11/10/93	YES
89	MCKENZIE, OWEN CORLE	11/10/93	YES
90	MCKNIGHT, ESTELLA	11/10/93	YES
91	MCKNIGHT, JOHN HENRY	11/10/93	YES
92	MEANS, CORNELIA JEWELL	11/10/93	YES
93	MERRITT, OSCAR WILLIAM	11/10/93	YES
94	MILLER, JASON DELEON WILTON	11/10/93	YES
95	MITRIONE, VITO	11/10/93	YES
96	MONROE, DELORES AMY	11/10/93	YES
97	MOORE, LEATHA MCGHEE	11/10/93	YES
98	MORRIS, JETER ANTHONY	11/10/93	YES
99	MORRIS, JOSEPH BRENNEMAN	11/10/93	YES
100	MOY, LAWRENCE DONALD	11/10/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
101	MUNCK, SCOTT ANTHONY	11/10/93	YES
102	MYERS, JOSEPH DONALD	11/10/93	YES
103	NELL, KENNETH WILLIAM	11/10/93	YES
104	NELSON, SLYVIA	11/10/93	YES
105	NEWMAN, MILDRED	11/10/93	YES
106	OLIVER, JAMES WILLIAM	11/10/93	YES
107	OWENS, JAMES WILLIAM	11/10/93	YES
108	OWENS, THEODORE	11/10/93	YES
109	PADGETT, FRANK	11/10/93	YES
110	PAIR, BAILY	11/10/93	YES
111	PANKEY, HERBERT LEON	11/10/93	YES
112	PARKER, DIANE LEVERN	11/10/93	YES
113	PATTEN, JOHN GERALD	11/10/93	YES
114	PATTERSON, CLARA MAE	11/10/93	YES
115	PAYNE, BEN DOUGLAS	11/10/93	YES
116	PECK, ROSE MARIE	11/10/93	YES
117	PERKINS, CLYDE ROBERT JR	11/10/93	YES
118	PISTORIC, JOSEPH PHILIP	11/10/93	YES
119	PITCHFORD, POLLY FRANCES	11/10/93	YES
120	PITT, MARGARET	11/10/93	YES
121	PLAKAS, JAMES CONSTANTINE	11/10/93	YES
122	POSEY, FRANK REGINALD	11/10/93	YES
123	PRICE, FLOYD LEE	11/10/93	YES
124	PRICE, FRANCIS FLOYD	11/10/93	YES
125	PRICE, LUCILLE BRYANT	11/10/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
126	PROCTOR, CARLO NICHOLAS	11/10/93	YES
127	PROCTOR, MARY CALLIE	11/10/93	YES
128	QUICHO, DOMINGO AMOR	11/10/93	YES
129	QUICK, RODERICK EARL	11/16/93	YES
130	RAWLS, ONDRA CARL	11/16/93	YES
131	REEVER, ROBERT HARRISON	11/16/93	YES
132	RIDDLE, LEONARD FRANKLIN	11/16/93	NO
133	RIGGLEMAN, OSCAR EUGENE	11/16/93	YES
134	RIGGS, CHRISTOPHER CALLEN	11/16/93	YES
135	ROBERTS, WILLIAM EUGENE	11/3/93	YES
136	ROSE, NOEL MASON	11/16/93	YES
137	ROSENBERG, J JAMES DONALD	11/16/93	YES
138	ROSENBERGER, JAMES DONALD	11/16/93	YES
139	ROSIER, CASSANDRA ALFELRO	11/16/93	YES
140	RUSK, WAYNE ALLEN	11/16/93	YES
141	RUSSELL, RONALD EARL	11/16/93	YES
142	SAGER, DAVID RUSSELL	11/16/93	YES
143	SAMPSON, RAYFORD ANTHONY	11/16/93	YES
144	SCOTT, J ODELL	11/16/93	YES
145	SCOTT, REGINALD ANTONIA	11/16/93	YES
146	SEDLOCK, MICHAEL GIRARD	11/16/93	YES
147	SENN, SHEREE FRANCINE	11/16/93	YES
148	SEROSKI, RAYMOND JACOB	11/16/93	YES
149	SHAE, JULIE MARILYN	11/16/93	NO
150	SHAFFER, RUSSELL ALAN	11/16/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
151	SHANNON, SHIRLEY MAE	11/16/93	YES
152	SHEA, THOMAS JOSEPH	11/16/93	YES
153	SIMPKINS, LARRY BERNARD	11/16/93	YES
154	SKINNER, CLAUDIA VIRGINIA	11/16/93	YES
155	SKIPWITH, FLORINE JONES	11/16/93	YES
156	SLIGHT, ARNETTE FROST	11/16/93	YES
157	SMITH, JAMES MARSHALL	11/16/93	YES
158	SPENCER, DANA WILLIAM	11/16/93	YES
159	STEWART, BRUCE LILLARD	11/16/93	YES
160	STEWART, DONALD LILLARD	11/16/93	YES
161	STEWART, SEAN JEROME	11/16/93	NO
162	STREETS, JENNIFER	11/16/93	YES
163	STURGESS, GEORGE EDWARD	11/16/93	YES
164	SWAN, MARYLIN ANNETTE	11/16/93	NO
165	SWANN, MELVA DRAMINE	11/16/93	YES
166	SWANN, WILBERT LEE	11/16/93	YES
167	TANIS, MATTHEW JOHN	11/16/93	YES
168	TAYLOR, CHINITA DENISE	11/16/93	YES
169	TAYLOR, DORIE CATHERINE	11/16/93	YES
170	THOAMS, JOHN SILAS	11/16/93	YES
171	THOMAS, ARTHUR STEWART	11/16/93	YES
172	THOMAS, GERALD RONALD	11/16/93	YES
173	THOMAS, JOHN SILAS	11/16/93	YES
174	THOMAS, RICHARD ALLEN	11/16/93	YES
175	THOMPSON, JAMES EDWARD	11/16/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
176	THOMPSON, OLA MAE	11/16/93	YES
177	THORNE, TINA ANN	11/8/93	YES
178	THORNE, TINA ANN	11/16/93	YES
179	TILLERY, ANTHONY QUINTON	11/16/93	YES
180	TILLERY, JOHN RENARD	11/16/93	YES
181	TIPTON, ELIZABETH JANE	11/4/93	YES
182	TOLAND, KIMBERLEY THERESA	11/16/93	YES
183	TOWNSELL, MILTON THEODORE	11/16/93	YES
184	TOWNSEND, JOSEPH CARROLL	11/16/93	YES
185	TOYER, WILLIAM EUGENE	11/16/93	YES
186	TYLER, FLORINE GILCHRIST	11/16/93	YES
187	UNDERWOOD, FLORENCE DELORES	11/16/93	YES
188	VANCE, SHAWN	11/16/93	YES
189	VENTRESCA, PONFILIO	11/16/93	YES
190	VINES, VERNON MCCLAIN	11/26/93	YES
191	WALL, VIOLA BELT	11/26/93	YES
192	WALLACE, MICHAEL FRANCIS	11/26/93	YES
193	WALSH, JOHN FRANCIS	11/26/93	YES
194	WALSH, PETER HENRY	11/26/93	YES
195	WALTERS, DIANNE	11/26/93	YES
196	WASHINGTON, ANTHONY HARRISON	11/26/93	YES
197	WASHINGTON, MAURINE ELIZABETH	11/26/93	YES
198	WASHINGTON, RUBY LEE	11/26/93	YES
199	WELLS, MICHAEL ALAN	11/26/93	YES
200	WESTCAMP, MARK	11/26/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
201	WHITAKER, DOROTHY MARIE	11/26/93	YES
202	WHITE, GENEVA	11/26/93	YES
203	WHITE, PERNELL DOUGLAS	11/26/93	YES
204	WHITMYER, ROSELL	11/26/93	YES
205	WILKINS, SHEILA MARIE	11/26/93	YES
206	WILLIAMS, CARROLL BERNARD	11/26/93	YES
207	WILLIAMS, HARRY LEE	11/26/93	YES
208	WILLIS, DEBBIE BROWN	11/26/93	YES
209	WILSON, CHARLES MICHAEL	11/26/93	YES
210	WILSON, HENRY DENNIS	11/26/93	YES
211	WILSON, WAYMOND MAURICE	11/26/93	YES
212	WINGATE, STEVEN ANDREW	11/26/93	YES
213	WISE, NETTIE SANDERS	11/26/93	YES
214	WOMACK, SHIRLEY CHANDLER	11/26/93	YES
215	YATES, EMMA ELIZABETH	11/26/93	YES
216	YOST, RALPH ROBERT	11/26/93	YES

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C.

IN THE MATTER OF: WHITE HOUSE TRAVEL

DEPOSITION OF THOMAS A. KELLEY

TUESDAY, JULY 30, 1996
Washington, D.C.

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:30 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Barbara Olson, Chief Investigator; Barbara Comstock, Investigative Counsel; Kristi Remington, Investigator; Donald Goldberg, Minority, Assistant to Counsel.

For THOMAS A. KELLEY:

LARRY R. PARKINSON, ESQ.
Deputy General Counsel
Federal Bureau of Investigation
Ninth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20535

Ms. OLSON. We are on the record this morning for the deposition of Tom Kelley, which will be administered under oath.

I would like to identify the people who are in this room. Mr. Kelley is here today, accompanied by Larry Parkinson, who is also a Deputy General Counsel with the Federal Bureau of Investigation. Don Goldberg is here from the Minority, and for Majority is myself, Barbara Olson and Kristi Remington.

Before you are sworn in, Mr. Kelley, I would like to provide you with some background concerning this investigation and your appearance here. Pursuant to its authority under Rules X and XI of the House of Representatives, the Government Reform and Oversight Committee is investigating the White House Travel Office matter. This matter refers to all events leading to the May 19th, 1993 firings of the White House Travel Office employees and includes all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1, 1993 to the present.

Our investigation also encompasses the activities of Harry Thomason, Darnell Martens and Penny Sample at the White House, as well as all allegations of wrongdoing concerning the Travel Office employees.

The committee investigation is reviewing all actions taken by any division or field office of the FBI and the Department of Justice, both prior to and after the firings, as well as issues which relate to the White House's receipt of FBI background investigations on prior administration officials.

The investigation includes but isn't limited to the investigation and prosecution in the United States v. Billy Ray Dale and all investigations and subsequent reviews of the Travel Office firings by any agency which includes but isn't limited to the White House Management Review, all FBI and Justice Department reviews, the IRS and Treasury Department internal reviews and reports, the GAO review, as well as the proposed United States House of Representatives "Resolution of Inquiry" considered and voted on in the House Judiciary Committee in July of 1993.

Although I recognize that you may not have any knowledge of many of these matters, do you understand that your answers should not purposefully exclude any information which you recall involving these subjects?

Mr. KELLEY. I do.

Ms. OLSON. The committee has been granted specific authorization to conduct this deposition pursuant to House Resolution 369, which was passed by the House of Representatives on March 7th, 1996. Pursuant to Committee Rule 19, which has been provided to, I believe, the legislative liaison, Maggie Owens, both Majority Counsel and Minority Counsel will be afforded an equal opportunity to pose questions to each witness.

Committee counsels will proceed with equal rounds of questioning, each lasting up to one hour, until both counsels have completed their questioning. The only exception to this will be if a Member of this committee is present and wishes to pose questions to you. If so, the Member will be allowed an immediate opportunity to pose their questions and committee counsel will then resume questioning when the Members have completed all their questions.

You are here today voluntarily and not by subpoena, is that correct?

Mr. KELLEY. Yes, ma'am.

Ms. OLSON. This deposition is to be administered under oath. You will be allowed to confer with your attorney. If you do not understand a question, please tell me. Of course, I will try to rephrase it. All objections raised by your attorney should be stated for the record, with the reason for the objection clearly stated.

Once an objection is raised, committee Majority Counsel will review whether the objection is proper in the context of this deposition. If Counsel does not agree that the objection is properly before this panel, I will confer with Minority Counsel and ask that they express their views on the record. If the objection remains outstanding, it ultimately may be presented to the Chairman of this committee or his designee for resolution.

The Chairman has agreed to consult with the Ranking Minority Member before issuing any final decisions on the objections.

You will be given a 5-day time frame in which you and your attorney may review this deposition once it has been transcribed and to correct any technical problems that you perceive occurred in the transcription and to clarify any matters that you feel need to be clarified.

After the 5-day review period, you will be asked to sign the transcript.

Do you understand that?

Mr. KELLEY. I do.

Ms. OLSON. Transcripts are coming back within 24 hours so unless otherwise notified, you should assume that we will have the transcript by tomorrow.

I wanted to start off, if I could, if you would just state—

Mr. KELLEY. I need to pose a question at this point, will I get a copy of this transcript?

Ms. OLSON. Our transcripts are under seal. However, since we are having a hearing on Thursday, that you are testifying at and we believe that the transcript will be used in that hearing, we will make it available here for you and your attorney to review, you know, as soon as possible. They will become public if the Chairman decides, I believe so, at our hearing.

The other rule that we have agreed with the Minority at their request is all of our depositions become public on Friday, when Congress goes out of session. So a copy obviously would be available at that time.

Mr. KELLEY. Thank you.

Ms. OLSON. It is just until that period that they are under seal.

THEREUPON, THOMAS A. KELLEY, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MS. OLSON:

Question. If we could just start with giving your full name and describe how you came to work at the FBI.

Answer. Full name is Thomas A. Kelley, K-E-L-L-E-Y. I have been employed by the FBI for 27 years as a special agent.

Question. What did you do before coming to work for the FBI?

Answer. I was a law student.

Question. And did you—was the FBI your first job out of law school?

Answer. It was.

Question. Where did you go to law school?

Answer. Boston University.

Question. And when did you graduate?

Answer. 1969.

Question. Okay. And who hired you into the FBI, if you recall?

Answer. I don't recall. It was a process. I got a letter from Mr. Hoover. Actually, I believe it was a telegram.

Question. And can you just give us a brief description of the different positions you have held within the FBI leading up to your present position?

Answer. Sure. From training school, I was assigned first to Detroit where I was a criminal investigator; went into Detroit in the fall of '69, was transferred to Baltimore the end of 1970 or the beginning of '71; served in Baltimore, again, as a street investigator, until 1977, when I was transferred to the then Legal Counsel Division at FBI headquarters; served in the supervisory capacity there coordinating the defensive lawsuits primarily, until 1979.

In August of 1979, I was transferred to the Newark field office and I was a supervisor of organized crime investigations. Slightly less than a year later, I was trans-

ferred back to headquarters and promoted to the position of Chief of the Legal Research Unit, again in the Legal Counsel Division. I spent, roughly, a year in that position and was transferred to the inspection staff.

Question. What year did you go to the inspection staff?

Answer. 1980 or '81. I'm not certain. I have a biography which I will provide on Thursday which lists all of these dates.

Question. Thank you.

Answer. I spent, roughly, 10 months on the inspection staff. On completion of that assignment, I was reassigned to the Legal Counsel Division, again as a Unit Chief, in the Civil Litigation, once again coordinating the defense of Civil Litigation.

In 1975, in the fall, I believe, in October, I was promoted to my present position, then called Deputy Assistant Director of the Legal Counsel Division, and I served in that capacity until the existing OGC and Legal Counsel Division were combined in the summer of '94, when my title was changed but my basic functions continued.

Question. I am sorry. And when did that change occur?

Answer. I believe it was the summer of '94.

Question. So you assumed the title of Deputy General Counsel in '94?

Answer. Right.

Question. Do you recall the names of the General Counsels that you worked for, I guess going back to when you came back to headquarters in the Legal Counsel's Office in 1980?

Answer. Sure. There were only two of them. John Albert Mintz, whom I believe you know.

Question. M-I-N-T-Z?

Answer. T-Z. Joseph R. Davis, and Howard Shapiro.

Question. And was this the order, Mr. Davis was General Counsel after Mr. Mintz and before Mr. Shapiro?

Answer. Exactly.

Question. Are any of the previous General Counsels still with the FBI at this time?

Answer. No. They are both retired.

Question. Did you know Director Freeh before he came to the FBI?

Answer. As Director or before he came to the FBI in the first place?

Question. Before he came to the FBI. Maybe you can explain.

Answer. Well, I would explain he served as an FBI agent for a period of time and I knew him slightly during that period of time.

Question. Do you recall what period of time that was?

Answer. It would have been when I was the Chief of the Legal Research Unit in 1980 or '81. He was assigned to the Criminal Investigative Division right next door to us.

Question. Do you know how long he stayed there?

Answer. I don't really know.

Question. Okay. Did you work closely with him?

Answer. On some occasions we would have matters that interrelated, but I wouldn't say it was a daily thing.

Question. Okay. Did you stay in contact with him after he left the FBI?

Answer. No, I didn't. I mean, I occasionally would run into him at various things but I had no personal relationship with him.

Question. Okay. And had you worked with him in-between the period at all after he left the FBI in 1980 and when he came back as Director?

Answer. No.

Question. When Director Freeh came into the FBI, can you describe what changes, if any, were made in the General Counsel's Office of the FBI?

Answer. Well, when Director Freeh arrived, he brought Mr. Shapiro in with him and established Mr. Shapiro as the General Counsel of the FBI responsible for general oversight of the legal program, which subordinated the existing Assistant Director of that division to Mr. Shapiro for purposes of general direction and guidance. That arrangement stayed in place until the existing assisting Director retired in June of '94, I believe.

Question. Who was that?

Answer. Joe Davis.

Question. Who was that?

Answer. When Joe Davis retired, Mr. Shapiro consolidated the two offices. Now, the Office of General Counsel that Shapiro headed was very small. There were two or three or four people in it. But basically what they did was combine his office and the Legal Counsel Division into one large entity.

Question. Can you describe if there was any change in the General Counsel's Office or the Legal Counsel Division concerning bringing in outside individuals or nonagent lawyers?

Answer. Well, before Mr. Freeh got there, we were considering the option because of the difficulty of getting sufficient resources from the agent population. So I think we had a proposal on the table at the time to hire some nonagent attorneys because historically the division had been always staffed by agent attorneys, like myself and Mr. Davis.

So I think we had a proposal on the table at the time. Then the Director, sometime after his arrival, decided to downsize the headquarters and to move agent resources back into the prosecution and investigation of crime, and one of the entities that was identified as having a number of people who could easily be replaced by civilians was the Legal Counsel Division.

So a decision was made to move a number of agents who existed in that job into the investigative arena, creating vacancies, which we then backfilled with civilian attorneys.

Question. You said earlier that Director Freeh came with Mr. Shapiro. Had Mr. Shapiro been an agent?

Answer. No.

Question. And so when—

Answer. He also wasn't in the Legal Counsel Division, though.

Question. He was in charge of the small division of lawyers. Can you just explain how he wasn't in the General Counsel's Division?

Answer. He was the General Counsel and his office was called the Office of the General Counsel but it consisted of himself and two deputies and a small support staff, and they provided general oversight to the Legal Counsel Division through the Assistant Director. So they were, in fact, generally in charge of the division but they did not have a hands-on, day-to-day responsibility for running it, until Mr. Davis retired, at which time they consolidated the two entities and Mr. Davis took over the day-to-day running of the division.

Question. You had described that there was a proposal on the table to allow nonagent lawyers into the FBI prior to Mr. Freeh coming to the FBI.

Answer. Yes.

Question. Can you describe what you mean by "proposal on the table"?

Answer. Well, we were having some difficulty getting staffing because of the number of agents available, or under consideration for the job. And in order to beef up our staffing, Mr. Davis had already decided to see if we couldn't get authority to hire some civilian attorneys to augment the existing agent staff.

Question. And do you know who Mr. Davis was seeking to get authority from to do that?

Answer. Oh, I would assume the Deputy Director or the Director.

Question. Who was at that time, do you recall the names?

Answer. Probably Floyd Clarke and Mr. Sessions; I don't know that for certain.

Question. Okay. We have heard about a book, an MOIG book, I believe, if I'm not mangling the initials.

Answer. That's right. Manual of Investigative Operations and Guidelines.

Question. Are you familiar with that book?

Answer. Generally.

Question. Is there any discussion in that book concerning contacts with the White House or the White House's contacts with the FBI on matters?

Answer. There probably are. They would generally relate to investigative contacts. If they were in there, I just can't at the moment recall what they are, but the book is designed to give guidance to investigators.

Question. Is there any book that is designed to give guidance to the General Counsel or Legal Counsel Division that is either an internal or, I guess, public book?

Answer. That gives guidance on how to do what General Counsels do; I would say, no.

Question. Is there any written guidance that a new General Counsel coming in or new individuals coming in to the Legal Counsel or General Counsel's Office could refer to?

Answer. Most of the guidance we have or written guidance we have is designed to, for example, provide advice to—guidance on how to conduct investigations, the law which affects that. We have at least one directory or manual which covers the types of redactions that can be made in civil discovery, but there is no general overall guidance or policy on how the General Counsel should do his job.

Question. Okay. Were you in attendance or are you aware of any general training or review on contacts or communications between the White House and the FBI or

between the FBI, Department of Justice and the White House that occurred either before May of 1993 or after May of 1993?

Answer. Is the question was I trained or did I attend any such training?

Question. Yes.

Answer. I don't believe so, no.

Question. Are you aware of any such training occurring?

Answer. No.

Question. After the firing of the White House Travel Office employees, there were some new guidelines or at least some guidelines were discussed, and I believe some guidelines were articulated by Director Freeh concerning White House contacts with the FBI.

Do you know how those guidelines, or can you describe how those guidelines are put into place in the FBI?

Answer. I am not sure I am familiar with those guidelines. If I saw them I might recognize them, but without seeing them, I don't know if I can answer that.

Question. Okay. We have sort of just the press release of the guidelines but not the actual guidelines. I would just like to make the request, if there are, in fact, written guidelines that arose out of the White House Travel Office firings, that they be provided?

Answer. Okay. It would help us if you could give us the press release.

Mr. PARKINSON. Barbara, are you also including in that, guidelines that the White House promulgated at the same time? Because I know there were a bunch of those guidelines and these were initiated by the White House.

Ms. OLSON. And we have those. But we had heard, and we don't have a copy of the actual guidelines, and maybe I am incorrect, but I was under the impression that the FBI also clarified—either clarified some guidelines or put some guidelines out concerning White House contacts. And this may have also been a directive from the Justice Department that went down to the FBI because the Attorney General was involved in clarifications of those contacts.

Mr. GOLDBERG. Can you ask Mr. Kelley what his specific duties are as one of four Deputy General Counsels? Maybe that will clarify?

Ms. OLSON. Okay.

Mr. PARKINSON. We will get you whatever. I know there are some AIRTELS, A-I-R-T-E-L, one word. Bureaucze.

Ms. OLSON. It's a whole different language. You should try reading the document. Thank you, Don.

EXAMINATION BY MS. OLSON:

Question. Why don't you describe exactly what your duties are as the Deputy General Counsel as opposed to the other Deputy General Counsels?

Answer. Up until the time the division was consolidated with Mr. Shapiro, I was the sole Deputy General Counsel. So from 1985 to 1994, I was the only Deputy. When Mr. Shapiro arrived, he divided the responsibilities and ultimately what my responsibilities became were the coordination of all litigation brought against the FBI and the general administration of the division.

Question. Can you describe what your duties entail within the general administration of the division?

Answer. Making sure that it's fully staffed, that we have adequate space, that the budget preparations are made every year, the long-range planning is conducted timely.

Question. And by "the division," you mean the FBI as a whole—

Answer. No.

Question [continuing]. Or just the headquarters?

Answer. The Office of the General Counsel.

Question. And the coordination of litigation, is that solely the litigation occurring within the Office of the General Counsel?

Answer. No. It's any litigation brought against the United States—or the FBI or its employees or its records.

Question. Would you be in charge of the agents that are assisting U.S. Attorneys or the attorneys at the Department of Justice in their litigation?

Answer. Yes, I am.

Question. If you can just briefly tell us how the other three Deputies' jobs are divided?

Answer. Well, the division consists of currently nine units, five of which handle litigation or litigation-related matters. The other four are in what we call a Legal Advice and Training Program or branch. There is a deputy in charge of those four units. There is a special agent attorney named James Maddock at the moment.

The other two deputies, one of which is Mr. Parkinson, the other currently is Lisa Kate Ososky, O-S-O-F-S-K-Y; first name Lisa, middle name Kate. Both of them handle broad legal policy issues and then specific legal problems that the FBI encounters in its investigations and operations.

The actual day-to-day running of the nine units falls to Maddock and me.

Question. How do we spell Mr. Maddock's name?

Answer. James M., M-A-D-D-O-C-K.

Question. Mr. Parkinson is here today as your attorney. Can you just describe if he is representing—what your understanding is of his representation of you here today?

Answer. My understanding of his representation is that he, first of all, represents the FBI, and he is here to assist me in answering any questions that the committee may pose or the committee staff may pose to me. I don't believe he represents me personally because that hasn't been authorized by the Department of Justice.

Question. Have you requested personal representation?

Answer. No, I have not.

Question. I wanted to go into an area concerning the FBI previous reports that were ordered by the White House and sent over. Can you tell us when you first learned that the White House had obtained or that previous reports had been asked for by the White House?

Answer. The first time I heard that was the afternoon that Congressman Clinger made an announcement publicly about the Billy Ray Dale request. I don't recall the date, the 4th or 5th or 6th of June.

Question. And how did you hear about that announcement?

Answer. The Director told me.

Question. What were the circumstances of the Director telling you? Was it in a meeting?

Answer. Yes. He asked me how—Mr. Shapiro was out of the office and he therefore asked me to come over and he explained to me that this release that Congressman Clinger had made, he showed me a copy of the document and he said he would like me to determine how that could have happened, and dispatched me to find out.

Question. And what did you do?

Answer. Recognizing the type of document it was, I went downstairs and I called the people who deal in those kinds of documents and conducted a short inquiry by interviewing two or three of them.

Question. Were these individuals in the Name Check Unit?

Answer. They were in the Executive Agencies subunit, and Mr. Bourke, who was—I forget what unit he is in. Special Inquiry Unit, I think. But I interviewed perhaps four people and I looked at some of the documents related to the Dale matter.

Question. Can you tell us who you interviewed?

Answer. This was a very quick thing, but I believe Jan George, Jim Bourke, a gentleman named Formy Duvall, F-O-R-M-Y, D-U-V-A-L-L, I think. There were one or two other people in the room but just now I can't remember who they were.

Question. Do you know if you interviewed Peggy Larson at that time?

Answer. Peggy Larson, I believe, was on vacation at the time.

Question. Who is Formy Duvall?

Answer. He was a member of the Executive Agencies Unit and I think I had been confused about his role. I thought he had direct control over these kinds of matters and it turned out he did not.

Question. In the course of your interview with these people, did you interview any of the direct supervisors of the people in the Executive Agencies Unit?

Answer. See, that's what I cannot remember now, whether there was somebody present who would have been in a direct supervisory chain, but at some point Mr. Kitchen became involved, who I believe was the new—had been the newly appointed section chief there. But I am not sure whether he was present for that preliminary discussion. I just can't recall.

Question. Okay. And you said that they showed you some documents during this preliminary discussion.

Answer. Well, they showed me the documents I asked for.

Question. And what were those?

Answer. I asked to see the background investigation of Billy Ray Dale, the 161 file, which they showed me.

Question. And who pulled that file for you?

Answer. Mr. Bourke had already pulled it.

Question. Okay. Do you know why he had already pulled it?

Answer. Apparently somebody had communicated to him the same information the Director imparted to me.

Question. Do you know who?

Answer. I do not. But he was already looking for the file when I entered the scene.

Question. Did Mr. Bourke discuss any communications that he had with anyone at that time?

Answer. I don't recall him doing so. He was basically answering my questions.

Question. Okay. When you reviewed the Billy Dale background investigation file, was the request asking for his previous report from December of '93 included in there?

Answer. I don't believe so.

Question. Do you know why, if it wasn't in there—would it normally have been included in his file?

Answer. As I later learned, no, it would not.

Question. Okay. Can you explain?

Answer. Yes.

Question. We might as well do it now.

Answer. I will do it now rather than later. The answer—number one, the evidence that a file or a piece of a file has been disseminated, it is marked on the back of the file in the form of a stamp. The stamp is initiated by a couple of people, including the actual analyst who made the release. Whether they actually released that document or a summary of it, it's stamped. So that's how I knew that the statement about Billy Dale's file having been released was accurate, because I could see the stamps on the back of the file pages.

Question. Okay. So on the back of the file pages, not the file itself; right?

Answer. No, on the actual document from which the information is taken.

Question. Which that would have been the White House request; is that correct?

Answer. No, it was not.

Question. Okay.

Answer. In this case, it was—what the White House requested was previous reports. So each previous report concerning Billy Dale, when you turned over the first page to the back of the page, bore one of those stamps. And I forget how many of them there were but there were quite a series of them that were stamped and indicated they had been transmitted to the White House, the date they were transmitted and the initials of the person who did it.

Question. So if one were to open Billy Dale's background investigation file at the FBI, one could look and see how many reports had been sent and where they had been sent to?

Answer. Yes. By looking at the backs of the first page of each document.

Question. So even if one asked for a previous report, a new copy will be made and it's stamped that it was sent over to the White House?

Answer. No, they wouldn't make a new copy. They would Xerox it and stamp the existing file copy.

Question. Okay. So at this time, you looked at the file and saw that the stamp was there. Did you later find out why the White House form asking for the previous report to be sent over to the White House wasn't there?

Answer. Yes.

Question. And where was it?

Answer. Well, with regard to this one, I believe they had a copy of it in the file, because at some point they began to retain them. And you will have to ask Mr. Shapiro, because he is the investigator who is closer than I, but they began to retain those forms and they would indicate on the face of the form how it was responded to. But prior to that time, they would simply take—take the incoming form, stamp the front of it, "no record," or "see attached," and send the whole thing back to the White House and retain no record in the FBI except that which appeared on the back of the documents affected by it.

At some point in time, I recognized or learned that there were in our possession, in a file folder or a drawer, a stack of these incoming requests from the White House, but it was for an abbreviated period of time, 1 or 2 years, and did not encompass the prior many, many years that we had been doing this.

Question. So this wasn't in the actual background investigation, the individual, but they were all collected together in one place?

Answer. That's right. That's what I was told.

Question. Do you know where they were being kept?

Answer. I believe they were being kept in the Executive Agencies Unit, based on what I was told that day.

Question. Okay. Do you know who had them?

Answer. I can't say for certain who had them. Peggy—not Peggy Larson. Jan George is the one who told me about that.

Question. Okay. And what did you do after your conversation with Mr. Bourke in looking at the Billy Dale file, and I guess confirming that a copy of the previous report looked like it had been sent over to the White House?

Answer. The first thing I did was I went and explained it to Mr. Shapiro and the Director and one or two others who were in the room. I don't remember exactly now who they were. But certainly Mr. Shapiro and the Director, at which point the Director instructed Mr. Shapiro to immediately undertake an investigation of this entire matter and make the facts available to the public.

Question. Do you know if this was the same day of the announcement or if these meetings occurred the following day?

Answer. I can't say with certainty, but I thought it was the same day.

Question. Did you prepare any written materials, memos or documents concerning your review or interviews of these individuals?

Answer. I don't believe so.

Question. Did anyone else help you with this initial interview of the people that you talked to that day?

Answer. No.

Question. So to your knowledge, there would be no written assessment or interview notes of your discussions with these agents?

Answer. No.

Question. And were your communications with Mr. Shapiro and Mr. Frech at this point all orally or through any e-mail system or other document?

Answer. No; all oral.

Question. Is that the normal procedure that you follow?

Answer. Well, I hadn't been tasked to conduct a full-scale inquiry. The Director just wanted to know quickly, that afternoon, as much as I could tell him about what happened. So I went and asked the appropriate questions and I knew full well there would be a follow-up investigation where they would be subjected to interview, and so forth, so I wasn't concerned about it at the time.

Question. Do you know if the Justice Department had been contacted at this point?

Answer. I don't know that.

Question. Did you have any conversations with the Justice Department at this point?

Answer. No, I did not.

Question. Once Mr. Shapiro was tasked to start the investigation, did you participate in the investigation at all?

Answer. Only to the extent that I was provided some occasional advice and I provided some assistance in editing the written work product. But I didn't actually participate in the interviews or anything like that.

Question. And editing the written product, you are mentioning that you assisted editing the final report that the FBI issued on June 14th, 1996?

Answer. June 14th, right. I should mention, before you leave this subject of Director Frech, sometime that afternoon, although I guess probably it could have been the next day, my staff mentioned to me that we should inquire as to whether or not there were any other members of the White House Travel Office who had been fired whose files might have been requested by the White House as well. So we pulled the files of the individuals we knew had been fired in the Travel Office affair and looked to see whether or not there was any indication that their records had been disseminated to the White House. We did, in fact, find one such indication, which is Barnaby Brasseux, whose name I can't spell.

Question. She knows how to spell that, B-R-A-S-S-E-U-X.

Answer. As you know, the Director called Congressman Clinger and let him know that as soon as he knew it.

Question. At the time, were you aware that there were numerous other files that had been pulled besides Billy Dale's and Mr. Brasseux's?

Answer. I was not.

Question. Do you have any knowledge that Mr. Frech was aware that there were numerous other previous reports requested by the White House during that period of time?

Answer. I do not know.

Question. Besides Billy Dale's and Barney Brasseux?

Answer. No, I did not.

Question. When did you learn there were other files?

Answer. Late on the afternoon of—what did we decide? Was it the 5th or the 6th?

Mr. PARKINSON. I can't remember.

The WITNESS. I have a calendar handy. Just where, I don't know.

I don't know whether it was June 5th or June 6th, but it was, I believe, the same afternoon that I was conducting this inquiry for the Director, although it could have been the next day. But late in that afternoon, whichever of the two afternoons it was, Mr. Shapiro told me that the White House had called him and advised him that they had discovered a lot of other files which had been requested by the White House in the same fashion that the Billy Dale Ray—Billy Ray Dale file had been requested, and further, that they wanted to turn them back over to the FBI.

EXAMINATION BY MS. OLSON:

Question. Did Mr. Shapiro tell you who at the White House called him?

Answer. I don't recall whether he told me precisely who it was. He asked me to go over to the White House and collect the files, and I was instructed to contact Jane Sherburne when I got there. But I don't remember whether he told me exactly who it was that called him.

Question. Did you contact Jane Sherburne before you went over there?

Answer. I personally did not.

Question. Did you direct anyone else or do you know if anyone else did from the FBI?

Answer. I think that somebody may have called, maybe Mr. Shapiro's secretary or somebody called to arrange our entering into the White House. I think they talked to a secretary. I don't know. All I know is I was given instructions. Inspector Kitchen joined me. The two of us drove over to the White House and met with Ms. Sherburne.

Question. When Mr. Shapiro told you the White House had contacted him, was anybody else there with you?

Answer. At that time, I don't think so.

Question. When was Mr. Kitchen brought in?

Answer. Well, he asked me—Mr. Shapiro asked me who should go, and first I was going to send an attorney and then decided to go myself, and then he thought maybe somebody from the Records Section would be an appropriate person. And I agreed with him.

Question. And if you can just explain why—what Mr. Kitchen's connection was with the Records Section at this time?

Answer. I believe he was the newly installed chief of the section.

Question. So he would have been the direct supervisor for Jan George and Peggy Larson, to your knowledge?

Answer. Yes, I think he was.

Question. Do you know if the Justice Department was notified at this point?

Answer. I do not know.

Question. Okay. Do you have any knowledge about any notification of the Justice Department up to this point on any of these matters?

Answer. No. Well, I don't know what—no, I don't, is the simple answer.

Question. Okay. You said you and Mr. Kitchen went over to the White House. Was it that same day that you were notified?

Answer. Yes.

Question. Okay. And what did you do when you got to the White House?

Answer. We were met by Jane Sherburne and another attorney from the White House Counsel's Office, whose name I cannot remember, at the time.

Question. Sally Paxton?

Answer. That's it, Sally Paxton. And we were taken over into the Old Executive Office Building to the office, I believe, of the head of the Records Section. And they produced four boxes of documents and file folders and put them up on a table, and they had a typewritten list of the contents of these file folders of these boxes. And Mr. Kitchen and I and the two attorneys from the White House Counsel's Office went through each file folder to make sure it was on the list and to examine them and make sure they were FBI documents.

Question. Do you know who from the White House Office of Records Management was there?

Answer. I believe—I don't recall their names right now. I have them on the receipt, but I think one of them was the director of the office, and I think the other one was his deputy.

Question. Terry Good?

Answer. I don't recall. They did not play an active role in this. They were sitting—they were in the room but they were not actively involved in the process of inventorying the documents.

Question. Do you recall Mr. Good typing up a statement with Ms. Sherburne while you were reviewing the files?

Answer. Toward the end of it, yes.

Question. Can you describe—

Answer. I remember somebody typing it, one of those two gentlemen.

Question. Can you just describe what was going on in the room while you were looking at the files?

Answer. Well, while we were looking at the files, we were just checking off the names in the boxes to make sure that they matched the list so that we had a complete list and everybody agreed that what they were giving us was what was listed on that list. There were four boxes. The fourth box, or the one box contained documents which both Kitchen and I looked at and decided were not FBI documents. That box was left.

There were two boxes that contained file folders with individual's names on them, and each of the individual's file folders, you know, the ones I looked at, had in them one of those request forms and some sort of a response from the FBI. I didn't look at them all by any means, but the ones I looked at were in that fashion.

The third and remaining box contained a series of file folders, which I later took to calling the miscellaneous box. There were a couple of things in there that looked to me like they might be FBI records, like a NCIC folder. For that reason, out of an abundance of caution, we took it with us. So we left one box and took three. We took this receipt, which was typed by the Records Management person and signed by all the parties in the place.

Question. I am sorry. Can you describe what was in the box, as best you know, that you left? It was—

Answer. It was internal department of—excuse me. Internal White House personnel-type records.

Question. Were these folders with names on them in the same fashion?

Answer. They were folders with—you know, it's very hard for me to describe it now, but I satisfied myself in going through it. Now I just can't remember what was in it, but I can tell you this: I satisfied myself and Mr. Kitchen as well that they were not FBI documents. They were internal personnel-related records from the White House. I just can't tell you any more than that.

Ms. OLSON. Okay. At this time, I am going to make Deposition Exhibit No. 1 the list.

[Kelley Deposition Exhibit No. 1 was marked for identification.]

EXAMINATION BY MS. OLSON:

Question. We will get a copy of that list and then I will show it to you. But I just want to insert in the record that we have got a copy of a list with some check marks, and I will have you look at it.

Answer. The receipt, you mean?

Question. No, the list of what was actually in the boxes. And I want to ask you if it's the same list that you just described that you checked off.

Answer. All right.

Question. Did you make a copy of any of these documents for the White House or prepare any—

Answer. Not at that point, no.

Question. Can you just tell us what you did after you reviewed them and took the three boxes?

Answer. We simply removed them back to the FBI headquarters and locked them up in the Office of General Counsel overnight.

Question. Did Jane Sherburne tell you how she came to discover that there were other files?

Answer. No.

Question. Did anyone explain anything to you about where these—how these boxes were discovered or how it was revealed that there had been lots of other previous reports ordered?

Answer. No.

Question. Did you have any discussions at the White House with anyone else other than the people that you have just described were in the room at that time?

Answer. No.

Question. Okay. Can you just tell us, after you took them back and locked them up in the General Counsel's Office, what did you do?

Answer. Well, Mr. Shapiro was there. He took a fast look at them. The following morning, he began to assign staff to inventory them. It was a painstaking process because he had to treat it as original evidence and everybody had to wear gloves. But he had a computerized list generated of all the files, all the documents, and the normal kind of thing you would do if you initiate this kind of an inquiry.

Question. Okay. Did anyone mention to you, from the White House, that these files had been handled in the interim period before you took control of them? And by "handled," did Jane or anyone else tell you about Craig Livingstone or anyone else handling either the Billy Dale file or any of the other files that you were taking control of?

Answer. Yeah, that—they didn't say anything about handling them, but as we were going through the inventory, there was a file folder listed for Billy Dale and it was checked out on the list to Craig Livingstone.

Question. Did you ask about that?

Answer. I did. They did not have an answer.

Question. And did you ask Jane Sherburne?

Answer. Yes. She said—I don't recall the exact exchange, but I said, where is this one? because I knew this is the one that caused the controversy.

And she said, well, it appears to be checked out to Mr. Livingstone.

There were two or three—there were half a dozen that were checked out to various other people, generally indicated by a red card, I believe, in the file, in the box. There was a little note attached to it.

Question. The file that Mr. Livingstone checked out, which was the Billy Dale file, did you come to find out why Mr. Livingstone had checked out the Billy Dale file?

Answer. No.

Question. Do you know if there was—

Answer. I believe it was checked out that day. The date on it, I think, was the same day we were there or the day before.

Question. Do you know if Mr. Livingstone handled the Billy Dale file with gloves to avoid adding fingerprints to it when he checked it out?

Answer. I have no idea.

Question. Do you know if there were fingerprint analysis being done on the Billy Dale file on that date?

Answer. I don't know.

Question. Okay.

Answer. Not by the FBI, I don't think.

Question. Do you know if the Independent Counsel had requested that Mr. Dale's file be sent over that day?

Answer. I have no idea what the Independent Counsel is doing.

Question. So you said Mr. Shapiro took a very quick look at them that evening after you brought them back?

Answer. Uh-huh.

Question. What happened afterwards?

Answer. I went home.

Question. Was Mr. Shapiro with anyone, besides you and Mr. Kitchen, I take it?

Answer. And his administrative assistant.

Question. Who was that?

Answer. Dana Sauer.

Question. And did you have any other involvement with these files after bringing them back to the FBI and showing them to Mr. Shapiro?

Answer. I don't believe I had any direct involvement with them from that point on. I mean, they went—what happened is that he asked the Director for some support from the Inspection Division to help in conducting this inquiry, and an inspector was appointed, some assistant inspectors were named, and they undertook the inquiry, including the handling of all the documents and whatever they did with them. So the matter was off my desk entirely at that point.

Question. Can you just describe briefly what is the Inspection Division within the FBI?

Answer. The division—the Inspection Division is charged with ensuring the FBI conducts its business according to the law and regulation, and they have a number of different components, the principal one of which is a group that travels from field office to field office conducting a very structured analysis of how the FBI is doing its job.

In order to be promoted in the FBI up into the upper level or upper echelon, you must have served as an assistant inspector at some period in your career. And to get to the higher levels in the field office management, anyway, you must have been a full inspector. So both a full inspector was assigned to this matter and then several assistant inspectors to assist him. They actually conducted the interviews and the investigation that led to Mr. Shapiro's report.

Question. And who were the individuals in the Inspection Division that were assigned to do this report?

Answer. The full inspector was Larry McCormick. I am not sure I know who all the aides were, but Duncan Wainwright; Steve Tidwell. I believe there were two others, and just now I can't remember who they were.

Question. And they are all with the Inspection Division at headquarters?

Answer. Well, inspectors can operate in two ways: You can be permanently assigned to the headquarters inspection staff or you can operate on a part-time basis, and you get credit for the time served. And most of these people, I believe, were part-timers. Like Duncan Wainwright is a field supervisor in the Washington field office and he was assigned in his capacity as an assistant inspector to do this task.

Question. Is Larry McCormick full-time?

Answer. He was a full-time permanent inspector.

Question. And is Mr. Tidwell also with the Washington metropolitan field office?

Answer. I think he is in Baltimore, although I'm not 100 percent certain of that. I think there were two others, but I just can't remember who they were at this moment.

Question. Other than these people, the five that you believe were working from the inspections unit on the FBI report, do you know who else was working on the actual gathering of the information for the report or if there was anyone else?

Answer. Well, occasionally, Mr. Shapiro would task somebody that worked for me, because I am in charge of the Civil Discovery Review Unit, and that unit has the capacity to gather documents and occasionally they would ask them to do something in connection with this.

Question. Do you recall any specific individuals or items that were tasked over through you?

Answer. Well, I mean, one of the things I recall is he asked to have this computer list generated, and that was generated by two people in the Civil Discovery Unit.

Question. Which computer list?

Answer. It was a precise listing of every file folder that we had received from the White House. That looks like it.

Ms. OLSON. I have got a document that is CGE 48000, and I will mark it as Deposition Exhibit No. 2, but I am going to get a copy without Post-its on it to put in the record.

[Kelley Deposition Exhibit No. 2 was marked for identification.]

EXAMINATION BY MS. OLSON:

Question. I will show you—just tell me if that appears to be the list that you just described?

Answer. This is the second one. I believe there was one done prior to this, and then it was augmented when they got the second box of documents, with which I had nothing to do with and I don't know how that happened. But I think this is the second one.

Question. Okay.

Answer. There was a preliminary one.

Question. That was created?

Answer. That was created within the 24-hour period following the time that we picked up the files.

Question. Okay. And that list, if you could just describe what that list consisted of?

Answer. Well, I'm not the expert on the subject. I mean, I just saw the thing in passing. It looked very much like this list.

Question. But it had the names of all the individuals—

Answer. Yes.

Question [continuing]. Whose files you all had recovered from the White House?

Answer. Yes, it did have that.

Ms. OLSON. At this time, we will make our check in our files for the first list, but we may not have it. If there is a list that is a White House name check request list that precedes this one, we would like to have a copy of that. This one does say "Augmented White House Name Check Request." We received this from the White House, and it's CGE 48000.

It does have material redacted from the White House, and we would also like an unredacted copy of this. I am not sure why material was redacted. Perhaps it was just social security numbers that were redacted, in which case we don't need an unredacted version if that's all that was redacted, but if you would just check to see.

The WITNESS. I think this is our list. I can't be 100 percent. I will have to go back and take a look.

Ms. OLSON. If you all would just check to see?

Mr. PARKINSON. All right.

Do you know whose Bates number this is?

Ms. OLSON. White House. Like I said, if the redactions on there are just social security numbers, it doesn't—that's fine. But if you notice pages or other things redacted, we would like that.

EXAMINATION BY MS. OLSON:

Question. Do you know if anyone from the Department of Justice was notified about the report investigation at this point, or did you have any discussions concerning notification of the Justice Department?

Answer. Concerning?

Question. This FBI investigation that was going on under Mr. Shapiro to wind up in a report.

Answer. Well, I personally didn't have any conversations with him. I believe at some point that the Attorney General was notified, because I think she made a public statement to the effect that Howard's report would serve as the report for both the Department and the FBI. How that communication occurred, I don't know.

Question. Okay. Were there any other tasks that went through the General Counsel's Office, that you are aware of, involving other individuals in your office for this FBI report?

Answer. I don't recall any, but as I say, I was somewhat removed from it at that point.

Question. Okay. When were you shown a copy of the report?

Answer. Mr. Shapiro began to write the report in the latter part of the week of the 14th.

What did I do with my calendar? I put it back in its usual filing place.

I saw an early draft or part of the thing sometime early that week, 11th, 12th, in there somewhere.

Question. And did you perform any edits of it or any revisions?

Answer. I made some editorial suggestions, yes, fairly minor.

Question. Okay. Was this just based on general editing or was it from your participation?

Answer. No, it was general editing.

Question. Do you recall what parts that you were reviewing of this report at that time?

Answer. Frankly, no, I don't.

Question. When did you—did you see other parts of the report at a later date?

Answer. Ultimately, I saw the entire report, particularly on the evening of the 13th and the morning of the 14th, as it was being assembled.

Question. Okay. And do you know who sent the report over to the Deputy Attorney General at the Justice—at the Justice Department?

Answer. Mr. Shapiro, I believe.

Question. Okay. Were you involved in or aware of any conversations concerning this report at this time with the Department of Justice?

Answer. I was present during one conversation between the deputy and Howard.

Question. And by "the deputy" is that Jamie Gorelick?

Answer. Yes.

Question. J-A-M-I-E, G-O-R-E-L-I-C-K.

Answer. And Merrick Garland may have been there as well, and it was toward the time when the report was due to be released. There was some questions about what recommendations were going to be made flowing from the results of the investigation. The conversation lasted 10 minutes. It was in Ms. Gorelick's office. Until you mentioned it, I had almost forgotten it.

Question. You believe it was Jamie Gorelick and Merrick Garland from the Department of Justice?

Answer. I believe so.

Question. M-E-R-R-I-C-K, G-A-R-L-A-N-D.

Ms. OLSON. Can we go off the record for a second.

[Discussion off the record.]

EXAMINATION BY MS. OLSON:

Question. We are back on the record after a short break.

You had looked at Deposition Exhibit No. 1, and there are check marks, and are those your check marks?

Answer. No.

Question. No. Was this the list you looked at?

Answer. Yes.

Question. How do you know they are not your check marks? Were they in another place or something?

Answer. There were two or three copies of this list between Ms. Paxton, myself, Mr. Kitchen, and I believe Ms. Sherburne had one, too. We were all operating from four different copies of the list. I don't recall who made the check marks or even if they were made at the time.

Question. Okay. And I wanted—but this does appear to be the same list?

Answer. Oh, I think so, yes.

Question. Okay. And I also wanted to ask you, the Craig Livingstone Billy Dale file, I wanted to go to the page that listed Mr. Dale, it has it marked—checked out on 6-6-96.

Answer. Exactly.

Question. You believe that was the same date—that afternoon that you were over there picking up the documents?

Answer. Yes.

Question. And Ms. Sherburne was unable to tell you at that time why the Billy Ray Dale file had been checked out to Craig Livingstone?

Answer. That's right.

Question. And you asked her why?

Answer. I said, where is this file?

And he said—she looked at it, and I think she said something like, well, Mr. Livingstone must have checked it out.

Question. Thank you.

During your editing or review of the entire report, was there ever any discussion about the fact that none of the supervisors in what I call the Name Check Unit, or I guess it's more appropriately called the Executive Agencies Unit, were mentioned?

Answer. I don't believe I ever noticed that. I don't believe I noticed that.

Question. One of the supervisors who is mentioned is Mr. Jim Bourke, who is in charge of the full field background.

Answer. He is not in charge of that unit, yes.

Question. So you aren't aware of any conversations or discussions during the drafting of this report that there is not a single supervisor of any of the Name Check people mentioned in the entire report?

Answer. No, I was not aware of that until you must mentioned it.

Question. Do you know who the supervisors are for the Name Check Unit? I mean, obviously, Mr. Kitchen is currently. Do you know—

Answer. The way it was explained to me at the time was Peggy Larson is the support supervisor, and I know there has been some consolidation and shifting of assignments down there so I don't know even as we are sitting here who the unit chief would be unless it's Peggy Larson.

Question. You think Peggy Larson might have been on like the level of Jim Bourke?

Answer. Oh, yes, it's possible. I don't think it is the case—and I don't know who the unit chief is even now. I recall trying to find out who the unit chief was at the time I was doing these interviews, but I was getting the right answers or the answers I needed from the people who were in the unit.

Question. We spent days and weeks trying to find out who the supervisor was.

Answer. How did you do?

Question. We have called all over the world to find out those names.

You have got a long history with the FBI. Do they keep organizational charts?

Answer. They don't keep them formally. They come and go as the units—I mean, they don't have a central repository of organizational charts. They have telephone charts which show sort of a wire diagram or a unit-by-unit grouping, and some people keep them and some don't, but they don't have an organization which just maintains them.

Question. Were you aware, during the December '93 period, of a reorganization going on or at least a large number of unit chiefs going through the Name Check Unit?

Answer. Not personally, I wasn't aware of it, no.

Question. Have you been made aware of it since this whole matter has become public?

Answer. Well, it's still not entirely clear to me, even now. I know that Vern Thornton was an acting unit chief and an acting section chief at one point, and I thought he had line responsibility for this unit at the time. Beyond that, I know nothing.

Question. And, in fact, that's one of the reasons we have him coming up for our Thursday hearing is we finally discovered that Vern Thornton, as best as anybody knows, was probably the unit chief at that time.

Were you involved in any of the decisions to change the unit chiefs right before December of '93 or following December of '93?

Answer. No. That's a different division.

Question. Okay. And quite a few of the people who had the responsibility retired. Do you have any knowledge or were you involved in any of the issues concerning their retirement following the December '93 period?

Answer. To whom are you referring?

Question. I don't have the list. There is about four individuals who went through as acting or unit chiefs from the 1993, early '94 period.

Answer. I would have to see the list. I don't really recall anybody. I thought Thornton was the guy.

Question. Okay. Do you know who drafted the press release that Mr.—Director Freeh put out with the report?

Answer. No. I don't personally know.

Question. Did you have any participation—

Answer. No.

Question [continuing]. In the drafting of that release?

Answer. No. But for the record, the afternoon of the 14th, the day he released the report, I left the country for 2 weeks. I didn't get back until the 26th of June.

Question. So while you were out of the country, did you have any involvement at all in the aftermath of the release of the report?

Answer. Besides marveling at what I was seeing on CNN International, no.

Question. Shortly after the press release was issued by Director Freeh, there was a revision of the release concerning whether the FBI had been victimized by the White House. Are you aware of that revision or any of the circumstances surrounding the revision that was made to that statement by the FBI?

Answer. I didn't know it had been revised.

Question. Do you know if the Justice Department reviewed the press release—

Answer. I don't know.

Question [continuing]. Before its release?

Answer. I don't know.

Question. On June 18th, Attorney General Reno made a statement where she asked the FBI to conduct a thorough investigation of the matter, after the release of this report. Did you have any meetings or were you involved in any of the actions taken by the FBI right after Attorney General Reno tasked the FBI to conduct this investigation?

Answer. On June 18th?

Question. Uh-huh.

Answer. I was in Europe on June 18th.

Question. Okay. And then on June 20th, the matter was turned over to the Independent Counsel, Ken Starr, by the Attorney General, in a statement that she believed there was a conflict of interest. Were you aware of that statement by the Attorney General?

Answer. Not contemporaneously. I later became aware of it.

Question. When was that?

Answer. After I got back from Europe.

Question. Okay. After you got back from Europe, what was your first reinvolvement with this investigation or this matter? Did you receive any kind of briefing to catch you up-to-date on what was going on?

Answer. I got back on the 26th of June—back to my calendar again—so I would have come to work on the 27th. I believe my first involvement with this matter post-vacation would have been some conversations with you—

Question. Okay.

Answer [continuing]. About the contents of this miscellaneous box, I think.

Question. Okay. The committee requested certain documents from the FBI concerning the miscellaneous box and, in fact, I went over to the FBI and sat with your Legislative Affairs person—

Answer. Right.

Question [continuing]. And tabbed numerous pages of documents and tried to narrow down the committee's request for lists so that we didn't have to just get the whole box.

Can you describe your involvement in this matter leading up to the fact that they ultimately were not turned over by the FBI but the White House turned the documents over to us—

Answer. Sure.

Question [continuing]. That they deemed that we had asked for?

Answer. Sure. Sometime after you reviewed the documents and marked them, Maggie Owens told me that you had done that and that she had had a subsequent conversation with some people in the Department of Justice concerning the committee request and the fact that you had identified these documents and what box they were in, and that the Department of Justice had suggested to her that, number one, she needed to check with the Independent Counsel about whether these documents should be released and, number two, that they appeared to be third-agency documents and, therefore, they belonged to the White House, and the White House was the one making—should be the one making the adjudication as to whether they should be released or not. She told me all that. She told me she had a discussion with the Independent Counsel who interposed no objection, and would I call Jane Sherburne at the White House and get Jane Sherburne's approval to release them, which I did.

Question. Can you describe why these documents were third-party documents that the White House had clearly turned over to the FBI to take possession of?

Answer. I think we have had this conversation.

Question. I would like to have it on the record.

Answer. I bet you would. The answer is, from our perspective, we had copies of the documents. We had given copies of them to the Independent Counsel, but because they were not directly FBI documents, we gave a copy of them back to the White House. So from our perspective, although we had copies in our files, they were still White House documents.

Question. When did you give the copy back to the White House?

Answer. I don't know. I wasn't present when that was done.

Question. Did you approve it to be done?

Answer. No.

Question. Did the White House request it?

Answer. I don't know, but it was my understanding—

Question. Do you know who—

Answer. It was my understanding that a copy had been sent back to the White House because they were not deemed to be FBI documents.

Question. Do you know who authorized sending the copy back to the White House?

Answer. No.

Question. Did you ever inquire to find out who had authorized the copy being sent back to the White House after the White House had requested the FBI to take these documents?

Answer. No.

Question. Okay. So you asked Maggie Owens to call Jane Sherburne?

Answer. No. She asked me to call Jane Sherburne.

Question. Okay. Did you do so?

Answer. Yes, I did.

Question. And can you tell us what Ms. Sherburne said?

Answer. Ms. Sherburne said—ultimately what she said, I don't remember if she said it in the same conversation or whether they put me off, but what she ultimately said was, you are right, those are White House documents. We would prefer to be the ones to turn them over to the committee, and would you communicate that to the committee. And I believe I communicated it to Maggie. Maybe Maggie communicated it to you.

Question. And I believe we communicated back and forth.

Answer. I think we did.

Question. Was Ms. Sherburne notified of the documents that were being sent to the Independent Counsel?

Answer. I don't know that. I mean, Ms.—I don't know that. Not by me.

Question. Wouldn't that have been a procedure if they were third-party agency documents?

Answer. Well, we have a different standard when we are dealing with an Independent Counsel. Basically, whatever the Independent Counsel asks us for, we give them.

Question. What's the standard for dealing with a congressional committee?

Answer. The standard for dealing with a congressional committee is the same as it is with people that we deal with outside the government.

Question. With any citizen?

Answer. Well, not any citizen but certainly any litigant, anything under the rules of civil discovery. We treat them as requests from somebody who is interested in our documents but we try to preserve whatever privacy there are in those documents, and what have you.

Question. So congressional—

Answer. For prosecution purposes, we always turn over whatever we have in our files.

Question. So do you believe the position of the FBI is to treat congressional committees as any litigant who might be bringing an action against the government?

Answer. That may overstate the case. We give the committees in Congress things that, for example, are protected by the Privacy Act in which we would not—

Question. Because the Privacy Act does not—

Answer. That's right, which we would not turn over to private litigants.

Question. Let me complete—because the Privacy Act does not apply to Congress, is that true?

Answer. I have heard that.

Question. Is that your understanding?

Answer. That is my understanding. It is my understanding.

Question. You are the General Counsel of the FBI. Do you have a belief that the Privacy Act applies to the Congress?

Answer. I am the Deputy General Counsel of the FBI, and it is my understanding that it does not.

Question. Okay. Is there any written guidelines—

Answer. Can I make one other point about this before we move on?

Question. Of course.

Answer. I should also point out to you that the Independent Counsel already had the originals of these documents. So it wasn't a question of whether I was going to give them—ask him whether he wanted copies of them. He already had the originals when I got involved in this discussion. He had originals of all the documents we had taken from the White House.

Question. I thought you took originals?

Answer. I did.

Question. So he didn't have originals of those documents?

Answer. No, that's not true. They gave him the originals.

Question. I know, but before you gave the documents to the Independent Counsel, he didn't have copies of originals, is that true?

Answer. He had the originals. We had copies. The documents you were looking at in the box were copies.

Question. I know, but when Jane Sherburne handed you documents, she handed you the originals, didn't she?

Answer. Yes.

Question. That's what I am asking.

Answer. Yes.

Question. You were sitting there with the originals when the Independent Counsel made his request, is that true?

Answer. No.

Question. Okay.

Answer. The FBI had the originals when the Independent Counsel made his request. Is that what you are asking?

Question. Yes.

Answer. Yes.

Question. And then the FBI made copies of those originals and retained the copy and handed the Independent Counsel the originals?

Answer. Exactly.

Question. And it's those copies that we were asking for certain copies of—

Answer. Yes.

Question [continuing]. That were still considered to be in the possession of the White House?

Answer. Well, they were considered White House documents, even though they are in our files.

Question. Okay. How did you communicate to the White House what documents we had spent hours going through and requesting?

Answer. I didn't communicate to them the substance of what you were requesting. I just told them that they were documents from the miscellaneous box, and she and I understood what the miscellaneous box was because we had sent a copy back, as I understood it, and plus during the discussions over there we knew which box was file FBI material and which one was miscellaneous.

Question. Do you know how the White House knew what copies to make for the committee?

Answer. I do not.

Question. Because they didn't send us the entire box. There were selected copies that were sent to us that had been communicated to the FBI. Do you know who told the White House what documents we selected?

Answer. It wasn't me.

Question. Do you know if Ms. Owens communicated that information in another phone call to the White House?

Answer. I don't know that. I just thought they gave you the whole box.

Question. No, they did not. They also did not give us copies of documents that we did request.

Answer. I did not know that, either.

Question. Were you aware that another copy was sent over to the White House of that box of documents—

Answer. No.

Question [continuing]. On that same date that the Government Reform and Oversight Committee requested those documents?

Answer. No, I am not aware of that.

Question. Do you know if anybody approved Maggie Owens making another copy of that box for the White House?

Answer. Well, I am not aware of that.

Question. Okay. And the basis for my belief that another copy was made was that the White House—Special Counsel Jane Sherburne wrote a letter stating that inexplicably the FBI sent us another copy, even though we already had a copy.

Answer. Oh, that, I thought, preceded this. I forget exactly what they were—the White House asked Maggie Owens for a copy of something and she provided it, and I guess the timing of it was such that it got confused in the White House or Sherburne's mind as to why she was getting it.

I did not realize it was a whole copy of this box. I don't think I ever really knew what it was. But there was some confusion in Sherburne's mind as to what she got, but I believe it was exactly what she asked for. I just don't recall what that was. You will have to ask Maggie.

Question. When Jane Sherburne calls Maggie and asks her for things, does Maggie ever go to anyone else before she provides copies to the White House?

Answer. She doesn't go to me.

Question. Do you know who she reports to?

Answer. She reports to John Collingwood.

Question. Okay. And has Mr. Collingwood been the supervisor throughout '93 and into '96, in your knowledge of that area?

Answer. I can't say about that far back, '93, but I believe so. Certainly in '94 and '95, he was.

Question. Was there any discussions, that you were aware of, why the report that was issued on June 14th only reviewed the improperly ordered files from December of '93 to February of '94?

Answer. That is the only files that I was aware of, myself. I don't know—I didn't conduct the investigation, but from the outset that's the only files that I was aware of.

Ms. OLSON. I have a document I am going to make Deposition Exhibit No. 3. It is a June 25th, 1996 letter, to Mr. John Bates, Deputy Independent Counsel, B-A-T-E-S, from Howard Shapiro, and it is cc'd to Chairman, I think—Chairman Clinger, as well as the Ranking Minority Member, Representative Cardiss Collins. [Kelley Deposition Exhibit No. 3 was marked for identification.]

EXAMINATION BY MS. OLSON:

Question. Have you ever seen that document before?

Answer. I have not.

Question. Then I won't ask you any questions about it.

Did Mr. Shapiro ever discuss with you a review he did of records of October/November which brought to light numerous other previous reports that were sent to the White House?

Answer. He never discussed a review he did. I knew that they had discovered somehow or another that there were additional documents, additional previous report requests that had been done, and the number jumped from 320 to 400-something. I was never clear how that happened.

Question. Do you remember who told you about that or who was involved in this matter?

Answer. Frankly, no. This occurred when I was out of the country.

Question. Okay. Do you know who Special Agent Dennis Sculimbrene is?

Answer. I do.

Question. When did you meet him or become aware of him in the FBI?

Answer. To the best of my knowledge, I have never met him.

Question. Okay. When did he first come to your attention?

Answer. I can't say that for certain, but sometime in June of '96, I learned that he was one of the agents who had served at the White House conducting background investigations, along with some others.

Question. Okay. Would that have been along with Gary Aldrich?

Answer. That would have been.

Question. Okay. Do you recall how you became aware of this? Was it in a meeting discussing this matter?

Answer. To tell you the truth, I can't recall how I learned it.

Question. Okay. Were you aware that he had been reassigned out of the White House and back to the field office in Tyson's Corner?

Answer. At some point, I learned that. I don't remember exactly when.

Question. Do you know if that was in June of '96 or back when he was reassigned?

Answer. I don't know. I would have learned it more recently, if that's the question.

Question. So by June, it would have been more recently in this matter involving Mr. Sculimbrene?

Answer. Yes.

Question. Okay. Have you ever been told or do you have any knowledge of the fact that he currently has no work assignments whatsoever to do?

Answer. I have been told he is on administrative leave.

Question. Who told you that?

Answer. I don't know, but somebody recently told me he was on administrative leave.

Question. So your knowledge is that he was on formal administrative leave and not coming into the office at all?

Answer. That was my understanding. I don't know exactly what the details of that are.

Question. Okay. Were you ever made aware that he had not had work assignments since the middle of last April?

Answer. No.

Question. Were you ever notified or ever made aware that he was transferred out of his assignment at the White House after he testified at the Billy Dale trial?

Answer. No.

Question. Did you have any meetings or any conversations with anyone concerning agents testifying at the Billy Dale trial?

Answer. No.

Question. Were you involved in any way in those matters concerning the Billy Dale trial testimony or review of the work that was going on in the Billy Dale trial?

Answer. No.

Question. Do you have any knowledge about the status of Mr.—of Agent Sculimbrene's White House pass and whether it was pulled?

Answer. No.

Question. Were you ever involved in any discussions or do you have any knowledge of the FBI pulling Mr. Sculimbrene because he would make the White House feel uncomfortable?

Answer. No.

Question. Were you ever in any meetings or have any discussions within the FBI concerning William Kennedy contacting Jim Bourke for guidance on what to do about wrongdoing in the Travel Office back in May of '93?

Answer. No, I was not involved in that at all.

Question. Were you ever made aware of any conversations that Bill Kennedy—William Kennedy, who was a White House Associate Counsel at the time, had with Dennis Sculimbrene and Gary Aldrich the night before the firing?

Answer. No.

Question. Has Mr. Renaghan ever reported any of the incidents that occurred concerning Mr. Sculimbrene and Mr. Aldrich to you?

Answer. No.

Question. Do you supervise in any way the field office supervisor David Bowie?

Answer. No.

Question. Was it ever reported to you or are you aware that Mr. Bowie allegedly stated that Billy Dale would have pled guilty if it hadn't been for those rich Republicans giving him money?

Answer. No.

Question. Was it ever reported to you or are you aware that Supervisor Bowie threatened Agent Sculimbrenne with an OPR investigation because of his testimony for Billy Dale?

Answer. No.

Question. Who starts OPR investigations?

Answer. Anybody who learns of any misconduct, writes a memo or otherwise communicates to the Office of Professional Responsibility and they authorize it.

Question. And this is the Office of Professional Responsibility within the FBI?

Answer. Yes, although you can accomplish the same result by reporting it to the Department of Justice Office of Professional Responsibility as well.

Question. Do you know who was head of the Office of Professional Responsibility in 1995, in October of 1995?

Answer. Well, the unit chief was Ralph Regalbuto, October of 1995. The deputy assistant director was—

Question. Can you spell his name?

Answer. Ralph Regalbuto, R-E-G-A-L-B-U-T-O.

Question. Thank you.

Answer. In October of '95, his immediate supervisor, would have been, I believe, David Ries, R-I-E-S, and his supervisor would have been—boss would have been Wiley Thompson, Deputy Assistant Director Wiley Thompson.

Question. Have you been brought into any conversations concerning Agent Sculimbrenne's OPR investigation?

Answer. No.

Question. Do you know if his supervisor, Mr. Bowie, is responsible in any way for this OPR investigation?

Answer. I do not know.

Question. Were you ever informed or do you have any knowledge that Mr.—Agent Sculimbrenne wrote a memo to White House Associate Counsel Bill Kennedy about how to make the FBI work better and how to improve the background check process?

Answer. I don't know the answer to that specifically. I know there was some correspondence between agents who worked in the White House about matters related to that. I have never read them.

Question. And do you know who that correspondence was to?

Answer. No, I don't know.

Question. Or where it is?

Answer. Well, I believe I have some copies of it someplace, but where and who it's addressed to, I don't know.

Question. We currently have subpoenaed documents from the Department of Justice which would include the FBI, and I am not sure how deep the search went, but if you could review any correspondence you have that concerns matters that are currently under—it was a January 11th subpoena, which we can provide a copy, but just to make sure, if you have any correspondence that might be responsive, we would just ask—

Answer. I personally?

Question. Yes.

Answer. Okay.

Question. Just to make sure. Like I said, there were a lot of things on the subpoena and I am not sure how deep the search went. But just at this time, if you have any correspondence that do concern memos to Bill Kennedy or memos that were written to White House Counsel's Office on the background, I would just ask if you review that, see if they are responsive.

It was a January of 1996 subpoena.

Mr. PARKINSON. Okay.

Ms. OLSON. It went to the Justice Department, but some of the documents may be responsive.

Mr. PARKINSON. I am not sure.

Do we have that subpoena?

The WITNESS. Yes.

Ms. OLSON. Barbara Comstock is present. She just said it was a February 6th subpoena that went to the Department of Justice rather than January 11th. I guess that was the White House.

The WITNESS. Well, if I have the documents, I will find them.

Ms. OLSON. Can we go off the record for a second.

[Discussion off the record.]

Ms. OLSON. All right. We are back on the record.

EXAMINATION BY MS. OLSON:

Question. Are you aware of a random drug testing program within the FBI for FBI agents?

Answer. Yes.

Question. On an average, how often are agents randomly tested per year?

Answer. I do not know.

Question. Okay. Who administers that program, if you know?

Answer. I'm not even certain of that.

Question. Were you ever told or do you have any knowledge of Agent Sculimbrene being randomly drug tested for the first time in his career just before he testified for Billy Dale?

Answer. Nope.

Question. Were you ever made aware or do you have any knowledge of problems that the White House FBI agents were having setting up and obtaining interviews with the staff in the course of completing background investigations?

Answer. I have only heard that recently. I was not aware of it contemporaneously.

Question. My questions are directed if you were involved in that period?

Answer. I was not.

Question. Do you know if any memos were sent to you from any of the agents concerning this problem?

Answer. No.

Question. Did you get a report from anyone from the Inspection Division that reviewed this issue at the Washington metropolitan field office in late 1993?

Answer. No.

Question. And by "this issue," I mean the problems that the FBI was having getting security interviews and getting their paperwork on time.

Answer. No.

Question. There was a report that the FBI White House liaison agents gave memos and charts to the Inspection Division in late 1993, while they were doing this review. Do you know if the Inspection Division retains that kind of material if they received it?

Answer. Generally, in the work papers, generally.

Question. Was it ever brought to your attention or were you ever notified that the White House agents were having trouble interviewing Tony Lake concerning the background investigation of his staff?

Answer. No.

Question. Were you ever made aware or do you have any knowledge of interns that were reviewing classified documents without security clearances or background investigations?

Answer. No.

Question. Did you ever become aware or do you have any knowledge of any problems that the FBI agents were having with volunteers that were in the White House without name checks being performed?

Answer. No.

Question. In the course of our investigation, we discovered from a Marceca-generated list that the previous reports of numerous FBI agents were sent to the White House Office of Personnel Security during this period. Can you just explain the policy of the FBI concerning sending the background reports of FBI agents over to the White House?

Answer. I don't know that I know the policy. I just recently learned that they did, in fact, respond to some of those requests. That's the first I had heard of it. On the other hand, if you are going to have somebody have a hard badge at the White House, I suppose they have to be treated like everybody else.

Question. Even an FBI agent that's cleared to carry a weapon?

Answer. Not in there they are not.

Question. Okay. So you think it's appropriate for Craig Livingstone to be sitting there with the background investigations on the agents that are investigating him?

Answer. I don't have an opinion on Mr. Livingstone's qualifications to review those things.

Question. Do you know if there is a policy at the FBI to allow the White House to obtain the background investigations on the agents that are performing their background investigations?

Answer. I don't know the answer to that, except that I know it was done, so I just assumed it's according to policy, but I don't know that.

Question. Is anyone looking into that at the FBI to determine whether this has been followed for years?

Answer. Not I.

Question. Okay. Two of the names that were on the list of background investigations that were sent over to Mr. Livingstone or to the White House Counsel's Office were Dennis Sculimbrene and Gary Aldrich. Were you made aware that those two individuals' background was sent over to the White House?

Answer. Very recently.

Question. What's the purpose of a background investigation report insofar as the White House is concerned?

Answer. As I understand it, the purpose of giving them that kind of information is for them to make a suitability determination as to whether or not this person is suitable to be in the White House complex, close to the President.

Question. And in the same context, if they are receiving background reports on FBI agents, would it be in any other context besides determining whether it's suitable for those agents to be at the White House?

Answer. Well, it shouldn't be, I wouldn't think.

Question. Do you know if the White House makes suitability determinations on the FBI agents that are assigned there by headquarters?

Answer. Frankly, I do not know that.

Question. Did anyone make you aware or do you have any knowledge of reinvestigations that were done on individuals out of sequence?

Answer. No.

Question. Were you ever told or do you have any knowledge if there were investigations performed on White House residence staff out of the normal sequence?

Answer. I don't know that.

Question. Did anyone tell you or do you have any knowledge of the fact that Agent Sculimbrene and Agent Aldrich said that Craig—or Agent Sculimbrene said that Craig Livingstone told him that his mother knew Hillary Clinton?

Answer. Could you rephrase that—would you read it back to me?

Question. Actually, let me rephrase it, because I changed it, I think in the middle of the question.

Were you ever made aware that Craig Livingstone told Agent Sculimbrene that his mother knew Hillary Clinton?

Answer. Very recently, I learned that.

Question. Okay. And how did you become aware of that fact?

Answer. He told the agent that interviewed him that. Sculimbrene told the agent that I sent out to interview him that fact.

Question. That Craig had told him that?

Answer. Yes.

Question. And just to be very clear, I am not talking about Bernard Nussbaum's interview. I am talking about Craig Livingstone.

Answer. I understand.

Question. Were you ever told that Craig Livingstone had also told others working in the White House that his mother knew Hillary Clinton?

Answer. No.

Question. Do you have any knowledge or have you ever been told that Bill Kennedy told Agent Sculimbrene that hiring Craig Livingstone in the Office of Personnel Security was a done deal?

Answer. No.

Question. Do you have any knowledge or have you ever been told that Bill Kennedy told retired Agent Gary Aldrich that Craig Livingstone was going to be Director of the White House Security Office because the First Lady or Hillary wanted him there?

Answer. I don't have any personal knowledge of that statement, no.

Question. Have you ever been told that?

Answer. Isn't that from his book? I mean, I don't have any independent knowledge of it at all.

Question. Okay. When did you first learn that the Government Reform and Oversight Committee wanted to look at the background investigation file of Craig Livingstone and Anthony Marceca?

Answer. I think the morning of Monday—back to my file cabinet—Monday the 15th.

Question. Is Monday the 15th?

Mr. PARKINSON. Yes.

The WITNESS. I think it was that morning, sometime early that day.

EXAMINATION BY MS. OLSON:

Question. Can you tell us just how you found out?

Answer. I assume—I can't recall this with specificity, but I believe Maggie told me because the people who produced the file worked for me, and I think she was just touching base to let me know that she had asked my staff to get these files ready and that you were going to come and look at them that afternoon.

Question. Okay. Do you know if she told you anything else or did you have any other conversations with her, other than just the fact that the files were going to be pulled and ready for my inspection?

Answer. That's basically it, yeah.

Question. Okay. Did you have any conversations with anybody else about this review at that time?

Answer. Not at that time.

Question. Okay. Were you aware that this committee had a voluntary deposition with Dennis Sculimbrene that day?

Mr. GOLDBERG. I would like to clarify that the committee did not have a voluntary deposition. The Majority staff had a deposition that was voluntary. Minority was not included or consulted in that process.

Ms. OLSON. Mr. Goldberg, since you are going to put this on the record, the Minority was consulted numerous times. They were called continually. They decided not to attend because they felt like the notice had not been 3 days and written. They were called before this—that deposition. They were called as the deposition was occurring, and all the Minority staff were there but they were otherwise busy.

EXAMINATION BY MS. OLSON:

Question. Were you aware that there was either a committee or a Majority staff deposition of Dennis Sculimbrene on that Monday?

Answer. No.

Question. After you were notified by Maggie that Majority staff was going to review the background files for Craig Livingstone and Anthony Marceca, when was the next time you had any conversations or any knowledge of anything going on with these files?

Answer. 2:00 that afternoon, I have a regular—on Monday afternoons I have a regular staff meeting with my unit chiefs. The Chief of the Civil Discovery Review Unit, when he arrived for that meeting, put two pages of Livingstone's file on my desk in front of me and says: Take a look at this.

Question. Who is that?

Answer. Paul Cignoli.

Question. You are going to have to spell it.

Answer. C-I-G-N-O-L-I.

Question. Did he tell you how he had gotten ahold of those two pages?

Answer. No, but he is in charge of the unit that was producing them, preparing them for your visit that day.

Question. Well, preparing them by taking them into a room for us to review?

Answer. No. I believe the understanding was that we were going to redact anything out of those files in which somebody had specifically requested confidentiality, and that was the function that they were performing.

Question. Do you know if he did the redaction?

Answer. I doubt it. I don't know for certain, but I doubt it.

Question. Do you know the name of the person who actually did the redaction?

Answer. I do not.

Question. And/or discovered the two pages that he showed you?

Answer. I do not.

Question. Can you describe what were the two pages that he showed you at that 2:00 meeting?

Answer. The first page was a cover page from an investigative report of a background investigation of David Craig Livingstone, done in 1993, although the date alludes me at the moment.

Question. And what was the second page?

Answer. The second page was a single investigative insert from within that report, which recorded investigative contact with three different individuals.

Question. Were these individuals Mr. Livingstone's supervisors and coworkers?

Answer. I don't recall who most of them were. I just recall one.

Question. And who was the one?

Answer. Bernard Nussbaum.

Question. Who else was in this 2:00 staff meeting when Mr. Cignoli gave you those two pages?

Answer. My other four unit chiefs were also present, but none of them had any contact with this document.

Question. Who were the other unit chiefs?

Answer. Well, I can't say for certain who was there because sometimes there's a relief there, but the other four unit chiefs are Teri Zall; Tom Blake; I believe Ed Williams may have still been there, although I am not certain of that; and Virginia Buckles. Teri with an "I" and Z-A-L-L; B-U-C-K-L-E-S.

Question. And this was Monday, July 15th?

Answer. I believe so.

Question. And what did you do after you read those two pages?

Answer. At some point in the next minute or two, or three or four, Mr. Shapiro came into the room just about the time I finished reading them. I said: Have a look at this.

Question. Do you know why—do you know if he came in the room because of those pages that had been presented?

Answer. No. He did not know the pages were there. He was there on some other business. And I was about to begin this meeting, so I showed him the document, which I think he then took and left the office with, I think. It was a very brief discussion about this and how this was inconsistent with public statements that I had been reading in the press.

Question. And what public statements had you been reading in the press?

Answer. Specifically, I had heard the First Lady of the United States specifically denied both of the statements I was reading there. So he took the document and left. I conducted my meeting.

Question. And what happened after the meeting?

Answer. After the meeting, he and I had a brief conversation about this document, about the fact that it seemed to be contradicting what was on the public record about this. And then there was a short discussion about you were coming that afternoon to look at it and whether he should tell the White House about it.

He instructed me to call the White House and asked me to call Jane Sherburne and let her know that this particular information, which was contradicting the public record, was in this document that was going to be turned over to the Congress.

So I made that phone call. Ms. Sherburne was either unavailable or out of the office. I don't remember which. I asked them to have her call me back. They said they would.

Question. I just want to put this in a time. This is still on June 15th, Monday?

Answer. July 15th, approximately 3:00 in the afternoon.

Question. Okay.

Answer. So sometime thereafter, half an hour perhaps, Mr. Shapiro asked me if I had contacted Sherburne. I told him I had attempted to but she hadn't called back. He said, fine, I will call myself.

He turned around and picked up the phone and he called the White House, White House Counsel's Office, and spoke to not the White House Counsel but his deputy.

Question. Kathleen Wallman?

Answer. That's it, Kathleen Wallman. And basically he began to tell her what he had found in these files, and I left the room, so I did not hear the entire conversation.

Question. Did Mr. Shapiro tell you why he directed you to call Jane Sherburne rather than the White House Counsel Jack Quinn?

Answer. I suppose because he knew I had some prior communications with Sherburne, and he just thought this was a routine matter that it should be brought to her attention. I don't know. That's just my supposition. I mean, he didn't tell me why.

Question. You just mentioned that maybe he thought it was a routine matter. Did you in any way believe this was a routine matter?

Answer. Well, I mean—I mean, it was routine in terms of notifying the affected parties, but in terms of the substance of the information, that was not routine, I grant you that.

Question. Okay. I want to ask you a few questions about notifying affected parties.

Answer. Yep.

Question. Can you please describe what the FBI policy is on notifying affected parties of matters that are being investigated?

Answer. Well, we attempt not—we attempt to keep everybody who is involved in one of these things apprised of the facts, if we can, because we don't want to be accused of being partisan one way or the other.

Question. How is the White House involved in this investigation of itself?

Answer. In what investigation?

Question. Well, there's an investigation going on of the White House by this committee. Can you just describe how the White House is involved?

You said you want to notify involved parties.

Answer. Well, the White House, to us, is just another agency of the government. I mean, we investigate other agencies of the government all the time, too. But we have to have regular discourse with them as well.

It didn't strike me that—I mean, I realize that there's an investigation going on by the committee, but we are having conversations with them every day about documents—not every day, but on a fairly constant exchange about documents with the committee, with the Department, and the White House whose documents were at issue. It did not strike me as anything more than a normal course of business disclosure of something that was unusual in the file that they should know was in there.

Question. Was this a White House document?

Answer. It was an FBI background investigation report.

Question. And it was a document that had never gone to the White House, in fact, isn't that true?

Answer. That later turned out to be the case, yes. I did not realize it at the time.

Question. Why didn't you realize it at the time? Wasn't it located in the middle of the background file?

Answer. It was.

Question. And it was not with the summary report that had been sent over to the White House, isn't that true?

Answer. That is what turned out to be the case, but I did not know that at the time.

Question. And is that because you just had the two pages that had been pulled out?

Answer. Yeah, and because I made the assumption that it had been sent over to the White House.

Question. To notify—the statement—and we have a July 19th letter, which is to Chairman Clinger, and it's signed by General Counsel Howard Shapiro, which makes the same statement that you made, is that the Bureau had a responsibility to advise affected parties.

When you are investigating an agency like HUD, do you advise the affected parties of information that you may have that's derogatory to them?

Answer. That's kind of a broad question. I mean, it would depend on the circumstances.

Question. If there's a subject of an investigation—

Answer. We don't tell the subject, of course.

Question. Were you aware that this committee was investigating actions by the White House Counsel's Office?

Answer. I understood you were investigating the actions of Mr. Kennedy and Mr. Nussbaum, yes. Neither one of them work there anymore.

Question. And did you have any discussion with Jane Sherburne whether or not she should immediately go out and contact Mr. Nussbaum—

Answer. No.

Question [continuing]. And/or Mr. Kennedy?

Answer. I did not.

Question. Do you know if Mr. Quinn was ever notified by anyone?

Answer. I have no knowledge.

Question. You said you left Mr. Shapiro's office while he was on the phone with Kathleen Wallman?

Answer. I believe I did.

Question. And you said he had started to discuss the contents. Did you later have a conversation with Jane Sherburne?

Answer. Yes. She called me back late in the afternoon the same day.

Question. And can you just tell us what occurred during that conversation?

Answer. Basically, what she—I gathered she called back to confirm what she had been told by Kathleen Wallman because the conversation was, is this true?

And I said, well, yes, it is. And she asked me if—I forget whether she asked me to tell her what the statement said or whether she told me what it said and asked me to confirm it, but that's what the nature of the conversation was.

Question. Okay. And regardless of who asked what, was the information contained in that statement which was recorded by Bernie Nussbaum relayed to Jane Sherburne on that day?

Answer. One way or the other, yes, it was.

Question. Okay. Did Jane make any other comments to you about what she was going to do with that information?

Answer. No, she didn't.

Question. Did you give her any advice whether or not she should go to the First Lady with this information?

Answer. I did not.

Question. But you were aware at that time that it was directly contradicting statements that had been made by the First Lady—

Answer. Yes.

Question [continuing]. Publicly?

Answer. Yes.

Question. Did you seek—I guess this sounds strange since you and Mr. Shapiro are two of the top people in the General Counsel's Office, but did you seek anyone else's counsel about whether you should call these people at the White House with this information?

Answer. No, I didn't.

Question. Do you know if Mr. Shapiro sought any higher authority's counsel?

Answer. I don't know that personally.

Question. Was there any discussion of whether Director Freeh should be told about this?

Answer. Not by me, or not with me.

Question. Okay. Do you know if Director Freeh was aware of the contents of this statement on Monday, July 15th?

Answer. I don't know, although I don't think so.

Question. Was there any discussion or do you know if the Justice Department was contacted about this information at this time, Monday, July 15th?

Answer. At the time, I did not know that.

Question. Did there come a time where you learned that the Justice Department had been contacted?

Answer. Yes.

Question. Can you just tell us when the Justice Department was contacted and who told you of that?

Answer. Howard told me, and I believe he told me he contacted them before he called the—before he asked me to call the White House.

Question. And who did he talk to at the Justice Department?

Answer. Dennis—what the heck is his last name? He is the Chief of Staff to Jamie Gorelick, Dennis Corrigan.

Question. And did Mr. Shapiro tell you what he told Dennis Corrigan?

Answer. Not in any detail, no.

Question. What did he tell you that he told him?

Answer. He told me he informed him that this information had come to light in the file and that he intended to tell the White House.

Question. And did he receive any authorization or advice from the Justice Department prior to calling the White House?

Answer. I don't know what Corrigan told him.

Question. Do you know if Mr. Corrigan put his boss, Jamie Gorelick, in touch with Mr. Shapiro, prior to him telling you to call the White House?

Answer. If he did, I'm not aware of it.

Question. Do you know if Jamie Gorelick had any knowledge of this before the White House was called?

Answer. Not so far as I know.

Question. The review that was done was continued actually because of the deposition of Mr. Sculimbrené and wasn't done until noon on that Tuesday, the 16th. Did you do any other—were there any other activities concerning this file that occurred prior to my review of this document at noon on Tuesday, July 15th—16th?

Answer. In regard to the file?

Question. The file or any issues connected with the file.

Answer. Well, so far as I know, the file was just simply prepared and was awaiting your review.

Question. Were any other individuals notified of the contents of the file or any other meetings concerning the contents?

Answer. Well, the only other matter came up the following morning after I had been thinking about it all night, and realized that what we had here was an issue of credibility in an investigation, an investigator who wrote something down in his report versus a very public denial that information was there.

Question. By the First Lady?

Answer. By the First Lady. And that we had some prior issues of agents fabricating investigative reports.

Question. Was that in any way connected with Agent Dennis Sculimbrené?

Answer. Not him personally, no, but because we had this divergence and because I figured that the FBI—the veracity of the FBI investigative report would soon be in issue here, I recommended to Mr. Shapiro that we send a couple of agents out and ask Mr. Sculimbrené if he recalled this interview and the details of it.

Question. You have brought up this issue of agents not having truthful reports. And, in fact, Jack Quinn brought this up in a letter that he wrote to Director Freeh as a possible reason that the report is not accurate. Can you just tell us what this issue is so that we have it on the record?

Answer. Well, he is talking about an agent named Gary Harlow who was investigated for, among other things, having completely fabricated investigative results. And we got a report here which is completely at odds with public denials.

Question. Was Mr. Harlow at the White House?

Answer. I think he was.

Question. Was he fabricating White House investigations?

Answer. That was my impression. I could be wrong about that, but that was my impression at the time. But we had these public allegations of an FBI agent having fabricated reports and then I see one which is completely diametrically opposite to what I am reading in the media and hearing on television about this affected person here. So I thought to myself, we have got a problem here which is going to put the FBI's investigative reporting into the spotlight.

Question. I want to ask you, before you go on to what you did with Mr. Sculimbrene, about Mr. Harlow. What's your basis of knowledge of what Mr. Harlow did? Do you have the documentation and the information?

Answer. I don't have it personally, no.

Question. What's the basis of your knowledge of what happened?

Answer. Mostly hearsay within the FBI.

Question. Do you know what years it was that Mr. Harlow was fabricating interviews?

Answer. No, not off the top of my head, but it was fairly recently was my impression.

Question. And I believe Mr. Quinn, in his letter to Director Freeh, said that Mr. Harlow was convicted?

Answer. I don't believe he was convicted of this offense. He was convicted of other offenses.

Question. Okay. Mr. Quinn alludes that he was convicted of that offense.

Did you send that information to Mr. Quinn at the White House on Mr. Harlow?

Answer. I did not.

Question. Do you know who provided that to Mr. Quinn so that he had it in his letter to Mr. Freeh?

Answer. Nope, I do not.

Question. Do you know if anybody had any discussions with anyone in the White House Counsel's Office or otherwise about Mr. Harlow in recent days?

Answer. Not that I am aware of, no.

Question. Okay. So I am sorry to interrupt you.

Answer. That's all right.

Question. You said that you then decided to send—you told Mr. Shapiro that you thought it was best to send two agents.

Answer. Right.

Question. And this was Tuesday morning, July 16th?

Answer. Yes. Yes.

Question. What was Mr. Shapiro's response?

Answer. He asked me why. And I explained it to him. And he said, all right.

Question. Okay. And did you then make some contacts on that morning?

Answer. I made one phone call.

Question. And who was that to?

Answer. Duncan Wainwright.

Question. Okay. And Mr. Wainwright is head of the investigations?

Answer. He was one of the inspectors aides who had helped Mr. Shapiro with the investigation into the Travel—into the files, White House files episode. So I knew he was familiar with this whole area and he was here in the Washington field office as opposed to somewhere else. So I asked him—

Question. Same office that Mr. Sculimbrene currently worked out of?

Answer. Right.

Question. Okay. And what did you say to him when you called him?

Answer. I explained to him what we had seen in this report and what I had heard in the media and our concern that this report may be inaccurate, and I asked him if he would go out and interview Mr. Sculimbrene and show him this report to refresh his recollection and see if he remembered it; see if it was possible that he had misattributed the information or he had gotten the information wrong and to see what he could learn from him about how this information came into existence.

Question. The basis for your thinking that Agent Sculimbrene's report might be inaccurate was solely based upon the fact that the First Lady had publicly denied the exact statements that were in the report?

Answer. Yeah, exactly. Yes.

Question. Did you tell Mr. Wainwright that Mr. Sculimbrene had created this document back in 1993?

Answer. I told him that it appeared from the paperwork that he had created it in 1993.

Question. Okay. And do you know if Mr. Wainwright actually saw the Bernie Nussbaum interview?

Answer. Yes. I faxed it to him.

Question. Okay. And do you know what then happened?

Answer. Duncan reported to me that he first learned that Mr. Sculimbrene was not in the office; he was on—I think he said he was on administrative leave and that he was at home and that he had contacted him at home and asked if he could come out and see him. I don't know whether he explained to him what he wanted to talk to him about, but he said he contacted him. He made arrangements to go see him, and he got another agent, which is customary in the FBI.

Question. Who was that?

Answer. Jennifer Esposito, E-S-P-O-S-I-T-O.

Question. And does she work in the Washington metropolitan field office?

Answer. Yes, she does.

Question. And what does she do?

Answer. She is a street investigator, I believe.

Question. Okay. Is she in the White Collar Crime Unit?

Answer. I assume so, because she is over in Tyson's Corner.

Question. Is her husband also with the FBI?

Answer. Yes, he is.

Question. And who is he?

Answer. He is the Assistant Director of the Criminal Investigative Division.

Question. And does he work directly—does he report directly to Director Freeh?

Answer. Yes.

Question. Is there any reason given why Ms. Esposito was asked to accompany Mr. Wainwright rather than the other individual who had done the report with him, Steve Tidwell or Larry McCormick?

Answer. McCormick was an inspector. This is not something that an inspector is required to do. It was just an interview. Tidwell, I thought, was in Baltimore. But I didn't pick Ms. Esposito; Wainwright did.

Question. Okay. Did you make any contact with Mr. Sculimbrene's attorney?

Answer. No.

Question. Were you aware that Mr. Sculimbrene had an attorney that represented him?

Answer. I was not.

Question. Do you know if Mr. Wainwright contacted his attorney before going out there?

Answer. He did not.

Question. Is it a policy at the FBI to go out to an agent's house that's represented by counsel without contacting his counsel?

Answer. Generally, not.

Question. Were you aware that Mr. Sculimbrene also had an OPR interview that very day?

Answer. No, I was not.

Question. Did Mr. Wainwright tell you that he was interviewing a person who was about to undergo an OPR interview with his attorney that afternoon?

Answer. He didn't know it, either.

Question. Okay. Can you just tell me what Mr. Wainwright reported to you that he did?

Answer. He reported to me that he contacted Mr. Sculimbrene on the phone; told him he would like to come out and interview him. Mr. Sculimbrene said, come ahead. I have taken my mailbox down because of the press inquiries. I will put it back up so you can find my house; which they then did. He went in and Mr.—

Question. How long of a drive was it to Mr. Sculimbrene's house?

Answer. It's apparently a good distance. I don't know exactly how far it is.

Question. I think it is Haymarket, Virginia.

Answer. That doesn't tell me much because I live in Maryland so I don't know exactly where Haymarket is. But I gather from Duncan, it was a good ride.

But anyway, he met them. He was very cordial. He was very cooperative. They asked him what they needed to ask him. He answered the question. I believe he mentioned at the time that he had an OPR interview that afternoon.

His attorney called just before the interview began. Mr. Wainwright spoke to the attorney. The attorney interposed no objection to the interview, and it went forward.

Question. Now, there's some communication that went between the attorney concerning whether he was told that this was part of the file—FBI file matter or the Independent Counsel investigation. Did Mr. Wainwright—when did Mr. Wainwright report what he had done to you?

Answer. The written report was in the next—the 17th, the next day.

Question. And that's the 302 of that interview?

Answer. Yes.

Question. Did you ask Mr. Wainwright to create a 302 of this interview?

Answer. Yes, I did.

Question. Are attorneys—are agents who are represented by attorneys usually allowed to have their attorneys there for a 302, if they are created?

Answer. For a criminal violation, yes, not for an interview for administrative purposes.

Question. Well, if Mr. Sculimbrenne had invented this whole thing, would that have been a criminal violation?

Answer. If he had admitted it, it would have been, yes. Nobody thought that he had. We just couldn't understand the discrepancy.

Question. But if you didn't think he had invented it, why were agents going to his house?

Answer. I sent the agents out to determine whether or not he independently remembered conducting this interview.

Question. Did Mr. Wainwright ask Mr. Sculimbrenne if he had any notes concerning that interview?

Answer. I think he did ask, yes.

Question. And do you recall if Mr. Sculimbrenne had any notes?

Answer. I believe Mr. Sculimbrenne's response was that if he had any notes, he would have held on to them for a brief period of time and then destroyed them, I believe.

Question. Did Mr. Wainwright report that Mr. Sculimbrenne said that he normally types up his interviews pretty close in time to taking them?

Answer. Yes, he did.

Question. Was any question raised at this time about contacting the Independent Counsel?

Answer. By whom?

Question. By anyone that's going out to talk to Dennis Sculimbrenne or going to try to find out—

Answer. No.

Question [continuing]. What's happened?

Answer. No.

Question. Were you aware that the Independent Counsel had already put Dennis Sculimbrenne before a grand jury concerning this matter?

Answer. I was not.

Question. So, to your knowledge, no one brought up the jurisdiction of the Independent Counsel during any of your conversations on this Tuesday?

Answer. No. It never occurred to us that it was within his jurisdiction.

Question. You were aware that the Attorney General had assigned, specifically assigned jurisdiction to the Independent Counsel over the FBI files matter, weren't you?

Answer. We were—yeah, we were aware of that. But to—our impression of that, at least my impression of that, was what the FBI's role was in providing information to the White House and the White House securing information. It did not occur to us that a misstatement by one of our agents or a possible misstatement in the files was a matter of any interest to the Independent Counsel. So it simply never occurred to us.

Question. But were you not aware that if the agent had not made a misstatement that possibly Bernard Nussbaum or the First Lady had made a misstatement?

Answer. Yeah, that is possibly so.

Question. And that that was what the Independent Counsel was reviewing, all matters having to do with the Craig Livingstone, Anthony Marceca files?

Answer. I did not know that. They had not asked us for the Anthony Marceca or Craig Livingstone files at that time.

Question. Are you aware that the Independent Counsel, Ken Starr, has FBI agents assist him in his investigation?

Answer. Yes, I am aware of that.

Question. Do you know if any of those FBI agents had reviewed the Craig Livingstone or Anthony Marceca file prior to this committee reviewing it?

Answer. I am unaware of whether they have done that or not.

Question. If they had reviewed it, would there be a notation?

Answer. No, not necessarily.

Question. And the committee's review, is that noted anywhere on the file?

Answer. No.

Question. Did you ever find out if anyone beyond Ms. Gorelick's chief of staff was notified or had discussions?

Answer. I don't know; don't know that.

Question. Did Mr. Wainwright report to you whether or not he told Mr. Sculimbrené's lawyer that he was questioning Dennis Sculimbrené about the contents of Bernie Nussbaum's statement on Craig Livingstone?

Answer. I am not exactly sure how he phrased it. He did tell him that it had to do with an interview with Mr. Nussbaum. Beyond that, I don't know what he told him exactly.

Question. And did he report that Mr. Sculimbrené's lawyer was first concerned about whether it had to do with the OPR interview?

Answer. I don't recall that.

Question. Are you aware of any action that was taken against Mr. Sculimbrené that afternoon as a result of the OPR interview or any other matters?

Answer. No.

Question. Do you know who's handling the OPR inquiry of Mr. Sculimbrené?

Answer. No.

Question. Have they been notified that agents were out at his house that morning?

Answer. Yes.

Question. Who notified them?

Answer. I don't know. The new head of OPR called me and asked me if we were out there on the same matter. I said, well, I know what I was out there on but it didn't have—I told him, I don't know what your case is about.

Question. Who is the new head of OPR?

Answer. Mike Defeo.

Question. Did he just start a few months back?

Answer. Yes.

Question. I guess we should spell his name.

Answer. D-E-F-E-O.

Question. There have been several requests that have been made to the FBI and letters from the Chairman, and I think they include the 302 that was filled out by the agents in the course of Mr. Sculimbrené's interview, but if there's any question, I would like to repeat that request or see a copy of the 302 that was filled out by the agent and any notes that he took that he might still have of that interview.

Answer. Okay.

Mr. PARKINSON. Barbara, just for my clarification, is that a request that's been made to whom, and was it in writing?

Ms. OLSON. It's from the Chairman, and I am sure it has gone to Louie Freeh or Howard Shapiro, but I will check, because we have got numerous requests still outstanding with the FBI.

The WITNESS. This is for the specific 302?

Ms. OLSON. I don't think we named the 302, because we didn't know, but we did ask for all documents concerning Craig Livingstone or Anthony Marceca's background. And certainly with a hearing coming up on Thursday, the Chairman is interested in reviewing that document before the hearing occurs.

EXAMINATION BY MS. OLSON:

Question. Were you ever told or do you have any knowledge of Anthony Marceca's activities at the White House?

Answer. None whatsoever.

Question. Were any issues concerning Mr. Marceca brought to your attention at any time?

Answer. No.

Question. We received some communications from the FBI regarding a limited inquiry that was done on Lisa Wetzl who had worked in the White House Office of Personnel Security. Do you know why a limited inquiry was ordered on Lisa Wetzl in May of 1995, a few months before she left the White House?

Answer. No idea.

Question. Are you aware of any instances where the background summary of Ms. Wetzl was requested to be changed before she left the White House?

Answer. No, I am not.

Question. Are you aware of any FBI agents being asked to go back and review the background investigation done on Lisa Wetzl to make sure it was correct?

Answer. No.

Question. Did Mr. Renaghan ever tell you that he was called by the White House and personally reviewed her background to see if it was correct?

Answer. I don't believe I ever had a conversation with Mr. Renaghan, so the answer is, no.

Question. Do you know if Mr. Schwarz was then sent to reinterview Ms. Wetzl and do a new background summary on her in '95?

Answer. I don't know who Mr. Schwarz is, and I don't know the answer to that question.

Question. There was an issue that came up with the White House where Mr. Nussbaum testified that he didn't know that these requests for previous reports were going over to the FBI under his name; that it was a form. Are you aware of documents that go out of the FBI signed by high-ranking FBI officials that they have no idea that documents are going out?

And I can be more specific; that copies of background investigations that have been completed for the White House go over to the White House under high-ranking FBI officials and they have no idea what the copies are and what's being sent, and their names are affixed on the copies?

Answer. But the name of the person who approved is signed on the copy.

Question. But the person who approves it doesn't sign his name.

Answer. That's a longstanding practice in the FBI.

Question. Why would you have an individual having his name on a transmittal letter to the White House and not having any—can you explain why the FBI would have an individual put his name on a letter to the White House and not have any personal knowledge of what's going over there?

Answer. I can't explain to you why it has been done that way. It has been done that way for many, many years. Communications go from one level of the executive to another level in a number of departments. I have seen a number of congressional correspondence signed the same way.

Question. I am talking about submission of background investigations going over to the White House.

Answer. I don't know how that's done, so I'm not an expert on the subject.

Question. The idea that a congressional correspondence—what's your basis of knowledge that congressional correspondence go out that way?

Answer. I have received some that way.

Question. By whom and who signed it?

Answer. "Signed for the Congressman by." And the FBI's way of doing that is to have the sending official initial, slash the individual who approved it so you have some documented record of who approved it.

Question. Craig Livingstone—

Answer. It's just form as far as who sends it.

Question. Well, part of the reason the question is being asked is obviously there was an issue that it was just form that Mr. Nussbaum's name was going over to the FBI to get 700-plus reports, and then we find out there's just form of an FBI official's name sending reports back to the White House.

Is there any regulation that the individual actually at least know what's gone out under his name by his—the people that work for him?

Answer. No. I think the practice is that a copy of it, generally, is made for the individual who approved it—

Question. Have you had any conversation—

Answer [continuing]. For the individual's whose name was used in the approval process.

Question. Have you had any conversations with Larry Potts concerning the forms that were going over to the White House on Craig Livingstone and Anthony Marceca?

Answer. No.

Question. The transmittal letter of Mr. Livingstone and Mr. Marceca's background investigation went to Bernie Nussbaum and were from Mr. Potts. Would that have been the same sort of longstanding policy where perhaps an individual under Mr. Potts might put his name on the transmittal letter?

Answer. I assume that's what—yeah.

Question. Do you know who actually—

Answer. If there is a transmittal letter, it should say who signed it.

Question. By having a slash with their initials?

Answer. Yes.

Question. Okay. Do you know who was in charge of sending the transmittal letters for background investigations back in 1993, early '94?

Answer. No, I don't.

Question. Do you know if it was the head of the SPIN Unit, Jim Bourke?

Answer. I don't know.

Question. Were you ever made aware or do you have any information concerning the White House FBI agents' concerns about recent drug use by White House staff that was revealed in their background investigations?

Answer. Nope.

Question. Were you ever brought into any of the conversations or made aware of any written memoranda about their concerns of this drug use in the White House?

Answer. No.

Question. There was an issue concerning the White House Liaison Agent, Gary Aldrich and his tenure at the White House. Do you know who Gary Aldrich is?

Answer. Only from the public brouhaha about his book.

Question. Were you involved in the internal review of his book at the FBI?

Answer. No, I was not.

Question. Do you have any knowledge if the White House was notified about the contents of his book while it was being held by the FBI?

Answer. I don't know.

Question. Do you know who besides, obviously, Mr. Shapiro, reviewed the book for publication?

Answer. Do I know who did?

Question. Yes.

Answer. In the Office of General Counsel, Lisa Osofsky.

Question. How do you spell her last name?

Answer. O-S-O-F-S-K-Y.

Question. And do you know if she reported back to Mr. Shapiro?

Answer. Yes. She works for me. She is Deputy General Counsel.

Ms. OLSON. Don, do you have any questions?

I am sorry I didn't stop after an hour.

Mr. GOLDBERG. That's okay.

I just have a couple of questions.

Ms. OLSON. Sure.

EXAMINATION BY MR. GOLDBERG:

Question. Did Mr. Sculimbrene recall in his interview with Mr. Wainwright the statement by Mr. Nussbaum that was at issue?

Answer. No, he did not. He did not recall the specific statement.

Mr. GOLDBERG. I don't think I have any other questions.

Ms. OLSON. Can we just go down for a second. I just want to do a double-check and make sure I haven't missed anything.

[Discussion off the record.]

EXAMINATION BY MS. OLSON:

Question. I just wanted to pick up on an earlier conversation we were having about the supervisors of the Name Check Unit. Do you know if John Harding or Patrick Lang were the direct supervisors for Peggy Larson during '93, early '94 period?

Answer. I thought John Harding might be, although I have not had any contact with him. I recently had a conversation with Rick Lang, Patrick Lang, and he told me he didn't have line responsibility for them.

Question. And I believe Mr. Lang is in Haiti now?

Answer. He is in Haiti.

Question. We had tried to locate him through Mexico and then I guess he went to Haiti.

Answer. It was my impression that John Harding was, for a period of time, the section chief in charge of that operation, but I don't know that from anything except hearsay.

Question. And can you just tell us why you were not able to talk to John Harding? What's his status at this time?

Answer. He is retired.

Question. Okay. And is there—we were informed that he was not communicating with the FBI at this time?

Answer. That's probably correct. I have not made any effort to have contact with him.

Question. Okay. Do you know any status of Mr. Harding that would cause him not to want to communicate with the FBI at this time?

Answer. He left the FBI under less than happy circumstances.

Question. Is there an administrative inquiry currently out on him?

Answer. I believe it is closed. At the time he retired, they closed it.

Question. Okay. So there's no actions currently pending against Mr. Harding, that you are aware of?

Answer. So far as I know. I am not an expert on the subject, but as far as I understand, there is nothing pending right now.

Question. Other than John Harding, Patrick Lang and Vernon Thornton, do you know of any other individuals who might have been the unit chief or Peggy Larson's direct supervisor during the late '93, early '94 period?

Answer. No, I don't know of my own volition, but it shouldn't really be that much trouble to reconstruct it. If you would like it reconstructed, I will reconstruct it for you.

Question. We have spent weeks trying to do that and, frankly, Maggie Owens even told us she was calling on the phone to different agents to find out who worked when they worked there, and I was shocked that there was no way to reconstruct who was a supervisor.

Answer. I will reconstruct it for you within the next 24 hours.

Question. Thank you.

If you would submit it, we will of course submit a copy to the Minority. It would be most helpful for us to know?

Answer. I can quote you Rick Lang. He said he never had any responsibility for it, because I just talked to him last week.

Question. It would be very helpful if we could have an official reconstruction of who was in that office and who reported to whom, even if it's just a little mini-organizational snapshot from, I guess, October of '93, until February of '94.

Answer. We can do that.

Ms. OLSON. Thank you very much.

That's all the questions I have, unless there's more for Minority.

I appreciate you coming on such short notice.

The WITNESS. It was a pleasure.

[Whereupon, at 12:55 p.m., the deposition was concluded.]

WHITE HOUSE SECURITY OFFICE - CRAIG LIVINGSTONE
 BOX 1 84 0903

- ✓ MASTER USSS ACCESS LISTS '93 (VOLUME 1)
- ✓ MASTER ACCESS LIST '93 (VOLUME 2)
- ✓ ACCESS LIST (VOLUME 1) 1993
- ✓ ACCESS LIST (VOLUME 2) 1993
- ✓ FBI RECEIPTS-1993
- ✓ INTERN NAMECHECK LISTS-1993
- ✓ IRS RETURNED MARCH-APRIL 1993
- ✓ NCIC LIST 8-93 - 12-93
- ✓ NCICS (VOLUME 1) '93
- ✓ NCICS (VOLUME II) '93
- ✓ NCICS (VOLUME 3) 1993
- ✓ PASS EXTENSIONS (VOL. 1) 1993
- ✓ SECURITY INTERVIEWS VOL (1) 1993
- ✓ SECURITY INTERVIEWS VOL (2) 1993

Read in OR by Terry Hood on 12/1/94

ENCLOSURES FILED OVERTSIZE ATTACHMENTS

CF 159
1 box filed 12/2/94

D Ex 1

I. WHITE HOUSE PERSONNEL SECURITY FILES STAFF PRIOR TO
01/20/93.

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~~J~~BELL, LOUISE HELEN
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~~J~~BEVACQUA, ANITA CAROL
~~J~~BIZIC, DANICA
~~J~~BLACK, DAVID LEE
~~J~~BLANKLEY, ANTHONY DAVID

ANN
 PATRICIA/BARNETT
 3/31/87

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 ✓ BOARD, ELIZABETH IDEN
 ✓ BOLTEN, JOSHUA BREWSTER
 ✓ BONINO, CAROLINA ORGEIRA
 ✓ BORCHARD, SUSAN AILEEN
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 ✓ CAMPBELL, VICTORIA ZIMA
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~~C~~ARNEY, LUCY COLE
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~~C~~COOKE, JULIE

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 ✓ DANDREA, JUSTINE
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 ✓ ERKENBECK, JANE ISSAACSON
 ✓ ERLAND, CHRISTINA LUCILLE
 ✓ ERVIN, CLARK KENT
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 OUT ~~EVANS, MADDENE E.~~ LISA WETZEL - 7/20/95
 ✓ EVANS, THOMAS C.
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 ✓ FARMER, CHAD DALEN
 ✓ FARMER, HENRY EDWARD
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 ✓ FENNEL, ANNE CLAUD
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 ✓ FERRARA, VINCENT JASON
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 ✓ FIRESTONE, LAURIE ANN
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 ✓ FITZHENRY, JAMES ALAN
 ✓ FITZPATRICK, SHARON ANN
 ✓ FITZWATER, MARLIN
 ✓ FLAGER, NICHOLAS RUSTER
 ✓ FLANNES, MARTIN ALVIN
 ✓ FLAUTT, FRANCES STEELE
 ✓ FLEMING, SHEL I ESTELLE
 ✓ FLETCHER, JEANNE DIANE
 ✓ FLETCHER, LEE
 ✓ FLETCHER, LYNNE MARGARET
 ✓ FLICK, HEATHER GWEN
 ✓ FLIPPEN, JOHN ALLISON
 ✓ FOGEL, DAVID LOUIS
 ✓ POLEY, JOHN PATRICK
 ✓ POLEY, MATTHEW TODD
 ✓ FONG, CLAYTON SEM
 ✓ FONG, JESSIE TSUI-SHIH

POONBERG, STEVEN MARK
 FORT, JOSEPH KENNETH OUT LISA WETZEL 2/11/5
 FORT, MICHELLE CATHERINE
 POSTER, GARY LAYNE
 POSTER, PAUL THOMAS
 PRANTZ, MARK ALEXANDER
 FREEMAN, JUDITH BJORKMAN
 PRITZ, MARY ELIZA
 PULTON, YSELLA AYN
 PURCHTOTT-ROTH, DIANA ELIZABETH
 GABLE, ELIZABETH BRINTON
 GALEN, CHRISTOPHER WILLIAM
 GALLETTA, JOHN DAVID
 GANNON, KELLEY LYNN
 GARDNER, JOHN STEPHEN
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 GARRETT, TRACY DAVIS
 GARVENS, TYLER
 GAY, CAROLYN SUE
 GEAR, KRISTEN MOREAU
 GEISSINGER, SPENCER EVAN
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 GOLAY, GAIL THRESA
 GOLDBERG, CATHERINE ANNE
 GOLDBERG, JULIE ANNE

UPDATE PROJECT AS OF 1/94-MARCECA

MISC →

ATT

C.P Telephone

CIA

GSA

Misc. Inv. for Non-Government Employees

White House Staff Personnel

Diversified Reporting

FB:

Office of Executive
Residence

Update ledger 1990-9

Update ledger 85-8



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 25, 1996

BY COURIER

Mr. John D. Bates
Deputy Independent Counsel
Office of the Independent Counsel
U.S. Department of Justice
Suite 490-North
1001 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. Bates:

I am writing to advise you that since the release of my report on June 14, 1996, and my testimony before Congress last Thursday, I have discovered another alphabetical series of requests from the White House to the FBI for previous background reports. This series is dated between October 29 and November 26, 1993, spans the alphabet from Fr to Yo and includes approximately 216 requests, in addition to the 480 requests addressed in my report.

As you know, the focus of my initial inquiry was limited to the series of requests apparent from the request for the file for Billy Ray Dale. That analysis encompassed the December 1993 through February 1994 timeframe and the letters Aa to Go.

In my continuing effort to identify any similar series of White House requests for FBI information, we have conducted further analysis of the computer records reflecting the approximately 22,000 requests submitted to the FBI since January 1993. As noted above, this process revealed another series of requests, all seeking copies of previous reports and providing as justification "access." In deference to your request, we will not conduct any further investigation of the White House requests for FBI file information at this time.

D Ex 3

Mr. John D. Bates

I have attached to this letter a listing of names we have identified as being part of this series of requests. As with the names I provided to the White House on June 11, 1996, there is no way to determine from FBI records whether the White House had a legitimate need for these reports at the time these requests were made. Consequently, I express no opinion at all about the propriety of these requests.

Sincerely,



Howard M. Shapiro
General Counsel

Enclosure

- 1 - Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C.
- 1 - Honorable Joseph R. Biden
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C.
- ① - Honorable William F. Clinger, Jr.
Chairman
Committee on Government Reform
and Oversight
House of Representatives
Washington, D.C.
- 1 - Honorable Cardiss Collins
Ranking Minority
Committee on Government Reform
and Oversight
House of Representatives
Washington, D.C.
- 1 - Mr. John M. Quinn
Counsel to the President
The White House
Washington, D.C.

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
1	FRANCIS, ANDREW JAMES	10/29/93	YES
2	GAMBLE, ALICE MAE	10/29/93	YES
3	GARDNER, CRAIG JAMES	10/29/93	YES
4	GARNER, SONJA HELENA	10/29/93	YES
5	GARRETT, CHARLES HENRY	10/29/93	YES
6	GETER, THELMA D	10/29/93	YES
7	GIBSON, FANNIE	10/29/93	YES
8	GILBERT, MICHAEL LOUIS	10/29/93	YES
9	GILLESPIE, REVES LANE	10/29/93	YES
10	GRACE, KENNETH EARL	10/29/93	YES
11	GRANADOS, JUAN RAMON	10/29/93	YES
12	GRAVES, EULA DEAN	10/29/93	YES
13	GREEN, ANNIE MAE	10/29/93	YES
14	GREEN, EVA HARMON	10/29/93	YES
15	GREEN, GALEN HOMER	10/29/93	YES
16	GREEN, KENNETH JAMES	10/29/93	YES
17	GREENWELL, MILDRED ETHEL	10/29/93	YES
18	GRIER, OPHELIA LOUISE	11/23/93	YES
19	HALL, CLEO ELIZABETH	10/29/93	YES
20	HALL, RICHARD LEE	10/29/93	YES
21	HAMMONDS, KENNETH LESTER	10/29/93	YES
22	HAMPTON, EDWARD ARNOLD	10/29/93	YES
23	HANDELAND, LARRY EUGENE	10/29/93	YES
24	HARLING, SALLIE IDA	10/29/93	YES
25	HARMAN, MICHAEL EDWARD	10/29/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
26	HARRIS, DELORES ANN	10/29/93	YES
27	HARRIS, GREGORY DARNELL	10/29/93	YES
28	HARRIS, ROSCO	10/29/93	YES
29	HASH, ROBERT LEE	11/03/93	YES
30	HAWKINS, GLADYS BEULAH	11/3/93	YES
31	HAYS, RICHARD PAUL	11/3/93	YES
32	HEAD, MARY LEE	11/3/93	YES
33	HEARD, CLAYTON LEMUEL	11/3/93	YES
34	HERR, CHARLES FRANCIS	11/3/93	YES
35	HILL, MILDRED JUANITA	11/3/93	YES
36	HILLIARD, LOYCE	11/3/93	YES
37	HOLMAN, ARTHUR JOEY	11/3/93	YES
38	HONEMOND, CLARIA ELIZABETH	11/3/93	YES
39	HOOD, LUVENIA PALMER	11/3/93	YES
40	HOSKINS, DORIS SHARON	11/3/93	YES
41	HOWE, MORRIS EMANUEL	11/3/93	YES
42	HUDLEY, CORNELIOUS	11/3/93	YES
43	IMES, WILLIAZM LEONARD	11/3/93	YES
44	ISOM, CHARLES CARNEL	11/3/93	YES
45	ISOM, DARYL CLINTON	11/3/93	YES
46	JACKSON, BETTY LEE	11/3/93	YES
47	JACKSON, CYNTIA DENISE	11/3/93	YES
48	JACKSON, DARRELL CLEVELAND	11/3/93	YES
49	JACKSON, RAYMOND GILBERT	11/3/93	YES
50	JOHNSON, AIREL	11/3/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Prov. dec.</u>
51	JOHNSON, BARBARA JEAN	11/3/93	YES
52	JOHNSON, CELESTINE COLEMAN	11/3/93	YES
53	JOHNSON, ROGENIA TOMINES	11/3/93	YES
54	JOHNSON, SELENA VIRGINIA	11/3/93	YES
55	JONES, HAROLD JACKSON	11/3/93	YES
56	JONES, MARGARET MARIE	11/3/93	YES
57	JONES, WILLIAM	11/3/93	YES
58	JULIAN, DOMINADOR TEODORE	11/3/93	YES
59	KEEL, MILDRED CHANDLER	11/3/93	YES
60	KELLERMAN, EDWARD FRANCIS	11/3/93	YES
61	KELLY, JOSEPH LOMAX	11/3/93	YES
62	KENNEDY, THOMAS	11/3/93	YES
63	KILGO, DELORIS JACKIE	11/3/93	YES
64	KINSMAN, LINDA KAY	11/3/93	YES
65	KITCHINGS, MAXINE CHRISTIANNA	11/3/93	YES
66	KRAUSE, WALTER GEORGE	11/3/93	YES
67	LAGANA, JOSEOH SALVADOR	11/3/93	YES
68	LAMAR, PATRICIA ANN	11/3/93	YES
69	LANDIS, ALLAN LEROY	11/3/93	YES
70	LANGLEY, AGNES LEOMA	11/3/93	YES
71	LATTIMORE, BESSIE MAE	11/3/93	YES
72	LEACRAFT, MATTIE OREE	11/3/93	YES
73	LEE, DORA	11/3/93	YES
74	LEWANDOWSKI, TIMOTHY WILLIAM	11/10/93	YES
75	LINDSAY, NICOLE RENEE	11/9/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
76	LINES, WILLIAM FULLER	11/3/93	YES
77	LITTLETON, RAYMOND THOMAS	11/3/93	YES
78	LOS, MARKK DAVID	11/3/93	YES
79	LOWERY, JANES ARTHUR	11/3/93	YES
80	MARSH, JOHN CHARLES	11/10/93	YES
81	MARTINEZ, THOMAS	11/3/93	YES
82	MATTHEWS, ARTHUR SYLVANUS	11/10/93	YES
83	MCCAULEY, DEAN WILLIAM	11/10/93	YES
84	MCCRAY, FREDERICK HERBERT	11/10/93	YES
85	MCCREADY, JOHN BERKELEY	11/10/93	YES
86	MCGEE, THELMA	11/10/93	YES
87	MCINTYRE, ROBERT LEE	11/10/93	YES
88	MCKENZIE, BERTHA ROSS	11/10/93	YES
89	MCKENZIE, OWEN CORLE	11/10/93	YES
90	MCKNIGHT, ESTELLA	11/10/93	YES
91	MCKNIGHT, JOHN HENRY	11/10/93	YES
92	MEANS, CORNELIA JEWELL	11/10/93	YES
93	MERRITT, OSCAR WILLIAM	11/10/93	YES
94	MILLER, JASON DELEON WILTON	11/10/93	YES
95	MITRIONE, VITO	11/10/93	YES
96	MONROE, DELORES AMY	11/10/93	YES
97	MOORE, LEATHA MCGHEE	11/10/93	YES
98	MORRIS, JETER ANTHONY	11/10/93	YES
99	MORRIS, JOSEPH BRENEMAN	11/10/93	YES
100	MOY, LAWRENCE DONALD	11/10/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
101	MUNCK, SCOTT ANTHONY	11/10/93	YES
102	MYERS, JOSEPH DONALD	11/10/93	YES
103	NELL, KENNETH WILLIAM	11/10/93	YES
104	NELSON, SLYVIA	11/10/93	YES
105	NEWMAN, MILDRED	11/10/93	YES
106	OLIVER, JAMES WILLIAM	11/10/93	YES
107	OWENS, JAMES WILLIAM	11/10/93	YES
108	OWENS, THEODORE	11/10/93	YES
109	PADGETT, FRANK	11/10/93	YES
110	PAIR, BAILY	11/10/93	YES
111	PANKEY, HERBERT LEON	11/10/93	YES
112	PARKER, DIANE LEVERN	11/10/93	YES
113	PATTEN, JOHN GERALD	11/10/93	YES
114	PATTERSON, CLARA MAE	11/10/93	YES
115	PAYNE, BEN DOUGLAS	11/10/93	YES
116	PECK, ROSE MARIE	11/10/93	YES
117	PERKINS, CLYDE ROBERT JR	11/10/93	YES
118	PISTORIO, JOSEPH PHILIP	11/10/93	YES
119	PITCHFORD, POLLY FRANCES	11/10/93	YES
120	PITT, MARGARET	11/10/93	YES
121	PLAKAS, JAMES CONSTANTINE	11/10/93	YES
122	POSEY, FRANK REGINALD	11/10/93	YES
123	PRICE, FLOYD LEE	11/10/93	YES
124	PRICE, FRANCIS FLOYD	11/10/93	YES
125	PRICE, LUCILLE BRYANT	11/10/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
126	PROCTOR, CARLO NICHOLAS	11/10/93	YES
127	PROCTOR, MARY CALLIE	11/10/93	YES
128	QUICHO, DOMINGO AMOR	11/10/93	YES
129	QUICK, RODERICK EARL	11/16/93	YES
130	RAWLS, ONDRA CARL	11/16/93	YES
131	REEVER, ROBERT HARRISON	11/16/93	YES
132	RIDDLE, LEONARD FRANKLIN	11/16/93	NO
133	RIGGLEMAN, OSCAR EUGENE	11/16/93	YES
134	RIGGS, CHRISTOPHER CALLEN	11/16/93	YES
135	ROBERTS, WILLIAM EUGENE	11/3/93	YES
136	ROSE, NOEL MASON	11/16/93	YES
137	ROSENBERG, J JAMES DONALD	11/16/93	YES
138	ROSENBERGER, JAMES DONALD	11/16/93	YES
139	ROSIER, CASSANDRA ALFELRO	11/16/93	YES
140	RUSK, WAYNE ALLEN	11/16/93	YES
141	RUSSELL, RONALD EARL	11/16/93	YES
142	SAGER, DAVID RUSSELL	11/16/93	YES
143	SAMPSON, RAYFORD ANTHONY	11/16/93	YES
144	SCOTT, J ODELL	11/16/93	YES
145	SCOTT, REGINALD ANTONIA	11/16/93	YES
146	SEDLOCK, MICHAEL GIRARD	11/16/93	YES
147	SENN, SHEREE FRANCINE	11/16/93	YES
148	SEROSKI, RAYMOND JACOB	11/16/93	YES
149	SHAE, JULIE MARILYN	11/16/93	NO
150	SHAFFER, RUSSELL ALAN	11/16/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
151	SHANNON, SHIRLEY MAE	11/16/93	YES
152	SHEA, THOMAS JOSEPH	11/16/93	YES
153	SIMPKINS, LARRY BERNARD	11/16/93	YES
154	SKINNER, CLAUDIA VIRGINIA	11/16/93	YES
155	SKIPWITH, FLORINE JONES	11/16/93	YES
156	SLIGHT, ARNETTE FROST	11/16/93	YES
157	SMITH, JAMES MARSHALL	11/16/93	YES
158	SPENCER, DANA WILLIAM	11/16/93	YES
159	STEWARD, BRUCE LILLARD	11/16/93	YES
160	STEWARD, DONALD LILLARD	11/16/93	YES
161	STEWARD, SEAN JEROME	11/16/93	NO
162	STREETS, JENNIFER	11/16/93	YES
163	STURGESS, GEORGE EDWARD	11/16/93	YES
164	SWAN, MARYLIN ANNETTE	11/16/93	NO
165	SWANN, MELVA DRAMINE	11/16/93	YES
166	SWANN, WILBERT LEE	11/16/93	YES
167	TANIS, MATTHEW JOHN	11/16/93	YES
168	TAYLOR, CHINITA DENISE	11/16/93	YES
169	TAYLOR, DORIE CATHERINE	11/16/93	YES
170	THOAMS, JOHN SILAS	11/16/93	YES
171	THOMAS, ARTHUR STEWART	11/16/93	YES
172	THOMAS, GERALD RONALD	11/16/93	YES
173	THOMAS, JOHN SILAS	11/16/93	YES
174	THOMAS, RICHARD ALLEN	11/16/93	YES
175	THOMPSON, JAMES EDWARD	11/16/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
176	THOMPSON, OLA MAE	11/16/93	YES
177	THORNE, TINA ANN	11/6/93	YES
178	THORNE, TINA ANN	11/16/93	YES
179	TILLERY, ANTHONY QUINTON	11/16/93	YES
180	TILLERY, JOHN RENARD	11/16/93	YES
181	TIPTON, ELIZABETH JANE	11/4/93	YES
182	TOLAND, KIMBERLEY THERESA	11/16/93	YES
183	TOWNSELL, MILTON THEODORE	11/16/93	YES
184	TOWNSEND, JOSEPH CARROLL	11/16/93	YES
185	TOYER, WILLIAM EUGENE	11/16/93	YES
186	TYLER, FLORINE GILCHRIST	11/16/93	YES
187	UNDERWOOD, FLORENCE DELORES	11/16/93	YES
188	VANCE, SHAWN	11/16/93	YES
189	VENTRESCA, PONFILIO	11/16/93	YES
190	VINES, VERNON MCCLAIN	11/26/93	YES
191	WALL, VIOLA BELT	11/26/93	YES
192	WALLACE, MICHAEL FRANCIS	11/26/93	YES
193	WALSH, JOHN FRANCIS	11/26/93	YES
194	WALSH, PETER HENRY	11/26/93	YES
195	WALTERS, DIANNE	11/26/93	YES
196	WASHINGTON, ANTHONY HARRISON	11/26/93	YES
197	WASHINGTON, MAURINE ELIZABETH	11/26/93	YES
198	WASHINGTON, RUBY LEE	11/26/93	YES
199	WELLS, MICHAEL ALAN	11/26/93	YES
200	WESTCAMP, MARK	11/26/93	YES

<u>No.</u>	<u>Name</u>	<u>Date Rec'd</u>	<u>Materials Provided</u>
201	WHITAKER, DOROTHY MARIE	11/26/93	YES
202	WHITE, GENEVA	11/26/93	YES
203	WHITE, PERNELL DOUGLAS	11/26/93	YES
204	WHITMYER, ROSELL	11/26/93	YES
205	WILKINS, SHEILA MARIE	11/26/93	YES
206	WILLIAMS, CARROLL BERNARD	11/26/93	YES
207	WILLIAMS, HARRY LEE	11/26/93	YES
208	WILLIS, DEBBIE BROWN	11/26/93	YES
209	WILSON, CHARLES MICHAEL	11/26/93	YES
210	WILSON, HENRY DENNIS	11/26/93	YES
211	WILSON, WAYMOND MAURICE	11/26/93	YES
212	WINGATE, STEVEN ANDREW	11/26/93	YES
213	WISE, NETTIE SANDERS	11/26/93	YES
214	WOMACK, SHIRLEY CHANDLER	11/26/93	YES
215	YATES, EMMA ELIZABETH	11/26/93	YES
216	YOST, RALPH ROBERT	11/26/93	YES

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C.

IN THE MATTER OF: WHITE HOUSE TRAVEL

DEPOSITION OF PEGGY JEAN LARSON

WEDNESDAY, JULY 24, 1996
Washington, D.C.

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 9:40 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Laurie Taylor, Investigator; Kristi Remington, Investigator; Ronald Stroman, Minority Deputy Staff Director; Dan Hernandez, Minority staff.

For PEGGY JEAN LARSON:

E. LAWRENCE BARCELLA, JR., ESQ.

and

GLEN MARTEN, ESQ.

Paul Hastings, Janofsky & Walker

Tenth Floor

1299 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2400

Ms. TAYLOR. We are on the record this morning for the deposition of Peggy Larson, which will be administered under oath.

Let me identify who is in the room. I am Laurie Taylor, Assistant Counsel for the Majority; Kristi Remington, also Assistant Counsel for the Majority; Mr. Ron Stroman, Counsel for the Minority, and Dan Hernandez, Minority staff. Larry Barcella is here representing Peggy Larson, as well as Glen Merten.

Before you are sworn in, I would like to provide you with some background information about this investigation and your appearance here.

As you may know, pursuant to its authority under Rules X and XI of the House of Representatives, the Government Reform and Oversight Committee is investigating the White House Travel Office matter. This matter refers to all events leading up to the May 19th, 1993 firings of the White House Travel Office employees and includes any and all information provided about the White House Travel Office and any employees of the White House Travel Office at any time from January 1st, 1993, to the present.

Our investigation also encompasses the activities of Harry Thomason, Darnell Martens and Penny Sample at the White House as well as all allegations of wrongdoing concerning the Travel Office employees.

The committee investigation is reviewing all actions taken by any division or field office of the FBI and the Department of Justice, both prior to and after the firings, as well as issues relating to the White House's receipt of FBI background investigations on prior administration officials.

The investigation includes but is not limited to the investigation of and prosecution of U.S. v. Billy Ray Dale and all investigations and subsequent reviews of the Travel Office firings by any agency, including but not limited to the White House Management Review, all FBI and Justice Department reviews, the IRS and Treasury Department internal reviews and reports, the GAO review, as well as the proposed U.S. House of Representatives "Resolution of Inquiry" considered and voted on in the House Judiciary Committee in July of 1993.

I understand that you may have information concerning only a few of these subjects, but do you understand that your answers to my questions should not exclude anything that you have knowledge about of any of the subjects I just described? And if you would like to review it, again, you are certainly welcome to.

Ms. LARSON. Yes, I understand.

Ms. TAYLOR. The committee has been granted specific authorization to conduct this deposition pursuant to House Resolution 369, passed by the House of Representatives on March 7th, 1996. Pursuant to committee Rule 19, which has been provided to your counsel, both Majority Counsel and Minority Counsel will be afforded an equal opportunity to pose questions to each witness.

Committee counsel will proceed with equal rounds of questioning, each lasting up to one hour, until both counsel have concluded their questioning. The only exception to this will be if a Member of this committee is present and wishes to pose questions

to you. If so, the Member will be afforded an immediate opportunity to question the witness and committee counsel will then resume questioning when the Members have completed all of their questions.

You are here today voluntarily and not by subpoena, is that correct?

Ms. LARSON. Correct.

Ms. TAYLOR. This deposition is to be administered under oath. You will be allowed to confer with your attorney. If you do not understand a question, please tell me, and I will be glad to rephrase it for you. All objections raised by your attorney should be stated for the record with the reason clearly stated. Once an objection is raised, committee Majority Counsel will review whether the objection is proper in the context of this deposition. If counsel does not agree that the objection is properly before the panel, I will confer with Minority Counsel and ask that they express their views on the record.

If the objection remains, it ultimately may be presented to the Chairman of committee or his designee for resolution. The Chairman has agreed to consult with the Ranking Minority Member before issuing his final decision on any objection.

You will be given a 5-day time frame in which you and your attorney may review your deposition for any technical errors that may have occurred during transcription and to clarify any matters. We generally receive our depositions by the next day, and so I am going to notify you now that I am sure we will have it by tomorrow, and you have a week time frame, 5 days, within which to come in and correct it.

Do you understand that?

Ms. LARSON. Yes.

Ms. TAYLOR. You are accompanied by your counsel this morning. I ask that you be sworn in at this time.

THEREUPON, PEGGY LARSON, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MS. TAYLOR:

Question. Could you state your full name for the record, please?

Answer. Peggy Jean Larson.

Question. What is your current title?

Answer. I am a supervisory research analyst.

Question. And how long have you been working for the FBI?

Answer. Forty years.

Question. And what position did you begin when you first started working for the FBI?

Answer. I think, gee, this is going back, fingerprint technician. I was in the old Identification Division.

Question. And did you hold that position until you began in the name check area?

Answer. Not exactly. I was in fingerprints for 2 years, and then I went into the office and worked in leave work for 6 years, and then I transferred to the unit that I am in now, which at that time was called the Name Check Section. I have been there ever since, which is 32 years.

Question. And it was formerly called the Name Check Section, but now is it called the Executive Agencies Dissemination Unit?

Answer. It is currently called the Executive Agencies Dissemination Unit, Subunit, I am sorry.

Question. The subunit that you are the supervisor of—

Answer. Is called the Subunit.

Question. And what unit is that a part of?

Answer. Well, we are part of the field information—let's see, this changes so often, Field Information Unit, I believe is the name of our unit. Because I think our section is Field Information Support Section.

Question. Now it is called the Field Information Unit?

Answer. Yes, it is currently called the Field Information Unit—goodness gracious—

Question. That is okay.

Answer. We have just undergone a change a few months back, and the name of my unit has changed, and we are field—

Question. Would that be Field Services?

Answer. Field Services.

Question. That is under the Field Information Support Section?

Answer. Right.

Question. Which is under the Information Resources Division?

Answer. Correct.

Question. So your subunit is one of how many units in the Field Services Unit?

Answer. Well, out of the Executive Agencies part, there is the File Review, there is the File Service, there is the Name Searching, and then there is other areas of the unit that works with the field information side that I am not involved with. My Name Check Program just deals with the File Review, the Filing Unit, and the Name Searching.

Question. All right. Are those on equal par with the EADU, the subunit that you work for, or are those underneath your unit? Are those called SubUnits?

Answer. They are SubUnits, yes.

Question. I am just trying to understand the organization.

So you are the supervisor of the Executive Agency Dissemination Subunit?

Answer. Subunit.

Question. And then you also work with the File Review Subunit?

Answer. Well, when you say work with them, they do a service for us. They assist us in our program.

Question. And another subunit is called File Services that assists your subunit?

Answer. Yes. That is where we request our files from.

Question. And then there is the Name Searching Subunit?

Answer. That is where we have our names searched.

Question. Who is the current head of the File Review Subunit?

Answer. That would be Nora Hardy. Nora is in charge of both the Filing Unit and the File Review.

Question. The File Service Unit and the File Review?

Answer. The File Service. Nora Hardy is over—File Review is a part of File Services now, because they took the File Review and put them into her area.

Question. Has she been there long?

Answer. Nora? I think she just had her 30th.

Question. Do you know someone named Alice Roberson?

Answer. Yes.

Question. Where does she work?

Answer. Well, she is now in the Mail Room, but she was the supervisor in charge of the File Review Unit, Subunit.

Question. She is now in the Mail Room?

Answer. She is now a supervisor down in our Mail Room.

Question. Just if you know, do you have any recollection of when she changed from File Review to Supervisor of the Mail Room?

Answer. Well, she has been down there for—I really can't give you a specific time. She has been down there—Alice was kind of working back and forth during the time that she was being transferred down there. She was kind of doing double duty.

Question. Do you think it has been more than 2 years that she has been down there?

Answer. I would say probably in the neighborhood, but I am not really sure.

Question. So there was a transition period where she worked both in the Mail Room as well as in the File Review?

Answer. Yes, she was assisting both areas. She had other supervisors there, but she was actually the supervisor in charge.

Question. Of File Review?

Answer. Of File Review.

Question. Who is your current supervisor?

Answer. Mary Patricia Smith.

Question. How long has she been your supervisor?

Answer. She came in May of this year. She is the Unit Chief.

Question. And is your current section chief David Kitchen?

Answer. Correct.

Question. Do you report to him in any way?

Answer. Yes. Well, actually I report to Pat, but I have occasions to talk with him, yes, report to him for things.

Question. Mary Patricia is someone you refer to as Pat?

Answer. Yes.

Question. Could you just briefly go into the function of the subject units that work with the Executive Agency Dissemination Subunit, beginning with the File Review Subunit? What is the function of that?

Answer. Well, the File Review, after the names have been searched in our Name Searching Unit, then the forms are sent to the File Review Unit, along with what we call a Search Slip that has the files listed on it. They pull the files and attempt to either "ident" them or "non-ident" them.

Question. Why don't we back up a little bit. It sounds like I have skipped a section.

I am going to show you a document marked CGE 18299. It is a form letter. I am sure you have seen this before. It is on White House stationery. It is a memorandum to "FBI, Liaison from Bernard W. Nussbaum, subject, FBI investigations." It has the subject's name. On this one the particular name is Harry Thomason, date of birth and other information.

And then the next section says "we request," and there are a number of possibilities, the first being "copy of previous report."

Why don't we go down the list and let me ask you if a request for a copy of a previous report is made from the White House, where does that request go first after it leaves the White House?

Answer. The request is brought in by—an FBI courier picks it up, brings it over to the FBI, brings it in to our Applicant Unit that does the backgrounds, and the envelopes are brought in there, they come in sealed envelopes. The mail that comes to us is left in the envelope with the exception of the mail coming from the Security Office, and that will be mixed up with the "Name Check," as well as Fields and Expanded Name Checks and Limited Updates. So they have to open that envelope in order to get ours, which would be either "Copy of Previous Report" or "Name Check"—

Question. Just a moment. I am not clear on one thing. You said that the envelope is picked up by courier and goes over to the Applicant Unit?

Answer. Yes.

Question. Is that SIGBU?

Answer. Yes, it is.

Question. Formally known as SPIN?

Answer. Formally known as SPIN.

Question. That mail goes to SPIN or SIGBU, and then you also mentioned there is certain mail that comes from the Office of Security?

Answer. Well, this is from the Office of Security.

Question. It is all from the Office of Security?

Answer. No, this is from the Office of Security. The mail comes from the National Security Council, from the Executive Office of the President, and from the Counsel to the President.

Question. As you have probably surmised, I am asking you about the mail that comes from the Office of Personnel Security at the White House.

Answer. Correct. That is this.

Question. Which is this form.

Answer. That is correct.

Question. There aren't any other offices in the White House that use this form?

Answer. Well, the Counsel, the Office of the Counsel, uses this form.

Question. For presidential appointments?

Answer. Yes, PA's and PAS's. The only difference I believe is on his it will have Office to the Counsel. I believe it is somewhere on the form. I don't know if you have an example or not.

Mr. STROMAN. Excuse me, you said PAS?

The WITNESS. That means it requires Senate confirmation. Presidential appointment, or presidential appointment with Senate confirmation.

EXAMINATION BY MS. TAYLOR:

Question. So the package is picked up from the White House, and the package with these forms comes from the Office of Presidential Authority and is sent to SIGBU?

Answer. Correct?

Question. What happens to it at that time? It is opened—

Answer. And separated.

Question. And who does that? Who is in charge of that?

Answer. There is a clerk there on the receiving desk that mail comes in to from the courier and she looks at the packages and separates ours and puts them—separates them and holds ours for us. One of my employees assigned to the White House desk goes over and picks it up. Mainly the clerk, if she is not there, one of the research analysts will go over and get it.

Question. Once the research analyst returns with it, where does it go first?

Answer. Well, then the clerk or employee Xeroxes this form, and a copy is faxed down to our Name Searching Unit, which is in Newington. A copy is sent to CJIS, Criminal Justice Information Services, which houses the arrest records.

A copy of it goes to IIIA, which is a database that houses terrorism and security-type information, intelligence. Then we also do a check in a bank called CLEA, will we actually do in our unit because we have a terminal, Criminal Law Enforcement

Application, I think it is called. This houses organized crime and other criminal matters. Then we do NCIC, which we do in our unit because we have a terminal, which is our Wanted database.

Question. Earlier when I showed you this form, I started with the——

Answer. "Copy of Previous Report."

Question. "Copy of Previous Report." If that option were checked, would those copies be sent to all of those places?

Answer. No.

Question. Only for a name check?

Answer. Only for a name check.

Question. It is a little confused, because this particular memo has "Name Check" checked off, or has a X there.

Answer. If it says "Name Check," that means it goes to all those areas.

Question. All right. Well, notwithstanding that X, let's start with "Copy of Previous Report." If that comes into your office, then what occurs with that form?

Answer. When they separate the copies over in the SIGBU unit, the girl over there on the desk, who as she is separating them, she sees "Copy of Previous Report," she knows we have to get the prior backgrounds. She would put the names like in the computer and write the file numbers down on a little sticky and put it on there so that we actually would have the file number and could just retrieve the file.

Question. And that makes it easier for you?

Answer. Yes, because they are not asking us to do all these others. They are just—this is what they call their Update Program. They are trying to get the copies of their previous reports back into their White House files.

Question. So once she puts the file number on and sends it over to your office, who receives it?

Answer. Well, the file assistant over there then will either request the file or one of our locate clerks will request the file from this area that is called the Filing Unit.

Question. File Review?

Answer. No, not File Review, the Filing Unit.

Question. File Service Subunit?

Answer. Yes.

Question. Who heads up the File Service Subunit?

Answer. That is Nora Hardy.

Question. That is Nora Hardy. Do you see that form before it goes to Nora Hardy?

Answer. No.

Question. So any request for previous reports are separated by the clerk at SIGBU and sent directly to Nora Hardy?

Answer. Repeat that again?

Question. If a request for a previous report on a memorandum like this one, which I am going to mark as Deposition Exhibit 1, is seen by the Clerk at SIGBU, she will separate that out from other requests and send it to the File Service Subunit?

Answer. No, no, no. My people pick all forms up.

[Larson Deposition Exhibit No. 1 was marked for identification.]

EXAMINATION BY MS. TAYLOR:

Question. So it goes to your file clerk and she sends it to the——

Answer. She doesn't send the form. She requests the file.

Question. She personally requests the file?

Answer. Either she or one of our locate clerks.

Question. Who would that person be in your office that makes the request?

Answer. The clerk?

Question. Yes.

Answer. Well, right now it is Sue Hebron, but at the time it was Kathy Walker.

Question. Kathy Walker. And does she handle those requests for all of your clients, or only for the White House?

Answer. She handles——

Question. Or did she?

Answer. No, she handles the White House, and whatever else is assigned on her side of the desk.

Question. So she may have other clients in addition to the White House?

Answer. Yes.

Question. Is there anyone on your staff that handles only White House requests?

Answer. Well, these girls, yes, the two analysts and the clerk.

Question. I guess my question is, is there anyone who is assigned purely to the White House and not to any other clients?

Answer. No.

Question. So at the time, late 1993, early 1994, Kathy Walker was the clerk who would have made requests—

Answer. For the files.

Question. To Nora Harding's for the files?

Answer. When you say to Nora Hardy's, to Nora Hardy's area?

Question. Subunit. She might have some other clerk with her working, or helping.

Answer. Definitely. Nora is the supervisor.

Question. Kathy Walker would call Nora Hardy's unit and request a copy of the Previous Report?

Answer. No, she would request the file.

Question. The file. All right. And that file would be sent over to your office?

Answer. Correct.

Question. And what would Kathy Walker at that time do with that file?

Answer. She would give the file and the form to the research analyst.

Question. And what would the research analyst do with the file and the form?

Answer. She will review the file and determine what out of the file should be sent to the White House.

Question. How does she make that determination?

Answer. Well, because they are asking for copies of previous reports, which is actually previous background, so they would look in the file. And if they had ever been investigated previously, their background, then she would make out a card denoting to have these particular serials pulled, because the information will go out in memorandum or letter form as the general rule. Most of the SPIN, or the SIGBU, units, their work is done by letter and memorandum. Summary memorandum. So she would have those particular serials out of the file Xeroxed for preparation to send back to the White House.

Question. Were you aware that when someone asks for a copy of the previous report, that it is for the Update Project, so-to-speak, that they are trying to recreate files?

Answer. Yes, because that is the only, to my knowledge, that is the only time that they request previous reports, when they are updating.

Question. Is that something that you experienced in other administrations?

Answer. Yes.

Question. If Kathy Walker were to make a request to the File Service Subunit for the file, and if she found that there was no file on that person, would that cause her any reason to talk to you or make a note or a memorandum?

Answer. You can't request a file if there is no file.

Question. Well, I can understand that.

Answer. Let me explain a little further. You get a number, a file number, so if you don't get a file number, then there is no file.

Question. Right. So if the clerk at SIGBU notifies—let me back up. If the clerk at SIGBU goes into the computer, puts that person's name in, and doesn't come up with a file number, what happens to that request?

Answer. Well, then if she doesn't provide us with a file number, then we would have it searched in our Name Searching Unit.

Question. Okay.

Answer. Subunit.

Question. In your experience, your 32 years experience in the Name Check Unit, do you know of many occasions when you would get requests without a file number?

Answer. Yes, there is not always a file number. The majority will have a file number, but there will be a few cases that there will not be a file number.

Question. And do you know why there wouldn't be a file number?

Answer. Because there has been no background done.

Question. So if there was no file number, Kathy Walker would make a request of the Name Searching Unit?

Answer. Correct.

Question. To search that name and check the indices?

Answer. That is our indices, yes.

Question. Did it come to your attention in late '93 or early '94 that there were a number of files, a request for files, where there was not a file available?

Answer. Not that I can recall. I believe there were a few, but I think the majority of them had files, yes.

Question. In that same time frame, was it brought to your attention that there were a large or extraordinary number of requests for previous reports coming through?

Answer. Yes.

Question. And who notified you of that?

Answer. One of the research analysts. I don't even recall which one. I mean, I know the girl so well, you know, and they would just mention it in passing.

Question. What did she say to you?

Answer. Just something to the effect that, you know, we have received a high number of requests for previous reports.

Question. Was she having trouble filling the requests, or is there any reason why she would have brought it to your attention?

Answer. Well, no, other than the fact that at that particular time, the reason that it brings it to mind for us is one of the girls working there, her husband had a heart attack, so it left the other girl, you know, alone there for a while, because Sheri was out.

Question. What was your response when you heard that there was an inordinate number of previous requests—requests for previous reports?

Answer. Nothing in particular.

Question. Didn't that seem unusual to you?

Answer. The number, the number seemed unusual, not the nature of the request.

Question. Right. Was there ever a time in your history that you remember receiving over 400 requests for previous reports within a 2- or 3-month period?

Answer. That goes back a long time. Not that I can recall. Normally the request for the update would be kind of staggered. They would maybe say they were going to request X number this week, X number the next week, until we had them all done. So the only thing unusual about it was the fact that I think starting in December, that we got a high number.

Question. Did you mention it to anyone else after you found out about that occurrence?

Answer. I just mentioned the number, as I recall, to my Unit Chief, but, as I said, the nature of the request was not unusual.

Question. I understand. But the number was unusual?

Answer. The number, yes.

[Discussion off the record with counsel.]

The WITNESS. I guess the reason that perhaps we thought it was unusual was because they took office in January, and up until December we had not had that many requests for the prior backgrounds. I think they did a few, some in July, starting in July, but not any high number, and it wasn't until December that we actually got I think around 249 or something in December. This was an unusually high number. But, there again, because of the fact that they had been in since January, we figured, well, they are just trying to get them all at one time.

EXAMINATION BY MS. TAYLOR:

Question. Do you ever remember a time in your history when you would have gotten 249 requests for previous reports in one month, even in the beginning of other new administrations?

Answer. Not that I can recall. They were usually staggered more.

Question. So you mentioned that you discussed this with your Unit Chief. And who was that at the time?

Answer. That was Vernon Thornton.

Question. What was his response to your mentioning of it?

Answer. As I said, it was just in passing more than anything else. I probably just said, "we received X number amount of requests for reports on, because they are doing their update program." And, as I said, this is a normal request for us. So—

Question. How long had Mr. Thornton been your Unit Chief, if you can recall?

Answer. Well, '92 I took over the unit, so he would have been there in '92.

Question. At least since '92?

Answer. Yes. Because '92, it will be 4 years for me in October. Yes, so I think he probably came to us in early '92.

Question. What kind of interaction did he have with the unit and the work that the unit was doing and the people in the unit?

Answer. Well, Mr. Thornton was in charge of several areas, so he was a very busy man, and we more or less only reported to him when we thought it was necessary. You know, if there was a problem, you went to him. If everything was running smooth—

Question. Did you ever have any meetings where you discussed the progress of the unit or the productivity or any kind of problems that might come up? Was there a meeting where you would sit down with him?

Answer. We had regular meetings. We had regular meetings. That was to discuss the general overall going's on in the unit, and not just the White House itself, for the entire unit. We have a very large program.

Question. I understand. Were those meetings scheduled on a weekly basis?

Answer. We tried to meet every 2 weeks.

Question. Every 2 weeks.

Answer. Yes, we tried to meet every 2 weeks, unless somebody was out or something of that nature, we pretty much met on a regular basis.

Question. Did the section chief ever attend those meetings?

Answer. No, it was usually Mr. Thornton and his supervisors.

Question. And who would his supervisors be? What would be their title?

Answer. It would be the supervisors of the other areas that he was in charge of, Alice Roberson, who was in charge of File Review, and the people that were under Mr. Thornton in his part of this unit, they would meet with him.

Question. I understand. Did you happen to discuss this inordinate request for previous reports in any of your meetings, that you recall?

Answer. No.

Question. You did mention that there was one of your staff who was out because her husband was ill.

Answer. Had a heart attack, yes.

Question. So the other woman was carrying the bulk of the work.

Answer. Yes.

Question. Was there anything that was done to help her with that work load?

Answer. Well, Jan came in and worked on a weekend.

Question. Who is Jan?

Answer. Jan George, the other analyst.

Question. So we have two analysts who were working on this now?

Answer. Yes.

Question. And one was Jan George and the other—

Answer. Sheri Carner.

Question. Who was the one out because of her husband?

Answer. Sheri.

Question. Sheri was out, so Jan began working on weekends?

Answer. I don't know, to tell you the truth, because this was like over Christmas, and Jan worked I know at least one Saturday. Whether or not she worked more than one Saturday, I don't really remember.

Question. Did anyone ever contact the White House to discuss how they could maybe stagger the reports or make it easier for the FBI—

Answer. No.

Question [continuing]. To handle the work load?

Answer. No.

Question. Do you recall ever having any discussions with Craig Livingstone?

Answer. No.

Question. Do you know if Jan George or Sheri Carner ever would have contacted his office to talk about the increased work load?

Answer. No.

Question. How about Mr. Thornton? Do you know if he ever—

Answer. No.

Question. And just to clarify, is that, no, not to your knowledge, or are you sure that none of those calls were made?

Answer. I know from my unit, the girls, the research analysts did not call. To my knowledge, Mr. Thornton did not.

Question. Do you know if anyone were to have contact with the White House in either your unit or your section, who that might have been?

Answer. It would only have been the research analyst or Kathy, the clerk. Actually, Kathy probably dealt with them more than anyone, because we really didn't have reason to have much voice contact with them, other than as an example, if this birth date was 1980, we would call over and say, "Can you check your date of birth?" rather than send it back and go through all this, in order to save time, we would check. If we thought there was some discrepancy in the name, we might call over and say, "Is this the correct spelling? Can you check?"

Other than that, we really didn't have much reason to have contact with them. We just processed the request and sent them back.

If there was a problem, we would call, you know, but it would be routine, like checking on something on the form, or if they called over and said we submitted a request, and now we need it expedited, could we get it earlier or something like that.

If someone called, it would most likely be Kathy Walker who would deal with the House?

Answer. Well, Kathy was the clerk on the desk, so she really dealt more with the problems that would arise on the forms than even the analysts did.

Question. I think we left off earlier, we were discussing the flow of the memorandum through your offices, and if I can recall, the request is made for the file by Kathy Walker?

Answer. Yes.

Question. At that time?

Answer. Yes.

Question. The file is given to her, and then she would analyze the file?

Answer. No. She would give it to the analyst.

Question. She would give it to the analyst, who would review it and make a determination on what would be sent back to the White House?

Answer. Right.

Question. And then what would occur after that with the file?

Answer. Well, the research analyst would make out what we call a pull card, and on that pull card, she would denote the serials to be taken from the file. Those serials, which would contain the summary memorandum with the prior background, would be Xeroxed for transmittal to the White House.

Question. And so you have a clear record of what exactly is sent to the White House when it is sent?

Answer. Absolutely.

Question. And is it clear to your analysts and to you and to whoever else handles these files the difference between the raw data in an FBI background file and the summaries that are derived?

Answer. We never send raw data out.

Question. No?

Answer. Never. Never. The only thing that we are sending out is copies of the prior backgrounds. In this case, it is what they were asking for.

Question. I suppose you have strict orders to do only that, correct?

Answer. Well, that is—of course. That is part of the procedure.

Question. If someone from the higher up in the FBI were to come to you, and this is someone who is maybe not familiar with the name check process and the unit and all of the inner-workings, were to come to you and say to you, "Ms. Larson, on the name of John Doe, an employee at the White House," what was sent to them on that person? Could you look up in your files on your pull card and find out exactly what was sent to the White House on that person?

Answer. Absolutely. Let me explain something to you. As I told you, the research analyst makes out what we call a pull card, so that the serials that contain the summaries can be pulled and Xeroxed.

When they are pulled, we place a stamp in the file, and on that stamp it denotes who it is going to, the date the request came in, the date it goes out, and the analyst's initials that pulled it, as well as the clerk who pulled the serial out of the file for it to be Xeroxed. And then on the stamp, beside of the White House, it will say, for instance, you note down here it says "access," there will be that "A" there, so when we go back and pull that file and look at that stamp, we will be able to say this came from the Office of Security, it was for access, it came in on this date, went out on this date, and this analyst had it Xeroxed. And that remains a matter of the file for the life of file.

Question. In the File Service Subunit where the files are contained, what exactly is contained in an individual's file in that subunit?

Answer. What exactly is contained—you mean in the complete file?

Question. Yes. If Kathy Walker were to call up Nora Hardy's subunit and say I need the Previous Report on this person, and the clerk in the File Service Subunit pulls the file, what is in there?

Answer. She will not even look in the file, because we are requesting the file by a number, and they will pull that number, and they will send that entire file.

Question. I understand. And I am not asking if she would look at it. But whether it contains the entire FBI background investigation, as well as the summaries?

Answer. Yes.

Question. Which was the basis of the previous report?

Answer. Yes.

Question. It is then sent to the analyst, and the summaries are taken out, copies are made, the dissemination stamp is put on the pull card, and that—

Answer. No, not on the pull card. In the file.

Question. In the file. And that denotes exactly what is sent to the White House—

Answer. Right.

Question [continuing]. On an employee? Then I would assume the file is returned to the File Service Subunit?

Answer. Correct.

Question. One more question on that: If you were to get a call from, say, Howard Shapiro, and he asked you what was sent out on a particular person, an employee of the White House, would you be able to clearly tell him exactly what they received?

Answer. Yes. If we had sent it out. Number one, we have a computer that we put all the names on, and so we know by pulling the name up on the computer exactly what went out, whether we sent two memos and two letters, or what.

Question. Just to conclude that, there is a clear difference to you and your people between the summaries that are sent out and the raw data background investigation?

Answer. Well, when you say "raw data," raw data to us means the information that the summary was gleaned from.

Question. Yes.

Answer. So, in other words, you have teletypes and air-foils and various inter-Bureau communications that this summary was taken out of. As I am sure you are aware, they go to the various offices for their leads. All this is compiled into one summary memorandum.

Question. Right.

Answer. So raw data to us would be those copies of teletypes, et cetera, that were coming in from the various offices. No, we would not send those out.

Question. That is what I mean. Therefore, you have one memoranda?

Answer. Correct.

Question. Or memorandum, which is the summary. And then you have all of the other data which it was based upon?

Answer. Right.

Question. And if you were to look at a file, you would be able to tell which is the summary memorandum and which was the information that it was gleaned from?

Answer. Yes. Yes.

Question. And would you be able to tell Mr. Shapiro, if he were to ask you, if some piece of information was sent to the White House on a particular individual? Let's say the birth date of someone, if he said, "Ms. Larson, was John Doe's birth date and place of birth sent to the White House?" You could tell him whether that was sent?

Answer. That is automatically in a background.

Question. If he said, "Was the results of Mr. John Doe's college transcripts sent to the White House?" Could you tell him?

Answer. Well, not necessarily his college transcripts, but the results of his education, yes. That would be probably in the summary.

Question. So if the question was, "Were the results of Mr. John Doe's education sent to the White House?" You would be able to look at the summary and see if that was sent?

Answer. Yes.

Question. If it was not, you could look in the background and see whether it was in there?

Answer. No, it has to go, because that is part of the background.

Question. This a hypothetical. If it was not in the summary, you would know that?

Mr. BARCELLA. I think we are getting our terms confused.

The WITNESS. I do, too.

Mr. BARCELLA. The summary and the background are the same thing. The raw data are the internal teletypes or—

The WITNESS. From which the summary is taken.

Mr. BARCELLA. There may be a summary page on top of the background investigation, but that is what she is calling a summary.

EXAMINATION BY MS. TAYLOR:

Question. The piece of paper or the pieces of paper that are sent to the White House are the summary memoranda?

Answer. That is the summary memorandum.

Mr. BARCELLA. That is what some people call the background check.

The WITNESS. That is the background. The background is in summary memorandum form.

EXAMINATION BY MS. TAYLOR:

Question. I don't mean to confuse the terms.

Mr. BARCELLA. Different people have been using different terms. That is why I thought I would clarify. There has been confusion as to what means what.

The WITNESS. If you notice, people talk about reports. Well, there is a difference in a report and a difference in a summary memorandum, in the form it goes in. But the backgrounds for the SPIN Unit are done in a summary memorandum. By that we call it a letterhead memorandum. The top of it will have the individual's name, be captioned, and then start with their background and go through everything that we have been able to glean from the investigation.

EXAMINATION BY MS. TAYLOR:

Question. The summary is always what is sent to the client?

Answer. The summary is always what is sent.

Question. I am going to try this one more time, because it is really a very simple question. If there is a piece of information that someone needs to know whether it was sent to the client, would you be able to determine that by looking the memoranda, the summary memoranda?

Answer. Well, in the background itself, you don't omit information. They have to include that—that summary must include all the background that is developed.

Now, if you are asking me hypothetically could I look and see, yes, could look and see. But that is not the way that it is done.

Question. Well, obviously if you have a 2-page summary, that is not going to include everything that was in 100 pages of reports.

Answer. Of a background.

Question. So my question was, if I asked you if there was a piece of information and whether it was sent to the client, could you look at the file and find out whether it was sent in the summary memorandum?

Answer. It would not be sent verbatim. I understand what you are getting at. For instance, may I use as an example; there would be a line in there that might say "27 references," and maybe "16 neighbors all highly recommended."

Well, no, those 27 references may not necessarily be listed. So if you are asking me could I go back and see what some of those 27 people's names were, sure. But when you do a summary, you don't necessarily list every person's name.

Like, for instance, if you say, "I think she is wonderful, she is highly qualified," and I say "I think she is a very good employee and an honest and loyal," they group that into a summary paragraph.

Question. I understand that. I understand that completely. There is no confusion with regard to how the summaries are created from the background data. I think I am going to try to ask you a yes or no question. If you can't answer yes or no, then I will try to rephrase it.

If someone asks you to go and look at a file to see if something was in a summary, could you go and look at that file?

Answer. Yes.

Question. You could pull the file and actively look at the summary memoranda and see if it was in there?

Answer. Yes.

Question. I think that is all I needed.

Answer. Okay.

Question. And while you are looking at that file, can you distinguish, you personally, between what is the summary portion of that file, the summary memorandum portion, and the background data reports?

Answer. Yes.

Question. Thank you.

So I think we completed that paper flow in sort of a roundabout way of the "Previous Report" request from the White House.

On Deposition Exhibit 1, the second option is a "Name Check."

Answer. Yes.

Question. And I think that we have a good understanding that all of the indices the FBI has available to it are checked—

Answer. Correct.

Question [continuing]. For that name, and whether there is information on that person or not is directed back to the White House?

Answer. Correct.

Question. Does your unit handle expanded name checks?

Answer. No.

Question. Does it handle full field investigations?

Answer. No.

Question. Does it handle limited updates?

Answer. No.

Question. There is another option for "Other" at the bottom. Is there anything else that your unit or subunit would handle in "Other?"

Answer. No.

Question. Let's talk about your supervisors again. I know that your current supervisor is Pat Smith.

Answer. Yes.

Question. And you mentioned that in some way, you do report to David Kitchen, who is the chief of the section?

Answer. He is my section chief, so I usually report to Pat, and then Pat keeps him apprised.

Question. So you don't personally report to Mr. Kitchen?

Answer. I don't personally report to him on a regular basis, but I do have occasions, yes, to, you know, have discussions with him.

Question. Before Pat Smith became your supervisor—and I believe that was sometime earlier this year?

Answer. May.

Question. May of 1996, who was your supervisor before that?

Answer. Well—

Question. I could try to help you. Was it John Hartingh?

Answer. John Hartingh was the section chief. I did not have a unit chief. Mr. Thornton retired last August, and when Mr. Thornton retired, I was to answer directly to Mr. Hartingh.

Question. Do you know why there wasn't another Unit Chief put in place after Mr. Thornton left?

Answer. Basically because the—like most organizations, you know, there has to be someone to—someone picked out to fill a slot, and they just weren't—at that time I think they may have been considering reorganization and weren't really sure how it was going to be broken down. So until Mr. Kitchen came in, there had not been a new Unit Chief named.

Question. Just as a procedural matter, the record is much clearer if I can complete my sentence before you begin your answer. So if you could try to do that. I know you probably know what I am about to ask you, but the record turns out to be clearer if I complete the question and then you answer. Okay?

So before Pat Smith, John Hartingh was the section chief, and you reported directly to him?

Answer. Correct.

Question. Did you report to him in the same manner that you report to Pat Smith now? With meetings or memos?

Answer. We had meetings about once a month.

Question. Since the end of August of '95 when Mr. Thornton left?

Answer. Correct.

Question. Did Mr. Hartingh have a good understanding of the operations of your unit?

Answer. I can't really say.

Question. I understand that he was a section chief, so he probably had a number of units under him.

Answer. Yes, he did.

Question. I am just trying to get a picture of how much time he spent with your unit as opposed to the others, or whether you felt that he was cognizant of your operations?

Answer. Well, I am sure that Mr. Hartingh was not as well versed as Mr. Thornton, but as I said, he more or less had to take on the responsibility because of the fact of Mr. Thornton retiring.

Question. Okay.

Answer. I am not really sure as to what his knowledge of my unit was, but I didn't have a lot of dealings with him.

Question. So you were basically in charge at that time, I suppose?

Answer. Basically.

Question. You are probably the only one around that has enough experience to be in charge of that unit. Did Mr. Hartingh then leave in February of this year?

Answer. I am not really sure when John left.

Question. Was there a period of time between his leaving and when Pat Smith became your supervisor?

Answer. Well, I think Kitchen came in March, I believe Dave came in March.

Question. As the section chief?

Answer. Yes. I really don't know when Mr. Hartingh left. I know he was out, but I don't know when he officially left.

Question. Were you aware that he was placed on administrative leave?

Answer. Yes.

Question. And did you have any knowledge as to why?

Answer. No.

Question. No one told you why he was placed on administrative leave?

Answer. No.

Question. Were you aware that he retired on June 6th?

Answer. I didn't know what date. Just someone said he had retired.

Question. Were you contacted on or around June 6th because of this FBI files matter coming to light?

Answer. Was I contacted?

Question. Yes. Did it come to your attention, the matter of the White House ordering more than 300 files on former—

Answer. Yes.

Question. And when were you first contacted about that?

Answer. Let's see, it would have been early in June.

Question. Was it before the press began covering it? I don't know if you read press reports, but were you contacted before it came out in the press?

Answer. Well, I was actually on vacation when they notified my unit, because when I returned from vacation, my analysts were already in the throws of this. That is the first I had heard of it.

Question. When did you go on vacation?

Answer. The week after the holiday, so it would have been the first week of June, and I think I came back around the 18th. I think I came back around the 18th. I know I came back on a Saturday morning, and I went in to work on Monday, which was mid-June. I don't know. If someone has a calendar, I can probably tell.

Question. That is close enough.

Answer. But I know I was in Las Vegas when it hit the fan.

Question. And when you returned, who notified you first about the problem?

Answer. My analytical employees, the two girls.

Question. Jan George and—

Answer. And Sherry Carner.

Question. And what did they tell you?

Answer. Just that there had been some problems over the reports, the back-grounds, as we call them, that went to the White House, and we were immediately, you know, trying to figure out what went where and when.

Question. Were you involved in that?

Answer. Well, to the extent, yes, that we were having our own internal, you know, investigation on it.

Question. And what was your involvement or your duties in that investigation?

Answer. Well, actually, nothing more than just answering questions.

Question. To whom?

Answer. Well, as I say, we were having our own internal—our inspectors came in, and they were asking questions similar to what you are asking.

Question. When you returned from your vacation and were told of the problem and the investigation, were you also told that Mr. Harting had retired?

Answer. I don't think I heard anything about John retiring at that particular time. As I said, we already had Mr. Kitchen, so I don't know when I heard that John had retired. But sometime after I came back.

Question. All right. Let's see if I can get this straight. You have Pat Smith; before that was John Harting, who you reported to directly as the section chief; before that, Vern Thornton was there, from sometime early '92—I may have a date here somewhere. In fact, I think it was March of '91 when he started at the Executive Agency Dissemination Unit as the Unit Chief. I know there was a reorganization in there, too.

Answer. Right.

Question. Which sort of changed the supervision. Did you ever report to Terry O'Connor indirectly?

Answer. No.

Question. Or Terry Etridge?

Answer. No. They were SPIN.

Question. They were with SPIN?

Answer. Yes.

Question. What about Patrick Lang?

Answer. I think Patrick Lang was a section chief. He was there for just a few months. But I really didn't have any dealings with Mr. Lang.

Question. What kind of a reorganization took place in May of this year when Pat Smith became your supervisor? If you can explain it. If you don't have personal knowledge, that is fine.

Answer. It is just when you say reorganization, when Mr. Thornton was there, he had some different areas under him that changed after he left and when Mr. Kitchen came in. We went from what we call one side of the house to the other. I am sure that probably doesn't make a lot of sense to you, but the division is a very large division, and we kind of moved from one side of the division to the other. I don't know why they reorganized or why they put us under Mr. Kitchen, but they did.

Question. Moving back to the end of 1993, in November to December of 1993, was there a reorganization that took place at that time that you can remember?

Answer. No.

Question. Do you remember if there was a division merger of the Information Management Division and the Technical Services Division?

Answer. Yes, I think the Technical Services Division came into our division.

Question. Was that when the Information Resources Division was created?

Answer. I believe so.

Question. Did that affect anything that you did in your unit?

Answer. No. No.

Question. Was that something that affected the supervision in higher levels?

Answer. Not for me.

Question. Because at that time you were purely reporting to Mr. Thornton?

Answer. Yes.

Ms. TAYLOR. I am sorry, I have gone past my hour.

Mr. STROMAN. Go ahead. I have just a few questions.

EXAMINATION BY MS. TAYLOR:

Question. Would you all like to take a few minute break?

Let's go off the record.

[Off the record, 10:53 a.m. to 10:58 a.m.]

Ms. TAYLOR. Okay, are you ready?

Back on the record.

EXAMINATION BY MS. TAYLOR:

Question. I have just a couple other names I want to mention and see if you ever worked under these supervisors. Gary Stupes?

Answer. Yes.

Question. S-T-O-O-P-S. And do you recall what his position was when you were working under him?

Answer. Gary Stoops was my section chief, I believe he was the section chief. It has been several years. I know when Gary left he was the deputy AD. He was, at the time we worked for him, he was I believe our section chief.

Question. Would that be Deputy Assistant Director?

Answer. Yes.

Question. All of these names I am mentioning to you are people who would have been supervisors since late 1992.

Answer. No, not Mr. Stupes was not.

Question. Maybe early 1992?

Answer. No.

Question. All right. Did he work under Section Chief Randy Prillaman, or division chief?

Answer. Randy Prillaman used to be our section chief, but Mr. Prillaman was not there in '92 either.

Question. I have here, I am just reading from a memorandum that I received from the Department of Justice, which is entitled: "Supervision of Executive Agency Dissemination Unit." Because I know it is hard to remember way back, it has some handwritten notes, I will just show it to you.

It says on April 9, 1992, Section Chief Prillaman was promoted to Special Agent in Charge.

Answer. Of Las Vegas.

Question. Would he have been there at least through April of '92? It says here above that, the unit reported to Randy G. Prillaman, Chief of the Information Services Section, who in turn reported to Norman Christiansen. And then below that it says on 4-9-92, he was sent to Las Vegas.

Answer. I didn't think Prillaman was there at that time, because I know he was in Vegas.

Question. Well, this is information I got from the FBI. So I assume their records reflected this information.

Answer. Mr. Christiansen was our assistant director.

Question. And did you report to him?

Answer. Oh, no.

Question. Because he was several levels above?

Answer. Yes.

Question. All right. And then in April of '92, after Section Chief Prillaman was promoted to Special Agent in Charge of the Las Vegas Division, he was replaced by John Schiman.

Answer. Yes.

Question. Do you recall reporting to John Schiman?

Answer. Not that I reported to John Schiman, but he was our section chief.

Question. It occurs to me in reading all of these names of supervisors who have changed over the past few years that there is a lot of movement going on with section chiefs and division chiefs. Is that something that you have experienced prior to the 1990's?

Answer. Yes.

Question. Yes?

Answer. I am sorry, yes. The agents come and go.

Question. Has that kind of movement among the agents and the supervisory levels affected their ability to know the operations of your unit?

Answer. I wouldn't say it affected their ability to learn operation. The longer they stay, the more familiar they become. But sometimes they are there for a year, sometimes they are there for 2 years. We don't have a lot of dealings with the level of the section chief. We deal more with the unit chiefs.

Question. Right. But it appears that some of the section chiefs, because of the re-organizations and apparently other reasons, were there only a few months perhaps before moving on, like in the case of Patrick Lang.

Answer. Right.

Question. And then John Hartingh was the section chief, but you reported directly to him because of a lack of a unit chief in that case?

Answer. Right.

Question. And you reported to him between February of—excuse me, August of '95 and February of '96. So that was, roughly, a 5-month period where he was your supervisor.

Now, when he was placed on administrative leave, who notified you of that?

Answer. Goodness gracious, I don't really remember. Maybe his secretary may have told me.

Question. It wouldn't have been someone from a higher level to notify you that your boss had been placed on administrative leave?

Answer. No, because I didn't know why John was out. I think I had called Jennie for something, and she told me that Mr. Hartingh was not there. I think I probably said where is he or something. She said he had been placed on administrative leave.

Question. So this was the man that was your immediate supervisor of your unit?

Answer. Yes.

Question. And you just knew that he wasn't there?

Answer. Well—

Question. For a while you noticed that he wasn't around?

Answer. No, I had—Jennie, probably his secretary probably called me for something, and she told me that he had been placed on leave.

Question. I see.

Answer. I don't really recall when John went on leave, but since I ran the unit, unless I had a purpose, I usually didn't go to him.

Question. Did she tell you why he was placed on administrative leave?

Answer. No.

Question. Who was the next person at the FBI that you discussed your lack of a section chief with or your lack of a unit chief? Did you talk to someone about who your next supervisor would be?

Answer. No.

Question. When were you notified that you had a new supervisor, do you recall?

Answer. I think I heard in, I don't know, maybe February, I am not sure of the date, that Mr. Kitchen was coming in, because he was in San Diego.

Question. Who would you hear such a piece of information from?

Answer. Probably from the secretary.

Question. Do you ever get memoranda from division chiefs or the higher-up supervisor who would give you information like this?

Answer. Yes. When something has been, you know, made an effective change, yes, they send around a communication. But not until the change has actually been made. Or if they name someone in an acting position. But at that particular time, I don't think there was anyone available—well, actually I have to go back there, be-

cause when Mr. Hartingh went out, they did name Susan McAndrew as acting. When John went out, they named Susan McAndrew, and I was notified from the office, and they sent around a notification saying that she was the acting.

Question. And when you get a notification from what you called "the office," what do you mean?

Answer. Well, it usually comes down, like it goes to every office in the headquarters, showing any changes at headquarters.

Question. So it comes from—

Answer. Probably out of the Director's Office.

Question. The Director's Office.

Answer. It could come out of the Director's Office. It could come from our division. It depends on what the notification would be. If it is just a change in our particular division, it might come from our Assistant Director. If it is something that affects the whole Bureau, then it would come from the Director's Office.

Question. And do those memos typically have someone's name on them?

Answer. You mean as the writer? It shows what office it comes from.

Question. So it would have that office's supervisor's name on it?

Answer. Well, it would be coming, for instance, if it is coming from our Assistant Director, it would have her or his name on it. If it is coming from the Director, of course, we all know who the Director is.

Question. Yes, we do. In the course of your work at your unit, do you ever have a need to speak to anyone at SIGBU?

Answer. Not necessarily.

Question. Well, let me just mention Mr. Bourke, Jim Bourke. Does he ever have an opportunity to talk to you in the course of your business?

Answer. Well, I mean, I know Jim Bourke, and I have, of course, talked to Jim. But his work and my work are two different areas. So, in other words, I don't have to get any type of permission. The only coordinating that we would do with Jim Bourke's unit is if my analyst got a request from the White House and Jim's unit was working on it, let's say, as a full field, then we would coordinate that. We would probably type something back to the White House and say that there is a full field in progress, and you will be advised of the prior background when that is completed. Because what it is is an overlap. If we want the file and they want the file—

Question. Right.

Answer. Am I confusing you?

Question. No, I think I understand.

Answer. In other words, if they need the prior background to open up a new background, so, you know, the both of us can't have it at the same time, so we usually defer to his unit and let them go ahead and take it.

Question. So you do you personally speak to him on the phone when these types of overlaps occur?

Answer. No, usually my analytical people or the clerk involved would. They would usually do the talking. They wouldn't necessarily talk to Mr. Bourke, they would talk to Mr. Bourke's employees.

Question. Back in late 1993 when you noticed the volume of requests coming out of the White House, did you have an opportunity to talk to Mr. Bourke about that?

Answer. No.

Question. Do you know if any of your analysts did?

Answer. Not to my knowledge.

Question. Recently I believe there has been some changes that have been made in the process of getting requests from clients and processing those, and I am not clear on the reorganization, but I understand that there has been one. Is that true?

Answer. The only change is that they are fine-tuning the form.

Question. What is it on the form that they are fine-tuning?

Answer. Well, they are—

Question. That is Deposition Exhibit 1. Do you know?

Answer. We don't have it?

Now the individual that is generating the request has to actually sign the form, and I think the person that the name check is on has to sign the form. So, anyway, they are all being signed now. That is basically the—they are adding some more categories on it. In other words, if it says "Access," it will be explained a little more what that access is for. So it is just kind of fine-tuning it.

Whereas this, all these came in under the counsel, now the person that actually is submitting it will sign the form as the person of the form will, and the reason for it will be a little more explicit.

Question. The person who is the subject of the form will sign the form?

Answer. Will sign the form.

Question. In 1993-94, you mentioned the SPIN Unit would check a name for a file number and write it on the form and send it to you. Is that a practice that is still in effect now?

Answer. No. No.

Question. Why not?

Answer. Well, probably because of what happened here. We just from now on will search them through Name Searching rather than—they were really doing it as a courtesy to us. Since we all worked for the FBI, the girl knew it would be a help to us, since they had a computer with all the prior backgrounds on it, file numbers, that it would just be a help to us if she just pushed the name in and got us the file number.

It just made our work easier. It wasn't that she had to do it, it was just really a courtesy, because we knew the girl on the desk and so to help us out, she would do that. But we are not doing that anymore now. We will actually have the form searched.

Question. And did that change take place in June of this year, or did that take place at an earlier time?

Answer. No, it took place after these reports went to the White House.

Question. Just to be clear, after these reports went to the White House, meaning in '94, or meaning in '96?

Answer. Meaning now.

Question. Now in 1996?

Answer. Yes.

Question. When this became public?

Answer. When it became public, I am sorry.

Question. That is okay. Earlier we discussed the possibility of a name coming through on one of these forms as a request for a previous report, copy of a previous report, and what would happen if there was no report in the file.

Answer. Yes.

Question. Would you—I am not sure if you answered that. What would happen if someone in File Review, File Service Review, found that there was no report for that person's name?

Answer. Well, as I told you, we got the file number from the girl in SIGBU. If she did not give us the file number, then we would have it searched in our Name Searching Unit. If we came up with no file, we would stamp this a "no record," and it would go back to the White House as a "no record." If we don't have a file, then that is it. It is a no record.

Question. Would that seem unusual to you, that someone would be requesting a file on a name where there was no file, a previous report?

Answer. Not really, because it could very well be that the person had not yet undergone a background. It could be someone, you know, new, that they were anticipating, and they just hadn't gotten around to it.

Question. If it was someone new, then there would not be a copy of the previous report?

Answer. That is correct.

Question. So there would be no reason for them to send the name under a "Copy of a Previous Report Request."

Answer. That is correct, if they are aware of it.

Question. If they are aware that the person is new?

Answer. No, if they are aware that—you said that they should send this only if they know that there has been previous; right?

Question. Well, you mentioned earlier there was this Update Project, where they were getting previous reports on holdover employees.

Answer. Yes.

Question. So by definition, that person would not be new; correct?

Answer. Correct.

Question. So, if you saw this checked, "Copy of Previous Report," you would probably assume it was for a holdover update?

Answer. That is exactly right. That is the only way we do it.

Question. Right. So if that is the only reason you do it, and you found there was no previous report in the file, would that seem odd to you?

Answer. Well, I am not going to try to second-guess the White House as to why they send over—

Question. No, I am not asking about the White House's request.

Answer. It does not seem odd, because it has happened before. Sometimes other agencies have conducted BIs or passes have been issued on name checks only.

Question. Has it happened often? Did it happen often in 93-94?

Answer. It has happened—I think there were—I don't recall the number, but I think there were a few names that there was no previous background.

Question. That came to your attention?

Answer. Well, not necessarily that came to my attention, because if there were no records, they were just a "no record."

Question. Then how do you know about them?

Answer. Well, my analysts, I ask the girls. I said did you have any that didn't have any? They said yeah, we had a few. I said what did you do? They said we searched them and stamped them "no record" and sent them back.

Question. At the time it was happening, they did not report that to you?

Answer. No, there would be really no reason to. I mean, if there is no record, as far as we are concerned, they just—

Question. Were your clerks aware of the Update Project and the reason for the requests for previous reports?

Answer. Analytical? Yes. They are the girls that handle it. They have to be. See, if this top one is checked, then that is automatic for us.

Question. If the top one, being the "Copy of the Previous Report," is checked, then your analysts know this is part of the Update Project?

Answer. Right. Because we are not doing anything for them but sending the previous background, which is, you know, the easiest thing we could do.

Question. Sure. And if they got the request and found there was no file on that person—

Answer. They would just stamp it "no record" and send it back.

Mr. BARCELLA. One second.

[Discussion off the record.]

EXAMINATION BY MS. TAYLOR:

Question. To your knowledge, during the 1993, early 1994 time frame, your analysts did not bring to your attention that there were more than a few reports, requests for previous reports, where there was no file available?

Mr. STROMAN. I don't think she testified it was more than a few. I thought she testified there was a few.

The WITNESS. I thought there were a few, but not a lot.

Ms. TAYLOR. I asked to her knowledge was there more than a few. That is my question.

The WITNESS. No.

Mr. STROMAN. She had previously testified there were a few.

Ms. TAYLOR. I understand. I know what her previous testimony was.

The WITNESS. The girls would have thought nothing about telling me about a "no record." That was home-free for them, you know. Just have it searched and stamped "no record." The fact that there was not a file on them, we don't know, maybe this is someone that they are going to ask to have a background conducted on. So these are people that they have got at the White House, but the background has not yet been done.

See, usually this occurs, the name check occurs before the background.

EXAMINATION BY MS. TAYLOR:

Question. But this is not a name check.

Answer. Correct. But sometimes maybe they get confused, you know, and just send it in with the list of previous reports, assuming that the person has already had a background, when in fact they have never been employed at the White House.

Question. I am going to show you a report that I received from the FBI—excuse me, this is a list of names that we received from the White House in the production, and the first page is marked CGE 48000, and it goes through 48057. The title of this list is "augmented White House name check requests."

I realize that this may not be a document that was created by your office, but I would like you to take a look at it.

The WITNESS. Have you seen this?

Mr. BARCELLA. No.

EXAMINATION BY MS. TAYLOR:

Question. It is my understanding this is a document that the White House requested and it was sent to the White House by the FBI, which shows a list of White House name check requests, starting with the name A-A-R-H-U-S.

Mr. BARCELLA. Always likely to be the first one in any alphabetical list. I do not understand, Laurie.

Ms. TAYLOR. This is a document we received from the White House, but it is my understanding that they requested this list from the Department of Justice.

Just a moment.

[Discussion off the record.]

The WITNESS. I haven't seen this.

EXAMINATION BY MS. TAYLOR:

Question. Let me go back and try to explain. When this matter of the FBI files being ordered by the White House first became public, the White House released a list of names to the press, beginning with this name, A-A-R-H-U-S, and it had some 331 names on that list.

Once the FBI and Department of Justice began their investigation of this matter, they then sent a list back to the White House asking whether or not there were other people that were wrongly ordered, that their files were wrongly ordered.

It is my understanding this is the list that was sent by the FBI requesting the White House to review and decide and determine whether there were other names, in addition to the original 331 that were incorrectly ordered.

So this list may not be something you have seen before. I am going to ask you to just take a look at it and see whether it looks familiar to you?

Answer. No. It does not.

Question. Let's look at it for a second. The top has several headings, and there are columns. There is name, date of birth, social security number, the next column is the date the report was sought, the date it was received by the FBI, the type of request, the reason for the request, the date it was provided to the White House, and the materials that were provided.

Now, I am going to take a look at the first name, which I can't pronounce, which begins with A-A-R-H-U-S, Carol. The date sought is empty. Date received by the FBI is 12-6-93. I assume that means the FBI received the request for the previous report on December 6, 1993. Type of request, it appears to say "Previous Report." The reason listed is "Access." And the date provided to the White House, the results of their request were provided to the White House on March 21st, 1994.

The next column is entitled, "Materials Provided," and underneath that column the word "negative" is typed.

In your 32 years experience in the Name Check Unit, does this "Materials Provided-negative" mean anything to you?

Answer. It means it was a "no record."

Question. That means there was no record?

Answer. If it is negative, that means we didn't have anything.

Question. All right. So that was in December of '93. Then the next one under materials provided says: "Four letters and four memos."

Answer. Yes.

Question. That looks to be the kind of materials you were discussing that are included in the summary?

Answer. Right.

Question. Going down the list, on No. 6, the "Materials Provided" says: "Nothing provided-no identifiable." It looks like, "information located."

Answer. Information.

Question. What does that mean to you?

Answer. That means there was no information provided, because there was nothing identifiable. There may have been tries, files that were pulled, to see if this man was identifiable with them, and it could have been someone with, say, the name of Joseph Agin, but we could not identify anything, so it went back "nothing identifiable."

Question. So that name was not in your indexes, A-G-I-N, Joseph?

Answer. Obviously, it was in our index, if they couldn't identify the material, then that that meant that although this name was in there, it was not necessarily identifiable with the files that were pulled.

Question. Just to clarify the record, we have taken testimony earlier from the Secret Service and other people which explained that this particular name was missing the first letter, A-G-I-N, it is supposed to be H-A-G-I-N with a "H" at the beginning. Perhaps that is why there was nothing provided.

Answer. That is what I am saying. There could have been a person with this name in there, but we couldn't identify anything in there.

Question. If you notice, this list includes only names that previous reports were requested.

Answer. Right.

Question. Going down the list, the next page, I would like to note for the record there are 10 names per page, on the first page there was one negative. On the second page, No. 11, Melissa Allison also has a negative under "Materials Provided"?

Answer. Okay.

Question. That would be someone who didn't have a file. The third page appears to have one name that says "negative," two names that say "negative." The next page, if you look at No. 42, under "Materials Provided," "negative." So once again there was no file?

Answer. No.

Question. On that person. The next page we have another "negative." On the next page, there is one name that has "nothing provided," another name that has a "negative" under "Materials Provided." The following page has three names where there was "nothing provided."

Answer. See, these are common names, so there was probably files to look at, but they couldn't identify them with these individuals based on the identifying data furnished.

Question. Number 68, Melena B-A-T-E-S, under "Materials Provided," if you could read what that says?

Answer. "Previous report, 1-61, headquarters, not in file since investigation in December 1993 which was sent to the White House."

So apparently they were not able to locate this file, but they were the subject—this 1-61, which would be done by the SPIN Unit, so they know from the computer that the investigation was done and sent to the White House in '93, but the file was apparently lost at the time. They may have found it at a later time. I don't know.

Question. Then on the next page, there are four names where there was "nothing provided." The following page, the first name, there was no file on the first name. The second name has some hyphens underneath "Materials Provided." Would that mean the same as the above?

Answer. I really don't know, because I have never seen this. I am just going by what I would think they were.

Did you say that this came from the FBI?

Question. Yes, ma'am.

Answer. Okay.

Question. And then there is another "negative" on the same page, which means there was no file on that person.

Answer. Right.

Question. And two other names where there was "nothing provided" because there was no identifiable information in your indices. So there is a total of 6 out of 10 on that page.

On the following page, for Marian Bell, there are simply hyphens again. I don't know if that means there was no information, but obviously no letters or memos were sent. I don't know why.

Answer. I don't either.

Question. Then also at the bottom of the page, there is another name where there is no information listed as materials that were provided.

Skipping two pages, there is on No. 121, the name Janet B-O-W-E-N, under "Materials Provided," could you read that?

Answer. "Refer to applicant investigation 5-91, sent to the White House on 1-17-94." This is what we call a referral. We didn't send it again because they already have it. And that also is a standard procedure. If they already have it in this administration, then we don't re-send it.

Question. In this administration?

Answer. Yes. If it was done for this administration, they should have it.

Question. Right. All right, the following page, there are two names where there was nothing provided by the FBI, no identifiable information.

Answer. See, that referred to previous background of '93, so that was done for them.

Question. The first name, could you explain that again?

Answer. See, they didn't provide anything because they referred to previous background 2-1-93. This person was the subject of a background investigation for the White House in February of '93. So this would be another referral.

Question. So, in other words, that background had already been—

Answer. Correct. Had already been done.

Question. The second name, there was nothing provided because there was no identifiable information.

Answer. Correct.

Question. The following page, there was one name where the information was already sent.

Answer. Yes, 1-11-94.

Question. Two pages later, which is now CGE 48018, there are two names where there is nothing provided because there was no identifiable information located. That is 2 out of 10 on that page. In your experience at the Executive Agency Dissemination Unit, would this be a large number or large percentage of names where there would be nothing on file at the FBI in requests for previous reports?

Answer. I would think maybe a little more than average, yes.

Question. Well, earlier I thought you said maybe there were a few.

Answer. As I said, the girls did not necessarily report this to me, because to them if it is negative, that is fine. We don't really know why they are sending the names over most of the time.

Question. If it had been reported to you, would that have been of concern to you? In a one-month period, receiving this many requests for previous reports, where there was absolutely nothing on file?

Answer. We don't usually question them as to why they—you know, for the reason they are including people's names. These could be perspective people they are going to use, for all we know. So we would not necessarily have thought anything too unusual about it.

Question. Your policy is not to question the White House when they send requests?

Answer. No. We do not question the White House except to discuss pending matters.

Question. On the next page, which is 48020, there are two names where there was nothing provided because of no identifiable information. There was another name which has a "negative" underneath "Materials Provided," which I assume means you did not have any file on that person?

Answer. Right.

Question. The following page, there are another three names with "nothing provided because of no identifiable information." The following page, there are two names which have "negative" under materials provided. Also there is another name where nothing is provided because of no identifiable information provided. That is 3 out of those 10.

The next page, there is one name with "nothing provided," and two other names which have "negative" meaning there were no files on hand at the FBI on those people. The following page, there are 3 "negatives," meaning no files available, as well as an additional 3 names where nothing was provided because of no identifiable information. That is 6 out of 10 on that page.

On the next page, there are 4 "negatives," meaning 4 people out of those 10 had no files, and another 2 with "nothing provided because of no identification or identifiable information." These are now 6 out of 10—I am sorry, 6 out of 9 which have no information on "Request for Previous Reports."

Skipping a page, there is one name on CGE 48027 with "nothing provided." On the following page, there are two names where there was "nothing provided because of no identifiable information." That is 2 out of 8 names on that page. It looks like we continue every single page to have at least one.

The next page, the following page, I might be wrong, that page is all set. It looks like you got information on all of those people. The following page, there are three with "nothing provided." The following page, there are 3 with "no information provided." These continue to be requests for previous reports on CGE 48033, there is nothing provided on 1 name out of 7.

The following page, 2 names out of 8 names have "no information provided." I could continue, but I am not going to. I have one other page I want to just show you, out of 8 names there were 7 where there was "no information provided because there was nothing identifiable" located on these requests for previous reports.

Answer. There were apparently quite a few.

Question. It appears that way.

If you could just give me a moment to look at my questions, I think we are wrapping up.

Would you like to ask a few questions?

Mr. STROMAN. Sure.

EXAMINATION BY MR. STROMAN:

Question. I only have a very few.

The document you were just reviewing, you have never seen that before, have you?

Answer. No, sir.

Question. You don't know who compiled that or the basis on which that information was compiled, do you?

Answer. I have not seen it.

Question. I think you testified earlier that in the latter part of 1993, there was a large volume of requests for "Previous Reports" coming in. I think you also testified usually the requests came in on a more staggered basis, is that right?

Answer. Yes.

Question. The large volume of requests that came in, prior to that volume of cases, requests coming in, were there very many requests for previous reports being requested by the Clinton Administration?

Answer. You mean prior to December?

Question. Yes, ma'am.

Answer. No, I don't recall any large number.

Question. Not a large number, but were there unusually small amounts coming in as compared with previous administrations, or were they consistent with previous administrations?

Answer. As compared to previous administrations?

Question. Yes, ma'am. In other words, I thought your testimony was usually you have a more staggered amount. That is, you would have so much this month, so much that month.

Answer. That is correct.

Question. Again, I could be incorrect, but I thought what you were saying was that for a long period of time, you didn't get very many requests for previous reports, and then you got a large amount.

Answer. That is correct.

Question. Is that your testimony?

Answer. That is correct.

Question. I just wanted you to clarify that.

Answer. As I said, I believe that the first request, and you have to understand, we are going back to '93 here.

Question. I understand.

Answer. I think they printed that off the computer, and the computer showed the first request was in like July. That was a little unusual, because ordinarily when they take office in January, within a couple months of so, they start them.

Question. You get them?

Answer. Right. Because the prior administration cleans house.

Question. Right.

Answer. So they start as soon as they can get set up.

Question. But in this instance—

Answer. In this particular case, I don't think we received any until about July, and they were not a lot.

Mr. STROMAN. That is the only question I have. Thank you very much.

EXAMINATION BY MS. TAYLOR:

Question. Ms. Larson, when you said earlier that it was not up to your unit to question the FBI—excuse me, the White House on their requests that are made to you, was that something that was told to you by a supervisor at some time?

Answer. No. We really had no reason to question the White House, unless there was some type of appended matter involved. In those instances, we would call and ask them what is the specific reason that you are interested in them? Other than that, we had the right of assumption that the officials making the request were making the proper request.

Question. And had anything like this, with this inordinate number of requests, ever occurred in any other administration in your history at the FBI?

Answer. Wait a minute now.

Question. Had anything like this particular matter, where an inordinate number of improper requests were made within a 2 or 3 month period, ever occurred in your experience at the FBI?

Answer. You mean knowing that these requests were improper?

Question. Had it ever come to light that something like this had occurred?

Answer. No.

Question. Ever in your history?

Answer. No.

Question. So would there be any reason for you to change your policies from previous administrations?

Answer. No.

Question. I wanted to make the record clear, if I hadn't earlier, about this list that we just were looking at, and that was the list which begins with CGE 04—

Mr. BARCELLA. I was confused by the last answer and the last question. I just want to make sure.

Are you assuming that the requests were inappropriate, were improper? Because you said an inordinate number of improper requests.

Ms. TAYLOR. The FBI, Director Freeh has made a statement, that they were improperly requested.

Mr. BARCELLA. Yes. But I am not sure that she knew that they were improper when they were made.

Ms. TAYLOR. I didn't mean to say you knew they were improper at the time.

The WITNESS. That is the way I took it.

Mr. BARCELLA. I just wanted to make sure you didn't take it wrong.

The WITNESS. I was going on the assumption that since it has come to light and it has been, if through no other reason that our Director did say that, no, this has never happened before.

Ms. TAYLOR. Just to make a record that the list, which is entitled, "Augmented White House Name Check Requests," was a list created by the FBI to send to the White House, so the White House could determine whether there were others in addition to the 331 names initially ordered that they needed to add to that list of improperly ordered files, and I hope that is clear. I have no further questions.

EXAMINATION BY MR. STROMAN:

Question. Just one minute or clarification. When you just indicated that this has never happened before, you mean it has never come to light?

Answer. To my knowledge. To my knowledge.

Question. Thank you.

Answer. This has certainly never come to light before.

Question. Thank you.

Answer. I have no way of knowing if it has happened. So that is why we have had no reason to change our procedures.

Ms. TAYLOR. Thank you.

I have no further questions.

[Whereupon, at 12:43 p.m., the deposition was concluded.]

THE WHITE HOUSE
WASHINGTON

March 23, 1993

002092

TO: FBI, LIAISON
 FROM: BERNARD W. NUSSBAUM
 SUBJECT: FBI INVESTIGATIONS

SUBJECTS NAME Thomason, Harry Z. SS# 431-74-0584

DATE OF BIRTH 11-28-40 PLACE OF BIRTH Hampton, AR

PRESENT ADDRESS 4908 Noeline Encino, CA 91436

REQUEST: Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation: Level I Level II Level III
 Limited Update
 Other

The person named above is being considered for:

White House Staff Position
 Presidential Appointment
 Access

Attachments:

SF 86
 SF 87, Fingerprint Card
 SF 86, Supplement

Remarks/Special Instructions:

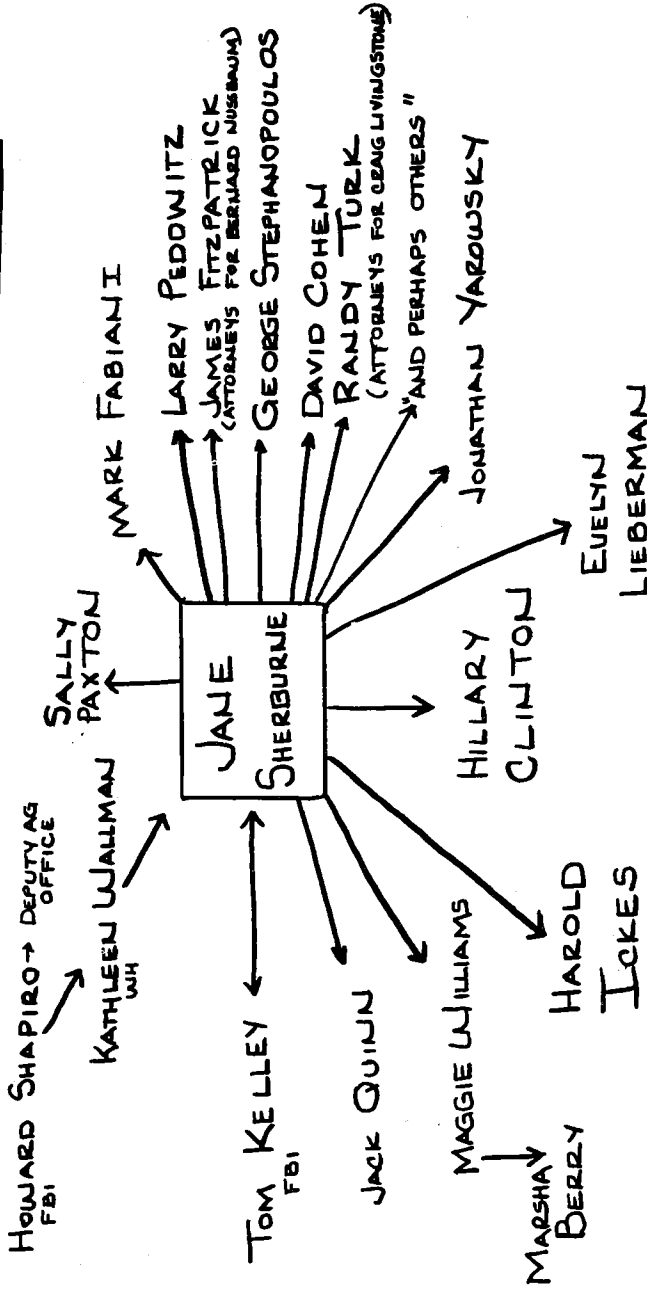
DEX 1
 CGE 018299

Mr. CLINGER. I would ask unanimous consent that this chart showing the people who were contacted with regard to the—to this matter would also be made a part of the record, together with the editorial appearing in the Washington Times today.

Without objection, so ordered.

[The information referred to follows:]

"HEADS UP" CONTACTS BEFORE
CHAIRMAN CLINGER SAW FBI FILE



* CREATED BY GOVERNMENT REFORM AND OVERSIGHT STAFF

The FBI and the files

The FBI has a lot to answer for in the White House's rifling of hundreds of confidential background files of former employees. And today Chairman William F. Clinger and his fellow Republicans on the House Government Reform and Oversight Committee will be asking the questions.

They will, of course, be asking the high ranking FBI officials scheduled to testify in today's hearing the key question of just why the agency was cheerfully handing over reams of documents the White House had absolutely no business seeing. Director Louis Freeh quickly backed off from his initial outraged insistence that he and his agency had been "victimized" by the White House. In any case, the image of the country's chief crime-fighting agency as victims of a White House run amok is only slightly less chilling than that of the FBI as willing participant in the White House's improper shenanigans. Unfortunately, recent FBI actions have done nothing to counter the latter image.

That's where FBI General Counsel Howard Shapiro comes in. The committee, like the rest of us, will be wanting to know what in the world prompted Mr. Shapiro to alert the White House to the fact that Mr. Clinger was about to find something in Craig Livingstone's own background file that would cause problems for both former counsel Bernard Nussbaum and first lady Hillary Clinton. Mr. Clinger had been invited by Mr. Freeh to review the file at FBI headquarters. What he found of particular interest in the file was a 1993 interview with Mr. Nussbaum conducted by Agent Dennis Sculimbrene, which quoted the former counsel as saying Mr. Livingstone came highly recommended by Mrs. Clinton, who knew Mr. Livingstone's mother.

Now, readers will recall that Mr. Nussbaum swore in his testimony before the committee that Mr. Livingstone simply appeared full blown in the security office, and that he had no idea where Mr. Livingstone came from or who hired him. Former Associate Counsel William H. Kennedy III did the same — as did Mr. Livingstone himself. No one associated with the White House, in fact, was prepared to take credit for Mr. Livingstone (though George Stephanopoulos later unflinchingly drew out the late Vince Foster as a possibility).

The one thing everyone was absolutely, positively willing to swear to was that the first lady had absolutely, positively nothing to do with it, and that she'd never met Mr. Livingstone's mother, Mrs. Clinton herself has assured the public — though not under oath — that she had nothing to do with hiring this political hack with a history of drug use, political dirty tricks, and abusive behavior toward women and blacks to head the White House personnel security office. So a contemporaneous investigation of Mr. Livingstone's suitability for the job citing Mr. Nussbaum citing Mrs. Clinton in his favor was obviously an ominous development for the White House.

So why would the FBI's general counsel alert the White House to that ominous development — particularly as he had to be fully aware not only that the White House is under investigation in the matter but that the Attorney General alone had told the FBI to lay off to avoid conflicts of interest? Mr. Shapiro's explanation, in a letter to Mr. Clinger, that he felt it was the FBI's "responsibility to advise effective operations" hardly holds water given that independent counsel Kenneth Starr charged with investigating the Clinton incident,

was not on Mr. Shapiro's little list of affected parties.

An equally disturbing question is why two FBI agents were dispatched — at around the same time as Mr. Shapiro was nohobnobbing with White House counsels — to Haymarket Va. to warn Dennis Sculimbrene in his own home that the White House was worried and concerned about his interview with Mr. Nussbaum, as Mr. Sculimbrene has described the discussion. Mr. Sculimbrene — who conducted hundreds of such interviews and who has since sustained a debilitating head injury — has no memory of the interview but would have had no earthly reason to fabricate Mr. Nussbaum's statement. This all happened three years ago, after all, before anybody had ever heard of Craig Livingstone or cared a fig how he got his job at the White House. Nor should it be forgotten that two other law enforcement officials — former FBI agent Gary Aldrich and Secret Service officer Arnold Cole — have sworn they also heard that Mrs. Clinton was responsible for Mr. Livingstone's hiring.

Sens. Christopher Bond and Richard Shelby have asked Janet Reno to investigate how and why Mr. Shapiro popped off the White House. Whatever his intention — and we can be sure that will be thoroughly discussed in today's hearing — Mr. Shapiro's action had the effect of giving the White House time to get its story in order, to contact Bernard Nussbaum's attorney so that he could get his story in order, and to set the format. Clinton spun his whole motion.

Thus we were treated to the delicious experience of hearing current White House Counsel Jack Quinn was outraged over Mr. Clinger's carelessness with Mr. Livingstone's confidential FBI background file (Mr. Clinger mentioned the Sculimbrene interview in a speech on the House floor). This disclosure by a Republican, Mr. Quinn thundered, was the first instance in which the contents of a background file had been divulged — when, of course, the White House, itself had divulged the information from the background file to Mr. Nussbaum's lawyer soon after getting the heads up from Mr. Shapiro well before Mr. Clinger took to the House floor. Bringing further amusement — and joy to the hearts of Mr. Clinton's staff — was Wednesday's Washington Post editorial, "A Troubling Question for the FBI." Though the unsuspecting reader may have taken the headline as evidence the Post was prepared to recognize the serious abuse of power that seems to have gone on here, the article or she would have been quite wrong. It might not have raised suspicion that the weighty question but routine follow-up and interlocking catnaps at the Post is thus: Do FBI agents falsify interviews they claim to have conducted?

The one agent credibly accused (and, in fact, convicted) of having done such a thing during a White House stint is Halbert Gary Harlow. Unfortunately enough, the editorial neglected to mention that Harlow was also charged with or accused of trying to murder his ex-wife, beating his current wife, stockpiling stolen FBI guns and ammunition in his house and trying to destroy the evidence. The notion that Mr. Sculimbrene (or Mr. Aldrich or Officer Cole) belongs in the same category is an outrageous smear.

It seems clear that the FBI and the White House are getting themselves in deeper at every turn. It also seems clear that Mr. Shapiro's tenure as FBI general counsel must end. And it seems equally clear that the usefulness of Mr. Clinger's investigation and of Mr. Starr's as well, grows by leaps and bounds.

WASHINGTON TIMES 8/1/96

Mr. CLINGER. And I would now further ask unanimous consent that the following deposition transcripts be placed in the record: FBI Agent Bourke, FBI Agent Carner, FBI Agent George, FBI Agent Margolis, FBI Agent Renaghan, FBI Agent Robinson, FBI Agent Schwarz, FBI Agent Sculimbrene, FBI Agent Taylor, FBI Agent Woods. Is there objection?

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, I object.

Mr. CLINGER. Objection has been heard.

Let me say out of respect for our witnesses today, I'm not going to wage a battle over placing these documents in the record at this time. It is ironic, I would note that at each of our previous hearings I have been criticized for not disclosing enough of the deposition transcripts. I even received letters from some in the minority asking that the deposition of Agent Sculimbrene be included in the record today, but I understand that objection has been heard.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman?

Mr. CLINGER. In any case—

Mr. BURTON. Parliamentary inquiry.

Mr. CLINGER. All depositions will be released.

I want to make this announcement, all of these depositions will be released to the public tomorrow; that is, Friday.

Mr. BURTON. Parliamentary inquiry, Mr. Chairman.

Mr. CLINGER. The gentleman will state it.

Mr. BURTON. If an objection is heard, can a vote of the committee be taken to put these in the record?

Mr. CLINGER. It can. I think in view of the fact we do have a long hearing today and these depositions will be part of the record as of tomorrow, it would be my hope that we would not—we would not battle this out at this time.

Mr. BURTON. Mr. Chairman, with all due respect, I think this is a very important part of this investigation. We've had these depositions taken. I really believe that they ought to be part of the committee record, and part of the Congressional Record, and I don't see any reason why they should not be put into the record. I don't understand why the minority is objecting, but I really think we should have a vote on this and put them in the record.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, I would like to have the opportunity to tell the membership why I'm objecting.

Mr. CLINGER. The gentlelady is recognized.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, I am objecting to that request not because I object to the release of the deposition, because it will be subject to release with all the other depositions tomorrow with my concurrence. I'm only objecting because you have objected to our efforts to place depositions of individuals other than witnesses in the record. For example, at our last hearing when Congressman Waxman sought to place into the record the deposition of Cecilia Woods who gave testimony that related to the testimony of Mr. Cole, whose deposition had been made part of the record, you objected. So we—I think we ought to apply the same rules to the minority and the majority, and that's why I objected, and still do.

Mr. CLINGER. I would point out that the specific depositions that I asked unanimous consent be made a part of the record do indeed relate to the subject matter of the hearing that is before us today.

The gentleman from Indiana.

Mr. BURTON. Mr. Chairman.

Mr. CLINGER. Yes.

Mr. BURTON. There's—history will record these hearings for good or ill, and I think that to leave out depositions that are relevant to this, because of objections by minority, is a mistake, and I would urge a vote on this, a roll call vote.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, I would urge some fairness. It seems to me that since Mr. Waxman was not able to insert in the record the deposition of Cecilia Woods, I think it's only fair that we do the same with the majority and the minority, and therefore I continue to object.

Mr. BURTON. All right, Mr. Chairman, I will withdraw my request.

Mr. CLINGER. I thank the gentleman.

We are now prepared to hear the testimony of our witnesses, and if they would please come forward and remain standing.

Lady and gentlemen, it is the custom of this committee that not to prejudice the rights of any witnesses that all witnesses would be sworn.

If you have no objection, would you raise your right hand.

[Witnesses sworn.]

Mr. CLINGER. Let the record show that all of the witnesses answered in the affirmative.

And we would now—please be seated.

I understand, Mr. Shapiro, that you have an opening statement to present at this time.

STATEMENT OF HOWARD M. SHAPIRO, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION; VERNON R. THORNTON, FORMER UNIT CHIEF, EXECUTIVE AGENCIES DISSEMINATION AND PERSONNEL UNIT, FEDERAL BUREAU OF INVESTIGATION; THOMAS KELLEY, FBI INSPECTOR, DEPUTY GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION; AND PEGGY LARSON, SUPERVISORY RESEARCH ANALYST, FEDERAL BUREAU OF INVESTIGATION

Mr. SHAPIRO. Yes, Mr. Chairman, I have an opening statement for three of the members of the panel.

I request permission, as I've mentioned to counsel previously, to go just somewhat beyond 5 minutes.

Mr. CLINGER. That's—that is understood.

The fourth member—

Mr. SHAPIRO. Also, retired Agent Thornton has a statement of his own.

Mr. CLINGER. Very good.

Mr. BURTON. Would Mr. Shapiro pull the microphone a little closer?

Mr. SHAPIRO. Yes, sir.

Mr. CLINGER. Very good.

Mr. Shapiro, you are recognized.

Mr. SHAPIRO. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to appear before you today to answer your questions regarding the access by the White House to FBI records.

Before I discuss the process of providing background reports to the White House and the reforms that we have made, I would like to touch on two issues that were the subject of Chairman Clinger's Floor speech on July 25th and which I know are of concern to this committee: My notification of the White House Counsel's Office of certain information in Craig Livingstone's background investigation file and the interview of Agent Sculimbrene by two FBI agents.

FBI Director Freeh has on several occasions made it clear to every employee that the FBI must be fair and nonpartisan when dealing with sensitive issues that have political implications. It is a principle to which I deeply subscribe.

The decision to simultaneously notify the majority and minority of this committee, the Department of Justice and the White House, about the information discovered in Mr. Livingstone's background file was an attempt to maintain that posture. It was part of an effort to be, and to be perceived to be, evenhanded and impartial. It is apparent that in this case, my effort to convey impartiality, although well-intended and for the right motive, has led to consequences which I regret.

In this instance, what was a good-faith attempt at being nonpartisan has been interpreted as exactly the contrary. I understand fully the concerns that have been expressed, but I can assure you that there was no malicious or partisan motive, nor was there any attempt to interfere in any way with the inquiry being conducted by this committee.

Beginning with the notification Director Freeh made to Chairman Clinger on June 5, 1996, of the discovery that former White House Travel Office employee Barnaby Brasseaux's file had also been provided to the White House inappropriately, we have particularly made efforts to keep this committee informed.

Briefly, here is what happened. When the FBI first learned that committee majority staff wanted to review the background files of Mr. Livingstone and Mr. Marceca, the files were immediately processed for disclosure to them. During that routine processing, a paralegal in my office noticed a statement attributed to Bernard Nussbaum that Mr. Livingstone had been recommended by Mrs. Clinton. This fact was later that same day brought to my attention.

I understood that majority staff from this committee was scheduled to review that file that same afternoon. Because the circumstances of Mr. Livingstone's hiring had already been the subject of a very public controversy and dispute between this committee and the White House, I also decided it was appropriate to notify the White House Counsel's Office. This was a decision which I made and for which I alone am responsible.

My intent was to notify, roughly simultaneously, both the committee and the White House for whom this information had originally been gathered. Knowing that committee majority staff was due to examine the materials that same afternoon, I placed a call to the Justice Department where I advised Dennis Corrigan, the Chief of Staff to the Deputy Attorney General, of the information and of my intent to advise the White House Counsel's Office.

I then called the Counsel's Office and spoke with Deputy Counsel to the President, Kathleen Wallman. Because of a last-minute rescheduling by the committee staff of which I had been unaware,

the majority staff did not in fact see the information until the following day.

In order to ensure that the information was equally available after the staff had canceled their scheduled appointment, we made an extra effort to ensure that committee staff would come to see the files and placed calls to both majority and minority staff to encourage them to do so.

When I notified the White House Counsel's Office, no one there was given access to any documents. The Counsel's Office was advised about the substance of one paragraph and read the text of a single sentence on an issue that had already been widely discussed in the media. The file itself was only made available to Chairman Clinger and a member of his majority staff.

Let me now address the decision to send agents to interview Agent Dennis Sculimbrene July 16th. The purpose of this interview was strictly and entirely for internal FBI reasons, and neither the Department of Justice nor the White House was either notified of it nor given the results of it. It had no partisan or ulterior motive and it was not part of any investigation of the White House files controversy, criminal or otherwise.

Moreover, it was not, as some have suggested, to intimidate Agent Sculimbrene; instead, the purpose was solely to determine whether the information reported by Agent Sculimbrene, and disputed by those reportedly involved, was accurate and reliable.

The record in our files reflecting the interview of Mr. Nussbaum is an unsigned, undated, uninitialed insert on plain paper. It purports to summarize in one paragraph each the interviews with three separate people over a 3-day period.

The date when the summary was prepared is unrecorded. I was advised that the information summarized by Agent Sculimbrene had previously been publicly denied. I knew that Agent Sculimbrene had himself told the Senate Judiciary Committee of a different recollection about this same subject.

I was also well aware of a regrettable recent history of unreliable information emanating from some agents assigned to the White House and, more generally, that questions had been raised by both Houses of Congress about the accuracy of FBI reporting. Accordingly, after the document was brought to my attention, I recognized that the integrity of FBI reporting was likely to be placed in issue. I readily concurred in the recommendation of my deputy to interview Agent Sculimbrene to see what, if any, recollection he presently had of this interview and whether he had any notes or other documentation of the interview.

Agent Sculimbrene was not surprised. He was not ambushed. He was not intimidated. An agent called Agent Sculimbrene, advised him of the purpose—excuse me, advised him of the subject matter and the purpose of the interview and made an appointment to see him. Nearly 2 hours later, two agents arrived at Agent Sculimbrene's home. The interview was brief and cordial. Agent Sculimbrene was cooperative and professional.

The two agents declined to discuss other issues which Agent Sculimbrene tried to raise. They departed on cordial terms after Agent Sculimbrene gave them a tour of his home and discussed his planned retirement home. At no time—at no time did the agents

tell Agent Sculimbrene that the White House was unhappy and concerned about this particular interview; no such thing occurred. Nor is there any reason to believe that Agent Sculimbrene, a 20-year veteran of the FBI, was in any way intimidated. As it turned out, Agent Sculimbrene had no recollection of this particular interview of Mr. Nussbaum and he did not have any notes.

Because I have been advised that the entire Livingstone file had previously been offered to the Independent Counsel and had been declined and that they had raised no objection to the file being made available to the committee for use in your ongoing public hearings, I did not believe that these two questions to Agent Sculimbrene about one document in that file were within the scope of their inquiry. Had I thought otherwise, I would neither have informed the White House nor sent agents to interview Agent Sculimbrene.

In hindsight, my attempt at appearing nonpartisan by keeping the White House and Congress equally informed has obviously failed. It is an outcome I neither intended nor desired.

I am, Mr. Chairman, one of those career officials you made reference to. I do not hold a political appointment nor have I ever. I can assure this committee that the actions I have described were not done for any nefarious nor partisan reason.

My purpose here, as with the internal inquiry I conducted with the provision of FBI file information to the White House, has been to be utterly fair and impartial and to discharge my responsibilities without regard to political consequences.

In the nearly 9 years as a Department of Justice employee, I have never allowed a political calculation to enter into any decision I have made; I am neither competent to do so nor would it be appropriate for me to do so.

Let me depart from my text for a minute to address, Mr. Chairman, your statement about the supposed heads-up to the White House about the Aldrich book.

The first draft of the book provided by Gary Aldrich and his counsel was replete with sensitive internal White House information that went to their internal procedures and went to White House security matters, as well as to the—directly to the result of his conduct of his official business.

I delivered a copy of that to the White House Counsel's Office because, as I in fact somewhat presciently advised them, I could not ensure, the FBI could not ensure that Mr. Aldrich would not go forward and publish that book prior to receiving clearance, and in fact that is what he did.

Let me now address the internal inquiry that produced the report of June 14th that you have cited, Mr. Chairman. This is a report that I wrote and it's based on an inquiry that I conducted in June of this year.

In that inquiry, I found that for more than 30 years, the FBI had been providing background reports and other information to the White House upon request. After examining this process, I concluded that the FBI had failed through the years to afford sufficient protection to the privacy interests of those whose files we maintained.

Unfortunately, in striving to rapidly and efficiently respond to requests from the White House and other agencies, we were not sufficiently attentive to our own responsibilities to safeguard the information in our files against negligent or intentional misuse by others.

As a direct result, the FBI disseminated background information without insisting on proper justification and for no apparent official purpose. This was a massive invasion of privacy.

In response to and without hesitation, Director Freeh immediately implemented a series of procedural changes to assure that such infringements of privacy never recur. These changes have been approved by Deputy Attorney General Jamie Gorelick, and they are now in place.

I began my inquiry on June 5, 1996, at the instruction of Director Freeh, after he learned that the White House had in December 1993 sought background information relating to Billy Ray Dale several months after he had been fired. The following day, I learned from the White House that they were in possession of additional FBI records obtained in the same matter—manner.

By June 13th, additional investigation revealed that the White House had improperly requested previous reports relating to a total of 407 individuals. These files are now in the possession of the Independent Counsel.

The requests relating to these 400-plus individuals sought copies of previous reports, and each provided as its justification the single word "access." No questions were raised by the FBI about these requests, although the unusual volume of this type of request was noted. And they were processed routinely by the personnel of the Executive Agencies Subunit of the Information Resources Division of the FBI, consistent with the guidelines that existed at that time.

As I sought an explanation for these actions, I discovered that the system had been in place through every FBI Director, essentially unchanged since the Johnson administration, and was designed to maximize speed and responsiveness. As a consequence, the FBI processed all facially valid White House requests without reflection.

Even though, as I found, the FBI had acted in compliance with the Privacy Act, we had clearly failed to accord adequate weight to the protection of privacy. Over time, a tradition of considerable deference to the White House had developed and questions were rarely asked.

It should not be forgotten that the provision of background information to the White House and other executive agencies is an integral component of the Federal employment and security clearance systems. Carefully investigated and accurately reported information is essential for making determinations regarding a person's suitability and trustworthiness for employment or access. The FBI personnel who process the requests for this information perform a valuable and necessary service. Nothing in my inquiry suggested any significant failing on the part of these employees.

As to their supervisors, however, I reached a different conclusion. Although I found no intentional misconduct, I found a complete abdication of management responsibility at the level of the unit chief, and the executive level management as well.

What is clear is that a policy of benign neglect cannot be tolerated in areas as sensitive as the dissemination of information from FBI files. Close and active oversight is an essential prerequisite to the fulfillment of our obligation to safeguard the information in our custody. Director Freeh has made it clear that he will tolerate nothing less.

It is incumbent upon all of us involved in this process, at the FBI, the White House, the Congress, and elsewhere in Government to achieve the proper balance between the very real and significant needs of the Government for the information contained in our files and our profound obligation to ensure that the information only be disseminated in appropriate and fully justified circumstances.

In an effort to ensure that this balance is better achieved, Director Freeh implemented a series of procedural reforms and redundant safeguards which will prevent negligent or improper incursions into our files and preclude any such wholesale invasion of privacy from recurring.

First, in an effort coordinated with the White House Counsel's Office, which oversees the White House Office of Personnel Security, we redesigned the manner in which White House requests for information from FBI files must be made to require:

One, either the consent of the person whose files are being reviewed or a letter from the Counsel to the President through the Deputy Attorney General to the FBI General Counsel explaining in writing why such consent cannot be obtained or should not be sought in the circumstances;

Two, that all requests reflect the actual signatures of both the requesting official and of an attorney in the Counsel's Office who will have reviewed and approved the request;

Three, considerably greater specificity regarding the reason for the request;

And four, that a copy of all White House requests for information be provided through the FBI Office of the General Counsel for review.

Nine other changes made by Director Freeh were approved by the Deputy Attorney General, all designed to protect against improper disclosures.

Finally, Director Freeh has instructed the FBI's Inspection Division to routinely audit the entire process to independently ensure absolute compliance with these requirements.

It should be emphasized that the inquiry I conducted between June 5th and June 14th was limited to an examination of the action of FBI personnel. In deference to the wishes of the Independent Counsel, we did not interview any White House personnel involved either in the request for background information generally or in the specific series of requests which occasioned my inquiry. Accordingly, neither I nor Director Freeh reached any conclusion about the actions or motivations of any White House employee.

Let me state again that both in my conduct of the internal inquiry into the provision of FBI file information to the White House and in my actions in deciding to notify the White House Counsel's Office, I have consistently acted according to what I believed was right and appropriate at the time and without, utterly without re-

gard to political calculations. No one regrets more than I do any appearance I may have created to the contrary.

Thank you, Mr. Chairman.

Mr. CLINGER. Thank you, Mr. Shapiro.

[The prepared statement of Mr. Shapiro follows:]

PREPARED STATEMENT OF HOWARD M. SHAPIRO, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you today to answer your questions regarding the access by the White House to FBI records.

Before I discuss the process of providing background reports to the White House and the reforms we have made, I would like to touch on two issues that were the subject of Chairman Clinger's floor speech on July 25 and which I know are of concern to this committee—my notification of the White House Counsel's Office of certain information in Craig Livingstone's background investigation file and the interview of Agent Sculimbrene by two FBI agents.

FBI Director Freeh has on several occasions made it clear to every employee that the FBI must be fair and non-partisan when dealing with sensitive issues that have political implications. It is a principle to which I deeply subscribe. The decision to simultaneously notify the majority and minority of this committee, the Department of Justice and the White House about the information discovered in Mr. Livingstone's background file was an attempt to maintain that posture. It was part of a continuing effort to be, and to be perceived to be, evenhanded and impartial. It is apparent that in this case, my effort to convey impartiality, although well-intended and for the right motive, has led to consequences which I regret.

In this instance, what was a good faith attempt at being non-partisan has been interpreted as exactly the contrary. I understand fully the concerns that have been expressed but I can assure you that there was no malicious or partisan motive, nor was there any intent to interfere in any way with the inquiry being conducted by this committee. Beginning with the notification Director Freeh made to Chairman Clinger on June 5, 1996, of the discovery that former White House Travel Office employee Barnaby Brasseaux's file had also been provided to the White House inappropriately, we have particularly made efforts to keep this committee informed.

Briefly here is what happened:

When the FBI first learned that committee majority staff wanted to review the background files of Mr. Livingstone and Mr. Marceca, the files were immediately processed for disclosure to them. During that routine processing, a paralegal in my office noticed a statement attributed to Bernard Nussbaum that Mr. Livingstone had been recommended by Mrs. Clinton. This fact was, later that same day, brought to my attention. I understood that majority staff from this committee was scheduled to review that file that same afternoon. Because the circumstances of Mr. Livingstone's hiring had already been the subject of a very public controversy and dispute between this committee and the White House, I also decided it was appropriate to notify the White House Counsel's Office. This was a decision which I made and for which I alone am responsible.

My intent was to notify roughly simultaneously both the committee and the White House, for whom this information had originally been gathered. Knowing that committee majority staff was due to examine the materials that same afternoon, I placed a call to the Justice Department, where I advised the Chief of Staff to the Deputy Attorney General of the information and of my intent to advise the White House Counsel's Office. I then called the Counsel's Office, and spoke with Deputy Counsel to the President, Kathleen Wallman. Because of a last minute rescheduling by the committee staff of which I had been unaware, the majority staff did not in fact see the information until the following day. In order to ensure that the information was equally available, after the staff had cancelled their scheduled appointment, we made an extra effort to ensure that committee staff would come to see the files, and placed calls to both majority and minority staff to encourage them to do so.

When I notified the White House Counsel's Office. No one there was given access to any documents. The Counsel's Office was advised about the substance of one paragraph, on an issue that had already been widely discussed in the media. The file itself was only made available to Chairman Clinger and a member of his majority staff.

Let me now address the decision to send agents to interview Agent Dennis Sculimbrene on July 16. The purpose of the interview was strictly and entirely for

internal FBI reasons, and neither the Department of Justice nor the White House was notified. It had no partisan or ulterior motive and it was not part of any investigation of the White House files controversy—criminal or otherwise. Moreover, it was not, as some have suggested, to intimidate Agent Sculimbrene. Instead, the purpose was solely to determine whether the information reported by Agent Sculimbrene, and disputed by those reportedly involved, was accurate and reliable.

The record in our files reflecting the interview of Mr. Nussbaum is an unsigned, undated, uninitialled insert on plain paper. It purports to summarize in one paragraph each, the interviews with three separate people over a three-day period. The date when the summary was prepared is unrecorded. I was advised that the information summarized by Agent Sculimbrene had previously been publicly denied. I knew that Agent Sculimbrene had himself told the Senate Judiciary Committee of a different recollection about this same subject. I was also well aware of a regrettable recent history of unreliable information emanating from some agents assigned to the White House, and, more generally, that questions had been raised by both Houses of Congress about the accuracy of FBI reporting. Accordingly, after the document was brought to my attention, I recognized that the integrity of FBI reporting was likely to be placed in issue. I readily concurred in the recommendation of my Deputy to interview Agent Sculimbrene to see what, if any, recollection he presently had of this interview, and whether he had any notes or other documentation of the interview.

Agent Sculimbrene was not surprised, he was not ambushed, and he was not intimidated. An agent called Agent Sculimbrene, advised him of the subject matter, and made an appointment to see him. Nearly two hours later, two agents arrived at Agent Sculimbrene's home. The interview was brief and cordial; Agent Sculimbrene was cooperative and professional. The two agents declined to discuss other issues which Agent Sculimbrene tried to raise. They departed on cordial terms after Agent Sculimbrene gave them a tour of his home and discussed his planned retirement home. At no time did the agents tell Agent Sculimbrene that the White House was unhappy and concerned about this particular interview. No such thing occurred. Nor is there any reason to believe that Agent Sculimbrene, a 20-year veteran of the FBI, was in any way intimidated. As it turned out, Agent Sculimbrene had no recollection of this particular interview of Mr. Nussbaum, and he did not have any notes.

Because I had been advised that the entire Livingstone file had previously been offered to the Independent Counsel and had been declined, and that they had raised no objection to the file being made available to the committee for use in your ongoing public hearings, I did not believe that these two questions to Agent Sculimbrene about one document in that file were within the scope of their inquiry. Had I thought otherwise, I would neither have informed the White House nor sent agents to interview Agent Sculimbrene.

In hindsight, my attempt at appearing non-partisan by keeping the White House and Congress equally informed has obviously failed. It is an outcome I neither intended nor desired. I can assure this committee that the actions I have described were not done for any nefarious or partisan reason. My purpose here, as with the internal inquiry I conducted of the provision of confidential FBI file information to the White House has been to be utterly fair and impartial, and to discharge my responsibilities without regard to political consequences.

During the course of the internal inquiry I conducted in June of this year, I found that for more than thirty years, the Federal Bureau of Investigation had been providing background reports and other information to the White House upon request. After examining this process, I concluded that the FBI had failed through the years to afford sufficient protection to the privacy interests of those whose files we maintain. Unfortunately, in striving to rapidly and efficiently respond to requests from the White House and other agencies, we were not sufficiently attentive to our own responsibilities to safeguard the information in our files against negligent or intentional misuse by others. As a direct result, the FBI disseminated background information without insisting on proper justification and for no apparent official purpose. This was a massive invasion of privacy. In response and without hesitation, Director Freeh immediately implemented a series of procedural changes to assure that such infringements of privacy never recur. These changes have been approved by Deputy Attorney General Jamie Gorelick and are now in place.

I began my inquiry on June 5, 1996, at the instruction of Director Freeh, after he learned that the White House had, in December 1993, sought background information relating to Billy Ray Dale, several months after he had been fired. The following day I learned from the White House that they were in possession of additional FBI records obtained in the same manner. By June 13, additional investigation revealed that the White House had improperly requested previous reports relat-

ing to a total of 407 individuals. These files are now in the possession of the Independent Counsel.

The requests relating to these 400 plus individuals sought copies of previous reports. Each provided as its justification, the single word, "access." No questions were raised by the FBI about these requests—although the unusual volume of this type of request was noted—and they were processed routinely by the personnel of the Executive Agencies Subunit of the Information Resources Division of the FBI—consistent with the guidelines that existed at the time.

As I sought an explanation for these actions, I discovered that the system had been in place through every FBI Director, essentially unchanged since the Johnson administration, and was designed to maximize speed and responsiveness. As a consequence, the FBI processed all facially valid White House requests without reflection. Even though, as I found, the FBI had acted in compliance with the Privacy Act, we had clearly failed to accord adequate weight to the protection of privacy. Over time, a tradition of considerable deference to the White House had developed, and questions were rarely asked.

It should not be forgotten that the provision of background information to the White House and other executive agencies is an integral component of the Federal employment and security clearance systems. Carefully investigated and accurately reported information is essential for making determinations regarding a person's suitability and trustworthiness for employment or access. The FBI personnel who process the requests for this information perform a valuable and necessary service. Nothing in my inquiry suggested any significant failing on the part of these employees.

As to their supervisors, however, I reached a different conclusion. Although I found no intentional misconduct, I found a complete abdication of management responsibility at the level of the unit chief, and the executive level management as well. What is clear is that a policy of benign neglect cannot be tolerated in an area as sensitive as the dissemination of information from FBI files. Close and active oversight is an essential prerequisite to the fulfillment of our obligations to safeguard the information in our custody. Director Freeh has made it clear that he will tolerate nothing less.

It is incumbent upon all of us involved in this process—at the FBI, the White House, the Congress, and elsewhere in Government—to achieve the proper balance between the very real and significant needs of the Government for the information contained in our files and our profound obligation to ensure that the information only be disseminated in appropriate and fully justified circumstances. In an effort to ensure that this balance is better achieved, Director Freeh implemented a series of procedural reforms and redundant safeguards which will prevent negligent or improper incursions into our files and preclude any such wholesale invasion of privacy from recurring: first, in an effort coordinated with the White House Counsel's Office, which oversees the White House Office of Personnel Security, we redesigned the manner in which White House requests for information from FBI files must be made, to require:

- (1) either the consent of the person whose files are being reviewed, or a letter from the Counsel to the President through the Deputy Attorney General to the FBI General Counsel explaining in writing why such consent cannot be obtained or should not be sought in the circumstances;
- (2) that all requests reflect the actual signatures of both the requesting official and of an attorney in the Counsel's Office, who will have reviewed and approved the request;
- (3) considerably greater specificity regarding the reason for the request; and
- (4) that a copy of all White House requests for information be provided to the FBI Office of the General Counsel for review.

Nine other changes made by Director Freeh were approved by the Deputy Attorney General, all designed to protect against improper disclosures.

Finally, Director Freeh has instructed the FBI's Inspection Division to routinely audit the entire process to independently ensure absolute compliance with these new requirements.

It should be emphasized that the inquiry I conducted between June 5 and June 14 was limited to an examination of the actions of FBI personnel. In deference to the wishes of the Independent Counsel, we did not interview any White House personnel involved either in the request for background information generally or in the specific series of requests which occasioned my inquiry. Accordingly, neither I nor Director Freeh reached any conclusion about the actions or motivations of any White House employee.

Let me state again, that both in my conduct of the internal inquiry into the provision of FBI file information to the White House, and in my actions in deciding to

notify the White House Counsel's Office, I have consistently acted according to what I believed was right and appropriate and utterly without regard to political calculations. No one regrets more than I do any appearance I may have created to the contrary.

Mr. CLINGER. Now we'll recognize Mr. Thornton, I believe.

Mr. THORNTON. Yes, sir. Thank you.

Mr. Chairman and members of the committee, my name is Vernon R. Thornton, and I am a retired FBI Special Agent. At the committee's request, I have flown in from my home in Hawaii to answer questions concerning your investigation of the White House's access to FBI records in 1993.

I began my employment with the FBI on June 18, 1962, in a clerical capacity and was appointed to the special agent position on September 23, 1968. Upon completion of special agent training at the FBI Academy at Quantico, VA, I was assigned to the Albany, NY, FBI Field Office, and from Albany, I was assigned to the Springfield, IL, Field Office and subsequently transferred to FBI Headquarters in Washington, DC.

At FBI HQ, I served in the Intelligence, Criminal Investigative, Inspection, Records Management, and Information Resources Divisions until my voluntary retirement on August the 31, 1995.

One of my responsibilities while assigned to the Information Resources Division was serving as Unit Chief of the Executive Agency's Dissemination and Personnel Unit. My responsibilities as Chief of this unit included managing the FBI's National Name Check Program.

The primary subunit involved in processing name check requests was the Executive Agency Subunit. The day-to-day operations of this subunit were managed by supervisory research analyst Peggy J. Larson. Mrs. Larson, along with other subunit supervisors, reported directly to me.

I initially assumed responsibility for the management of the National Name Check Program in March 1991, following a reorganization within the Records Management Division. During my review of each subunit's responsibilities, I quickly learned that the Executive Agency Subunit was responsible for processing requests from the White House and for FBI file information and that a separate entity, referred to as the White House desk, existed within that subunit to respond to the White House requests.

This White House desk was staffed by two of the subunit's most experienced research analysts under the direct supervision of Mrs. Larson. Mrs. Larson, who at that time had worked for the FBI for 35 years, had spent most of her employment in the National Name Check Program. Mrs. Larson had personally worked on the White House desk for many years before being appointed to a supervisory position, and, because of this, I had the utmost confidence in her handling of the subunit's day-to-day operations, including those affecting the White House Security Office.

During discussions with Mrs. Larson, I was told that there had never been a problem in processing name check requests received from the White House and that the subunit had an excellent working relationship with the White House Security Office.

In November 1993, the FBI's Records Management Division and Technical Services Division were consolidated into the Information

Resources Division. As part of the reorganization, I was assigned responsibilities in addition to the National Name Check Program; specifically, I became responsible for the division's personnel, staffing and position classification matters, space and facilities, security office, mentoring program, and Office of Professional Responsibility matters. Reorganization issues occupied a considerable portion of my time over the next several months.

During this time, I continued to have biweekly meetings with my subunit supervisors and managers as well as individual daily contact to discuss work-related issues. Any problems or issues raised by my supervisors received my immediate personal attention. At no time was the White House name check operation perceived to be a problem.

In December 1993, Mrs. Larson advised me that the research analysts assigned to the White House desk were very busy and requested that I authorize overtime for the employees to enable them to get current with the work. I also recall Mrs. Larson mentioning to me that the number of name check requests being submitted by the White House had increased and this was partially responsible for the backlog of work.

Mrs. Larson also reminded me that one of the research analysts assigned to the White House desk had taken a lot of leave because of a severe heart attack suffered by her husband, and Mrs. Larson did not raise the problem as anything other than routine. If she had, I would have brought this to the attention of my supervisors and, in turn, to the appropriate White House personnel.

This was merely a request from Mrs. Larson for overtime, and I did not consider it to be unusual or significant—or significant since other entities within the subunit routinely required overtime to maintain current with their workload. This is the only time I can recall wherein Mrs. Larson and I specifically discussed a problem pertaining to the White House requests for FBI information, and this problem pertained strictly to the FBI's internal processing of the requests. There was no apparent reason for me to question the legitimacy or validity of these requests.

On a personal note, now that I realize this FBI file information was released to the White House improperly, I sincerely regret it happened. I hope this information is helpful to the committee's inquiry, and I will be pleased to answer any questions.

[The prepared statement of Mr. Thornton follows:]

PREPARED STATEMENT OF VERNON R. THORNTON, FORMER UNIT CHIEF, EXECUTIVE AGENCIES DISSEMINATION AND PERSONNEL UNIT, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman and members of the committee, my name is Vernon R. Thornton and I am a retired FBI Special Agent. At the committee's request, I have flown in from my home in Hawaii to answer questions concerning your investigation of the White House's access to FBI records in 1993.

I began my employment with the FBI on June 18, 1962, in a clerical capacity, and was appointed to the Special Agent position on September 23, 1968. Upon completion of Special Agent training at the FBI Academy, Quantico, Virginia, I was assigned to the Albany New York Field Office. From Albany, I was assigned to the Springfield, Illinois, Field Office, and subsequently transferred to FBI Headquarters, Washington, D.C.

At FBIHQ, I served in the Intelligence, Criminal Investigative, Inspection, Records Management and Information Resources Divisions, until my voluntary retirement on August 31, 1995.

One of my responsibilities while assigned to the Information Resources Division, was serving as Unit Chief of the Executive Agencies Dissemination and Personnel Unit. My responsibilities as chief of this unit included managing the FBI's National Name Check Program. The primary subunit involved in processing name check requests was the Executive Agencies Subunit. The day-to-day operations of this subunit were managed by Supervisory Research Analyst Peggy J. Larson. Mrs. Larson, along with other subunit supervisors, reported directly to me.

I initially assumed responsibility for the management of the National Name Check Program in March, 1991, following a reorganization within the Records Management Division. During my review of each subunits' responsibilities, I quickly learned that the Executive Agencies Subunit was responsible for processing requests from the White House for FBI file information and that a separate entity, referred to as the "White House desk" existed within that subunit, to respond to White House requests. This White House desk was staffed by two of the subunit's most experienced research analysts under the direct supervision of Mrs. Larson.

Mrs. Larson, who at that time had worked for the FBI for 35 years, had spent most of her employment in the National Name Check Program. Mrs. Larson had personally worked on the White House desk for many years before being appointed to a supervisory position. Because of this, I had the utmost confidence in her handling of the subunit's day-to-day operations, including those affecting the White House Security Office.

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On a personal note, now that I realize this FBI file information was released to the White House improperly, I sincerely regret it happened.

I hope this information is helpful to the committee's inquiry. I will be pleased to answer any questions at this time.

Mr. CLINGER. Thank you, Mr. Thornton.

As I understand it, Mr. Kelley, you have no opening statement. Do you have any comments that you would—

Mr. KELLEY. I appreciate the committee's kindness in asking me. But no, I have no statement.

Mr. CLINGER. Thank you.

Ms. Larson?

Ms. LARSON. No, No, sir.

Mr. CLINGER. Very well. I think we will now proceed under the 5-minute rule, and I will ask the first series of questions, if we can activate the clock. My questions go to you, Mr. Shapiro.

On June 21 of this year, Attorney General Reno filed an application for the expansion of the jurisdiction of an Independent Counsel with the U.S. District Court for the District of Columbia to include the Filegate investigation within the jurisdiction of Ken Starr.

Mr. Shapiro, you were aware of that action by the Attorney General, were you not?

Mr. SHAPIRO. I certainly was, Mr. Chairman.

Mr. CLINGER. And you were also aware that in fact the court did so refer the Filegate matter to Independent Counsel Ken Starr?

Mr. SHAPIRO. Yes.

Mr. CLINGER. Were you also aware that Janet Reno stated it would constitute a conflict of interest for the Department of Justice itself to investigate the matter involving an interaction between the White House and the FBI, which is a component of the Department of Justice, and that that was the justification for making that request?

Mr. SHAPIRO. I understood, Mr. Chairman, that Ms. Reno, in her court document, stated it would be a political conflict of interest for the Department of Justice to investigate whether Mr. Marceca violated Federal criminal law in making the request and obviously in any related portion of that investigation; yes, sir.

Mr. CLINGER. You stated in your statement that you felt it was the FBI's responsibility to notify affected parties of information. I think that is what you said. Are you aware of any FBI policy that would require you to notify anyone in a situation like this; is this a matter of FBI policy on the books?

Mr. SHAPIRO. Actually, I don't believe I said that in my statement, Mr. Chairman. I believe I did say something to that effect in the letter that I sent to you on July 19th, and what I—if I can go to that for a second, if you'd permit me. That's, of course, the end of a sentence, not the complete sentence.

Mr. CLINGER. I guess the basic question is, is there a policy in the FBI to notify affected parties in instances like this?

Mr. SHAPIRO. Well, it depends exactly how you would define "instances like this," sir.

What I had said and what I meant to convey, and perhaps didn't use the clearest language in my letter to you, was that on a matter that was of already of considerable public controversy, that in this investigation we had sought to treat everyone evenhandedly—

Mr. CLINGER. Right.

Mr. SHAPIRO [continuing]. In both the Congress and the White House.

Is there a specific written policy about it? None that I'm aware of, sir.

Mr. CLINGER. And particularly, wouldn't that be the case where the Attorney General had herself indicated that this was a matter that the FBI should not be involved with?

Mr. SHAPIRO. Well, I think I've made it clear, Mr. Chairman, and I understand you may disagree with me on this, but that I did not understand, I did not think that this information specifically was at the time part of the Independent Counsel's investigation. I have

said quite clearly that had I thought that, I never would have told the White House.

Mr. CLINGER. The White House didn't really have any need for this information, did it?

Mr. Nussbaum and Mr. Livingstone had already left the White House, had they not?

What would be the purpose of informing the White House since the principals that were alluded to in the statement were no longer employed by the White House?

Mr. SHAPIRO. Again, Mr. Chairman—and I'm sorry that I can't make this any clearer than I've said—my purpose was, in a matter that had already achieved great public controversy, that the FBI not be seen on one side of this controversy or another and that we be seen as evenhanded.

Mr. CLINGER. All right.

Mr. SHAPIRO. I certainly recognize that my effort there failed.

Mr. CLINGER. Now, you speak about being evenhanded. You did in this case call and read the information, the pertinent information, over the phone to an individual in the White House. You didn't personally call and read the information to anybody on the committee or, indeed, anybody in the Independent Counsel's Office, did you?

Mr. SHAPIRO. Let me address both of those, if I might, Mr. Chairman.

Again, I didn't call the Independent Counsel's Office because it was my understanding, based on their both having no objection to our providing it to your committee for your public hearings about this and their declining an offer of the file themselves, that this was not a matter which they were interested in. That's why I didn't call them.

I didn't call your committee, sir, because at the time I called the White House, your investigative counsel was scheduled, to my knowledge, to be there within the hour to read it herself, whereas no one from the White House was scheduled to be there to read it.

Mr. CLINGER. We have been interviewing FBI agents as part of our investigation into this whole FBI files matter. Director Freeh indicated he did not want the committee to question line agents about matters included in background investigations which they had conducted, and, as a result of that, the director requested that I review the background files rather than question the line agents about the investigation.

Were you, Mr. Shapiro, aware of this request by the director, that I—that the committee not interview agents directly about background information?

Mr. SHAPIRO. Yes, sir, I was aware of that.

Mr. CLINGER. And isn't that why your agents reviewed Mr. Livingstone's file?

Mr. SHAPIRO. I'm sorry, which agents would that be, sir?

Mr. CLINGER. The—I mean that you went into Mr. Livingstone's background file, did you not, as a result of the request from this committee?

Mr. SHAPIRO. A paralegal working for me processed that file for discovery to you, for dissemination to you, processed them, looking to see if there were any individuals who had specifically requested

confidentiality and that their names not be disclosed. That's why people went in, in order to make it available to you and your majority staff; yes, sir.

Mr. CLINGER. Did you confer or consult with anyone before making the determination to contact the Justice Department? Or did you confer, consult, with anyone prior to contacting the White House?

Mr. SHAPIRO. Yes to both, Mr. Chairman. I discussed the matter with my deputy, Mr. Kelley here, or briefly at least advised him of that, that I was intending to do that. I discussed the matter with John Collingwood, the chief of the FBI's Office of Public and Congressional Affairs. Then I, before calling the White House, I placed a call to Dennis Corrigan, Chief of Staff to the Deputy Attorney General.

Mr. CLINGER. Just one final question. When you talked to the Department of Justice, wasn't—didn't anybody there give you any indication that since this matter was—had been referred to Independent Counsel that it was something that the FBI should not be pursuing or involving itself with?

Mr. SHAPIRO. No, sir. Obviously had they done that, I probably would have stepped back, taken a second look at it, and not have made the decision which has caused me to be here today.

Mr. CLINGER. Mrs. Collins.

Mrs. COLLINS OF ILLINOIS. Mr. Shapiro, one of the reasons you give in your opening statement for interviewing Agent Sculimbrene about his 1993 interview with Mr. Nussbaum is the inconsistent statement that Agent Sculimbrene gave to the Senate Judiciary Committee.

Now, is that the interview that committee majority staff conducted on June 19 where he stated Mr. Kennedy told him that Mr. Livingstone got the job because of his mother's connection with the First Lady?

Mr. SHAPIRO. Yes, Mrs. Collins. I can't vouch for the date, but that was the information. I was aware that was inconsistent.

Mrs. COLLINS OF ILLINOIS. Are you aware of, on June 25, the Wall Street Journal reported that Agent Sculimbrene is attributed to claiming that both Mr. Kennedy and Mr. Livingstone told them that Mr. Livingstone's mother knew Mrs. Clinton?

Mr. SHAPIRO. I don't recall whether I was aware of that then. I have become aware of it since, that's for sure.

Mrs. COLLINS OF ILLINOIS. Are you aware, as I said in my opening statement, that in the sworn statement to this committee, Mr. Sculimbrene changed his story again and testified that Mr. Kennedy didn't tell him that Mr. Livingstone got his job because of his mother's connection with the First Lady, that he said that it was Mr. Livingstone who told him that?

Mr. SHAPIRO. I was not aware of that at that time.

Mrs. COLLINS OF ILLINOIS. In that same sworn statement, Mr. Sculimbrene was asked if he would ever have recorded in Mr. Livingstone's background investigation statements whether Craig Livingstone's mother knew Hillary Clinton, and Mr. Sculimbrene responded, "No."

He was then asked why he wouldn't have recorded the information in Mr. Livingstone's FBI background file, and he responded

that that's an agent's call and since—I'm quoting him now—he said, "That's an agent's call, and since I really didn't know whether it was true or not, it was more or less irrelevant."

I'm aware, Mr. Shapiro, that Agent Sculimbrene claims that he suffered memory loss from an unfortunate accident, but would these types of inconsistent statements give you any concern about the accuracy of the interviews?

Mr. SHAPIRO. Yes, ma'am. And I was aware of some of them. I don't know which of them my deputy was aware of at the time that he recommended, and I concurred that we send somebody out there.

Mrs. COLLINS OF ILLINOIS. And when you sent somebody out there, what happened?

Mr. SHAPIRO. Well, we sent two agents. The agents called and made the appointment to go out there. They went out and asked him the sort of narrow questions about whether he had any recollection of this interview and whether he had any notes or documentation of it. He neither had a recollection of it nor notes or documentation, though he did say that the document was in the form that he would typically prepare.

Mrs. COLLINS OF ILLINOIS. There was a letter dated July 22 from Richard Hauser, who is an attorney representing Mr. Sculimbrene, that went to you regarding the FBI's interview of him. Are you familiar with that letter?

Mr. SHAPIRO. Yes, I am.

Mrs. COLLINS OF ILLINOIS. In that letter, Mr. Hauser states that Mr. Sculimbrene was unexpectedly visited at his home in Haymarket, Virginia, by two agents for the purpose of conducting an urgent interview. Is that a true statement?

Mr. SHAPIRO. It is not a true statement to the extent I am aware of the facts.

Mrs. COLLINS OF ILLINOIS. Can you tell us what happened?

Mr. SHAPIRO. As far as I'm aware, it was neither unexpected nor was there any indication it was urgent.

Agent Duncan Wainwright contacted Agent Sculimbrene on the telephone at approximately 9:15. He told him basically the subject matter of the interview that he wanted to conduct. Agent Sculimbrene said fine, he should be there. They set a time at 11.

Agent Sculimbrene was very accommodating. He said, "Let me go out and put back up the numbers on my mailbox so you can find my home. I've taken that down because the media has been hounding me." He put that back up. They got there at 11, and they had a brief and cordial and professional interview.

Mrs. COLLINS OF ILLINOIS. Well, Mr. Hauser goes on to state that Agent Sculimbrene submitted to the interview after receiving assurances that the subject of the interview was not related to the White House Travel Office, and then he states that he was surprised to subsequently learn that the focus of the questioning was an interview that was conducted by Agent Sculimbrene in 1993.

The question is, did the FBI surprise Mr. Sculimbrene and his attorney about the focus of the interview?

Mr. SHAPIRO. The answer is no, and, in fact, the agents spoke with Mr. Hauser prior to initiating the interview. They told him—or so they tell me—what they specifically wanted to ask him about,

and he commented to the agents that the reason for doing the interview seemed reasonable to him and that he had no objection to it. They then went on to do it.

We have—we sent Mr. Hauser back, as you can imagine, a letter disputing a number of the allegations in there, and he subsequently acknowledged to my deputy that he was not quite sure of some of the allegations he had made.

Mrs. COLLINS OF ILLINOIS. How do you explain these inaccuracies—the inaccurate statements made by his attorney?

Mr. SHAPIRO. I don't know the answer to that, Mrs. Collins.

Mrs. COLLINS OF ILLINOIS. In Chairman Clinger's Floor statement, he said that FBI agents who were sent to interview Agent Sculimbrene about his 1993 interview with Mr. Nussbaum told Mr. Sculimbrene that the White House was unhappy and concerned about this particular interview and about what had been said about Bernie Nussbaum. You've indicated in your opening statement that this was not the case.

From your discussion with the FBI agents who interviewed Mr. Sculimbrene, can you tell us generally what the agents said to Mr. Sculimbrene?

Mr. SHAPIRO. I can tell you very specifically that they both very adamantly state that they never said anything of that kind whatsoever, that they said they wanted to ask him if he had any recollection of a particular interview of Bernard Nussbaum; that they showed him the document; he read it; they asked him if he recalled doing that interview; he said he recalled interviewing Bernard Nussbaum on a number of occasions but did not specifically recall that. And they asked him if he had any notes, and he said he didn't, he had routinely destroyed them, as he would have.

And he did say that he seemed to recall Craig Livingstone telling him that his mother—where's the—let me get this correct. Let me refer to the document, if I might.

Mrs. COLLINS OF ILLINOIS. While you're looking for that, can you also answer whether anybody on the committee called you to get the agents' version of what they said to Mr. Sculimbrene before Mr. Clinger's Floor statement?

Mr. SHAPIRO. Oh, no, ma'am. The first I was aware that this was even an allegation was when I heard Chairman Clinger state it on the Floor of the House.

If I could finish the earlier question: He, Agent Sculimbrene, advised that he had no recollection of being told by Mr. Nussbaum about Livingstone having been recommended by Hillary Clinton, but he said that he did recall Livingstone telling him that his—Livingstone's—mother was a friend of Hillary Clinton's.

Mr. CLINGER. The gentlelady's time has expired.

Mrs. COLLINS OF ILLINOIS. Thank you, Mr. Chairman.

Mr. CLINGER. I recognize the gentleman from Indiana, Mr. Burton, for 5 minutes.

Mr. BURTON. I want to make sure I understand this correctly, Mr. Shapiro. You believe there should be fair and equitable treatment between the parties concerned, right?

Mr. SHAPIRO. Yes, sir.

Mr. BURTON. And yet on July 15, on Monday, you contacted the White House, and every one of these people, every one of them,

knew about all of this information before our committee and before the chairman did. Why is that?

Mr. SHAPIRO. Mr. Burton, I contacted a single person in the White House Counsel's Office.

Mr. BURTON. I know you did. But, you know, that's—that's like pouring water into a—into a strainer. It's going to go everywhere, you know.

Everybody in the White House knew about this before the relevant committee and the committee members. The chairman didn't know about this, neither did the counsel for this committee, and yet that is supposed to be fair and equitable treatment.

Mr. SHAPIRO. Can I address that, Mr. Burton? I believe there's a question to me there.

Mr. BURTON. I don't believe that's a question. That's a statement. That is a statement.

Mr. SHAPIRO. OK.

Mr. BURTON. I don't think that's fair and equitable treatment.

You are also talking about being nonpartisan. In Mr. Aldrich's book before it was published, you took it over to Jack Quinn, the Counsel to the President, and I believe you said that in your sworn deposition—I can't find that right now—that you didn't—you didn't take that over there for review; is that correct?

Mr. SHAPIRO. No. I said I did not take it there for them to participate in our prepublication review.

Mr. BURTON. Here is your deposition.

Mr. SHAPIRO. Can I see my deposition, sir? It has not been made available.

Mr. BURTON. It's in your deposition, but I'll read it to you. It says, "Since I haven't been invited"—

Mr. SPRATT. Mr. Chairman, can the committee make the document available to the witness if you're going to cross examine him from it.

Mr. BURTON. His counsel reviewed it last night.

Mr. SHAPIRO. Reviewed it last night. I would like to see it.

Mr. SPRATT. He asked to see it.

Mr. SHAPIRO. And I'm requesting it.

Mr. CLINGER. The clerk will provide the witness with a copy of the statement.

Mr. BURTON. I hope this doesn't take away from my time.

Mr. MICA. Mr. Chairman, suspend the gentleman's time.

Mr. CLINGER. We will suspend the time.

What page of the deposition?

Mr. BURTON. This is page 83, Mr. Chairman.

Mr. CLINGER. Page 83.

Mr. SHAPIRO. I'm sorry, page 83?

Yes, sir. Thank you.

Mr. CLINGER. Restart the time.

Mr. BURTON. In your deposition—you have it in front of you—it says, "I hadn't ever thought that that was a question since I hadn't invited them to have anything to do with the review process." And yet just recently in your testimony today, you said you asked them to review the manuscript for accuracies.

Mr. SHAPIRO. The review process that I am referring to was in response to previous questions about prepublication review, a proc-

ess undertaken at the FBI. I did not ask—and I have not stated to the contrary—the White House to participate in our prepublication review process.

Mr. BURTON. What were they doing?

Mr. SHAPIRO. I was giving it to the White House because the original draft of that document revealed all sorts of sensitive internal White House procedures, White House security matters and others.

I knew that Mr. Aldrich could publish that document, as he did, without waiting for our approval, without—without concurring with our objections, and that they should know and have it in their hands before internal White House procedures were disseminated to the world.

Mr. BURTON. When did the White House become a part of this review process for the FBI?

Mr. SHAPIRO. They were not made a part of the review process.

Mr. BURTON. Then why did you do that?

Mr. SHAPIRO. I'm sorry, sir. I thought I just explained that.

Mr. BURTON. Not to my satisfaction.

Let me just ask you this question. Janet Reno said on June 20th that she concluded this would be a conflict of interest for the Justice Department to investigate the matter involving an interaction between the White House and the FBI, a component of the Department of Justice, and yet you sent two FBI agents out to see Mr. Sculimbrene.

You also sent all this information over to the White House, to Kathleen Wallman, who gave it to Jane Sherburne and everybody else at the White House on June the 15th before our committee did.

Does that seem to fly in the face of what the Attorney General said because—and that's why she wanted to turn this over to the Independent Counsel, because it would appear there would be a conflict of interest for the FBI to be involved in all this investigative process?

Mr. SHAPIRO. Mr. Burton, we—my intent in calling the White House was to tell them simultaneously or roughly simultaneous with the committee.

Responding to an earlier statement of yours that I intended to disseminate it to the world through the White House prior to the committee knowing, at the time, Ms. Olson was scheduled to be over within the hour to see the same information. She, in fact, canceled that at the last minute and came the following day, at our urging to come the following day, to make sure that then the White House did not have advance notice.

We took steps to ensure—to encourage the committee staff to come in order to make it as simultaneous as possible.

Mr. BURTON. But you called over and read all this information to the White House.

Mr. SHAPIRO. A single sentence, sir, yes.

Mr. BURTON. But you did not call the Independent Counsel whom the Attorney General of the United States wanted to charge with this responsibility.

Mr. SHAPIRO. Wanted to charge with a criminal investigation of the provision—the acquisition and request for FBI files from the White House.

Mr. BURTON. You don't think you're splitting hairs here?

Mr. SHAPIRO. I didn't think so at the time, no.

Mr. BURTON. Do you now think you split hairs?

Mr. SHAPIRO. I don't think I'm splitting hairs. I can understand how, in retrospect, one can see this as part, a peripheral part, of their investigation.

Mr. BURTON. Can you understand why the Congress of the United States and the investigative committee would be a little bit concerned, when we were told that this was being turned over to the Independent Counsel because of a possible conflict with the FBI, that you folks continued to go out and see individuals like Mr. Sculimbrene and went ahead and gave information to the White House before you gave it to the committee?

Don't you think that would seem a little bit of concern to the Members of the Congress that's investigating this?

Mr. SHAPIRO. Again, we didn't interview people like Agent Sculimbrene. There wasn't a series of interviews here. There was not an investigation. There was a single decision to interview Agent Sculimbrene about a matter which had been hotly contested and disputed about our internal concerns about the——

Mr. BURTON. You——

Mr. SHAPIRO. Excuse me, sir—about the integrity of FBI reporting.

Some very serious and troubling questions had been raised, in part by a subcommittee of this committee, about the integrity of FBI reporting, and our concern was that there was an FBI issue here, wholly apart from—wholly apart from any criminal or congressional investigation into the other questions relating to the files.

Mr. BURTON. When your agents went out there, his attorney was not there. He was informed on very short notice they were coming out, and so he was there by himself when your two agents went out; is that correct?

Mr. SHAPIRO. Whenever we interview our employees, they are usually there by themselves; yes, sir.

Mr. CLINGER. The gentleman's time has expired.

The Chair now recognizes the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Mr. Shapiro, I thank you for your testimony. You are a very credible witness. You have told us exactly what happened on this issue, and I think your testimony speaks for itself.

Mr. SHAPIRO. Thank you, sir.

Mr. WAXMAN. What it says to me and the American people is, again, the Republicans are digging another dry hole.

Let's, if I could use my time, just set out for the press and the American people what has happened with this committee. It really is quite astounding.

There has been an enormous waste of taxpayers' money for this committee to do the depositions. I think there are close to 70 depositions that have been taken, hours and hours of activities by the

staff and everyone else, all paid by the public. And what has this committee taken us to?

Well, we started off with an accusation that there's some kind of enemies list being accumulated at the White House and that this is a very serious charge, and we started to look at whether that charge was accurate. There is no evidence of that at all.

The only thing this committee has uncovered is that there were two people involved in getting the files for the White House from the FBI from the list provided to them by the Secret Service and they were not doing it competently.

We then heard from this committee, the Republican majority, well, that couldn't be true because the Secret Service files are always correct. But then we found out that the Secret Service files are replete with errors.

The Secret Service does not take anybody off the list in terms of having access to the White House until they turn in their pass. So someone like James Baker didn't turn in his pass, and the Secret Service kept him and other people on the list.

We then had the chairman make a very serious accusation. He went to a press conference and said that Bernard Nussbaum—in fact, what Nussbaum was trying to do was to order the FBI files on Billy Dale. That turned out to be inaccurate. The chairman never was willing to make an apology when he found out it was wrong.

Then the inquiry was no longer on the files; it was no longer on something for which they had no evidence. Suddenly we have a hearing on whether Craig Livingstone was hired because his mother was a friend of Hillary Clinton's.

Come on. Give me a break. There was no evidence of that other than a statement by Mr. Sculimbrene in the FBI file. That's the only evidence of it. Mr. Nussbaum was asked about it, and he declared under oath it's not true. Mrs. Clinton was asked, and she said she didn't know Mrs. Livingstone. Craig Livingstone denied it; Bernard Nussbaum denied it; William Kennedy denied it.

You have all these people who have firsthand information about this issue, they've all denied it under oath, and yet the chairman went to the House Floor, having gotten this information from the FBI files, and made it public. This is the only invasion we have of the FBI file privacy.

There's no evidence that the White House used FBI files in an improper way and invaded people's privacy—that was the original reason for this investigation—no evidence of anybody at the White House doing it. Now we have a clear demonstration of the chairman doing that.

Now I just think that what we have in this long exhaustive investigation is the spreading of innuendo, of partial and improper statements, half truths, in order to attack President and Mrs. Clinton and anybody else that gets in the way of this committee in trying to get to the Clintons. And I think that the American people and the press ought to take note of that fact.

Then the issue no longer was whether Craig Livingstone's mother was friends with Hillary Clinton, because that obviously doesn't stand up. The question is, did Bernard Nussbaum think that was the case? Well, if Bernard Nussbaum thought that might have been

the case when he talked to Mr. Sculimbrene, that's not a controverted decision. That is not an internal inconsistency in Mr. Nussbaum's statement. That is a contradiction with Mr. Sculimbrene's statement.

Now I wrote to the chairman of the committee, and I pointed out to him, Democrats weren't there at that deposition because, under the rules, we were supposed to have been given notice of Mr. Sculimbrene's deposition, and we weren't given adequate notice, and we weren't there.

Then I inquired whether we had a copy that deposition. I was told by the Republican staff, oh, no, there's no copy of that deposition. In fact, there was one. A full 10 days later, after I tried to get the deposition, we found out that there was a copy.

I wrote a letter to the chairman saying, did you do anything to find out whether there was some independent accuracy to Mr. Sculimbrene's statement? As far as I know, he never even did the simple thing of calling Mrs. Livingstone and asking her that question.

This committee is not doing a fair job. They're not trying to get to the truth. They're trying to use the House of Representatives and the committee process and the deposition process for partisan political motives.

And if there's some wrongdoing, the independent investigator is supposed to investigate that.

Give the evidence to the independent investigator and ask him to look at it, Mr. Chairman, not go to the House Floor and make a serious accusation and say, "I don't know whether it's accurate or not, I just want the American people to know about it."

The press is being used. The press would never report these kinds of statements if they had as little evidence as the chairman has. But once the chairman makes an accusation, then the press uses that accusation and sets it out; and then there is a denial; and the majority of the American people in a late poll think that the original accusation was accurate, that the White House had an enemies list, when in fact that claim has been discredited.

Mr. CLINGER. The time of the gentleman has expired.

The Chair recognizes Mrs. Morella, the gentlelady from Maryland.

Will you yield?

Mrs. MORELLA. Yes, Mr. Chairman.

Mr. CLINGER. We are not talking about whether or not Craig Livingstone's mother recommended. We are asking the questions as to whether the statement of Mr. Nussbaum said he heard from Hillary Clinton that this was the man they wanted in that job.

Mr. WAXMAN. Mr. Chairman, I ask Mr. Sculimbrene be brought before the committee. Have you given a response to that?

Mr. CLINGER. We will take that under consideration.

I now recognize the gentlelady from Maryland.

Mrs. MORELLA. Thank you, Mr. Chairman.

I want to commend you for your outstanding work in trying to allow us as a committee to piece together this jigsaw puzzle of very troubling issues.

This started with the White House Travel Office employees situation and led to this chain of troubling discoveries about the involvement of both the White House and the FBI.

Frankly, in response to what my colleague had said, I was here for the last hearing we had, and the Secret Service, I thought, comported themselves with great demeanor and integrity and reflected the fact that they are dedicated public servants who protect the President.

I also want to point out that the FBI Director, Louis Freeh, suggested that Chairman Clinger review Mr. Livingstone's FIB background file, and what Chairman Clinger found contradicts statements in sworn testimony of White House officials, and when he announced this on the House Floor as part of his legislative duty, he was not the first to reveal this information. The FBI had given a heads up to the White House about Mr. Livingstone's file before Mr. Clinger even reviewed it, setting off a chain of telephone calls to White House officials, and the FBI sent agents to the home of Dennis Sculimbrene, the agent interviewed, who interviewed Mr. Nussbaum during Mr. Livingstone's background checks, to let him know that the White House was not happy with that routine interview over 3 years ago.

All of that on top of the fact that I and the American public have been very concerned about the FBI's role all along, wondering how the FBI could have processed this unusual number of requests without question.

But I have a few questions. I would like to basically direct them to Ms. Larson, who has been a great public servant, who has given 32 years to this profession and position. I want to clarify some things.

Ms. Larson, a lot of people are confused by all of the different processes and checks that are going on in the FBI. I want to make sure that everyone understands that a copy of a previous report is something entirely different from a name check, a full background investigation, a limited update, or any of the other various requests that the White House can make of the FBI.

Our investigation concerns the Clinton administration's requests of hundreds of Republican administration officials' FBI background files. The White House requested copies of previous reports from the FBI, and that is what was sent to the White House.

When responding to my questions, I wonder if you would focus on copies of previous reports only, although I do realize that your unit performs other functions.

Ms. Larson, you were the supervisory research analyst at the executive agency's dissemination subunit during the period December 1993 through February 1994; correct?

Ms. LARSON. That is correct.

Mrs. MORELLA. Your subunit handled requests for copies of previous reports in the White House, did it not?

Ms. LARSON. That is correct.

Mrs. MORELLA. I want to be sure that everyone is clear on what a copy of a previous report is. When you compile a copy of a previous report, someone in your unit obtains the entire file and looks through all of the summary reports and memoranda and deter-

mines what was previously sent to the White House. Those memoranda are then copied and sent to the White House.

I am just looking for some general understanding of the procedure. I realize I may have left out some details, but is that basically correct?

Ms. LARSON. Basically, yes. The copies of previous reports actually to us are probably summary memorandums which were the results as conducted by the background investigation unit. Rather than as a report, they go in summary memorandum form.

Mrs. MORELLA. I believe that your subunit would place a stamp on the back of the first page of any document which was sent to the White House. The stamp would identify the document as being sent to the White House per a request for a copy of a previous report and would have the date and the initials of the analyst that is involved. Is that correct?

Ms. LARSON. That is correct.

Mrs. MORELLA. Basically what you were trying to do is recreate a file that the White House had at one time; is that accurate?

Ms. LARSON. Well, the reason for our dissemination stamp is because, this way, we have a tracking system. We know who requested it, when it came in, when it went out, and the individual responsible.

Mrs. MORELLA. So it would be pretty obvious that anybody who saw it would know who was responsible—

Ms. LARSON. If they came upon it in the future.

Mrs. MORELLA. Did there come a time in late 1993 and early 1994 when you began to receive a large amount of requests for copies of previous reports?

Ms. LARSON. Yes, ma'am.

Mrs. MORELLA. In your 32 years of experience with your unit, can you recall another instance when you received more than 400 requests for copies of reports within a 2- to 3-month period?

Ms. LARSON. Probably not within a 2- to 3-months period. It is not unusual that we would have received that many requests over a longer period of time, but I can't recall in that short period of time.

Mrs. MORELLA. Did you report the unusual number of requests to your supervisor?

Ms. LARSON. I made Mr. Thornton aware of the fact that we did have an increase in the number of requests for prior backgrounds only. I only brought it to his attention because I was going to have to get some overtime. I believe it is in the record that one of my employees, her husband was ill and the other analyst was rather backed up.

Mrs. MORELLA. Did he indicate that he would followup on this? I wondered what his response was.

Ms. LARSON. His response was, did I have enough help, and how much overtime did I need, and were there any problems. I said no, that just because of one of them being out, that the other analyst was in need of overtime. He said that was fine. But as far as the nature of the request, there was no problem with that.

Mrs. MORELLA. Mr. Thornton, can you respond to that?

Mr. SCHIFF [presiding]. Just responding to that same question.

Mrs. MORELLA. Following up when she made the comment to you about the unusual number—

Mr. THORNTON. When Mrs. Larson brought this matter to my attention, as I indicated in my opening statement, it was not a matter of bringing it as a problem with the requests or the extraordinary number of requests; it was, as I saw it, strictly to ask for overtime to process requests, and this was around the time of the holidays and so forth.

As I indicated earlier, one of our research analysts assigned to the White House desk had taken an extraordinary amount of leave due to the illness of her husband, so I did not look at this request from Mrs. Larson as being anything other than a routine request for overtime. It was not presented to me as, "The White House is asking for a large number or volume of previous reports, and this is unusual; do something about it;" it was not presented in that light at all.

Mrs. MORELLA. I guess I am surprised that you would not have surmised that this was an unusual—

Mr. SCHIFF. The lady's time has expired.

Mr. Spratt, you are recognized for 5 minutes.

Mr. SPRATT. Mr. Shapiro, thank you for an excellent statement—forthright, and, as far as I am concerned, you have no apologies to make to anyone.

Let me ask you, under what authority were the files of Mr. Marceca and Mr. Livingstone made available to this committee?

Mr. SHAPIRO. Let me take a step back just to explain the sequence of events there.

Mr. Clinger and his staff—his staff were deposing agents of the FBI, line agents, and asking them questions about their background investigations. Mr. Freeh, the director, wrote a letter to Mr. Clinger on July 10th talking about our long-standing policy to try and shield line agents and particularly our concerns to have them deposed about information that they did in background investigations and offered, if necessary, as a substitute that the files themselves be made available. So they were. A request came in letter form, and they were.

Mr. SPRATT. You spoke earlier about this practice sort of growing up about anyone taking an intense look at which files were made available, what sort of need to know there was—

Mr. SCHIFF. Mr. Spratt, I believe we will complete your questioning and recess after that.

Mr. SPRATT. Are we recessing now?

Mr. SCHIFF. I would like you to complete your questioning. I will give you an extra minute because of the interruption of the bell.

Mr. SPRATT. What sort of safeguards and sanctions under the law apply to the use of these files once they are made available to committee staff or to members of the committee, to the Independent Counsel?

Mr. SHAPIRO. Well, this is a somewhat unprecedented occurrence. In the past, as far as I am aware—and I have consulted with others who have been at the Bureau much longer than I—background investigative files have never been made available to Members of Congress or their staff outside of the confirmation process.

In the confirmation process with the various Senate committees, there are very detailed MOU's that govern how the information will be provided to the Senate and the Senators and their staff and what, if anything, they can do with it.

This request, as far as I know, and this offer by Director Freeh was in all respects unprecedented. There is nothing that governed—since the Privacy Act does not govern the Congress, there is nothing in that I am aware of that actually limited its use.

Mr. SPRATT. So if a non-Member of Congress or a noncongressional staff member had obtained access to these files—say it is a paralegal working in the Independent Counsel's Office who has access to the file, and then releases this information to the public and to the media—what sanctions would apply to that individual under the Privacy Act? What penalties would apply?

Mr. SHAPIRO. Depending on the motivation, the possibility of criminal and civil penalties exists, sir.

Mr. SPRATT. What is the statutory citation? Is it the Privacy Act itself?

Mr. SHAPIRO. The Privacy Act, 5 United States Code, section 552(a).

Mr. SPRATT. So for everybody except a Member of Congress, for whom this act is not made applicable, the disclosure of information from a confidential personal file is a criminal violation of the law; is that correct?

Mr. SHAPIRO. If it is done without falling into one of the exceptions of the Privacy Act, yes, sir.

Mr. SPRATT. Given this incident, do you think there should be some consideration given to safeguards and sanctions when anybody—a Member of Congress, staff, whoever it may be—obtains access under extraordinary circumstances to the contents of these files?

Mr. SHAPIRO. Well, sir, prior to this incident, the Deputy Attorney General had instructed me to have my staff look into the full universe of the possibility of who would get access to the FBI files.

As you know, we had already looked very carefully at the White House access, but she asked us to look across the board to cover congressional access as well as other executive branch access.

Mr. SPRATT. You testified that you found that, going back to the Johnson administration, this process of obtaining these files had become very loose and not very rigorous. If the White House wanted it, they would simply say access, and on the most perfunctory sort of basis they would be provided access.

Have you found, in looking into the past, similar cases where there was mishandling or the obtaining of files which were not strictly required for personnel purposes?

Mr. SHAPIRO. The problem is that records simply don't exist. We have computer records going back only to 1990, and it is very difficult to determine—in fact, even in this case we could not independently determine from the FBI's information whether these requests were legitimate or not, because we don't know at any given time who has a legitimate need for access to the White House as opposed to for whom information is being sought where there is no legitimate need.

So the short answer is, we just are without the ability to entirely address that.

There are certainly anecdotal information in files how in the past a President or a member of a President's staff would pick up the phone and call Mr. Hoover or one of his top executives and ask for information on someone and it would be provided. It did not appear that there were rigorous safeguards applied to that.

Mr. SPRATT. Thank you very much.

Mr. SCHIFF. I am informed that we have two votes scheduled on the House Floor. So the committee will be in recess until 5 minutes after the conclusion of the second vote. I would ask members scheduled to do questioning of the witnesses to be back at that time.

The committee will be in recess.

[Recess.]

Mr. CLINGER [presiding]. The Committee on Government Reform and Oversight will resume sitting, and the Chair will now recognize the vice chairman of the committee, the gentleman from New Mexico, Mr. Schiff, for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Before beginning with my questions, I want to make an observation. Following our colleague Mr. Waxman's earlier statement that the Secret Service list contained some names that were outdated on them for access to White House, I think that is true to an extent. I think the Secret Service still showed people as eligible to enter the White House who no longer had a need to do so.

But a point related to this issue is, the Secret Service never put a name back on the list once it had been removed, and Mr. Livingstone and Mr. Marceca asked for many files from the FBI on backgrounds of individuals whose access to the White House had been removed years before, and those names are not on any Secret Service list that can be identified.

So we still don't know why Mr. Livingstone and Mr. Marceca would be asking for names for background files on individuals who had not requested and were not eligible for access to the White House. Maybe we will get that answer someday, but we don't have it today.

Mr. Shapiro, it is my understanding that you personally authorized the two FBI agents to interview Agent Sculimbrenne. Is that correct?

Mr. SHAPIRO. That is correct, sir.

Mr. SCHIFF. Did Director Freeh or anyone else ask you to do that, or was that your decision at your level of responsibility?

Mr. SHAPIRO. It was my decision. It was based on a recommendation made to me. I did not check with any higher authority.

Mr. SCHIFF. At least a subject of what you wanted your agents to interview Mr. Sculimbrenne about was Mr. Sculimbrenne's interview with former White House Counsel Nussbaum; is that correct?

Mr. SHAPIRO. That was essentially the subject.

Mr. SCHIFF. And the main issues in Mr. Sculimbrenne's interview with Mr. Nussbaum were the indications from interview notes that Mr. Nussbaum had reported that Mrs. Clinton in some way was involved in the hiring of Craig Livingstone in the White House; is that right?

Mr. SHAPIRO. Yes, sir, I think that is a fair statement.

Mr. SCHIFF. If I understood your testimony earlier, you said the agents reported back that Mr. Sculimbrene could not recall Mr. Nussbaum saying that Mrs. Clinton was involved in Mr. Livingstone's hiring but that Mr. Livingstone may have told Mr. Sculimbrene that himself. Did I remember that right?

Mr. SHAPIRO. Something close to that, sir—that while he did not have any recollection of this particular interview of Mr. Nussbaum or of Mr. Nussbaum saying that particular fact, that he did recall Livingstone telling him not that Mrs. Clinton had some connection with his hiring but that his—Livingstone's mother was a friend of Hillary Clinton.

Mr. SCHIFF. So the same information, but coming from Mr. Livingstone, not from Mr. Nussbaum?

Mr. SHAPIRO. At least an aspect of that information.

Mr. SCHIFF. Mr. Shapiro, I would like to refer to a portion of title 28 of the United States Code, section 597(a), and it is talking about matters that are assigned to an independent counsel as this matter was assigned at the Attorney General's request to Independent Counsel Kenneth Starr's office.

And this reads, in part, "Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter." And they give some exceptions, but I don't think the exceptions apply here.

Are you familiar with that section?

Mr. SHAPIRO. I am now, sir.

Mr. SCHIFF. You are now?

Mr. SHAPIRO. Yes, sir.

Mr. SCHIFF. You weren't familiar with it before I just read it to you?

Mr. SHAPIRO. I was familiar with it before you read it to me, yes. Although I can't say I could have recited the section at a previous time, I was certainly familiar with the principle and with the standard that it sets forth; yes, sir.

Mr. SCHIFF. Were you familiar with the principle and the standard it set forth at the time you dispatched two FBI agents to interview Agent Sculimbrene?

Mr. SHAPIRO. Yes, sir.

Mr. SCHIFF. It says here that, "the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter."

As the general counsel for the Federal Bureau of Investigation, do you think that you fall under the definition of "all other officers and employees of the Department of Justice" in that section?

Mr. SHAPIRO. I don't think there is any dispute about that.

Mr. SCHIFF. So you agree that you do?

Mr. SHAPIRO. Yes, I certainly do.

Mr. SCHIFF. So even though the section says, "and the principle is that all investigations and proceedings were suspended," you chose to send two FBI agents to do some more investigation; is that right?

Mr. SHAPIRO. Not exactly, sir.

Mr. SCHIFF. What did you send them to do?

Mr. SHAPIRO. It says "regarding such matters." 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. So there is that aspect to it.

Mr. SCHIFF. Just to clarify, are you saying that you did not think that Mr. Livingstone's hiring was related to the matters to be investigated by the Independent Counsel?

Mr. SHAPIRO. What I am saying and have said before is that at the time, based on their having interposed no objection to those files being released to this committee for its use in its public hearings, and having declined access to those files themselves when we had offered them, that I did not believe that they were investigating those underlying matters.

Mr. SCHIFF. Did you check with the Independent Counsel specifically before you asked two of your agents to interview Mr. Sculimbrene, before doing so?

Mr. SHAPIRO. No, sir, I did not. Had I thought differently about the matter, had I focused on the fact that this might have been something within the purview of their investigation, I certainly would have, as I had worked very closely with them over the sort of preceding 2 months to ensure that we did not trample into their investigation and vice versa.

Mr. SCHIFF. Mr. Chairman, I ask unanimous consent to make title 28, section 597(a), of the United States Code part of the record.

Mr. CLINGER. Without objection, so ordered.

[The information referred to follows:]

§ 597. Relationship with Department of Justice

(a) SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

Mr. CLINGER. The Chair now recognizes the gentlelady from New York, Ms. Slaughter, for 5 minutes.

Ms. SLAUGHTER. Mr. Chairman, I am sorry that Agent Sculimbrene isn't here this morning, because we are taking him apart pretty well and he is unable to defend himself.

But I wanted to ask you, Mr. Shapiro, if you are familiar with an internal memorandum dated August 7, 1995, from Special Agent Bowie in which Agent Bowie recounts a conversation he had with Agent Sculimbrene?

Mr. SHAPIRO. I am somewhat familiar with it, yes.

Ms. SLAUGHTER. In that memorandum, Special Agent Bowie states—and this is a quote:

Sculimbrene has allowed both his personal and political feelings to obscure his judgment relative to the entire matter (the Dale case).

Special Agent Bowie states that Agent Sculimbrene alleged that he had sent memoranda when he had not, and Agent Bowie goes on to state that Agent Sculimbrene's conduct and behavior were clearly outside the norm.

Agent Bowie concludes by stating, "the writer is persuaded that Sculimbrene's behavior is abnormal and indeed irrational."

Are you familiar with that?

Mr. SHAPIRO. I am familiar with that, yes.

Ms. SLAUGHTER. In that same memorandum, Special Agent Bowie states that Sculimbrene stated that Billy Ray Dale had confided to him, Agent Sculimbrene, that he had used Travel Office funds to pay bribes to foreign officials.

As you may be aware, Mr. Dale has testified before our committee that the reason he deposited Travel Office funds in his own account was to keep a lower surplus at the Riggs account.

Are you familiar with those comments by Agent Sculimbrene?

Mr. SHAPIRO. I am familiar with the fact that Mr. Bowie attributes those comments to Agent Sculimbrene, yes.

Ms. SLAUGHTER. Did the Bowie memorandum, Mr. Shapiro, play any role in your decision to have FBI agents interview Mr. Sculimbrene?

Mr. SHAPIRO. Not specifically the Bowie memorandum, but I was aware more generally of controversy about Agent Sculimbrene's conduct and his views about some matters.

Ms. SLAUGHTER. There was concern in the agency, or Agent Bowie, I assume, would not have been looking into this issue had there not been some concern that he obviously maligned Billy Dale, which to this committee is heresay.

Mr. SHAPIRO. Yes, there was concern by Agent Bowie, who was a supervisor involved in the matter.

Ms. SLAUGHTER. I would like to go back for a moment to something that my colleague, Mr. Spratt, talked to you about, and that is, I would like you to characterize the cooperation the FBI has given this committee regarding the Travel Office investigation.

Mr. SHAPIRO. Well, if I might, Ms. Slaughter, I think, at least from my perspective, the FBI has been extraordinarily cooperative with this committee. We have produced a large volume of documents. Thousands of hours of paralegal time and time with people in Congressional Affairs and elsewhere have been used in processing that, and we have contributed—in fact, the very offer of Director Freeh to Chairman Clinger to have access to these background reports is unprecedented as far as anyone else is aware in the conduct of any other oversight investigation.

Ms. SLAUGHTER. And you have also made this available to this committee without any written agreements or understandings? You just handed them over, which is unprecedented?

Mr. SHAPIRO. As far as I am aware, yes, ma'am.

Ms. SLAUGHTER. Congressman Spratt talked about what happens if a person outside the Congress who has access to these files leaks or gives out information. As you pointed out, the only time that you have routinely given background checks is for the confirmation process of nominations before the Senate; correct?

Mr. SHAPIRO. That is correct. And even then we did not make the full files available as we did here. In almost all cases, we make simply the summary reports available.

Ms. SLAUGHTER. What kind of agreement do you have with the Senate when you hand over partial information to them?

Mr. SHAPIRO. I can't go into great detail of that on personal knowledge, but there is an MOU that very specifically describes who may have access to it, how the information is to be handled, how it is to be stored, in whose custody it may be, and for what purposes the information may be used.

Ms. SLAUGHTER. As I understand, you require an FBI clearance, there are no copies to be made, no verbatim notes, and a warning that unauthorized release is cause for summary dismissal. Does that sound accurate?

Mr. SHAPIRO. That is consistent with my general understanding, yes.

Ms. SLAUGHTER. It is my understanding that former FBI agent Halbert Gary Harlow was convicted last year of falsifying at least 50 interviews that he claimed to have conducted; is that correct?

Mr. SHAPIRO. I am sorry. Agent Harlow's falsifying interviews, yes. I understand that he has admitted to, as part of a criminal prosecution, falsifying approximately 50—entirely fabricating I believe is more the point.

Ms. SLAUGHTER. If a Member of Congress or this committee or any other committee had relied upon those falsified interviews to make referrals to the U.S. attorney for perjury, would you not say they would have unfairly tarnished the reputation of that person?

Mr. SHAPIRO. Regrettably, I think that would have been the inadvertent result of that if someone did that, yes.

Ms. SLAUGHTER. Did the criminal conviction of Agent Harlow play any role in your decision to interview Agent Sculimbrene?

Mr. SHAPIRO. Yes. The general awareness that there have been some very serious and significant questions raised about the accuracy of information emanating from some of the agents, at least assigned to the White House, was a very substantial factor in our decision to do that.

Ms. SLAUGHTER. I have no further questions, Mr. Chairman. I yield back the balance of my time.

Mr. CLINGER. I thank the gentlelady, and I now recognize the gentleman from California, Mr. Horn.

Would you yield to me for one question?

Mr. HORN. I am glad to yield to the chairman.

Mr. CLINGER. Mr. Shapiro, as a result of the interviews which your agents had with Mr. Sculimbrene and in looking into this matter, did you find any reason to doubt Mr. Sculimbrene's word that he had falsified that report?

Mr. SHAPIRO. Other, sir, than the fact that every person involved has denied the information reported therein, no.

Mr. CLINGER. So do you believe your agents?

Mr. SHAPIRO. I generally do believe our agents, yes. There are 10,000 agents of the FBI, and it is a regrettable fact not every one of them is as good as the best.

Mr. CLINGER. But there is no evidence that Mr. Sculimbrene is other than the best; is that correct?

Mr. SHAPIRO. Well, other than the best, I am not sure, but I have certainly not now nor have I ever made an accusation or an allega-

tion that Mr. Sculimbrene has falsified that information. I do not mean to be at all understood to be suggesting that.

Mr. CLINGER. Thank you.

Mr. HORN. Ms. Larson, when you have the request for the files to go to the White House, do you take a look at what names are on the folder at all before they are sent over?

Ms. LARSON. The requests are brought into the area, a desk typically called the White House desk, and the research analyst on that desk of course has to look at names. If there is a problem, then it might be brought to my attention—

Mr. HORN. Were any of these—after somebody looked at the names like James Baker, former Secretary of State, did anybody come to you and say, “This is strange; the former Secretary of State file is being requested by the White House”?

Ms. LARSON. One of the analysts did recognize Mr. Baker’s name, and at the time I recall that she said to me, “James Baker’s name is in this list of names for the White House.” She said, “What do you think they want with him?” I said, “I don’t know, unless they are going to use Mr. Baker on some type of panel or discussion.” It is not unusual, sir, that they would use politicians of either party—

Mr. HORN. I understand that.

Were there any other names brought to your attention by any member of the staff?

Ms. LARSON. No, sir.

Mr. HORN. So that is the one that did wake somebody up.

Ms. LARSON. That—

Mr. HORN. But nobody went up the line and said, “Gee, what are they doing over there”?

Ms. LARSON. No, sir, because it was a routine thing for us, and the girls were just handling them and trying to get them back to the White House.

Mr. HORN. Now, you have been there several decades. Has any White House ever ordered that many files that fast?

Ms. LARSON. I wouldn’t say it is a question of ordering that many files that fast. It was a little unusual in that we did not normally receive that high a number at one time; they were more staggered. Usually when the administrations would take over, they would stagger their requests. This was unusual in that we did receive such a high number.

Mr. HORN. So it was unique?

Ms. LARSON. It was unusual.

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

Mr. KELLEY. No, I don't, and I wouldn't.

Mr. HORN. When the spouse is head of the criminal division within the FBI?

Mr. KELLEY. The spouse is the spouse. This agent was on an investigative mission like any other.

Mr. HORN. Well, it is interesting.

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 counsel. Did you want to curry favor with them to be a judge?

Mr. SHAPIRO. If I wanted to curry favor with them, sir, I would not have used the words "egregious violation of privacy" when I described their acquisition of 407 White House files. I would not have been involved in writing a report that I think it is fair to say at least the White House was none too happy with it.

I think you could say, looking at what I have done in my career outside the single 5-minute period that we are focused on, that there has never been an effort to curry favor with anyone.

Mr. HORN. 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 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.

Mr. Freeh brought you in. If he had brought me in to your job, I would have checked with the boss before I called the White House.

Did you check with the boss, Mr. Freeh, who brought you in?

Mr. SHAPIRO. Mr. Horn, let me say that I could not agree with you more about the need for the FBI to act impartially and fairly and without currying favor to anyone. And I believe, and I am proud to say, that the report I wrote just a few weeks ago I think is an example of that and paid no attention to consequences for anyone one way or the other. I think it speaks for itself.

As to your specific question, Mr. Freeh was out of the office on the day that this happened. He was taking a well deserved day after 2 trips in 2 weeks to Saudi Arabia. He wasn't there. He was spending some time with his family. I made the decision on my own.

Mr. HORN. But he was at the other end of a telephone. You didn't call.

Mr. SHAPIRO. That is true. I made the decision on my own.

Mr. HORN. Did you tell him when he got back?

Mr. SHAPIRO. I advised him later that evening.

Mr. HORN. Mr. Chairman, I would like to put into the record, since we are discussing it, the FBI investigation or report on Agent Sculimbrene.

Mr. CLINGER. Without objection, so ordered.

[The information referred to follows:]

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/16/96

Special Agent M. Dennis Sculimbrene, Washington Metropolitan Field Office (WMFO), Washington D.C., upon being advised of the identities of the interviewing Specials Agents and the nature of the inquiry provided the following information.

At the beginning of the interview, SA Sculimbrene advised that he suffers from a partial memory loss due to a serious head injury he sustained on 1/24/94. Because of his memory problems, SA Sculimbrene has difficulty remembering some of his investigative activities while assigned to the WMFO squad that handled White House background investigations.

SA Sculimbrene stated that in March, 1993, he was assigned to the WMFO squad responsible for conducting White House background investigations. During that assignment, he frequently conducted background investigations which caused him to interview Bernard Nussbaum and other senior White House officials. He did not recall interviewing Bernard Nussbaum in connection with a White House background investigation for David Craig Livingstone.

SA Sculimbrene was requested to review a copy of an undated investigative insert documenting investigation conducted by him regarding David Craig Livingstone on 3/1-3/93. After reviewing the document, SA Sculimbrene advised that the document did not refresh his recollection concerning his interview with Mr. Nussbaum about Livingstone. SA Sculimbrene advised that while the document appeared to be written by him and contained his typewritten initials, he could not recall interviewing Nussbaum about Livingstone. Furthermore, he did not recall interviewing Lori Stallings or William Kennedy who were also listed on the document as having been interviewed by him regarding Livingstone.

SA Sculimbrene advised that he has no recollection of being told by Mr. Nussbaum that David Craig Livingstone "had come highly recommended to him by Hillary Clinton". SA Sculimbrene does recall being told by Livingstone that Livingstone's mother was a friend of Hillary Clinton. This conversation took place when he interviewed Livingstone in connection with Livingstone's background investigation.

Investigation on 7/16/96 at Haymarket, Virginia
 File # 62-HQ-1170627
 by SA Jennifer Eposito JEA
SSA Duncan J. Wainwright DJW Date dictated 7/16/96

62-HQ-1170627

Continuation of FD-302 of SA M. Dennis Sculimbrene, On 7/16/96, Page 2

While he could not recall the Nussbaum interview, SA 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. SA Sculimbrene occasionally took interview notes which he maintained in his work folders for a couple of months. After this period, if it appeared that his interview notes would not be needed, he routinely disposed of his notes in a Bureau confidential trash container. SA Sculimbrene surmised that if he had taken interview notes during the Nussbaum interview, he would have routinely disposed of the notes a few months after the interview. If his interview notes had not been destroyed, they would be located in his work papers at WMFO. He also mentioned that he usually saved copies of his interview reports on the computer used by FBI personnel at the White House. He recalled that sometime after the Livingstone background investigation was conducted, the hard drive on that computer was changed after a malfunction occurred.

Prior to the interview, SA Sculimbrene accepted a telephone call from his attorney Richard Hauser, Baker & Hostettler, (202) 861-1541. At SA Sculimbrene's request, SSA Wainwright spoke with Mr. Hauser and explained the topic to be discussed during the interview. Mr. Hauser advised SSA Wainwright that he represented SA Sculimbrene and that he had no objection to the interview being conducted. The interview was conducted after SA Sculimbrene concluded his telephone call with his attorney.

Attached is a copy of the investigative insert prepared by SA Sculimbrene documenting his interviews of Bernard Nussbaum, Lori Stallings and William Kennedy during the period 3/1-3/93.

WMFO: 161-E-HQ-1045996
MDS/mds

1

EMPLOYMENT

Executive Office of the President
Office of the Counsel
Old Executive Office Building
Washington, D.C.

The following investigation was conducted by SA M. Dennis Sculimbrene regarding DAVID CRAIG LIVINGSTONE on 3/1-3/93.

LORI STALLINGS, Supervisory Personnel Assistant, The White House Office, Personnel Office, advised that the appointee is listed on the rolls with the EOP in the Office of the Counsel, but is not officially employed at the White House Office as a Security Assistant to the Counsel to the President at this current time (March 4, 1993). He began work on a volunteer basis about 5 weeks ago, on a temporary/part time basis. She said that these are unofficial records, and official records would not be available for an indefinite period.

BERNARD NUSSBAUM, Counsel to the President, advised that he has known the appointee for the period of time that he has been employed in the new administration. He had come highly recommended to him by HILLARY CLINTON, who has known his mother for a longer period of time. He was confident that the appointee lives 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.

WILLIAM HOLDER KENNEDY, Associate Counsel to the President, advised that he has known the appointee since he arrived himself, to take over the office responsibilities that he currently handles. He did not hire the appointee, and was aware that the appointee may not stay in his current position. He was aware that the appointee was attempting to head the Military Office. KENNEDY said that if the appointee stays in his current position, he would recommend his access to the complex, based on the understanding that he makes such recommendation on the short period of time that he has known the appointee.

7-16-96 - Dennis Sculbano

11-10-96 - Spol. v. info re Sculbano's request
#houses

11-16-96 - Concluded conversation - Diss. Spol. v. of NY

1984 - Livingston & Clintons worked
in Texas on the Hart campaign

road in publicized
talked people @ with
credible info :

remained insert re Livingston
does not recall interviewing

Nussbaum re Livingston
or Dave Stallings. Does recall Kennedy
interviewed not recalled

no independent recollection of interview

does know ~~re fact~~ Livingston had
told him Mrs. Clinton knew
his mother.

usually ~~re fact~~ in call (repet)
same info

no recall

Normal Practice:
 Yeh's notes on SF-86 which was
 the Agate copy

filed SF 86 in work file
 retained for a couple of
 months --

Would destroy ~~the~~ notes after
 a couple of months if
 Confidential Trash

The host of knowledge - no notes
 if any would be in A-1 system area of NUMRA
 plus nothing @ home - searched recently
 Anything from 1993 - should be
 destroyed

Never ^{intentionally} left any documents at
 the White House overnight -

1993 - did 2nd interviews

1-11-93

Dennis Sculimbrene

7/14/80
SB JC

DICK HAWK - MITY An RS + BTT

(204) 861-1541

- Meet by Quercus
- multiple instances

Head Insurg 4/24/94

- Don't recall
- Generally did not take notes

Don't recall

Phonetic - Same Day, Frisk

Notes on SP 86

Wanted have file on BTT Case

No notes to find out details

Not least sum of WH only

LP was destroyed - Ho Friday, WA phone records recently taken

Approx 2000 instances

Paul Sam

Low station no recall

FD 302 1

62 MR-1170627
324-5364

Mr. CLINGER. The Chair now recognizes the gentleman—I am now prepared to recognize the gentleman from Pennsylvania, Mr. Kanjorski, for 5 minutes.

Mr. KANJORSKI. Thank you, Mr. Chairman.

Before I start, I should note for the record that it was most interesting in the last examination that the sex and position of a husband and wife team involved in the FBI was made note of in the record.

If I recall, not too many months ago I was criticized for suggesting that perhaps sometimes there is a relationship between husbands and wives that work in various areas of Government, but I notice the majority side perhaps made a suggestion that the choice of the particular agents to make the interview may have had some effect as to why she was picked, because of her husband's position in the Bureau, and I thought we were above that and recognize that males and females can pursue individual professional careers without one having effect on the other, and now I see the other side perhaps suggesting that there is that effect. I wish we could get our systems straight here.

Mr. Shapiro, have you at any time in your experience opened up a raw file—I understand this is a raw file; is that correct, this material we are talking about today? This is not the summary file that would have been sent to the White House?

Mr. SHAPIRO. That is correct. The information made available to Chairman Clinger and his counsel was the complete raw file.

Mr. KANJORSKI. And as I understand your testimony, this is the first time, to your knowledge, that this has ever really happened, so that you have no rules as to what people should do because you never expected to make this type of raw material available and then find it disclosed on the House Floor.

Mr. SHAPIRO. It is true that, as far as I have been able to determine both from my own 3 years and from my Deputy's 27 in the FBI, that we are unaware of this happening outside of a confirmation process where, in most cases, it is limited to the summary reports.

Mr. KANJORSKI. I have in my possession a copy of an interview by the FBI of Mr. Sculimbrene on July 16, 1996, and it indicates that it was made by Special Agent Esposito and Special Agent Wainwright on July 16. In that document, the interviewed party indicates that he has no independent recollection of the comments made in the raw data under the heading of the interview of Mr. Nussbaum; is that correct?

Mr. SHAPIRO. That is correct, sir.

Mr. KANJORSKI. Was this material, the interview of Mr. Sculimbrene, made available to this committee or to the chairman prior to today?

Mr. SHAPIRO. Yes, sir. I don't believe that the interview itself, but on the day that Chairman Clinger and Barbara Olson were at the FBI on July 18, I am told that they were advised that day that we had asked Agent Sculimbrene and that he had no specific recollection.

Mr. KANJORSKI. So that they were aware prior to looking at the raw file and prior to anyone taking the Floor of the House to make the statements that, in fact, the agent involved had no recollection,

could not state whether the information was correct or incorrect or, in fact, whether he even made that statement?

Mr. SHAPIRO. I believe it was immediately after looking at the raw file, and it would have been approximately a week before the chairman's speech on the Floor.

Mr. KANJORSKI. So at least when the statement was made on the Floor, that Member of Congress would have had in his possession an interview by the FBI of that agent some week before—

Mr. CLINGER. If the gentleman would yield, I would just state for the record, we did not have that information before I went to the Floor.

Mr. KANJORSKI. Now Mr. Shapiro said that you did.

Mr. SHAPIRO. What I said, sir, is not that they had the interview in their possession, but I am told that they were advised of the fact that Agent Sculimbrene had been asked if he had any recollection of this and that he had said he did not.

Mr. KANJORSKI. To the best of your knowledge, when was the document itself made available to the committee?

Mr. SHAPIRO. I believe the document itself was just made available last night in response to a request.

Mr. KANJORSKI. But the contents of this document—do you know whether it was made available directly to Mr. Clinger or to Mr. Clinger's counsel?

Mr. SHAPIRO. I am advised that both were in the room. I believe the conversation was with Counsel Barbara Olson.

Mr. KANJORSKI. So the record is very clear, that when the statement was made on the House Floor, the FBI had disclosed to this committee and a Member of Congress that the person that they were suggesting that made this comment regarding who knew whom, who hired whom, was in fact not able to be personally recollected by that agent when just recently interviewed by the FBI?

Mr. SHAPIRO. That is my understanding, sir, and—well—

Mr. KANJORSKI. To your knowledge, has Mr. Sculimbrene ever been asked to testify before this committee?

Mr. SHAPIRO. I think I might be the last one in this room to know, sir, but—

Mr. KANJORSKI. Is there any rule or regulation which would bar his ability, his availability, to testify before this committee?

Would the majority have the right to call him, if they so desired, so we can get firsthand information here as to what recollections there are and what happened?

Mr. SHAPIRO. The committee obviously has the right to call anyone it wishes. We generally resist having line agents of the FBI testify. We made an exception, for instance, with Ms. Larson here, who, although not a line agent, is nonsupervisory personnel.

When a line agent is directly involved in a matter in controversy, we usually—we always, upon request, make them available as, for instance, we had to a subcommittee of this committee during the Ruby Ridge inquiries.

Mr. CLINGER. The gentleman's time has expired.

Mr. McHugh, the gentleman from New York, is recognized for 5 minutes.

Mr. MCHUGH. I wanted to take a step further, a question that was posed to you a few moments earlier with respect to your ulti-

mate contacts with the director, Mr. Freeh, with respect to your actions. I believe you noted that you spoke to him later that evening by phone.

Mr. SHAPIRO. Yes, sir.

Mr. MCHUGH. What was his reaction after your conversation?

Mr. SHAPIRO. If I can add a sentence or two of context, I spoke to Director Freeh while he was at Six Flags amusement park with two of his young children who had birthdays that week. I spoke to him over a cellular phone, and I advised him of a number of events of that day, and among them I advised him, at least to the best of my recollection, that we had discovered this information and we were making it available to the committee and that I had made it available to the Department of Justice and the White House. I don't believe that he had much of a reaction at all, sir.

Mr. MCHUGH. So you don't recall he either approved or objected; he just was neutral on it?

Mr. SHAPIRO. He did not object. I don't believe he patted me on the back either; he just acknowledged it as a fact.

Mr. MCHUGH. As you said in your statement, when you advised the Chief of Staff to the Deputy Attorney General, why did you contact that person prior to going to the White House? What did you expect as part of that process? Were you looking for approval?

Mr. SHAPIRO. It is hard to say exactly what I expected, sir. As a courtesy and a matter of typical procedure not invariably followed, but the primary liaison between the Department of Justice and the White House Counsel's Office is through the Deputy Attorney General's Office, and so I usually—I would not say invariably, but I usually advised them if I am going to notify the White House Counsel's Office.

Mr. MCHUGH. What was that person's reaction at that time?

Mr. SHAPIRO. He noted it, noted the information, and I told him I intended to advise the White House Counsel's Office, and I don't recall exactly what he said, but I believe he said OK.

Mr. MCHUGH. Was there any follow-up from the Deputy Attorney General's Office after that time—the Deputy Attorney General's Office or the Attorney General's Office, either one?

Mr. SHAPIRO. No, neither.

I did the following day have a very brief exchange with the Deputy Attorney General when I was over there, when she asked me to come over there to discuss the matter I referred to earlier about our looking generally at restrictions on the dissemination of file information not only to the White House but to other executive agencies and the Congress.

During the course of that, I noted at some point—I believe I said to her, "You are aware that we have recently disseminated some of this information to the Congress and to the White House," and I believe she nodded.

Mr. MCHUGH. When you contacted Kathleen Wallman in the White House, what was her reaction? Was there any response and follow-up contact after that time?

Mr. SHAPIRO. I placed a call to Jack Quinn.

Mr. MCHUGH. I understand that, but your testimony says you had the contact with Ms. Wallman.

Mr. SHAPIRO. That is what happened. I was referred to Ms. Wallman. I advised her of the information. I read her that sentence. I believe she read it back to me. She seemed to be trying to get it precisely.

She asked me what limitations there would be if any upon Chairman Clinger or this committee using the information. I told her as far as I was aware there were no limitations other than individual discretion of Members of Congress, because the Privacy Act did not apply. I believe that was the end of the conversation.

Mr. MCHUGH. When you made available the advance copy of the Aldrich book to the White House, did you consult with anyone as to your going to do that prior to the action, with the Director or anyone else in the office?

Mr. SHAPIRO. It was back in February, sir, and I don't specifically recall. I believe that I advised the Director that I was intending to do that.

Mr. MCHUGH. And what was his reaction?

Mr. SHAPIRO. If I advised him, he obviously didn't object, because I would not have gone ahead and done that. I don't specifically recall his reaction to it.

Mr. MCHUGH. We can infer from what you just said that he approved. If you spoke to him, he must have approved?

Mr. SHAPIRO. I believe so, sir; yes.

Immediately after dropping it off, I recollected that I had not on that occasion advised the Deputy Attorney General's Office, and so from the car on the way back from the White House I called to tell them to remedy that oversight.

Mr. MCHUGH. Is my recollection correct? In your deposition, you noted that it was not unusual for any agent who had conducted the number of interviews that Agent Sculimbrene had to fail to recall specific portions of that.

Mr. SHAPIRO. I believe I said he had been doing applicant work full-time, that he had done hundreds, if not more, of interviews, and that I did not find it surprising that he could not recall a specific interview.

Mr. MCHUGH. Were the presence of unsigned, uninitialed, undocumented sheets in an FBI background file unusual?

Mr. SHAPIRO. It being uninitialed would be unusual, sir. It should be an initialed document. That was an unusual fact.

Mr. MCHUGH. How unusual? The people of this country are very concerned, as I think they have a right to be, and certainly members of this committee are as well, that the integrity of the entire process the FBI has initiated and apparently now according to the integrity of the actual documents themselves is in question. How unusual is it to find uninitialed, unsigned documents in supposedly tightly held, secret FBI files?

Mr. SHAPIRO. I can't answer that. The rules, as I am advised, require that the document be initialed. This one was not. I can't tell you how unusual it is that this one was not.

Mr. MCHUGH. My time has expired.

Mr. CLINGER. The gentleman's time has expired.

The Chair now recognizes the gentleman from Minnesota.

Mr. PETERSON. Thank you, Mr. Chairman.

I want to head off in a different direction here. Last Friday I went down to the Secret Service and looked at their computer system from top to bottom and spent a couple of hours asking them questions. Most of what I found out, I could make sense out of all this, that part of this whole situation. The one thing that doesn't make any sense is how this list was compiled, how they came up with these 470 names or whatever the number was, which is somewhat in dispute.

Ms. LARSON, because you are here today and apparently you are the one that the request was made to, to pull these files, I was told by the Secret Service that the only list they ever saw of this was this list here. I guess my question is, what format did this request come to you? Was it this list?

Ms. LARSON. No, sir. We received them on individual White House forms.

Mr. PETERSON. So these 86 Forms, whatever they are called?

Ms. LARSON. No, sir. We have a White House form that comes over under the Counsel's Office, the Counsel to the President, and the information is placed on each individual form. We did not receive any type of list.

Mr. PETERSON. Did you get a stack of 470 of these then?

Ms. LARSON. No, sir. I think they came in at different times. I know in December I believe the count was something like 249, and it went from there. But each time we would receive an individual copy of a form with the name and describing their background data on it.

Mr. PETERSON. You mean the background data they wanted from you?

Ms. LARSON. No. I mean identifying data so that we could make sure that we could identify the person as to whom—

Mr. PETERSON. Did each of the requests ask for the same thing?

Ms. LARSON. Each request asked for a copy of a previous report; yes, sir.

Mr. PETERSON. So there were no differences between any of these; they were all the same?

Ms. LARSON. All the same. They were all a copy of a previous report, and then the access was checked.

Mr. PETERSON. Have you ever seen this list?

Ms. LARSON. No, sir, I have not.

Mr. PETERSON. Mr. Shapiro, have you ever seen this list?

Mr. SHAPIRO. My eyesight is perhaps not as good as it should be, sir. I have seen a list quite similar to that—

Mr. PETERSON. This hen scratching is the Secret Service. They went through this to try to figure out if there was rhyme or reason to this.

This is whether they are inactive or active, and this side is when the expiration of the 5-year form ran out, apparently.

Originally this was—it says up here "White House personnel security files staff prior to 1-30-93" and then has a list of 470 names. Apparently somebody made this up—we are not sure who—to have a list of what files were sent over for—

Mr. SHAPIRO. I don't believe I've seen exactly that list going from 1 to 470, but there—and there've been numerous lists emerging from all sorts of different corridors. But a list in format similar to

that was enclosed with the two boxes of files that were returned to the FBI as an inventory list on June 6th of 1993.

Mr. PETERSON. Did you inquire or did anybody inquire who made up that list or where that list came from?

Mr. SHAPIRO. No. My Deputy, Mr. Kelley, went over to retrieve those boxes of files and—thank you—and I believe the understanding was that that was an inventory list from the boxes, but I don't believe we did any inquiry about that.

You will recall at the time when I was conducting this inquiry, I had worked out with the Independent Counsel's office, in an effort to stay out of their territory and their investigation, that we would not conduct any interviews of any White House personnel, that we would conduct of the interviews of FBI personnel, and so we did not make any inquiry or investigation at the White House about where that list came from.

Mr. PETERSON. There was no, never any—would these files that were sent over to you, did you have any record of them?

Ms. LARSON. When you say the files, you mean the forms?

Mr. PETERSON. These request forms.

Ms. LARSON. Request forms? Yes, I believe that we did have some of the forms still on hand. I know from January 1994, we had some of the forms that were sent over in 1993, and then we kept them thereafter.

Mr. PETERSON. I guess what I was getting at, would there be any way for you to be able to tell whether from your records that you got requests for 470 people that would correspond with the 470 people that are on here?

Mr. SHAPIRO. Yes, sir. There are two ways to tell: Ms. Larson's subunit keeps a computer record of requests. We have those documents going back to 1990, I believe. Since January 1994, we've also kept a hard copy of requests.

So we have—and I produced in the course of doing the inquiry that resulted in this June 14th report, I produced an internal list of when these requests were, when they came in, when they went out. But—and we have matched them up with some of the lists that have emerged, but not all of them. There have been many different lists, again, as you know.

Mr. PETERSON. Why did you match them up with some of the lists, somebody ask you to do that or you wanted to find out if they were the same?

Mr. SHAPIRO. I believe I was asked in my Senate testimony before the Senate Judiciary Committee to compare my analysis with one list that they had.

Mr. PETERSON. Did it pretty much correspond?

Mr. SHAPIRO. I believe the list I was shown was a subset of the larger list I had prepared, yes, sir.

Mr. PETERSON. And it checked out that these had been requested and it made sense?

Mr. SHAPIRO. Yes, sir.

Mr. PETERSON. OK.

Thank you, Mr. Chairman.

Mr. CLINGER. Thank you.

I now recognize the gentleman from New York, Mr. Gilman, and ask him if he might yield to me just to make one point?

Mr. GILMAN. Pleased to yield.

I thank the chairman for recognizing me.

Mr. CLINGER. I would just like to note for the record that the insert that has been referred to and which Mr. Shapiro indicated was not initialed and that that was unusual, as I look at the insert, it does certainly indicate that Mr. Sculimbrene did this, dictated this himself, and that he in fact typed it.

His initials are indicated as the typist on that record. So I think that was done contemporaneously with the interview, which took place on the 1st and 3rd—or the 3rd—between the 1st and 3rd of March, 1993.

Mr. SHAPIRO. May I be permitted to comment on that, sir?

Mr. CLINGER. Yes.

Mr. SHAPIRO. My comment on the initials referred to their not being penned or inked initials, which is what the regulations require, not there not being any typed, there was no dispute. That's why we went to Agent Sculimbrene about it, as opposed to going to someone else, that this was a document that purported to come from him.

Mr. CLINGER. That he did, in fact, prepare this.

Mr. SHAPIRO. He says he doesn't specifically recollect it, but it is consistent with the form that he uses, and these are his initials.

Mr. CLINGER. Isn't it likely that he had conducted hundreds if not perhaps thousands of interviews during this period of time?

Mr. SHAPIRO. Absolutely, as I recently said.

Mr. CLINGER. Thank you.

Mr. GILMAN. Thank you, Mr. Chairman.

I want to commend Chairman Clinger for this ongoing and comprehensive effort this committee has been making under your leadership, on the potential abuses of the FBI and the uses concerning the utilization of these personnel files. However, while conducting this legitimate oversight, let's not lose sight of what the current FBI Director Louis Freeh has personally brought to the Department since his appointment in 1993.

When accepting that important and powerful position as Director of the FBI, Mr. Freeh, according to his annual report to his employees, raised with President Clinton the vital issue of the need for the FBI to retain its independence and have no role in politics. Before—believe me, that was an essential pledge then since the earlier Travelgate firing affair and some of the public pronouncements about an ongoing investigation by the Bureau, under prodding by the Clinton White House, raised many eyebrows, both in our committee and elsewhere.

Director Freeh has brought a sense of professionalism and pride back to the premier law enforcement agency in the world. And today while he struggles with the TWA 800 flight inquiry, the Saudi Arabian bombing, as well as the Olympic bombing, he needs our and the Nation's support and confidence.

Let us keep our eye on the main issues here: the cavalier attitude and problems with the potential abuse of the FBI, its function and the very background files lies primarily at the White House. However, the Bureau should not be above criticism and review. And let us not forget that we are fortunate to have dedicated peo-

ple like Director Freeh leading the FBI, a person who gave up a life tenure on the Federal bench to serve his Nation.

As the public record makes clear, he is fully cognizant of the need for the Bureau to avoid politics and to retain its independence. Those who would not honor, comprehend or understand those important goals central to the Bureau's integrity do not belong in positions of trust, whether they be at the FBI, at the White House or anywhere else in our Government today.

Mr. Chairman, I do have just a few questions, with your permission.

Mr. Shapiro, are you one of the first General Counsels who was not a former FBI agent when you assumed that post?

Mr. SHAPIRO. I am the first, sir.

Mr. GILMAN. You are the first.

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 a situation?

Mr. SHAPIRO. Mr. Gilman, I shared the information with someone who, with Kathleen Wallman in the White House Counsel's Office, who I am not aware was giving testimony one way or the other.

As to the hypothetical question you put to me, I believe that obviously if the Department thinks that someone at the FBI is interfering with an investigation, it is a matter they should take very seriously.

Mr. GILMAN. What do you think the Justice Department should do in that kind of a case?

Mr. SHAPIRO. Well, in this case, since the allegation I believe would be interference with the Independent Counsel's office, I think they would defer to the Independent Counsel's office, which if they felt that there was a concern, would conduct their own inquiry. They, obviously, have both the full authority and the wherewithal to do that.

Mr. GILMAN. Do you think some penalties should be applied in a situation of that nature?

Mr. SHAPIRO. That goes to the intent, as you know, sir. That is really the issue in the criminal law. I don't believe people should be penalized, certainly not criminally penalized for matters that are not intentionally done to interfere with any investigation.

I think that's the touchstone of criminal liability in this country, and it's, frankly, the touchstone for most purposes for any administrative liability.

Mr. GILMAN. Do you think sharing that kind of information with the other party would breach the confidence of the FBI and affect the prosecution?

Mr. SHAPIRO. Under the hypothetical you gave me, sir, or under my actions in this case?

Mr. GILMAN. Under the hypothetical.

Mr. SHAPIRO. Under the hypothetical, I believe you posited that it would do that, so it would be hard for me to disagree.

Mr. GILMAN. Thank you.

Thank you, Mr. Chairman.

Mr. CLINGER. Let me, using your time, may I ask you, Mr. Shapiro, if, in fact, did you alert anybody in the White House that they should not divulge that information that you were relaying to Ms. Wallman to anybody else, and were you aware that, in fact, there was an enormous dispersal of that information to a whole variety of people?

Mr. SHAPIRO. I was not aware of the dispersal of information. I neither advised the White House nor the Congress who they could contact with the information we made available to them.

Mr. CLINGER. Do you think it is appropriate that that many people were made available—or were made aware of that information?

Mr. SHAPIRO. I don't think I'm in a position to say.

Mr. GILMAN. Mr. Chairman, if I might, if you would yield just for one more inquiry?

Mr. Shapiro, wasn't there an ongoing grand jury inquiry on the files and on Livingstone at the time you made your telephone calls?

Mr. SHAPIRO. 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.

Mr. CLINGER. The gentleman's time has expired.

Mr. GILMAN. At the time you made your call, you weren't aware that there was a grand jury investigation?

Mr. SHAPIRO. I didn't say that, sir. I said I was aware.

Mr. GILMAN. You were aware?

Mr. SHAPIRO. Yes. The question is what was the scope of the grand jury investigation. At the time I made my call, as I said before, I did not believe that the information I was telling the White House Counsel's Office was within the scope of their investigation.

Mr. CLINGER. The gentleman's time has expired.

Mr. GILMAN. I thank the chairman.

Mr. CLINGER. And the Chair now recognizes the gentlelady from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. Thank you, Mr. Chairman.

First of all, I would like to offer my congratulations to the FBI and to FBI Director Louis Freeh, for the FBI's careful and sensitive handling of the tragic crash of Flight 800 TWA. A friend and neighbor, Judith Connelly Livia, was on that flight. The crash has highlighted America's vulnerability to terrorism. It has forced us to recognize the importance of thorough security checks at our airports and other sensitive areas.

The White House is one of those areas. So if these hearings lead to improvements in the way the White House handles security checks, we will have accomplished at the very least something that's very useful. Unfortunately, too often these hearings have degenerated into partisan conflicts and attacks. After 20 hours of hearings on the FBI files, we have not heard any testimony or seen any evidence of any unethical or criminal behavior by anyone at the White House.

Let me be clear, this was an inexcusable and unwarranted intrusion into the private lives of over 400 people. It must not happen again.

The White House and the FBI have instituted new procedures to ensure that it will not happen again, and that really should be the focus of these hearings, not who hired whom or who had the credentials to do what job, but how we can improve White House security checks.

I am troubled by the inaccuracy of the list of White House pass-holders provided by the Secret Service. On July 14th, The Washington Post reported that the Secret Service had prepared a list of holdover pass-holders from prior administrations that include President Bush, former Secretary of Education Lamar Alexander and others. Other reports indicate that in 1994, Secret Service files were not updated when departing employees turned in their badges. We should also find out why FBI files are filled with rumor, half truths, lies and sometimes gossip.

Security checks help ensure the safety of White House personnel, of the confidentiality of sensitive information; they must be reliable. But Special Agents Gary Aldrich and Dennis Sculimbrene do not inspire confidence. We should stop wasting our time with a politically motivated attack on the White House and leave the prosecution to Kenneth Starr. Instead, let's find out what we can do to improve White House security.

And with that, I'd like to begin by asking Mr. Shapiro about the recently implemented new procedures for releasing FBI information to the White House.

Mr. SHAPIRO. Yes, ma'am.

Mrs. MALONEY. Do you believe that these new procedures would prevent the release of FBI files on former employees?

Mr. SHAPIRO. Yes, I believe that they—that they will. They require, in almost all circumstances, the consent of the person whose file is being retrieved from the FBI and disseminated to the White House, and it seems very unlikely that one could acquire that consent. One, obviously, can never, never make a foolproof system that someone couldn't intentionally circumvent, but I believe that the reforms that we've put in, that I designed in consultation with the Director and the Deputy Attorney General and with the Counsel to the President, that those reforms will go a long way toward making it very unlikely that anything like that could recur.

Mrs. MALONEY. Do you believe that there are any additional changes that should be made?

Mr. SHAPIRO. Well, my staff and staff at the Counsel's Office have been in continuing dialog about some of the administrative procedures to effectuate and to ensure that these procedures are working smoothly. We've also asked and begun a dialog on whether those files should be permitted to remain at the White House or even whether there should, as now, be accession to the archives after an administration, or whether they should rather return to the FBI.

So there are a number of questions that we're still examining. But I believe the basic process has been dramatically altered, and in a way that will prevent the either inadvertent or the—short of a truly intentional criminal act, it would stop these—this sort of dissemination of files without authorization.

Mrs. MALONEY. Do you believe that we should put the force of law behind these procedures? As you may know, Mrs. Cardiss Col-

lins has legislated these procedures into law. Have you seen that legislation? And do you think we need to pass laws to make sure that it's upheld?

Mr. SHAPIRO. Well, in one respect, let me say the force of law, we note on the document itself, for the first time we make someone certify subject to the penalties for false statement, that this is sought for official purpose. So in that respect, obviously we are putting the force of already existent law into place.

We also put people on notice that any unauthorized disclosure, or in a recent change, any unauthorized request could be a violation of the Privacy Act. Whether or not—I'm not sure I have an opinion on whether these procedures need to be implemented by statute. Obviously, we wouldn't have objection the that.

My only concern, of course, is that it makes it harder to change them in light of evolving circumstances once they're legislatively enacted.

Mrs. MALONEY. Do you believe the information in FBI files is reliable?

Mr. SHAPIRO. On the whole, yes, I do.

Mrs. MALONEY. On the whole.

Mr. SHAPIRO. And when information is in raw files, an awful lot of information is based on what people tell us. That's primarily where it comes from.

Mrs. MALONEY. But what measures are taken to verify that the information is true? If you say you rely on what people tell you, how do you verify it is true? How is it reliable unless you know it's true?

Mr. SHAPIRO. That's the whole nature of the investigative process, is to talk to multiple witnesses to see whether they corroborate the statements or allegations that are made by one to see—and we do that, if it's a matter of any materiality. There is, of course, someone may make a—some sort of statement that is really not material to the inquiry and no one makes much effort to determine as to that—its veracity.

But our entire job is taking information from different sources, often conflicting, and through the investigative process, either through multiple witnesses, through objective evidence, through forensic evidence, trying to see where the truth lies.

Mrs. MALONEY. Well, my time is up.

Mr. CLINGER. The gentlelady's time has expired.

I now recognize the gentleman from Connecticut, Mr. Shays, for 5 minutes.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. Shapiro, we're here because many years ago the White House fired seven individuals from the Travel Office, which they had the right to do. Then when it turned out not to be a popular decision, they sought to justify their decision by seeking prosecution of these individuals.

They went to the IRS, they went to the FBI. They didn't go to the Justice Department. And as a result of that, they ultimately had to do an internal investigation and apologize to the American people for the misuse of the FBI and the IRS. They also, this Government has also had to refund money to some of these seven individuals. That's how this sordid affair started.

And it involved the coziness of the FBI and the potential intimidation of the FBI to misuse their office. And that's why you're here today, because there has been a continual cover-up of information that may or may not lead to someone's guilt, but the fact that they sought to cover it up leads us to be suspicious. So we are suspicious, I am suspicious. And I'd like to just ask first off, you are—what is your exact position?

Mr. SHAPIRO. I'm the General Counsel.

Mr. SHAYS. You graduated from what law school?

Mr. SHAPIRO. Yale Law School.

Mr. SHAYS. Which I consider to be one of the finest law schools in the country.

So you have a pretty good idea of the law, I think it's fair to say?

Mr. SHAPIRO. I try to, sir.

Mr. SHAYS. And you are not a political appointee?

Mr. SHAPIRO. No, I'm not, sir.

Mr. SHAYS. You are a professional employee.

Mr. SHAPIRO. I am a career Justice Department employee.

Mr. SHAYS. Now, we have the FBI—excuse me, we have the White House Travel Office Management Review, their own review, and they said Kennedy said that he needed to hear from Bourke within the next 15 minutes and that if the FBI were unable to provide guidance, Kennedy might have to seek guidance from another agency, such as the IRS. That's from the Federal Government. That is from the White House's own document. We have a 301 Form that the FBI interviewed Patrick Foran. He was in Office of Professional Review, and I believe he was an FBI employee; is that correct?

Mr. SHAPIRO. I know of Pat Foran as an FBI employee.

Mr. SHAYS. He said: Kennedy did not want to talk about it on the telephone and asked for a meeting with someone from the FBI headquarters as soon as possible. Kennedy did not want the FBI to send an agent from the field office, noting it was a most urgent matter being requested by the highest levels at the White House.

That's pretty scary. So we have that kind of on the record. We then seek to get more information, and in the process of getting more information about the Travel Office, we find out that the FBI gave 300 files to the White House on people who no longer worked at the White House. And subsequent, the FBI has apologized for that. Then we learn it was 400. Then we learn it was 500, maybe 700 to 900. It gets pretty scary.

Now, what concerns me is your conduct and the conduct of the FBI—excuse me, the conduct of the FBI in, first, the information of the Aldrich book, which is also scary. One, for what it says, and for how Mr. Aldrich seemed to have done a review of the First Family, which I think was done very unfairly. And I can now understand, if his basis for deciding the Clintons weren't capable and qualified to get a White House pass based on the innuendo, and so on, that he had in the epilogue, I understand why we don't want people to see FBI reports, if that's the basis of it. But I want to talk to you about this.

Evidently we were asked—you were asked a question—excuse me, this is your, Mr. Shapiro, this is your deposition. You were

asked: Can you tell me if there were any other conversations about the Gary Aldrich book with anyone at the White House?

You said: Yes, approximately a week or so later, I could give you the exact date for this, too, Mr. Quinn called me to advise me—excuse me, I'm going to start earlier.

On February 1996, you gave the Aldrich copy to the White House, and the question was: And did you communicate the substance of that book because they were an interested party?

Your response: Yep.

Then the question was: Okay, do you know who, who did you speak to at the White House? And that was—was that Jane also?

No, it was Jack Quinn.

Now, the question is: Define to me who an interested party is? Mr. SHAPIRO. I'm sorry, sir, can you identify what page you're on?

Mr. SHAYS. I'm on page, I guess, 81. Eighty-one.

Mr. SHAPIRO. I see that.

Mr. SHAYS. But the bottom line is you were asked at line 11 and 12, and your line answer on 13, you said they were an interested party.

Mr. SHAPIRO. No, actually Ms. Olson said that, and I said "yep."

Mr. SHAYS. You said: Yep, they were an interested party.

The bottom line to the answer is the same: They were an interested party. Define for me an interested party.

Mr. SHAPIRO. Well, let me define what I meant there, if I might. What I meant there, as I said before, the first draft of Mr. Aldrich's book, even more so than the draft that was published ultimately without authorization from the FBI—

Mr. SHAYS. That's not the question.

Mr. SHAPIRO. I'm answering the question.

Mr. SHAYS. You're not answering the question.

The question was, were they an interested party? And you said, yes. How is the White House, as someone with your background, how can you tell us that the White House was an interested party? And define interested party, that's the question.

Mr. SHAPIRO. As I was about to say, sir, and I will continue, the first draft of his book contained numerous, lengthy passages about internal White House procedures, White House security matters and the text of interviews of White House people.

Those—I told them that I could not ensure and ultimately was unable to ensure that Mr. Aldrich would comply with our requirements as to what material could be published and what material could not, that it could be published any day without prior notice to us, as it was, and that I thought given how much it divulged about internal White House processes, they needed to see it.

Mr. SHAYS. So you're defining an interested party because?

Mr. SHAPIRO. Because the book was replete with internal White House information.

Mr. SHAYS. Wasn't it replete with other information that would affect other people? Why did you decide it should only go to the White House?

Mr. SHAPIRO. Who else do you have in mind, sir?

Mr. SHAYS. Any other interested party.

Mr. SHAPIRO. I'm not sure—Mr. Aldrich wrote a book about his time at the White House, sir, and it was about the White House and the White House procedures.

Mr. SHAYS. What about all the people that were mentioned, weren't they interested parties?

Let me get on to the next item.

Mr. SHAPIRO. I did not disseminate—

Mr. CLINGER. The gentleman's time—

Mr. SHAYS. How about the Secret Service, did you notify the Secret Service? I would like an answer.

Mr. CLINGER. You can answer that question, then the gentleman's time has expired.

Mr. SHAYS. Were they not an interested party?

Mr. SHAPIRO. I don't know whether they were or not.

Mr. SHAYS. Weren't they mentioned, weren't they discussed?

Mr. SHAPIRO. I'm sorry, I can't hear the colloquy.

Mr. CLINGER. The gentleman's time has expired.

The Chair would now recognize the gentlelady from Florida, Ms. Ileana Ros-Lehtinen.

I'm sorry, forgive me. I withdraw the yielding to Ms. Ros-Lehtinen and recognize the gentleman from Pennsylvania, my colleague from Pennsylvania, Mr. Fattah, for 5 minutes.

Mr. FATTAH. Thank you, Mr. Chairman.

Mr. Shapiro, you are the lead lawyer in the FBI; is that correct?

Mr. SHAPIRO. Yes, sir.

Mr. FATTAH. The General Counsel. You are a career employee of the Justice Department?

Mr. SHAPIRO. Yes, sir.

Mr. FATTAH. And not a political appointee of the Clinton administration.

Mr. SHAPIRO. No, sir. The only political appointment—

Mr. FATTAH. The FBI is somewhat busy these days. You are handling the investigation into the terrorist attack on American military troops in Saudi Arabia; is that correct?

Mr. SHAPIRO. In Dhahran, yes, sir.

Mr. FATTAH. Do you have a role in that, either in terms of issues of international law and matters pertaining to that investigation?

Mr. SHAPIRO. I not infrequently have a role in that and some of the other investigations we have going on, when my other obligations permit it.

Mr. FATTAH. And you—the FBI is handling the investigation into the bombing in Centennial Park at the Olympics?

Mr. SHAPIRO. Yes, sir. And I have been twice daily, aside from what I missed for a deposition for this committee, I have been twice daily participating in conference calls involving lots of obviously important legal issues in the investigation that's proceeding there.

Mr. FATTAH. And as has been mentioned by my colleague Mr. Gilman from New York, there is an investigation taking place there that at least in part is being conducted by the FBI because of the potential that it could have been a criminal act that brought down the flight 800?

Mr. SHAPIRO. Yes, sir. And I've been involved in that on almost a daily basis. I traveled up to Long Island last Friday with the Director on that issue.

Mr. FATTAH. So can you remember a time during your tenure at the FBI when the General Counsel's Office has had this—this level of very prominent investigations going on simultaneously?

Mr. SHAPIRO. I think this may be the top of it, sir. The only other thing I can think of is in the two or 3 weeks immediately after the Oklahoma City bombings, I essentially didn't go home then, either.

Mr. FATTAH. So on the list of fairly important matters that you may have to handle as General Counsel, I assume you have to pass on the legalities on a whole host of matters dealing with these investigations; would that be correct, that there are matters—

Mr. SHAPIRO. Absolutely.

Mr. FATTAH [continuing]. In which you have to give guidance?

Mr. SHAPIRO. Yes, sir, absolutely. I—two of the last four nights I was—excuse me—woken up in the middle of the night on matters such as that.

Mr. FATTAH. Now, this committee is conducting a hearing today about some FBI files that the White House requested that has to do with some earlier investigation into the Travel Office. Are you aware that the Congress passed an Independent Counsel's law so that when the Congress felt that there was something improper that has taken place, that there could be an independent investigation? Are you aware of the Independent Counsel's Act?

Mr. SHAPIRO. Yes, I am.

Mr. FATTAH. Are you aware the Congress has determined that there's some matters that sometimes you need an Independent Counsel, and that in this particular matter, as relates to these travel employees and the FBI files, that the Independent Counsel's office is conducting an investigation?

Mr. SHAPIRO. Yes, I am, sir.

Mr. FATTAH. Is there any reason that you know of, given your high position in the law enforcement establishment, that this Congress should not have confidence that Mr. Starr's office is capable of investigating these matters?

Mr. SHAPIRO. I don't have any reason to not have full confidence in Mr. Starr and his office.

Mr. FATTAH. So the fact that we would take from your time in the midst of these other pressing investigations to question, even after you've done a deposition, you about this matter, do you have—is there something that was left out of your deposition?

Mr. SHAPIRO. Certainly nothing intentionally. I testified for about 4 hours, sir.

Mr. FATTAH. Well, let me—there is in these documents that I've read, a number of issues that come to light. One is that the agent involved, Mr. Sculimbrene—is that his name?

Mr. SHAPIRO. Sculimbrene.

Mr. FATTAH. Sculimbrene. Another FBI agent suggests that he had some personal ax to grind, he had some political problems with the White House, and then particularly that he took it very, very hard that these Travel Office employees were dismissed, he believed unfairly. And that he, in his memorandum, suggests that

perhaps because of his leanings in this regard, may not be the most reliable person at all.

There's a lot of back and forth, and I think that's what we want the Independent Counsel to try to figure out. Because when you do investigations like this, you have to take all of these different pieces of information and try to figure out where the truth lies, and that's essentially what the FBI specializes in doing; isn't that correct?

Mr. SHAPIRO. Yes, sir.

Mr. FATTAH. And so either side on this, whether the White House is innocent or guilty, whether there's some hideous conspiracy going on, that's what Kenneth Starr's office, with a very substantial budget, he has the—at his disposal a number of FBI agents; is that correct?

Mr. SHAPIRO. Yes. I believe approximately 30 FBI agents are assigned to his investigations.

Mr. FATTAH. As best as I can determine, multimillion dollars have been spent by Kenneth Starr's investigation investigating a whole range of matters, and he's been fairly successful in some guilty convictions and others related to investigations back in Little Rock.

Again, I just want to, for the record, because I'm confused as to why we're holding this hearing, especially why we're holding you hostage in this hearing when there are so many very important matters that the American public is depending on the FBI—you know, we spend a lot of time attacking the White House or attacking each other here.

This is a little new twist that we would now spend a day attacking the FBI, when the American public is really depending on you to be able to get to the bottom of some of these real criminal acts that have taken place.

So the Independent Counsel again, we should feel comfortable that based on everything you know that there would be a complete and thorough investigation of these matters?

Mr. SHAPIRO. I feel comfortable that the Independent Counsel will thoroughly and completely investigate the underlying matters. I also feel comfortable that if they have concerns or continuing concerns about any actions by me, that they have it fully within their authority and their capability to take whatever steps they need to investigate that and to address that.

Mr. FATTAH. Thank you.

Mr. CLINGER. The gentleman's time has expired.

The Chair would now yield to the gentlelady from Florida, Ms. Ileana Ros-Lehtinen.

If she would yield to me to ask one question?

Ms. ROS-LEHTINEN. Of course, Mr. Chairman.

Mr. CLINGER. The question is this: I think there has been an effort in the preceding days and at this hearing to discredit Agent Sculimbrene on the grounds that he had some bias or other. I just would want to make the point that the interview that he conducted with—that Mr. Sculimbrene conducted was done at a time long before any question had been raised with regard to the firing of the Travel Office individuals. There had been no evidence of that. This was early in the administration.

So to suggest that somehow because of the bias of Mr. Sculimbrene that he was distorting an interview he had over the hiring of Mr. Livingstone and misquoting Mr. Nussbaum, I think stretches credulity. This occurred way before there was any question of impropriety or firing the White House Seven; is that correct?

This interview occurred in March, did it not, of 1993?

Mr. SHAPIRO. Yes. And that's before the David Bowie memo. It is—and I don't mean to take issue with anything you said, Mr. Chairman. Mr. Aldrich in his book attributes to Mr. Sculimbrene some, I think it's fair to say, negative attitudes toward the White House from as soon as the Clinton administration came in.

Mr. BURTON. You're quoting the book now.

Mr. SHAPIRO. I have the book here.

Mr. CLINGER. I'm sorry, the gentlelady—

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman.

Mr. Shapiro, I want to followup on something in your deposition talking about your lack of political experience or that you didn't understand politics.

We read in your deposition on page 125, that you haven't had a political career. It appears that you seem to use this to justify your unseemly contacts with the White House, not just to give them the heads-up on a piece of information that should have rightly gone to the Independent Counsel. And I'm speaking about Bernie Nussbaum's FBI interview saying that Craig Livingstone is tied to the First Lady, you called Jack Quinn and told him of this, and not just to personally hand-deliver a confidential unauthorized draft of Gary Aldrich's book—I see that you've gone now to the bookstore and purchased your own copy.

I would like to ask you later on about Director Freeh and whether his—what his role was in that, if he had asked you to do this. And now we hear from this letter of July 25, by Jack Quinn to your Director, to your boss, which attacks the chairman of this committee and purports to question the FBI, we hear that you personally helped Jack Quinn edit this letter.

This is too much for us, for some of us to accept that you didn't see the political consequences of your actions.

And I'd like to ask you a little bit about your background on political affairs, et cetera. You worked on campaigns in college; is that correct, Mr. Shapiro?

Mr. SHAPIRO. Could I be permitted a moment to address some of what you said already?

Ms. ROS-LEHTINEN. Well, I just have this one question and we will continue, and you will be glad to answer the questions that we're asking now about your political experience in college, if you may answer that.

Mr. SHAPIRO. I may answer it. I would like to note that as a career employee of the Department of Justice, I would generally consider it and, in fact, by law by this Congress, it would be inappropriate for me to ask questions about private political activities of any of my employees.

Ms. ROS-LEHTINEN. And speaking about your position in the Department of Justice, you were sworn in as an assistant U.S. attorney, and it's a stretch of my imagination—

Mr. SHAPIRO. Under President Reagan.

Ms. ROS-LEHTINEN [continuing]. To believe that an assistant U.S. attorney, the highest position of that organization being a political appointment, that you've never had an understanding of improper political behavior.

Mr. SHAPIRO. I've never suggested that I didn't have that understanding. I answered a question put to me and I answered that question as to whether I was a political appointee, as to whether I made political calculations.

Ms. ROS-LEHTINEN. Well, you were warned then of the danger of political prosecutions during your career, political vendettas, of political favoritism, and so I'd like to ask about—

Mr. SHAPIRO. There was never an issue raised or an accusation ever made in any respect about any investigation I conducted or even the slightest suggestion. I have worked under three Presidents and four Attorney Generals of both political parties and have conducted myself at each time without any regard to political consequences. Had I been more attuned—

Ms. ROS-LEHTINEN. With the experience that you've had, Mr. Shapiro, were there any other times when you were asked to edit the letter from the White House that was going to your boss—

Mr. SHAPIRO. I was not—

Ms. ROS-LEHTINEN. Or is this the only instance that you've had the opportunity to participate in such a—

Mr. SHAPIRO. I was not asked to edit this letter, which is a matter I asked to have a moment to respond to.

What I said was he read the letter to me beforehand. He asked if anything in its tone would be offensive to the FBI inadvertently so as not to create a separate issue, and he asked me was it—did I have an opinion based on where I sat as to whether it was appropriate for that letter to come from him or someone else.

Ms. ROS-LEHTINEN. I know exactly what you said, because I have the deposition here. And on page 138, you do talk about what you were asked, whether you had an opinion on who that letter should come from from the White House, you discussed whether it should be Jack Quinn, Leon Panetta, you talked about the tone.

Why didn't you just say, thank you very much, have a nice day, and hang up? It would seem to me that in this wonderful career that you've had with all this great experience, that the appropriate response would have been: This seems to be an inappropriate conversation, and hang up, and even not even say have "a nice day."

Why did you continue this conversation and help edit this letter, which is, as I say, is a personal insult to our chairman, who I think has conducted this hearing in a very fair way?

Mr. SHAPIRO. Well, as you—

Ms. ROS-LEHTINEN. And yet you say this was not a political—

Mr. FATTAH. Can the witness have a chance to respond, Mr. Chairman?

Mr. BURTON. Let her ask her question.

Mr. FATTAH. Can the witness also have a chance to respond? I think that's fair.

Ms. ROS-LEHTINEN. Of course. I just want to make sure that he understands my question.

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.

Mr. SHAPIRO. Well, you would be wrong, I am sorry to say. I did not have a direct hand in the drafting of that document. The document was entirely drafted at the point it was read to me. I did say at the beginning I had some awareness. In fact, I think the first thing I said to Mr. Quinn was: I will conduct this conversation with you about matters I consider appropriate. You should assume—

Ms. ROS-LEHTINEN. Why didn't you hang up?

Mr. SHAPIRO. Excuse me, you should assume that we will be deposed about this conversation and I'm conducting it on the assumption that that's going to go on.

Ms. ROS-LEHTINEN. So you think that—

Mr. CLINGER. The gentlelady's time has expired.

Ms. ROS-LEHTINEN. Understanding that you might have a deposition related to it is more than enough justification for you to continue in a conversation about the drafting of this letter.

Mr. SHAPIRO. Again, I don't believe that's what I said.

Mr. CLINGER. The gentlelady's time has expired.

You may complete the answer.

Mr. SHAPIRO. Thank you, Mr. Chairman.

What I was—the letter was read to me in complete form. I was advised of a dispute internally as to what one word should be and asked whether that word would create problems they were not seeking to create at the FBI. You will note, if you've read my deposition, that as to the allegation, the comment about Mr. Clinger, I went out of my way to say to them, that's not a subject you should discuss with me and I will not have anything to say about what you propose to say about the committee or Mr. Clinger, and that, too, is in my deposition.

Mr. CLINGER. The gentleman's time has expired.

The Chair would now recognize the gentleman from West Virginia, Mr. Wise, for 5 minutes.

Mr. WISE. Mr. Chairman, I would yield my time to Mrs. Collins—I'm sorry, Mrs. Maloney.

Mr. CLINGER. The gentlewoman from New York is thereby recognized.

Mr. FATTAH. Would you yield?

Mrs. MALONEY. I yield to Mrs. Collins at this time.

Mrs. COLLINS OF ILLINOIS. Well, then I yield to Mr. Fattah. Round Robin.

Will you start the clock again, Mr. Chairman?

Mr. FATTAH. Mr. Shapiro.

Mr. SHAPIRO. Yes, sir.

Mr. FATTAH. You were, in the last series of questioning, trying to be responsive. You were accused a number of times of editing this letter and you've stated now for the record that the letter was read to you in its complete form?

Mr. SHAPIRO. It was read to me in its complete form. I was advised that there was a—that they had a question about one word or one phrase and that they were recommending, I told them that I agreed that the form they were recommending would be less trou-

blesome in terms of anyone at the FBI inadvertently taking offense at something that they did not mean to say.

Mr. FATTAH. You also suggest in that when you had your appointment at the Justice Department that you, as I think Deputy Associate Counsel, Assistant Counsel, that was in the Reagan administration?

Mr. SHAPIRO. I was hired by Rudy Giuliani as an assistant U.S. attorney in the Reagan administration. I held that position through the Bush administration, and left at the conclusion of the Bush administration, and then came back here under the Clinton administration into my position at the FBI.

Mrs. MALONEY. Would Mr. Fattah yield some time to the gentlewoman from New York?

Mr. FATTAH. Yes, I would be glad to yield.

Mrs. MALONEY. Thank you.

Robert Gilman, a prominent Washington lawyer argues that providing FBI files to the White House is a violation of the Privacy Act because the White House is not an agency; and what is your opinion, Mr. Shapiro?

Mr. SHAPIRO. My opinion is I have all respect for Mr. Gilman, but he's wrong, that the routine use notice that puts people on notice that we are going to disseminate these documents to the White House is not using "agency" in the narrow technical term as used in one portion of the Privacy Act. It is, in fact, used in different ways in the Privacy Act.

Mrs. MALONEY. Do you believe it would be a violation of the Privacy Act for a Member of Congress to disclose information contained in an FBI file to the public?

Mr. SHAPIRO. As far as I'm aware, the Congress, in drafting the Privacy Act, did not cover the Congress by the Privacy Act.

Mrs. MALONEY. Well, do you believe that the chairman's disclosure of raw FBI background files without supporting evidence violates the spirit, if not the letter of the Privacy Act?

Mr. SHAPIRO. I don't believe I'm perhaps in the best position to answer that question.

Mrs. MALONEY. Let me phrase it another way.

Would the FBI make this type of information public without supporting evidence?

Mr. SHAPIRO. The FBI does not generally make public available information from background investigations, whether it has or it does not have supporting evidence.

Mr. CLINGER. Would the gentlelady yield to me?

Mrs. MALONEY. I certainly will.

Mr. CLINGER. Just to make a point, however, that the FBI did disseminate this information to individuals in the White House who, in turn, disseminated it outside of the White House to private individuals. Is that right?

Mr. SHAPIRO. Yes. I didn't add that. I sort of assumed that was well understood by everyone.

Mrs. MALONEY. Mr. Shapiro, are you aware that Craig Livingstone's mother, Gloria, has denied knowing the First Lady?

Mr. SHAPIRO. I have heard that.

Mrs. MALONEY. Are you aware that the First Lady has denied knowing Craig Livingstone's mother?

Mr. SHAPIRO. Yes.

Mrs. MALONEY. Are you aware that in a sworn statement before this committee Mr. Nussbaum has denied saying that the First Lady wanted Craig Livingstone hired?

Mr. SHAPIRO. Yes.

Mrs. MALONEY. Are you aware that in a sworn statement before this committee Mr. Kennedy has denied saying that the First Lady wanted Craig Livingstone hired?

Mr. SHAPIRO. Yes.

Mrs. MALONEY. Did these denials at least raise the possibility in your mind that Mr. Sculimbrene's note in Mr. Livingstone's FBI file might be wrong?

Mr. SHAPIRO. It raised the possibility that it might be inaccurate. Again, I don't want to suggest that we thought or considered really that he may have intentionally falsified it, but it raised the possibility that it may have been inaccurate, and that's why we sent two agents to interview him.

Mrs. MALONEY. Do you believe that the White House had the right to know that this committee was given access to Craig Livingstone's file?

Mr. SHAPIRO. I have given that a lot of thought over the last few days, as you might imagine. I think it would have—under the circumstances and the appearances that were created, it would clearly have been better if I had not advised them. But I was motivated entirely by the good faith belief that that was the best way to be evenhanded and to advise them of the fact that information we had gathered for them was being provided to the Congress for use presumably in a public hearing.

Mrs. MALONEY. Do you believe that the FBI did anything illegal or unethical in releasing the FBI file summaries to the White House?

Mr. SHAPIRO. Are you talking about my release or the earlier release of the files, of the 400 files?

Mrs. MALONEY. Both.

Mr. SHAPIRO. I don't believe that the FBI did anything illegal in either situation, and I guess I don't believe the FBI did anything unethical in either situation. In both situations, I think we could have exercised better judgment.

Mrs. MALONEY. Going back to Mr. Gilman's point that he raised, do you believe that there's enough confusion to warrant the issuance of new regulations specifying that a Federal agency includes the White House?

Mr. SHAPIRO. You bet I do. In fact, I have instructed our people to redraft the routine use notice to ensure that it includes the words "any agency, including the White House."

I would note that on the same page, where the "routine use" notice appears in the Federal Register is a chart of the different indices and who they get disseminated to, and it has, "White House special index disseminates information in background files to the White House."

It is inconceivable to me that any citizen consulting the Federal Register for wanting to know the routine uses and seeing that chart on there that says "White House special index, information will be disseminated" would not be on notice, which of course is

what the "routine use" notification is for, that the White House was one of the agencies, contrary to Mr. Gilman's point.

Mr. CLINGER. The gentlelady's time has expired, and the Chair notes that the vote is in progress at the present time, and the committee will stand in recess until 1:20.

[Whereupon, at 12:42 p.m., the committee was recessed, to reconvene at 1:20 p.m., the same day.]

Mr. CLINGER. The Committee on Government Reform and Oversight will resume its hearing, and the Chair would recognize for 5 minutes the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Mr. Shapiro—

Mr. SHAPIRO. Yes, sir.

Mr. MICA. I have heard you refer to yourself as a career employee at the FBI. In fact—

Mr. SHAPIRO. Of the Justice Department, sir.

Mr. MICA. Of the Justice Department. And you have—I guess you worked with Louie Freeh back in your previous professional experience; is that correct?

Mr. SHAPIRO. Yes, sir. We were assistant U.S. attorneys together in the Southern District of New York.

Mr. MICA. You didn't come on originally as a career employee, unless this press release is wrong that I have. This press release says that you were teaching at law school and would take a 2-year leave of absence; is that correct, initially?

Mr. SHAPIRO. I have a break in service, but I was hired into a career position, Mr. Mica.

Mr. MICA. Are you still on a leave of absence?

Mr. SHAPIRO. Yes, I am. They keep extending it for me.

Mr. MICA. You are a career—and you have converted to career civil service?

Mr. SHAPIRO. I am in the Senior Executive Service.

Mr. MICA. I am not certain of your status and whether you can do that. I chair the House Civil Service Subcommittee, and I am going to ask our subcommittee to look into those terms.

Mr. SHAPIRO. As you know, Mr. Mica, the FBI has a separate SES system.

Mr. MICA. Yes, I know it does, and we are going to check into that, but I have not heard of that kind of a relationship where you are career and also on a leave of absence. And we may need to change that, because for all intents and purposes it appears that you can subvert the political appointment process and someone can put someone in a position such as your position, who is a friend, create it to career, and also give them the advantage of staying on a leave of absence, which I would have some questions about.

But I want to take a minute and talk about the sequence of events on Monday, July 15th. It's my understanding that Maggie Owens, who is the FBI congressional affairs liaison, was notified by our committee of a congressional request to review Craig Livingstone's background file. Is that correct?

Mr. SHAPIRO. Yes. I believe she received a call that morning.

Mr. MICA. And that was Monday morning. And then she told you—she told you about that?

Mr. SHAPIRO. At some point that morning, she told me about that.

Mr. MICA. OK. And what did you tell her to do?

Mr. SHAPIRO. Well, I am not sure I told her to do anything, but I—she doesn't work for me. I did ask her, had she checked with the Independent Counsel.

Mr. MICA. And what did she say?

Mr. SHAPIRO. She advised that they had no objection to providing the information to the Congress and that they had declined her offer to make the file available to them.

Mr. MICA. So you were concerned at that point, just from a congressional inquiry, that, in fact, she should check with the Independent Counsel; right?

Mr. SHAPIRO. It's not that I was concerned; it was that we had agreed with the Independent Counsel—

Mr. MICA. That's Monday morning.

Mr. SHAPIRO. We had agreed with the Independent Counsel, sir, that before any information was provided up to the Hill, that we would check with them.

Mr. MICA. Was that Monday before noon, would you say?

Mr. SHAPIRO. Yes.

Mr. MICA. And when did you and Mr. Kelley look at that file, the Livingstone file?

Mr. SHAPIRO. I believe it was sometime in midafternoon that I looked at it.

Mr. MICA. On Monday?

Mr. KELLEY. I first saw it around 2.

Mr. MICA. And did you see it?

Mr. SHAPIRO. A little bit later, maybe 3.

Mr. MICA. Who did you think you should call first, the Independent Counsel or the congressional committee, to make them aware of what you had found?

Mr. SHAPIRO. Well, I knew the congressional committee was scheduled to be over within an hour or so and didn't need to be prompted to do so. I took the earlier comments of Ms. Owens to mean that the Independent Counsel was not—the scope of their investigation did not extend to these matters.

Mr. MICA. But you asked her to contact the special counsel and check that, or did she do it on her own?

Mr. SHAPIRO. I had asked her if she did check that. She said she had done it on her own.

Mr. MICA. So she did it on her own, and you were concerned at that point that that be checked out. But you wanted to contact the White House first before—and you looked at the file about 2, and you looked at it what time?

Mr. SHAPIRO. I don't remember the time. I thought it was closer to 3 by the time I saw it, but I don't know for sure.

Mr. MICA. By 3. What time did you decide to send the FBI to Mr. Sculimbrene's house?

Mr. SHAPIRO. The following day.

Mr. MICA. Now wait a second. That can't—at 9:15 in the morning the agents called; you testified that at 9:15 in the morning, the next morning, they said they were on their way?

Mr. SHAPIRO. We—

Mr. MICA. Now, did you—

Mr. KELLEY. That's because I called them early the following morning.

Mr. MICA. Pardon?

Mr. KELLEY. That's because I called them early the following morning.

Mr. MICA. You called them at what time the next morning?

Mr. KELLEY. Before 9; 8:30 or 9.

Mr. MICA. So before 9. So they were then at 9:15 calling him immediately and at his house at 11; is that correct?

Mr. KELLEY. That's my understanding, yes.

Mr. MICA. Who was the paralegal that looked through the files?

Mr. KELLEY. I believe Jim Stroud.

Mr. MICA. And did Jim contact you first or Mr. Shapiro first? Mr. Kelley first?

Mr. KELLEY. His Unit Chief, Paul Cignoli, brought the documents with him to a regularly scheduled meeting I have with my unit chiefs at 2.

Mr. MICA. And then did you contact—I want to know the sequence of who you contacted. Did you contact Gorelick first after 2? Did you do that, Kelley, or did you do that, Mr. Shapiro?

Mr. SHAPIRO. No. When I—at some point I returned into the office space—we share a suite—as Mr. Kelley's meeting with his unit chiefs was breaking up, sometime 2:30, 3. He brought it to my attention, and shortly thereafter I—

Mr. MICA. So who was contacted first, the White House or Gorelick, the Deputy Attorney General?

Mr. SHAPIRO. The Deputy Attorney General's Office.

Mr. MICA. You are sure of that?

Mr. SHAPIRO. That they were advised of the information first, yes.

Mr. MICA. That who was advised, the White House was advised first or the Attorney General was advised first?

Mr. SHAPIRO. The Deputy Attorney General's Chief of Staff, Dennis Corrigan, was advised first.

When I finished that call—

Mr. MICA. Before the White House?

Mr. SHAPIRO. Before I called Kathleen Wallman.

Mr. CLINGER. The gentleman's time has expired.

Following consultation which I have had with the ranking minority member, we have agreed to extend Rule 19 of the Rules of the Committee on Government Reform and Oversight through the last day of August 1996, for the sole purpose of conducting a deposition of David Craig Livingstone. We have had to do this to accommodate Mr. Livingstone's attorney, who had other commitments, unbreakable commitments, this week.

It is my understanding that Mr. Livingstone will appear voluntarily, and I would exercise my subpoena under this unanimous consent request only if a voluntary appearance cannot be arranged. Without objection—if there is an objection. Without objection, it is so ordered.

Mr. BURTON. Mr. Chairman.

Mr. CLINGER. The gentleman from Indiana.

Mr. BURTON. Mr. Chairman, I ask unanimous consent to proceed out of order. I have to go to a meeting at the Senate and speak in just a few minutes.

Mr. CLINGER. Without objection.

Mr. BURTON. I thank my colleagues for allowing me this.

[The prepared statement of Hon. Dan Burton follows:]

PREPARED STATEMENT OF HON. DAN BURTON, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF INDIANA

Mr. Chairman, this hearing is very timely. As we continue our investigation of the FBI's role in the White House's improper acquisition of files on hundreds of former employees, we have new and very disturbing evidence that the Clinton administration is continuing to politicize the FBI.

On June 20, 1996, Attorney General Janet Reno said that it would be inappropriate for the Justice Department or the FBI to continue to investigate the FBI files matter because of the possibility of conflicts of interest. Now we learn that the FBI gave the White House a "heads up" in July regarding the statements made by Bernard Nussbaum which were contained in Craig Livingstone's FBI file. The next day, the FBI sent agents to Dennis Sculimbrené's home to ask him about his 1993 interview with Bernard Nussbaum, and to tell him that the White House was unhappy about this interview.

I believe that the FBI owes Dennis Sculimbrené an apology for the way he has been treated since he testified last fall in the Billy Dale trial. More importantly, I believe it is totally unacceptable for the FBI to operate in a political manner as we have seen and are continuing to see.

I'm tired of hearing officials in the Clinton administration say "well, in hindsight, that action may have been unwise," "it was a bureaucratic snafu" and "I don't recall who directed that such and such an action to be taken."

I want to know, this committee wants to know, and the American people want to know, why the FBI gave this "heads up" to the White House. Did someone at the White House request this information? If so, who? Why were FBI agents sent to Dennis Sculimbrené's house? Did the White House direct the FBI to send these agents to Mr. Sculimbrené's house, and if so, who at the White House was responsible for this action?

Mr. Chairman, I commend you for your tenacity in getting information out of the Clinton administration regarding the FBI files. It is fully consistent with your legislative duties for you to inform the House and the American people that Bernard Nussbaum's statements under oath before this committee contradict what he said in 1993 when he was interviewed regarding Craig Livingstone.

Mr. Shapiro has said under oath that he told Kathy Wallman at the White House that he believed that the Privacy Act does not apply to Congress, and that there were no limits on Congress' use of the information. Mr. Kelley also said, under oath, that it is his understanding that the Privacy Act does not apply to Congress.

Neither you nor me nor anyone on this side of the aisle need apologize for exercising our constitutionally-mandated oversight responsibility. Making false statements under oath before a congressional committee is a very serious charge, and I support your decision, Mr. Chairman, to refer this matter to the U.S. attorney for the District of Columbia and the Independent Counsel.

Mr. BURTON. First of all, let me just say that we are not attacking the FBI; we are attacking some things and questioning some actions that took place. The FBI does a great job for this country, and I don't think anybody should misconstrue our actions.

Mr. Gilman said awhile ago, or it was during his questioning—he asked you, Mr. Shapiro, about the grand jury investigation. Now, the grand jury investigation was going on regarding, we believe, Livingstone and Marceca.

You said you did not know the scope of the grand jury investigation or who may or may not have been involved, and yet you gave information to the White House which ultimately went to at least 16 of the officials at the White House.

Since you didn't know the scope of the grand jury investigation but you knew, basically, what it pertained to, don't you think that may have impeded the judicial process or the grand jury process?

Mr. SHAPIRO. Well, I have no reason to believe the information I gave to the White House and that they chose independently to subsequently disseminate, that it has, in fact, impeded anything. However, I—well, there's no "however."

Mr. BURTON. You don't question that at all? I mean, there was a grand jury investigation involving two employees at the White House.

Mr. SHAPIRO. Former employees.

Mr. BURTON. Former employees, by the Independent Counsel. And you gave information to the White House which may have had an impact on that grand jury investigation. And as I understand it, you graduated cum laude from undergraduate school. You went to Yale.

Mr. SHAPIRO. Magna cum laude from undergraduate school.

Mr. BURTON. Magna cum laude; excuse me. Magna cum laude. And you also worked on the *Gotti* case?

Mr. SHAPIRO. No, I did not.

Mr. BURTON. You did not. Well, you worked on a number of major cases, as I understand it here.

Mr. SHAPIRO. I think I had a successful career as an assistant U.S. attorney.

Mr. BURTON. For you to make a mistake like that seems very questionable to me.

Mr. SHAPIRO. It has troubled me, too, Mr. Burton. It's not the first time I have ever made a mistake, and I—

Mr. BURTON. You sure made a doozie this time.

Mr. SHAPIRO. I wish it would be the last. I can't assure you of that either.

Mr. BURTON. It was a doozie of a mistake.

Incidentally, you said you came—you are a career employee, but let's make sure we have the record straight. You were not with the FBI before this administration?

Mr. SHAPIRO. No, and I did not mean to suggest otherwise.

Mr. BURTON. You came when Mr. Freeh came, who was a political appointee, and he brought you with him from New York; is that correct?

Mr. SHAPIRO. Based on our having worked together as assistant U.S. attorneys together in New York.

Mr. BURTON. But the fact is, before that time you were not a career employee? I mean, I don't want to mislead anybody who is paying attention to these hearing.

Mr. SHAPIRO. I was a career employee for the Department of Justice. I maintained a Department of Justice appointment, special appointment, even while I was at Cornell Law School, and I came back into a career position at the FBI.

Mr. BURTON. But you were not a career employee at the FBI?

Mr. SHAPIRO. No. No, sir.

Mr. BURTON. OK.

Mr. SHAPIRO. I am now. I was not then.

Mr. BURTON. You said in testimony awhile ago, there are 30 or approximately 30 FBI agents working with Mr. Starr.

Mr. SHAPIRO. Yes, sir.

Mr. BURTON. The Attorney General said because of the possibility of a conflict of interest, she didn't want the FBI involved in this. And yet even though Mr. Starr had 30 FBI agents, you chose, after Janet Reno said this, to send two FBI agents out to see Mr. Sculimbrene?

Mr. SHAPIRO. Mr. Burton, you are asking me, again, about the ramifications of the same decision. Had I made the determination that this was a matter within their scope, there's a lot of things I wouldn't have done. Having made the determination, perhaps erroneously, that this was a matter outside of their scope, I couldn't refer it to the Independent Counsel.

Mr. BURTON. I think it stretches credibility, or credulity, for us to believe that you, a man who has the expertise that you have, knowing that this has been turned over to Kenneth Starr, who has 30 FBI agents, to go ahead and, of your own volition, to send two FBI agents out to investigate somebody or talk to somebody who may have a bearing—who has a direct bearing on the FBI's investigation through the Independent Counsel.

Mr. SHAPIRO. Well, I am sorry that it strains credibility, sir, because unfortunately it happens to be the truth, and I wish I could convince you of that some other way other than to say, I make a thousand decisions a day, sir. I don't have 4 days after the fact to think about them. Looking back at it now, I can understand why it seems like an unlikely decision. At the time, making the decision on the fly, that's the decision I made. If it was wrong—

Mr. BURTON. Let me just say, this entire investigation, we have had case after case after case where people have selective memory loss. They have made mistakes. It goes on and on and on, and after awhile the committee starts saying, "My gosh, doesn't anybody remember anything? Doesn't anybody take responsibility for their actions?"

Mr. SHAPIRO. Have I failed to remember anything, sir, in the last 4 hours?

Mr. BURTON. I am not just talking about you.

Mr. SHAPIRO. Thank you.

Mr. BURTON. Now, has Louis Freeh expressed concerns about you as to what you did, or has Mr. Gorelick—Ms. Gorelick, rather?

Mr. SHAPIRO. I haven't discussed this matter with the Deputy Attorney General or the Attorney General. The Director and I have had a number of conversations about it.

Mr. BURTON. What was his response? What did he think about it?

Mr. SHAPIRO. He wishes I hadn't done it.

Mr. BURTON. So do we.

Mr. SHAPIRO. So do I, sir.

Mr. BURTON. 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.

Mr. SHAPIRO. Mr. Burton—

Mr. BURTON. Let me just get to my question.

Mr. SHAPIRO. Yes.

Mr. BURTON. Doesn't this fly in the face of your so-called policy of being nonpartisan and everybody being equally informed?

Mr. SHAPIRO. No, because, as you know, since I have testified about it perhaps four or five times this morning, my intent was—which was subverted by the fact that, unknown to me, the appointment had been canceled—was to make roughly simultaneous notice.

Now that may have been a mistake, sir, but it's a different mistake from the one you are accusing me of now.

Mr. BURTON. Well, I am not talking about your intention; I am talking about the bottom line, the practical result.

The fact is, you are asking this committee and the American people to believe that this was another bureaucrat's innocent mistake. And with your credentials, it just stretches my imagination to think a man that, with your—of your caliber and your background could make this kind of a blunder.

Mr. SHAPIRO. I am appreciative, sir, that you have such a high opinion of me and my abilities.

Mr. BURTON. I do, about your background.

Mr. SHAPIRO. And I don't mean—I'm not saying that at all snide. I am saying I, too, am capable of making, from time to time, horrific blunders, and if I have made one here—and obviously to some extent I have—I deeply regret that. I do not act flawlessly in this job.

Mr. BURTON. This administration is rife, full, of all of these kinds of blunders.

Mr. SHAPIRO. Have you ever known one that wasn't, sir?

Mr. BURTON. Week after week after week.

Thank you, Mr. Chairman.

Mr. CLINGER. The gentleman's time has expired.

The Chair would now recognize the gentleman from Massachusetts, Mr. Blute, for 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman. And I again commend you for holding these hearings, and I thank the witnesses for their testimony.

As has been said, I think most of us and most Americans hold the FBI in very high regard, view it as a, for the most part, professional law enforcement agency that has done great work for the American people over its long history.

That is not to say that from time to time there haven't been problems with the FBI, and I think those of us who have studied the history of it know what happened during the Watergate era

and the misuse of the FBI, and perhaps even before that some problems with the way certain FBI files were used by various FBI people with regard to Dr. King, for example. These are problems, I think were corrected, and the FBI has moved on and, again, regained its high stature with the American people.

I think this committee would like to see that trend continue, and we find some of the things very troubling that have occurred here, not just here but seemingly a pattern. And we look for patterns on this committee.

I want to ask you about a pattern in which the FBI has been misused by this White House. We know about the Travelgate investigation in which the FBI was brought in very quickly. We know that Janet Reno spoke out very strongly about that and said it was wrong; it shouldn't happen again.

With regard to the FBI files, Director Freeh has said that the FBI was, quote/unquote, victimized by the White House and that this wouldn't happen again.

My question to you, Mr. Shapiro: In your key capacity, what kind of message were you getting from the top about how to interact with this White House?

It would seem to me that you would have gotten the word from Janet Reno, from Director Freeh, and from everyone on up, that it would be—it would behoove you and the rest of the FBI to be very careful in your dealings with this White House, given the track record that had already begun.

Yet even with all of those warnings, the heads up still went to the White House staff on the issue of Mr. Nussbaum, Mr. Livingstone's file and what was in it, and Mr. Aldrich's book was still—the text was still presented to the White House staff.

My question to you is: Didn't you have some sense that you needed to tread carefully in this area?

Mr. SHAPIRO. Mr. Blute, that's a very fair question. Let me say at the outset, I am proud to have been an integral part of some of those achievements over the last 3 years—Oklahoma City, Unabomb, the Freemen, the investigations we are conducting right now. Those are the things I normally spend most of my time doing.

Let me say that of course I have received the message and have heeded it for the most part, day in and day out, about being careful with our relations with the White House. The Director has been very firm about that, has been very strong about that.

Perhaps in this case I was insufficiently inattentive to that. I think I have said that.

In the files matter, as you well know, I wrote a report that went out directly—not directly addressing the White House's conduct—was a very hard hitting report and one that didn't make the White House by any means happy, as one could tell from their subsequent public statements. They didn't talk to me about it.

Maybe in that context, I allowed myself to think that there would be less likelihood that someone would challenge my independence, my veracity, my integrity, and that in my effort to be evenhanded here, I took a little bit too much for granted the fact that I had staked out a very independent position in my report.

Mr. BLUTE. Let me ask you this: What kind of a relationship do you have with White House staffers, White House counsel? I mean,

how often did you talk to them on the phone? Did they periodically call you up to chat about various things that were happening over there at the FBI? Were you the go-to guy in the White House to get a sense of what was happening within the FBI?

Mr. SHAPIRO. No one calls from the White House to find out generally what's happening at the FBI. There is no go-to guy; there is no normal channel. Their connection is with the Department of Justice.

Mr. BLUTE. How often would you have conversations with Jack Quinn, for example, the White House Counsel? Kind of a parallel position.

Mr. SHAPIRO. I spoke to Jack Quinn on a number of occasions in redesigning the form of White House requests, because they are the other side of that and the pieces have to fit together.

If you exclude that, those conversations, which possibly were five or six or eight, I have probably spoken with him over the years that he has been in there fewer than 5 or certainly fewer 10 times. It is an unusual occurrence.

Mr. BLUTE. And those were conversations about—

Mr. SHAPIRO. I think we have discussed most of them here.

Mr. BLUTE [continuing]. Ongoing situations?

Mr. SHAPIRO. Two about the Aldrich book; one where he called to see who the public person was to send this letter to, not for me to edit this letter.

Mr. BLUTE. Let me ask you how you have made your judgment—you have discussed it to some extent, but I want to get a little deeper—on what we are calling a heads up to the White House with regard to these files.

Again, in light of the fact that Janet Reno had stated that the FBI was improperly used during the Travelgate investigation, in light of the fact that Director Freeh had said very strongly that the FBI was victimized during the FBI file request thing, what kind of process? Did you think about this as you thought and weighed in the balance whether you should have revealed this to the White House?

Mr. SHAPIRO. I think it is clear, in retrospect, that I didn't think about it nearly enough, period; that I became aware of the information. I knew it was the subject of considerable public controversy and dispute before.

I knew this was information that we had, of course, originally gathered for the White House, and knowing that it was going to the committee, supposedly that afternoon, within an hour, there's not more—anything more to it, Mr. Blute. I wish I had thought through it in a little more depth.

Mr. BLUTE. Well, Mr. Chairman, I think this committee has a responsibility to the American people to get these facts on the record, and to indicate our concern about the misuse of the FBI whenever it occurs, and to continue to urge the FBI in its internal structure to put up significant fire walls between a political operation at the White House and a legitimate law enforcement responsibility that the FBI has.

I think those fire walls, at the very least, have been breached. Perhaps we have to think about building higher walls.

Thank you, Mr. Chairman.

Mr. CLINGER. I thank the gentleman from Massachusetts. I now recognize the gentleman from Virginia, Mr. Davis, for 5 minutes.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Shapiro, it has been a long day. I am going to try to just skip through a couple of issues.

Listening to your responses today, I get the impression that one of the agents up here who has been maligned by some—in my judgment, maligned by some of the other members, Agent Sculimbrene—that instead of defending him, you seem to be going out of your way to cast doubt about his credibility.

Mr. SHAPIRO. I don't mean to be doing that, sir.

Mr. DAVIS. OK.

Mr. SHAPIRO. I do mean to explain the basis why I sent agents to interview him. I had questions.

Mr. DAVIS. You were asked that question.

Mr. SHAPIRO. Yes.

Mr. DAVIS. And that's fair comment. But I think people have taken that hedging and run with it.

I would just like to ask a couple of follow-ups on that to give us a chance to clarify this because he is not here to defend himself at that point.

Mr. SHAPIRO. That's right, and I did not mean to personally attack him.

Mr. DAVIS. For example, in response to Chairman Clinger's questions of Mr. Sculimbrene doing the background interviews well before the Travel Office firings, before they were any issue at all, at that point it seemed to me you gratuitously almost referred to something in Mr. Aldrich's book. Do you remember what I am talking about?

Mr. SHAPIRO. I do, sir.

Mr. DAVIS. I mean, first, I read the book. I was coming back on an airplane, and it was the only book in any bag, and I read it. The quotes from Mr. Sculimbrene are third-party quotes. They weren't under oath. We don't know if he actually said them at that point. He wasn't under oath at the time.

Could you put this in a context?

Mr. SHAPIRO. Yes, sir, and I do not mean to rely on in any great extent or to suggest that I have much confidence in the content of Mr. Aldrich's book. However, what I understood the chairman to be asking me was whether there was any basis at the time, anything I'm aware of at that time, that would have given rise to those concerns. The one indication I am aware of is in Aldrich's book. And for all the serious questions that I have, and I know others have, about Aldrich's credibility, Dennis Sculimbrene was his friend and partner. I have somewhat less reason—

Mr. DAVIS. Not partner in the book, was he?

Mr. SHAPIRO. No, no. Partner at the White House.

I had less reason to believe he would slander him or falsely praise him if that's how he sees it. I don't know how Mr. Aldrich would see it.

In any event, you are right to note that. I didn't mean to be relying, as an authoritative text, on Mr. Aldrich's book.

Mr. DAVIS. Do you question his credibility at this point—Mr. Sculimbrene's? Do you question the credibility of the writing he put forward in those notes of March 1993?

And let me just add, he would write down what he heard, as most FBI agents would do. That doesn't mean what they heard was correct.

Mr. SHAPIRO. That's correct.

Mr. DAVIS. Somebody could be telling him. One thing we have learned in these hearings is that there's a lot of hearsay in these files that are told to agents; they write it down and file them.

But we don't have any basis at all, do we, for thinking Mr. Sculimbrene manufactured this?

Mr. SHAPIRO. I question the accuracy; I do not question his credibility in it. As I said, during my deposition, I was asked that question. It never occurred to me that he falsified, fabricated, that information. It did occur to me that it was distinctly possible that he had transposed what one witness said to him in the course of interviews into another witness' mouth. In fact, he does this insert not immediately after seeing that one witness but after seeing a series of witnesses and goes back and types it up.

Now, I don't know exactly when he did it, because it's not dated. Nothing wrong with that. It just makes it hard for me to know how much after the fact he did it. And as I said in my deposition, I did not have reason to believe, and I do not now, that he intentionally got that wrong.

Mr. DAVIS. Does anybody else have any comments on that up here at the table? Anybody else have any evidence or any thought that somehow Mr. Sculimbrene was putting something in here that he didn't feel was accurate?

Mr. KELLEY. No. My thought process was essentially the same as Mr. Shapiro's.

What we did was look to see whether or not there was anything that would corroborate what he wrote, his insert, by asking him whether he made any notes. That's one of the primary reasons we sent somebody out there, to see if we could tell from his notes whether it was properly attributed in the insert.

Mr. DAVIS. But generally you wouldn't—I don't want to get into the investigative phase of this either, but generally you wouldn't keep notes on something like that, would you? This was a small factor at the time because this wasn't an issue at the time.

Mr. KELLEY. That's true, and generally—as he told us, he generally kept his notes for a few days to make sure that everything went well in the filing of the report and then he tossed them.

Mr. DAVIS. There would have been no reason—I mean, he had no idea at the time that this would blow up, that the Travel Office employees would be fired, that Mr. Livingstone would rise to prominence, and that the very innocent comment made to him, that somehow this could be anything else?

Mr. KELLEY. I don't see how he could possibly have known that.

Mr. DAVIS. I just want to make sure of that. So we don't have any real reason to doubt him at this point, that what he put in there was accurate, do you?

Mr. KELLEY. I don't.

Mr. DAVIS. OK. Do you, Mr. Shapiro?

Mr. SHAPIRO. I am sorry; any reason to doubt him?

Mr. DAVIS. You don't have any reason to doubt that what he put in there was as he heard it?

Mr. SHAPIRO. Well, the only reason to doubt it, which is as available to you as it is to me, is that apparently everyone involved in it denies it.

Mr. CLINGER. Would the gentleman yield on that—

Mr. DAVIS. I would be happy to yield.

Mr. CLINGER [continuing]. Just to ask a question.

You are suggesting that he may have heard this from somebody other than Mr. Nussbaum in the course of his interviewing for the background, whether or not to believe Mr. Livingstone. But doesn't that suggest that he, in fact, heard it from someone?

Mr. SHAPIRO. It absolutely does, Mr. Chairman. It absolutely does.

Mr. CLINGER. And that whether it was from Nussbaum or somebody else, there's no question that he heard—he would not have put that information into that background report unless he heard it from somebody?

Mr. SHAPIRO. I don't have a basis to disbelieve him on that. In fact, he says he heard something like that from Livingstone himself, and that's obviously one possible—

Mr. DAVIS. Let me just ask, how long after an interview are FBI agents required to dictate the results of an interview?

Mr. SHAPIRO. If it is a normal 302, an investigation is a 5-day rule. I don't know if there's a separate rule for applicant procedures.

Mr. KELLEY. There has to be, because there were deadlines associated with them.

Mr. DAVIS. So that generally this would have been done in the next few days?

Mr. SHAPIRO. Within the next few days, I think it's fair to say.

Mr. DAVIS. So in theory, it would have been pretty fresh at this point?

Mr. SHAPIRO. Sure. But I don't know how many people he would have seen in the interim.

Mr. DAVIS. And the only reason that you would reflect up here, at least to us, any kind of doubt at all is the fact that we have had testimony under oath that's different?

Mr. SHAPIRO. Yes.

Mr. DAVIS. But other than Mr. Nussbaum's comments on this and denials by the administration, you have no basis?

Mr. SHAPIRO. No independent basis, no, sir.

Mr. DAVIS. OK. And just one other question. I just want to—I think it's important to clarify that, both for you and Mr. Sculimbrene—I see my time is up. Let me just ask indulgence for one more question.

In the letter that Mr. Quinn wrote to—

Mr. SHAPIRO. Director Freeh.

Mr. DAVIS. Yes, to the Director, and where the chairman here was under attack, Mr. Sculimbrene was also under attack. Did you share your concerns at that point about an FBI agent being under attack, as you did about Chairman Clinger?

Mr. SHAPIRO. In fact, I did. In fact, the one comment I made—which I have been accused of editing or drafting this, which of course I did not do—was that the draft said—used the—what they read to me was two versions, whether they had falsified or whether the information has been claimed to be false. And I said we have no basis to determine that this has been falsified and that would be taken as an affront.

Mr. DAVIS. Thank you. I am glad you got a chance to clarify that.

Mr. SHAPIRO. I appreciate the opportunity to say that.

Mr. CLINGER. The time of the gentleman has expired.

Mrs. COLLINS OF ILLINOIS. Point of order, Mr. Chairman.

Mr. CLINGER. The gentlelady is recognized.

Mrs. COLLINS OF ILLINOIS. I understand from counsel that we don't have a copy of the letter that was just referred to from Mr. Quinn. May we have a copy of that letter for our review, please?

Mr. CLINGER. A copy of the letter from Mr. Quinn to Mr. Freeh?

Mrs. COLLINS OF ILLINOIS. To Mr. Freeh.

Mr. DAVIS. You are the only person in town that doesn't have a copy.

Mr. CLINGER. I would assume you have a copy.

Mrs. COLLINS OF ILLINOIS. I don't know why you don't treat me right.

Mr. DAVIS. I will personally give you my copy.

Mr. CLINGER. I would assume that since Mr. Quinn gave it to us, he would have given it to you as well.

Mrs. COLLINS OF ILLINOIS. Thank you.

Mr. CLINGER. The Chair would now be pleased to recognize the gentleman from Indiana, Mr. Souder, for 5 minutes.

Mr. SOUDER. I have got a number of concerns I want to address here at the beginning, that we have been through many different hearings.

We who are freshmen on this committee tend to be at the tail end of that and have heard many questions, and sometimes some of the questions get repeated. But it's an eery experience that brings a lot of things back from when I was in my politically formative years. Whether it's the kind of casual sharing of information between the FBI and the White House that may not be directly related to a law enforcement question, whether they be what we used to read about the J. Edgar Hoover and Martin Luther King files and a way to ingratiate himself, this certainly, while it may have been an accident, looks like it could also be an attempt to ingratiate himself.

It's too early for us really in this process, which brings us back to the other formative experience when I was in college, and that was watching the Watergate hearings. Quite frankly, in the first year of that, there was—it looked like mostly a political charge and that the first people were not necessarily coming forth, and a lot of Republicans stood up and asked softball questions and defended it and weren't really interested necessarily in getting into what happened but, rather, in engaging in a partisan debate. Hopefully for America, this will not be a repeat of that and, in fact, in the end we will find out that there were no bad intentions.

One of our concerns, however—and I think members on the other side need to be careful with this, too—is whether or not there has

been an orchestrated—and one of the things that was learned from Watergate was not that we shouldn't repeat errors but that we have to manage them more.

One of the most disturbing episodes that I have been through was sitting through some of the deposition with Jane Sherburne, not because I know that she has done anything wrong; in fact, I don't know that she has; but the chart that's up there, the chart that's been distributed and put in the record, suggests a level of insensitivity to how oversight works and an insensitivity to the American public's concern about whether their Government is straightforward.

She said, with a very soft but nevertheless arrogant approach, that, "Of course I would have talked to people before they came to the oversight hearing. Of course we talked to people who weren't even employees anymore because we went out—because they were calling in, wanted to know what they could say and couldn't say. I am a good attorney. Of course I did this."

Furthermore, she said, "Of course I debriefed everybody as they came from the committee."

Now, it may be because they were worried that there were going to be political charges and it's an election year. It also is how you do a cover-up. And it is impossible for us as an oversight committee to get to this kind of information if it's all the time being orchestrated what comes up here and doesn't. And the arrogance in that process has been very frustrating, not so much the personal arrogance but that.

And the point about, this was a mistake, everybody makes mistakes, including people who were in Watergate made mistakes, but they had to pay for certain mistakes even if they didn't have malicious intent at the time of those mistakes.

And the other thing is, these mistakes seem to be repeated in certain areas. The mistakes seem to be repeated over and over where it happens to be politically potent mistakes. And at some point you say, well, individuals can make mistakes and they can make them in multiple departments, but will they make the same type of political mistakes in department after department?

And what I want to do is review a little bit what we have had as a result of your actions, Mr. Shapiro.

Those who would need the information in the Livingstone file for damage control purposes were alerted first. It may have been an accident, but in fact that's what happened. And those who were investigating knew last. And no explanations or excuses can change the basic fact. Even though you acknowledge you wish it hadn't happened, that has, in fact, hindered our ability.

Mr. SHAPIRO. The last was, of course, about that 12 hours later—or 18 hours later.

Mr. SOUDER. But they had—in a system where they already were doing this whole type of approach, those hours become important to being able to get to witnesses, know where the information is, and, as an oversight committee, tremendously restrains our ability to get the fact.

We have also learned that you shared the Aldrich manuscript with the White House that had political materials. Once again, it was coming out in public but went to them first, which means they

had the opportunity to control witnesses before they came to this committee.

Mr. SHAPIRO. But that's not why it went to them.

Mr. SOUDER. 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.

Mr. SHAPIRO. I did not say I made some changes; I said they advised me of two versions.

Mr. SOUDER. You said they—

Mr. SHAPIRO. Excuse me. I said they advised me of two versions. They said they were inclined to go with one. I said that would be less offensive to us than the other. That's not actually—

Mr. SOUDER. Were you read the whole letter?

Mr. SHAPIRO. Was I read the whole letter?

Mr. SOUDER. Yes.

Mr. SHAPIRO. I don't actually know. I was read much more than that. I do know, as I pointed out before, that when they got to the part about the Congress, I said it would be entirely inappropriate for me to comment on that.

Mr. SOUDER. If there were other things that were incorrect, would you have changed them?

Mr. SHAPIRO. If there were—if they—incorrect? I wasn't—

Mr. SOUDER. If there were statements in there that you felt were wrong, would you have changed them and notified them? Would you have notified them that there were errors in it? That's editing.

Mr. SHAPIRO. I was not—but that's not what I was doing, sir. I was asked two questions: Was the tone of this letter sent from the White House to the FBI going to be inadvertently offensive to someone in the FBI? Because that's not what the letter was supposed to be about and that wasn't the intent. Second of all, would the Director be offended at receiving a letter from the Counsel to the President? Should it come from someone higher?

Mr. SOUDER. And if the answer—if you felt that was the case, would you have helped change the letter?

Mr. SHAPIRO. I would have answered those questions.

Mr. SOUDER. Then you edited it. That's the definition of "editing." It doesn't mean that—

Mr. SHAPIRO. That I would have edited; not that I did edit.

Mr. SOUDER. An editor doesn't necessarily make changes. An editor has the opportunity and the authority to make changes.

Mr. SHAPIRO. Yes, but one who edits changes something.

Mr. SOUDER. You in effect signed off on the letter. You sent a high-profile—you sent high-profile agents to visit Mr. Sculimbrene.

Mr. SHAPIRO. I signed off on one aspect of the letter. I refused to comment on the aspects that related to the Congress.

Mr. SOUDER. That's correct. You—

Mr. SHAPIRO. Well, that's an important distinction, I think.

Mr. SOUDER. But in effect—

Mr. SHAPIRO. I assume the chairman would consider it very important if I signed off on the parts of it that addressed his conduct.

Mr. SOUDER. By participating in the signing off in a letter, you in effect signed off on that portion, too. And so I——

Mr. SHAPIRO. No, I did not. I explicitly and vehemently made clear——

Mr. SOUDER. And you are an attorney, and you know——

Mr. SHAPIRO [continuing]. That I was not signing off on that. That is an absolutely unfair allegation.

Mr. SOUDER. Well, people who are listening can make that determination.

Mr. SHAPIRO. I am confident how they will make it.

Mr. SOUDER. You also sent high-profile agents to visit Mr. Sculimbrené's home, which you say was not intended.

Did you also, by the way, have agents go through his house looking for the notes?

Mr. SHAPIRO. Go through his house?

Mr. SOUDER. Did they look for notes in his office?

Mr. KELLEY. They did not.

Mr. SOUDER. They didn't look for any notes in his office?

Mr. KELLEY. Oh, in the field office?

Mr. SOUDER. Yes.

Mr. KELLEY. Yes, they did.

Mr. SHAPIRO. In the field office files.

Mr. SOUDER. Did they notify him that they were going through his files?

Mr. SHAPIRO. Those aren't his files; those are the FBI's files.

Mr. SOUDER. Do you notify people when you go through files usually?

Mr. SHAPIRO. Those are not his personal files. Perhaps you don't understand.

Mr. SOUDER. OK.

Mr. SHAPIRO. In each field office, when someone does an investigation, they send their records to——

Mr. SOUDER. Did you search his desk?

Mr. SHAPIRO. My answer is what my answer is. They send their records to be filed in the field office. Those are not their personal property. It's not what's in their desk. It's not what's in their drawer.

Mr. SOUDER. Did you search the desk?

Mr. SHAPIRO. No.

Mr. SOUDER. There was no desk searched, no files of Mr. Sculimbrené?

Mr. SHAPIRO. None that I am aware of. Certainly no one was asked to.

Mr. KELLEY. Yes, his work area was searched, as far as I know.

Mr. SOUDER. Is that standard operating procedure?

Mr. SHAPIRO. That's the first I know of it.

Mr. KELLEY. When I went to the file, I could not find any notes. I had them look at the file, and they said, "Well, we will check his work area." I said, "Thank you very much."

Mr. SOUDER. Is that what happened?

Mr. CLINGER. Is he aware of that? Was he aware of that?

Mr. KELLEY. I don't think so. I don't think he was on duty.

Mr. SHAPIRO. I wasn't even aware of it.

Mr. SOUDER. So is that a standard operating procedure when you—I can't find something in the file, to go through people's desk without notifying them?

Mr. KELLEY. We go through their work area if we are looking for work-related material, yes.

Mr. SOUDER. Without notifying them that you are doing that?

Mr. KELLEY. If he had been in the office, we would have notified him. We would have asked him to do it.

Mr. SOUDER. My main point—I know my time is up.

Mr. CLINGER. The gentleman's time has expired.

Mr. SOUDER [continuing]. Is that this certainly appears political when combined with the other things. Even if you say that isn't your intent, combined with all the other things, I think hard to draw a conclusion otherwise.

Mr. CLINGER. The gentleman's time has expired.

The Chair would now recognize the gentleman from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I want to ask a few questions of Mr. Kelley.

First of all, Mr. Kelley, you were with the FBI how long?

Mr. KELLEY. Twenty-seven years.

Mr. GUTKNECHT. So you are a long-time professional employee?

Mr. KELLEY. Yes, sir.

Mr. GUTKNECHT. How long have you served in your current capacity?

Mr. KELLEY. Eleven years.

Mr. GUTKNECHT. Did you know Mr. Sculimbrene before these recent events?

Mr. KELLEY. No, sir.

Mr. GUTKNECHT. As I understand it, he was assigned to the White House in 1980. Is that correct?

Mr. KELLEY. I don't know.

Mr. GUTKNECHT. Well, that's what our files show.

It also says that he was a senior agent assigned to the White House.

Historically, what kind of people would be assigned to that kind of a role?

Mr. KELLEY. I know I am not the expert on that subject. I know that they generally send senior agents over there, and he is a 20-year veteran.

Mr. GUTKNECHT. I guess the point is, you wouldn't send somebody over there who had had a lot of problems or was a third-tier—I mean, you would send your best people; right? Isn't that a pretty important assignment?

Mr. KELLEY. If I was in charge of it, that's what I would do. But I don't know who the agents were that were over there, except—

Mr. GUTKNECHT. Do you know anything about how he was rated? I mean, what were his ratings throughout the years as an FBI agent?

Mr. KELLEY. I have no idea, sir.

Mr. GUTKNECHT. Do you know why he was reassigned from the White House?

Mr. KELLEY. I thought it was in connection with because he had an accident, but I could be wrong about that. I don't know, is the answer.

Mr. GUTKNECHT. It didn't have anything to do with the fact that he had been subpoenaed and testified in the *Billy Dale* case?

Mr. KELLEY. If that was the case, I am not aware of it.

Mr. GUTKNECHT. It was just coincidental, as far as you know?

Mr. KELLEY. I don't even know that it happened.

Mr. GUTKNECHT. OK. A question, too, apparently Mr. Shapiro came to you when—and I'm not sure who first became aware that there was potentially incriminating information in this file.

Is that exactly what happened? Did somebody come to you?

How did you learn that someone may have made some comments in the file that didn't square with what we had sworn testimony to? When did you learn that?

Mr. KELLEY. OK. The incriminating part threw me off. I learned of it around 2 in the afternoon on Monday, the 15th, when the Unit Chief in Charge of the Civil Discovery Unit who works for me and who is responsible for preparing the documents—

Mr. GUTKNECHT. And that is whom?

Mr. KELLEY. Paul Cignoli.

Mr. GUTKNECHT. Paul Cignoli. He came to you and said what?

Mr. KELLEY. He said, "We are getting these documents ready for the committee, and they came out of Mr. Livingstone's file." And he said, "The analyst who was looking at it pointed this out to me." And he handed me the first page of the report.

Mr. GUTKNECHT. Why was the analyst looking at the file?

Mr. KELLEY. He was preparing it to take out information where people had specifically requested confidentiality. So he was going through it page by page, and he came across this insert.

And the analyst is one who reads the newspapers and recognized that this statement had been denied publicly by people like the First Lady. So he saw the conflict there, and he put it in front of me—Cignoli did.

I read it. I personally had heard the First Lady deny this particular statement. So I brought it to Mr. Shapiro's attention within the next half-hour. I was having a meeting at the time, so the time slipped a little bit.

Mr. GUTKNECHT. And why did you bring it to Mr. Shapiro's attention?

Mr. KELLEY. For the same reason, because it's an FBI file in which there's recorded information which is at odds with what I had heard publicly, which, that alone suggests to us that we may have an FBI issue as opposed to a credibility of the parties concerned. That is, are we accurately reporting the information we are getting?

Mr. GUTKNECHT. Did you think it was a good idea to take that information to the White House?

Mr. KELLEY. Well, Mr. Shapiro asked me—didn't ask me; he said to me, "I am going to send this up to the White House."

We had been dealing with the White House and the committee on issues relating to documents.

I am like Mr. Shapiro. If I thought about it a little bit longer, perhaps I would have reached a different conclusion than the one I ultimately reached, which is that it was OK.

Mr. GUTKNECHT. So you advised him that it was OK to give the information?

Mr. KELLEY. I did not interject any—I did not object to it.

Mr. GUTKNECHT. You did not object?

Mr. KELLEY. That's right.

Mr. GUTKNECHT. Silence gives consent?

Mr. KELLEY. Exactly.

Mr. GUTKNECHT. So you gave your consent that the information should go to the White House.

What about the transcript of the book? Did you recommend that that go to the White House?

Mr. KELLEY. I have never even seen the transcript of the book.

Mr. GUTKNECHT. Were you aware of it?

Mr. KELLEY. I knew it was in the house being reviewed.

Mr. GUTKNECHT. Did you know that it went to the White House?

Mr. KELLEY. I did not.

Mr. GUTKNECHT. OK. Just one last question. And you have been involved in other criminal investigations. It just strikes us all as rather odd that, here you have information that tends to suggest that potentially someone may have perjured themselves, and yet that information was given to an individual who was, in fact, I think, within the next day or two being called before a grand jury.

I mean, if you compared that to almost any other circumstance, wouldn't you think that that was awfully odd, for the FBI to notify someone that there may be potentially criminally—there may be some information in their file which could cause them some criminal problems relative to perjury? To share that with that individual, don't you think that's a bit bizarre?

Mr. KELLEY. Well, I thought the information was publicly known, that there was this divergence of opinion because some of Sculimbrene's statements had been contrary to this particular version of events as well. That's No. 1.

No. 2, I did not know there was a grand jury investigation under way. I knew the Independent Counsel was conducting an investigation, but I thought it was limited to the issue of how the FBI or why the FBI was providing files to the White House. I did not understand the parameters of the investigation. I certainly did not know there was a grand jury empaneled.

Mr. CLINGER. The gentleman's time has expired.

The Chair recognizes the gentleman from Illinois, Mr. Flanagan.

Mr. FLANAGAN. Thank you, Chairman.

I have attended all of these hearings, and I continue to remark that if this were written in a novel, no one would believe it.

Today, we have all kinds of folks, some of the smartest people alive and they have made colossal blunders, I think was the correct quote, and today it is salted in with a special agent who was hit by a propeller blade from a plane. It continues to get curiuser and curiuser but not in a nefarious sort of way, just in an unbelievable way. It just gets stranger every day. And some of the smartest people alive continue to make mistakes that fill gaps that cover nicely.

I remain deeply incredulous of the entire panoply of testimony we received from the beginning to the end, because it all builds upon each other and there—and where you come to a point where you may actually have something, you have a person who cannot remember or someone who at least has a plausible excuse for being unable to remember.

We have contemporaneous notes taken on particular pieces of information that are currently, now, refuted and disregarded. And we have some of the best trained people alive who make mistake after mistake and are very good at standing up and beating their breast and doing a mea culpa but continually and endlessly, inexcusably, filling the void of information on this with well, we screwed this up or we can't remember this or we can't remember that.

And it all comes back down to the same place, is that we have some folks at the White House who went through some files they shouldn't have, had some files they shouldn't have had, and that really is the base question of why we are here.

And I think today's testimony, today's questioning, today's depositions, today's sworn-to statements, are an interesting diversion from the base question, but I don't know how it gets us any closer to finding out how those files got over there and who had anything to do with them and whatnot.

I think the behavior by Mr. Shapiro in trying to appear to be fair and clean and honest is reprehensible. I am sorry. That's what I think. I think it goes beyond a mere mistake. I think it's appalling. But that's—what's done is done. Let's move on.

I have no questions for this panel, Mr. Chairman, and I will yield to—I was going to yield to Mr. Horn, who is not here, so I will yield to the Chair if he chooses to use the balance of my time.

Mr. CLINGER. I thank you very much for yielding the time to me.

We have been involved, Mr. Shapiro, in attempting to receive documents from the White House over a long period of time, some of which have been claimed for executive privilege. When we did get them, they were severely redacted. In other words, we have now been arguing about those redactions and whether they were appropriate or not.

My question to you is, in view of the fact that you were interested in letting the White House know that there were things involving their procedures that were very delicate, very sensitive, and so forth, that might be spread upon—spread to the world with the publication of this book, but there were other allegations in that book that were—you know, suggested that there was wrongdoing that had been engaged in by individuals in the White House, it strikes me as very odd that you would not have undertaken what the White House Counsel's Office has taken in responding to us, and that is to redact those elements that would alert or potentially alert the White House to the fact that there might be some involvement and, indeed, that the FBI might ultimately be involved in investigating those allegations.

Didn't it occur to you that you perhaps ought to have redacted that manuscript before you sent it to them?

Mr. SHAPIRO. Mr. Clinger, I was not then and I am not now aware of any sort of new allegations of criminal conduct in that book. None were brought to my attention. I never sat and read it

from beginning to end. Portions were brought to my attention. None of those were.

I take your suggestion that it might have been a better practice to have done that. Of course you are comparing what I did here with what the White House does in supplying documents to you. I don't believe the documents you have received from the FBI have been heavily redacted.

Mr. CLINGER. No. But I am suggesting that in the event where you actually might be involved in the continuing investigation of a criminal nature, that it might be wise to redact those elements if you are dealing with potential criminal activity.

Mr. SHAPIRO. I agree entirely with the premise of that. I am not aware that this book made allegations of criminal misconduct. It makes all sorts of allegations about all sorts of people's behavior, and those that have been brought to my attention don't relate to criminal behavior.

Mr. CLINGER. Let me ask you this: In earlier testimony you have indicated that everybody had disputed Agent Sculimbrene's recollection of this; that all of the parties had, in fact, disclaimed any knowledge of it.

Isn't it true that the only individuals who have a contrary view from Mr. Sculimbrene—in other words, state that he is in error—were the First Lady and Mr. Nussbaum and possibly Mr. Livingstone?

Mr. SHAPIRO. And I am told, through press accounts, Mrs. Livingstone, his mother.

Mr. CLINGER. Right, that she did not know the First Lady?

Mr. SHAPIRO. And Bill Kennedy, to some extent, although that's sort of related, him saying he didn't do it.

But yes, those are the only people involved, as I understand, sir. I don't know who else would know.

Mr. CLINGER. OK. We will now recognize the gentleman from Ohio, Mr. LaTourette, for 5 minutes.

Mr. LATOURETTE. Thank you very much, Mr. Chairman.

And to the panel, I want to thank you for your patience today. If I seem happy to be asking questions, it's only because when you get to this part of the dais, you have to have a lot of patience, and our friends on the other side of the aisle, I think they send messages through their cloakroom that the guy with the beard from Ohio is about to ask questions, so they bring some members back to do the committee wrap-up hearing, and it sort of makes you feel like a fifth wheel on a four-wheel wagon.

I want to praise Chairman Clinger for having this hearing. Every one of these hearings that we have had have been instructive, and we have sort of built a case of from where we started with Travelgate, the unnecessary and cruel firings of seven long-time Federal employees, through today.

And, Mr. Shapiro, if I can chat with you for just a minute, what has always concerned me, regardless of whether or not you made a mistake or not, is this chart bit that was shown earlier in the hearing, this sort of starburst effect that you had no control over, but when you made that phone call to the White House, this is what happened, whether you intended it to or not.

And what bothers me about it is this, that this entire set of hearings has been about the fact that we have been told that these FS-86's, or whatever they are called, these personnel background sheets, contain the most personal information there is about a person—whether you are HIV positive, whether you had an extramarital affair, whether you have a problem with drugs or alcohol, whether you have been fired from a job. All your darkest, deepest secrets can be included, including rumors and some untruths.

And so when I—a starburst like this has a potential; that's really what's always bothered me about this case.

Mr. SHAPIRO. Could I address that very briefly, sir?

Mr. LATOURETTE. If you could, because I only have 5 minutes.

Mr. SHAPIRO. I will be very quick.

Mr. LATOURETTE. Sure.

Mr. SHAPIRO. There was no personal information conveyed to the White House.

Mr. LATOURETTE. I am not talking about you.

Mr. SHAPIRO. OK. But I mean, with that starburst—

Mr. LATOURETTE. No, no, no. What has bothered me about this Filegate mess, as it has been called, is that the potential for a starburst like occurred when you passed your information on, that wasn't personal information. But all of these 400, 600, 700 files in their summaries contained—I believe Mr. Livingstone said what the FBI and the White House Counsel's Office is most concerned about is the derogatory stuff. Why would this person be a potential embarrassment to the administration if we hired him or her?

Mr. SHAPIRO. Yes, sir.

Mr. LATOURETTE. So the worst of the worst is what is sent over to the White House.

Mr. SHAPIRO. Absolutely.

Mr. LATOURETTE. And if this starburst can occur on your phone call, it could have occurred in any one of those 700 contacts where files were requested of Ms. Larson to be sent over to the White House, and everybody has agreed that there was no business to request these 700. That is what has always been the bottom line.

And what we are told is, we should trust this guy, Mr. Livingstone, whose best reference on his resumé was that he orchestrated Chicken George sightings during the 1992 Presidential campaign. Well, that makes me nervous, and if I was one of the 700 people whose files had been disclosed to the White House, that would make me very nervous as well. That truly is what's of concern.

The question I have to you is that you wrote a report—you are the author of the report of 6-14-96, and it is a fine report. People have said nice things about you, and I will say that that's a swell report you wrote, and I think you did a good job.

If you could follow—I am not as swift a lawyer as you appear to be, and so if you could just follow a hypothetical with me.

It is my understanding that at the White House, prior to this administration, a woman by the name of Jane Dannenhauer ran the White House Personnel Security Office, in effect, or was in charge of ordering and receiving the files. She struck me, when she testified, a lot like Ms. Larson, a career professional, someone that knew how to do their job, someone that was ethical, someone that

simply processed documents because they needed to know what was in them.

Let's say, however, that Mrs. Dannenhauer was replaced with not another fine person like Mrs. Larson or Mrs. Dannenhauer but with a political operative who, again, has made a career out of being political—I am not saying that's good or bad—and they decide that either because they receive directions from above or because they are incompetent and goofy, or because an administration is having trouble getting their midlevel employees cleared by the FBI because they have some questionable life-style activities—drugs and alcohol and things like that—and so they say, "Hey, I have an idea; let's look at the Reagan and Bush people to see if maybe we are being sort of given the short shrift by the FBI," or any number of things. And they begin to request stuff that they are just not supposed to have.

What safeguard was there at the FBI—we asked the White House counsel this—what safeguard was there at the FBI that would have prevented these folks, whether they are stupid or malicious, from getting files that they were not supposed to have?

Mr. SHAPIRO. You are asking me then as opposed to now?

Mr. LATOURETTE. That's exactly right.

Mr. SHAPIRO. Absolutely none, as far as I can tell.

Mr. LATOURETTE. OK.

Mr. SHAPIRO. And as you know, I criticized the absence of that quite severely in my report.

Mr. LATOURETTE. OK, and that's right. That's one of the things that I thought was good about your June the 14th report.

Is it my understanding now that you believe—I mean, anybody can get around anything, but the changes that you recommended to the Attorney General and others, that you believe that this situation cannot occur again?

Mr. SHAPIRO. Yes, or is extraordinarily unlikely to occur without someone taking heroic efforts. As you say, anyone can get around anything.

Mr. LATOURETTE. Mr. Thornton, if I could turn to you for just a second, were you advised or alerted to any difficulties with Mr. Livingstone's potential employment in this sensitive position in the White House?

Mr. THORNTON. No, sir, I was not.

Mr. LATOURETTE. Were you ever—and one of the weaknesses that I think Mr. Shapiro points out in his June the 14th report, he doesn't criticize Ms. Larson but he criticizes those who apparently supervised—were in a supervisory position to Ms. Larson, for not—it wasn't Ms. Larson's job to figure out whether or not these folks had left the White House; that was for someone else to flag. Would that have been?

Mr. THORNTON. At the time, I did not realize it should have been, but in retrospect, looking back on it, yes, I should have reviewed the procedures in place at the time more carefully and anticipated that something like the release of the files that occurred, might occur, and ensure that there were procedures in place to prevent that.

Mr. LATOURETTE. The FBI had done a background check on Mr. Livingstone, had they not?

Mr. THORNTON. I have no knowledge of that.

Mr. SHAPIRO. Yes, sir.

Mr. LATOURETTE. OK. So someone at the FBI would have had the information that may or may not have raised a flag as to his suitability for that employment?

Mr. SHAPIRO. Well, sure. I mean, we do not make evaluations, we just set forth the facts and send them. But someone obviously conducted that investigation. Whether or not they knew what position he was getting is a separate question.

Mr. KELLEY. That is the investigation that we are talking about here, that this information came out of. And what we do is, we conduct an investigation for the client. In this case, the client was the White House. They make the evaluation.

Mr. LATOURETTE. But in this case—if I could just beg the Chair's indulgence, in this case, the client held all the cards because they could ask for any file they wanted from you fellows and ladies back before you made these changes and you would have handed it over, no questions asked?

Mr. SHAPIRO. I think that's essentially correct.

Mr. LATOURETTE. That's pretty sad. Thank you for your honesty. Thank you, Mr. Chairman.

Mr. CLINGER. The gentleman's time has expired.

I am going to recognize the gentleman from Wisconsin. Before I do, I would ask unanimous consent that at the conclusion of Mr. Barrett's questioning, that the time for the questioning of this panel would be concluded in 20 minutes thereafter to be divided equally between myself and the ranking minority member.

Without objection, so ordered.

The Chair now recognizes the gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. Shapiro, just a couple of questions.

Mr. SHAPIRO. Yes, sir.

Mr. BARRETT. It's my understanding that a former FBI Agent Harlow was convicted last year of falsifying at least 50 interviews that he claimed to have conducted. Is that correct?

Mr. SHAPIRO. I don't know exactly what his conviction was for. He was convicted of criminal offenses, and he did admit to fabricating somewhere around 50 of those interviews. I just don't know whether in the ultimate plea bargain that was something he pled guilty to.

Mr. BARRETT. Can you explain to me why the FBI began investigating—investigating him and his interviews?

Mr. SHAPIRO. I believe, to the best of my recollection, there were maybe a number—that information came to light to us from a source that they had never—sort of by happenstance, that they had never been questioned in the course of a background.

Someone was talking to them about something else, I think, or whatever, and asked them, hadn't they previously provided information to the FBI? And they said they had never been questioned. And when we started looking into that, we saw that Agent Harlow had written a report of an interview of that person as if they had been questioned. It turned out that they—that it was a complete fabrication.

Mr. BARRETT. So he had not actually interviewed that person? It wasn't a case of him interviewing a person and then changing it; he had simply not even interviewed them?

Mr. SHAPIRO. Completely fabricated an interview he had never conducted.

And when we started looking further into that, you know, we found—not me personally, but obviously the agents investigating this found numerous incidents where he had simply fabricated reports, and he ultimately admitted that.

Mr. KELLEY. They simply took his investigative reports and went out and interviewed the people who allegedly had been interviewed and determined that about 50 of them had never been contacted by him despite the fact that there were interviews in the reports.

Mr. BARRETT. So it was when you went back to these people you realized that there was a problem?

Mr. SHAPIRO. Right.

Mr. BARRETT. All right. Did that play any role in the decision to interview Agent Sculimbrene?

Mr. SHAPIRO. Sure.

Mr. KELLEY. Yes.

Mr. BARRETT. Maybe you can elaborate on that.

Mr. KELLEY. Let me do it because I am the guy that recommended it.

Mr. BARRETT. Fine. Mr. Kelley, let's see what you have to say.

Mr. KELLEY. Between the time—first seeing on the evening, and Tuesday morning I was driving to work, I was thinking to myself, this could be as much of an issue for the FBI as it is for the parties who are quoted in this document. That is, if it is incorrect, if it was fabricated, if it was attributed to the wrong person, any of those things would be very bad for the FBI.

Therefore, I thought it appropriate to ask Mr. Sculimbrene what he recalled about it and whether or not he had any documentation to corroborate it, in the form of notes, for example. So I asked Duncan Wainwright, who was an agent who had worked on this report for Mr. Shapiro, to contact Mr. Sculimbrene and ask him those questions. My concern was for the FBI's processes at the time.

Mr. SHAPIRO. And that concern for both of us has been formed by our knowledge of the Harlow conviction; not to suggest that Agent Sculimbrene was at all responsible for Agent Harlow's conduct, but that was another agent who had been assigned to the White House, and it would make it—you know, this was a concern for the FBI.

Mr. BARRETT. You will have to excuse me for not having been here throughout the entire hearing. There are a lot of other things going on.

Mr. SHAPIRO. I understand.

Mr. BARRETT. If you could tell me, when you decided to discuss with Mr. Sculimbrene, did he have notes, or what did he have to document his statement?

Mr. KELLEY. He did not have any notes. He said that his practice was to prepare notes, keep them for a few days, and once the report was finalized and accepted, to destroy them. That's what he told the agents I sent out to interview him.

Mr. BARRETT. And after your discussions with the agents, what did you conclude?

Mr. KELLEY. I concluded that we had a matter here that could not be resolved as easily as I had hoped because he didn't recall conducting the Nussbaum interview at all and he had no notes to corroborate it.

Mr. BARRETT. So what did you do at that stage?

Mr. KELLEY. I asked my people to put that into an FD-302, or written report of interview, which was submitted to me the next day, which was ultimately given to the Independent Counsel.

Mr. SHAPIRO. Can I say that one thing is, I think it's important to note that what we did not do was advise the White House of that. To this date, until our testimony, we never advised the White House. In fact, the first person we advised of that was staff for this committee and subsequently sent a copy of that report to the Independent Counsel.

Mr. BARRETT. OK. I have no further questions. Thank you very much.

Mr. SHAPIRO. Thank you, sir.

Mr. CLINGER. The gentleman yields back the balance of his time.

We will now proceed on the closing questions, and I will recognize myself for 3 minutes.

There have been obviously efforts made here to sort of tar Mr. Sculimbrene with the brush of another agent who, in fact, has been found guilty of wrongdoing.

Did you, Mr. Kelley, or Mr. Shapiro, have any doubts about other background investigations that Mr. Sculimbrene had conducted? Was he questioned about other files, or was the subject of the interrogation limited to this particular background file because of the discrepancies of other witnesses?

Mr. KELLEY. It was limited to this particular interview.

Mr. CLINGER. So you had no reason to question whether Mr. Sculimbrene was a bad apple or a rogue agent?

Mr. KELLEY. No, sir.

Mr. CLINGER. Thank you.

Mr. Shapiro, you noted that people at the White House disputed what Mr. Sculimbrene's notes said. But are you aware that Mr. Nussbaum has disputed the accounts of a number of individuals who've testified under oath to statements he has made and actions he has taken; are you aware that there have been people who have disagreed or taken exception to Mr. Nussbaum's recollection?

Mr. SHAPIRO. I was advised of that by your counsel during my deposition.

Mr. CLINGER. Mr. Kelley, are you aware of those kinds of discrepancies?

Mr. KELLEY. Yes, sir.

Mr. CLINGER. Are you aware, for example, that Mr. Nussbaum disputed accounts provided by one of his associates, Steve Neuwirth, a person he had brought to the Counsel's Office himself, that he had disputed an account by Mr. Neuwirth?

Mr. SHAPIRO. I was not aware of that.

Mr. CLINGER. Were you aware that Mr. Neuwirth made statements about the First Lady and Susan Thomases being concerned about unfettered access to Mr. Foster's, his office, after his death,

and that Mr. Nussbaum denied those statements of his own to his own associate?

Mr. SHAPIRO. I was aware Mr. Neuwirth had made those statements in the hearing, yes, sir. I was not aware that Mr. Nussbaum had denied it.

Mr. CLINGER. Are you aware that Mr. Nussbaum had disputed accounts of conversations former Deputy Attorney General Phil Heymann testified to under oath in which Mr. Heymann said he had a heated conversation with Mr. Nussbaum saying, are you hiding something, Bernie, when Mr. Nussbaum changed the agreement on reviewing Foster's documents and that in fact Mr. Nussbaum denied that that conversation took place?

Mr. SHAPIRO. I think it is safe to say I was at least generally aware that there was a dispute between Mr. Heymann and Mr. Nussbaum, yes.

Mr. KELLEY. That was reported in the press.

Mr. CLINGER. And are you aware that Mr. Nussbaum claimed to have shown the Vince Foster Travel Office notebook to everyone in the room on the day that Mr. Foster's office was reviewed and they were going through it, and that none of those individuals that we have been able to discover, validate that they saw that Travel Office notebook at the time?

Mr. SHAPIRO. I didn't follow it closely enough to know that, sir.

Mr. CLINGER. Are you aware that Mr. Michael Shaheen of OPR stated that the White House Counsel's Office under Mr. Nussbaum declined to provide requested notes, failed to mention the existence of any handwritten notes by Mr. Foster on the Travel Office despite their request for such records?

Mr. SHAPIRO. Now that you mention it, I believe I was aware of a press account of Mr. Shaheen saying that, yes.

Mr. CLINGER. Are you aware of Mr. Shaheen testifying that the Counsel's Office, under Mr. Nussbaum, engaged in an unprecedented lack of cooperation and candor?

Mr. SHAPIRO. I don't recall that specific statement, but I do recall Mr. Shaheen was critical of Mr. Nussbaum.

Mr. CLINGER. What I have been somewhat offended by here is this suggestion that it's taken for granted that Mr. Nussbaum is—his veracity is not to be questioned, that it clearly had to be something in the FBI, something that Mr. Sculimbrene slipped a cog somehow and that somehow Mr. Nussbaum was not to be challenged or questioned. I think that the record we have spelled out here in these questions would suggest that Mr. Nussbaum indeed should be questioned.

Mr. SHAPIRO. I would just like to say that's a fair comment, Mr. Chairman. I don't think we took for granted what Mr. Nussbaum said. We knew that it wasn't just of course Mr. Nussbaum who denied it. We knew that there was this dispute, and as Mr. Kelley said, that this dispute could become an issue for the FBI, not just for everyone else. Surely it would not have been a good idea for me to have gone out and questioned Mr. Nussbaum about this.

Mr. CLINGER. My 3 minutes have expired, and I would turn to Mrs. Collins to use such of her time as she might desire.

How much time would you yield yourself?

Mrs. COLLINS OF ILLINOIS. Three minutes, Mr. Chairman.

Mr. Shapiro.

Mr. SHAPIRO. Yes, ma'am.

Mrs. COLLINS OF ILLINOIS. I think you were asked earlier whether or not you thought the firewalls between the—the statement was made that there were firewalls between the White House and the FBI that may have been breached. Do you think the firewalls between the White House and the FBI have been breached?

Mr. SHAPIRO. Well, I certainly think the firewalls between the FBI and the White House were breached in the provision of the 400-plus files, and we've erected new, higher walls to avoid that.

Do I believe the firewalls were breached in terms of my dissemination?

Mrs. COLLINS OF ILLINOIS. Yes.

Mr. SHAPIRO. No, ma'am. I communicated to them information that was already very public. That is a separate question from whether I believe in retrospect it was a good idea.

Mrs. COLLINS OF ILLINOIS. Do you feel that the questions that the committee has asked you today have allowed, have given you the opportunity to fully explain all that happened regarding the FBI and the files?

Mr. SHAPIRO. Those who allowed me to answer their questions, yes, ma'am.

Mr. KELLEY. Exhaustively, yes.

Mrs. COLLINS OF ILLINOIS. Exhaustively. I'm sure the whole panel feels that very same way about it.

I have introduced legislation, and the number is H.R. 3785, which pretty much codifies what you have done. One of the things that it does is to—it does four things: First, it will send back to the FBI the security records of individuals no longer in the White House. That's No. 1.

Second, it would require the written permission of the individual whose record is requested from the FBI before the FBI could send that information to the White House. Now this requirement could only be waived under extraordinary circumstances after written requests of the highest officials.

And third, the bill would extend the criminal sanctions of the Privacy Act to the misuse of these records.

And finally, it would require the Secret Service to develop accurate lists of individuals in need of access to the White House.

Now, I'm wondering whether you think it would make sense to enact this type of legislation, Mr. Shapiro?

Mr. SHAPIRO. Well, I'd obviously want to study it a little more carefully. But each of the points you've mentioned are points that I think are important and that I personally, but more importantly, the FBI institutionally supports.

Again, my only hesitation about legislation is that in an area like this, between and among the executive branch, is it makes it a little harder subsequently if events evolve and if things change to make fine-tuning adjustments to it. But as to the principles you've announced, I support them wholeheartedly and without reservation.

Mrs. COLLINS OF ILLINOIS. Thank you.

I wasn't sure whether the clock was on 5 minutes or 3 minutes.

Let me say this; as you say, you've been here exhaustively, and I just want to commend you, first of all, for having sat here through all of this. You have certainly been very clear about the things that you have done, about the fact that there isn't any smoking gun, as far as I can see. There has been no cover-up, as far as I can see. There's not been any political motive, as far as I can see. So I think that what we're doing right now is trying to figure out who killed cock Robin.

I yield back, Mr. Chairman.

Mr. SHAPIRO. Thank you, Mrs. Collins.

Mr. CLINGER. You yielded your 3 minutes?

Mrs. COLLINS OF ILLINOIS. I reserve my time, Mr. Chairman.

Mr. CLINGER. The balance of your time, yes.

I now recognize the gentleman from Connecticut for 4 minutes.

Mr. SHAYS. Thank you.

Mr. Shapiro, Mr. Sculimbrene does not back off anything that he said in his report, is that true?

Mr. SHAPIRO. He doesn't say one way or the other. He has no recollection of it.

Mr. SHAYS. Did he back off from his statement on the report? Does he stand by the report?

Mr. SHAPIRO. I don't understand what that means, sir. He does not recall that interview. He did not say it's false. He does not recall the interview.

Mr. SHAYS. Did he back off his report, is the question?

Mr. SHAPIRO. And I'm sorry to say, I don't understand other than the way I have answered the question.

Mr. SHAYS. I'm going to use my 4 minutes.

The only other question I asked you is did he back off his report? That's a simple question. The answer is either yes or no.

Mr. SHAPIRO. Well, I'm sorry, what does that mean, did he back off the report?

He said: I have no recollection of it.

Mr. SHAYS. OK.

Mr. SHAPIRO. That is that backing off? If it is, yes; if it's not, no.

Mr. SHAYS. Did he write the report?

Mr. SHAPIRO. He does not recall writing the report, to the best of my recollection, but believes this is in the format—

Mr. SHAYS. Is the FBI suggesting he did not write the report?

Mr. SHAPIRO. No.

Mr. SHAYS. Thank you.

Mr. SHAPIRO. But that's not the question you asked me.

Mr. SHAYS. That's just what I asked.

Now, I would like to know if anyone in the White House asked you to interview Mr. Sculimbrene or anyone on behalf of the White House?

Mr. SHAPIRO. No.

Mr. KELLEY. No.

Mr. SHAYS. Did anyone in the White House ask you to verify his report or anyone on behalf of the White House ask you to verify his report?

Mr. SHAPIRO. No.

Mr. SHAYS. Did—

Mr. SHAPIRO. Nor did we give them the results of the interview.

Mr. SHAYS. Pardon me?

Mr. SHAPIRO. Nor did we advise them of the results of the interview.

Mr. SHAYS. When they read to you the letter, what were your two choices?

Mr. SHAPIRO. What were my two choices?

Mr. SHAYS. Yes, when they read you the letter, they gave you two options.

Mr. SHAPIRO. Two questions: One, was it sufficient, would it be considered sufficient if this letter came from the Counsel to the President, to which I said—

Mr. SHAYS. What were your two choices in terms of what was worded in the letter?

Mr. SHAPIRO. Well, I need to look at it, if you don't mind, if we have it.

In the fourth paragraph, if I'm remembering correctly, in the first sentence, as it presently reads: The implication that the FBI background investigation might include a false report, the other formulation of that I was advised of was that an FBI background investigation might have been falsified.

Mr. SHAYS. So they were suggesting to you that this—that the report that Mr. Sculimbrene did was falsified.

Mr. SHAPIRO. And I objected to that.

Mr. SHAYS. You objected to the fact that it was—why were they going to ask you whether it had been falsified; why would they have asked you that?

Mr. SHAPIRO. I don't believe they were asking me whether it was falsified. What I understood them to do was to be checking the tone of the letter and see whether some part of it would be inadvertently offensive to the FBI. I said accusing an agent of falsification in the absence of evidence would in fact be offensive to the FBI.

Mr. SHAYS. In terms of the fact that you gave the Aldrich book 4 months before the general public saw this book and you said it was in the—the White House had an interest, did you ask the White House to do anything?

Mr. SHAPIRO. No, sir.

Mr. SHAYS. Then what was the purpose of giving it to the White House?

Mr. SHAPIRO. I believe I've answered that before; I'm happy to do so again. The purpose was for them to do as they saw fit with the information in there that disclosed all sorts of sensitive internal White House procedures.

Mr. SHAYS. And what would you suggest that they—what were their options?

Mr. SHAPIRO. Well, for instance, it made reference to the phone systems of the White House and how one might go about penetrating them from the outside. I thought that was something that if in fact the book came out, they might be prepared to address so that their phone systems not be easily penetrated.

Mr. SHAYS. When you gave them the book and they con—Mr. Quinn contacted you, would you relay that conversation again. What was the bottom line to that conversation?

Mr. SHAPIRO. He called me 2 days later after I gave him the book on February 23, and said to me—and I thought I had my notes of it somewhere, which is what I'm looking for.

Mr. SHAYS. Since my time is running out, I'll withdraw that question.

The question I would then ask you is, is it your practice to—did you give the book to anyone else? Did the FBI give this book—

Mr. SHAPIRO. Outside of the FBI?

Mr. SHAYS. Outside of the FBI.

Mr. SHAPIRO. No, sir.

Mr. SHAYS. Is it your practice when people give you books like this that you would disseminate it to the people who it's written about?

Mr. SHAPIRO. I've never seen a book like this, sir.

Mr. SHAYS. OK. But the FBI has never written a book?

Mr. SHAPIRO. An agent assigned to the White House has never written a book divulging all sorts of inside, sensitive information about the White House, and I'm not aware of an agent assigned to another post divulging all sorts of sensitive information.

Mr. SHAYS. Now, I read the book, and your point is that in that book there is sensitive information divulging how you can crack—

Mr. SHAPIRO. You read the book after Mr. Aldrich did remove a number of things we objected in the intervening 4-month period.

Mr. SHAYS. Is it your testimony he did withdraw it?

Mr. SHAPIRO. Did withdraw what?

Mr. SHAYS. Did not print certain things?

Mr. SHAPIRO. Oh, yes.

Mr. SHAYS. Well then, why would you have had to show it to the White House?

Mr. SHAPIRO. Because I—

Mr. SHAYS. Wait a second.

Mr. SHAPIRO. I'm sorry.

Mr. SHAYS. Why would you have had to show it to the White House until you and Mr. Aldrich have agreed to what you were going to print?

Mr. SHAPIRO. We never agreed—

Mr. SHAYS. Why would you show him certain things that were not yet going to be printed?

Mr. SHAPIRO. We never agreed to what he would print. I showed it to them because, as I predicted to them, as it turned out presciently, he might go ahead and publish it before he received approval and clearance from us. As it turned out, he made some changes we asked him to make and then went ahead to publish it before he received clearance and approval from us. That is exactly why I showed it to them.

In fact, I said to them explicitly, I cannot assure you that despite the fact that he's purporting to act in good faith here with our procedures, that he won't go out and publish it tomorrow. I have no way to stop him from doing that. And, in fact, ultimately, though he did make some changes we recommended, that's exactly what he did, sir.

Mr. SHAYS. Thank you.

Mr. CLINGER. The time has expired.

I now recognize the gentleman from California, Mr. Horn, for 2 minutes.

Mr. HORN. Thank you, Mr. Chairman.

Mr. Thornton, let me ask you a question.

Mr. THORNTON. Yes.

Mr. HORN. Ms. Larson reported to you when you were in that role at the FBI, was that correct?

Mr. THORNTON. Yes, sir.

Mr. HORN. Any time, either with Ms. Larson or other employees, where someone came to you and said: You know, I think we've got a problem over there in the White House Security Office, Mr. Livingstone is acting this way or that? Did you ever get any information from any member of the FBI or anybody in a reporting line to you about Mr. Livingstone?

Mr. THORNTON. Not that I can recall, actually, no, sir, I did not.

Mr. HORN. You've heard a lot at this hearing. Do you have any recommendations you would make, having been in the role where you knew what files were going and coming, that ought to take place?

Mr. THORNTON. Are you talking about the changes in the procedure—

Mr. HORN. Yes.

Mr. THORNTON [continuing]. That is being recommended?

Mr. HORN. Yes. You agree with those?

Mr. THORNTON. I agree with those wholeheartedly.

Mr. HORN. Don't have anything to really add to it?

Mr. THORNTON. No, sir.

Mr. HORN. OK.

Let me ask you, Mr. Shapiro.

Mr. SHAPIRO. Yes, sir.

Mr. HORN. You've testified you knew Mr. Aldrich addressed at great length in his book the problems of the White House officials in the Clinton administration getting background checks and failing to get them; isn't that correct?

Mr. SHAPIRO. I don't believe I've testified to that, but I believe it's correct that—

Mr. HORN. Yes. And then the GAO study confirmed that, and I believe you're aware of that study, aren't you?

Mr. SHAPIRO. I was aware of it, not at the time that I reviewed the Aldrich book, but I was aware of it at the time I wrote my report, yes.

Mr. HORN. They noted that 190 White House employees took over 100 days to fill out their SF-86's, and 36 took over 300 days.

Are you aware that the GAO study shows most people didn't get their permanent passes until 1994?

Mr. SHAPIRO. I don't remember the exact facts, but that's consistent with my general recollection of it, sir, yes.

Mr. HORN. When you received Mr. Aldrich's book, did anybody look into these problems, because they're mentioned in his book, to see if there were any ongoing problems that the FBI ought to know about?

Mr. SHAPIRO. Well, among the people we gave the book to was our people handling the background checks and the internal, the reviews of the White House. I don't know exactly what they did,

but it was brought to their attention. I discussed it at the highest levels of that division of the FBI that these were issues now.

Mr. HORN. And was there follow-up?

Mr. SHAPIRO. I don't know exactly, sir.

Mr. HORN. Who did you discuss it with at the highest level that might—

Mr. SHAPIRO. Tom Coyle, who is the Assistant Director of the Personnel Division and he is overall in charge of that process.

Mr. HORN. OK. Were any of the issues raised in Mr. Aldrich's book regarding a lax approach to passes investigated by the FBI? And I take it, they didn't, to your knowledge, or what?

Mr. SHAPIRO. Not to my knowledge, no, sir.

Mr. HORN. Have you heard of any investigation that someone else might have done?

Mr. SHAPIRO. I knew there was at one point a congressional inquiry into it.

Mr. HORN. Right.

Now, why are you investigating allegations about the White House but not those of your own agents that are supported by a GAO report; in other words, shouldn't we be looking at the role of those files going back and forth with the White House? Do you feel the—that's just one question.

Do you feel the new procedures will assure that we can catch something like this in the future?

Mr. SHAPIRO. Let me—this is a somewhat complicated question, sir, and I will answer as quickly as I can, because I know everyone is sensitive about time.

The new procedures, I believe, will address a large part of this. But they will not address the internal White House problem of how quickly they get themselves cleared. That's not a matter, I believe, within FBI jurisdiction. That is not a criminal issue. That is not something that we could investigate as the FBI. We can investigate ourselves all the time, and we do, and we take any allegation about an FBI agent very seriously.

I could not, and it would be wrong for me to suggest that I could dispatch FBI agents to look into how the White House handles their own internal security. That's a matter between the White House and, to some extent, the Secret Service. It's not at all a matter, unless it becomes criminal, for the FBI. And so that was not something we would have sent agents into.

Mr. HORN. Did the Secret Service ever express concern to the FBI about the slowness and really nonchalance of ever getting security clearances by a good part of the White House staff?

Mr. SHAPIRO. I'm not aware of any such communication on any formal level. I'm not even really aware of any informal level except, again, in Mr. Aldrich's book where he relates some conversations.

Mr. CLINGER. The gentleman's time has expired.

Mr. HORN. Thank you.

Mr. CLINGER. The gentlelady from Illinois.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Shapiro, getting back to the Aldrich book, is there anything in that book that after review the FBI would have required him to take out?

Mr. SHAPIRO. There were a number of things we required he took out, which he did take out—take out. There were a number of other matters still pending that we had objected to that he published without taking out. I believe there were six somewhat lengthy passages that we had standing objections to from the beginning through the date of his publication that we never consented to their being published.

Mrs. COLLINS OF ILLINOIS. You felt those were extremely sensitive or what?

Mr. SHAPIRO. I don't recall the exact ones, but we—we felt that those were ones we could not compromise on, either because they related to the internal security of the White House or directly to the conduct of FBI operations and, thus, was information learned directly from an official investigation and, therefore, not something that should be subsequently disseminated publicly.

Mrs. COLLINS OF ILLINOIS. Well, since he went and put those in the book anyway, is the FBI considering any kind of recourse against Mr. Aldrich?

Mr. SHAPIRO. Yes, we are, Mrs. Collins. We have recommended to the Department of Justice that if sustainable, and they are reviewing that, that a civil suit be brought for noncompliance with the prepublication review process. We've done that last year with another retired agent, and the nature of that suit is a breach of contract suit. It seeks to recover and disgorge profits from violating the prepublication agreement. It's really the only recourse we have. He's, of course, a retired agent.

Mrs. COLLINS OF ILLINOIS. I see.

Mr. SHAPIRO. It is the basis—I'm sorry, it was just noted that that prepublication agreement is part of the employment agreement for all FBI personnel.

Mrs. COLLINS OF ILLINOIS. That was going to be my next question.

Thank you, Mr. Chairman.

I yield back.

Mr. CLINGER. The gentlelady yields back the balance of her time?

Mrs. COLLINS OF ILLINOIS. I do.

Mr. CLINGER. I would now recognize the gentleman from Illinois for 1 minute.

Mr. FLANAGAN. Gentlemen, I had not intended to ask a question today, but Mr. Barrett, in his questioning, leads me to just one.

What faith and confidence do you repose in the information in your own files now? The criminal prosecution that was there—

Mr. KELLEY. I'm sorry, I can't hear you.

Mr. FLANAGAN. I'm sorry. I'm told I'm fairly soft-spoken.

What faith and confidence do you repose in the information included in your own files now, the specter of Mr. Sculimbrene's contemporaneous information included in the file now being suspect because it's denied by everyone and their brother having anything to do with this, and everyone and their wife at least having something to do with this, and their mother. Mr. Barrett now says that there is some criminal prosecution of some other created information in a file.

What faith and confidence do you repose in the information in your files now? I think—I honestly believe that was the question he was asking.

Mr. KELLEY. I think the answer to that is we have 10,000 FBI agents out there working day in and day out to conduct first-rate criminal investigations. Every once in a while in my years, I've seen maybe five instances in which an FBI agent has been accused of this kind of conduct, and when we see it, we prosecute it, and that's what happened in this case.

Mr. FLANAGAN. Did you prosecute all five of those?

Mr. KELLEY. I can't tell you that because it goes so far back, I can't remember them all. We have certainly fired them when we could.

Mr. FLANAGAN. OK.

Mr. KELLEY. And prosecuted the ones we could as well.

Mr. FLANAGAN. And I don't think anyone would suggest they would be perfect.

But let me ask you one more with the esteemed panel of attorneys in front of me who would know this. If Mr. Sculimbrene were not with us today, if he had passed on, would not his contemporaneous notes be taken as near gospel?

Mr. KELLEY. We have never challenged Mr. Sculimbrene's report.

Mr. FLANAGAN. I understand that. I understand you haven't, but others have. And I'm asking, would they not be taken as gospel?

Mr. SHAPIRO. I'm not sure exactly. If the question is because of his death?

Mr. FLANAGAN. No, if he had passed on and was unable to be interviewed, because of his current affliction and his inability to remember and other things that are with that, if he had just passed on, just assuming broadly, hypothetically if he had passed on and these notes were in his files, would they not be taken as factually true?

Mr. SHAPIRO. No, I don't believe so. I don't believe this is a reference to the dying declaration rule of evidence.

Mr. FLANAGAN. No, I'm not talking about dying declaration. I'm talking about contemporaneous recitation.

Mr. SHAPIRO. We try and generally take, and I think experience suggests this is the appropriate approach, we generally have a great deal of confidence in FBI files. But even had Mr. Sculimbrene been deceased, if we had a case where everybody else involved in it denied it, we'd still have the same questions.

Mr. FLANAGAN. Can you point to any example of that ever happening anyplace else?

Mr. SHAPIRO. Where an agent's account was questioned?

Mr. FLANAGAN. Where everyone else denied what an agent wrote and you believed everybody else, but not the agent.

Mr. SHAPIRO. We didn't say we didn't believe the agent.

Mr. FLANAGAN. I didn't suggest that you did. But you said this would happen, should that happen.

Mr. SHAPIRO. We would have that question. There are other cases, including in criminal matters, where one has questions whether an agent got it right in a particular case. This committee or a subcommittee of this committee raised some of those questions and we took them very seriously in connection with the Ruby Ridge

investigation, as to whether a couple of those FBI 302's maybe reported information that wasn't completely accurate. We've looked into that. We took that very seriously. So, I mean, that's just one example.

Mr. FLANAGAN. Did you find that that information was inaccurate?

Mr. CLINGER. Time has expired.

Mr. SHAPIRO. I believe that there, as in here, we were left with a he-said, she-said, and no way to ultimately resolve them.

Mr. FLANAGAN. Thank you.

Mr. CLINGER. The gentleman's time has expired.

The Chair would recognize the gentlelady from Illinois for any closing statements she may have.

Mrs. COLLINS OF ILLINOIS. Mr. Chairman, today's hearing has proved to be yet another detour from our investigation of why the FBI files of former administration employees were requested by the White House and whether they were improperly disseminated. To the extent that testimony was received on that issue, as I said before, we might as well have spent the last 6 hours trying to ascertain who killed Cock Robin.

All we have generally learned today is that the FBI employees who processed the forms would not be in a position to decide whether the requests were appropriate or not. This hearing has focused on the narrow question of who hired Craig Livingstone and whether the FBI did something wrong when it told the White House of a document in the FBI file of Craig Livingstone that indicated that Bernard Nussbaum said that Mr. Livingston had the backing of the First Lady who was allegedly a friend of Mr. Livingstone's mother.

What we have really learned today on this matter is what? Well, first, as I've noted, this allegation has been denied by every individual involved, including Mr. Nussbaum, the First Lady, Craig Livingstone, and his mother.

With respect to the agent who wrote the note, Mr. Sculimbrene, we know that he has no independent recollection of this information. To the contrary, he has stated under oath that he thought it was Mr. Livingstone who was the source of the information.

On other occasions he has testified that William Kennedy was that source. We also know that the committee had an FBI memo indicating that Mr. Sculimbrene had a strong bias against the Clinton administration and that an agent was concerned about Mr. Sculimbrene's truthfulness in his upcoming testimony on behalf of Billy Dale at the Dale trial. Therefore, I think it's fair to say that there are reasons to at least have some doubts about the credibility of the uninitialed summary report by Mr. Sculimbrene.

I would note that at his interview with the Senate, Mr. Sculimbrene began by alleging that Mr. Kennedy had told him of the relationship with Mrs. Livingstone and the First Lady, but by the end of that interview admitted that he may have just inferred that fact.

With respect to Mr. Shapiro's decision to notify the White House, it appears to me that the FBI was really trying to stay out of the political fight, not get into one. The implication that the question

of who hired Craig Livingstone was the subject of an Independent Counsel investigation has no foundation.

There's no reason to believe that the Independent Counsel would consider this relevant, and we know that the Independent Counsel told the FBI they had no interest in the file, nor did they seem concerned that a congressional committee could review the file and disclose its contents to anyone, including the White House.

And finally with respect to the interview of Agent Sculimbrene by the FBI, it seems normal that the FBI might want to confirm whether he recalled the Nussbaum interview and whether the unsigned document was in fact his. In light of questions being raised about the accuracy of FBI investigations, the FBI could have been criticized for failing to check it out.

Mr. Chairman, as I have said in the past, I will support your efforts to get to the bottom of the FBI files issues, and by that I mean why the files were requested and how were they used. To date we still have no other evidence that it was anything but a terrible error, but I am still willing to keep looking.

However, this diversion into this issue of who hired Craig Livingstone suggests to me that the committee has come to the end of the road in its initial investigation and is now looking for new issues to embarrass the Clinton White House.

If I may, Mr. Chairman, I know this committee is serious, but if the committee is as serious as they say they are about these kinds of issues with the FBI, I hope that they will seriously consider my bill, which is H.R. 3785, and in fact I'm going to send a letter to each Member on—I've already on the Democratic side, but to each Member on your side of the aisle to ask them to cosponsor my legislation and hope that they will, because I, too, hope that they are as serious as I am about preventing this in the future.

I yield back, Mr. Chairman.

Mr. CLINGER. I thank the gentlelady for her closing statement.

Obviously, there are differences among Members on the issues that have transpired in recent weeks and the significance of those actions that have been taken by the FBI and others.

I would note that in 1994, the FBI Director, Mr. Freeh, stated: As we examined the past to make the future more productive for law enforcement, I want to cite the lessons that must be learned from an event that occurred shortly before I became FBI Director concerning a White House official calling directly to the FBI with instructions to investigate alleged wrongdoing by employees in the White House Travel Office. It was an unfortunate incident, an example of matters that we will avoid at all costs. When I was asked to become FBI Director, I told the President that the FBI must maintain its independence and have no role in politics. President Clinton fully agreed, all of us must keep this policy uppermost in our minds at all times . . . no politics in the FBI, no exceptions.

Unfortunately, I think some of the events that have taken place with regard to notifying the FBI—the White House of the fact that I had observed and looked at the background file involving—taken by Mr. Sculimbrene and the giving of the—Mr. Aldrich's book to the White House 4 months before it was published, I think raised the specter that politics is still a factor in the picture here, and it's giving the perception at least that the FBI's actions and docu-

mented record conflict with the testimony which I think we've heard today.

The FBI wants us to think, would hope that we would believe that this relationship with the White House has ended, but we have seen, unfortunately, that that has not been the case; a litany of actions, however, contradict it. Frankly, I'm very skeptical about the Bureau's protestations that this was a series of further innocent bureaucratic mistakes, when viewing the results of what has happened: The heads-up to the White House, sending two high-profile agents to visit Mr. Sculimbrene; sharing the Aldrich book with the White House, at least participating and having discussions with the White House Counsel about the letter that he was going to send to the FBI, that certainly suggested not an arm's-length relationship; searching through Mr. Sculimbrene's work area without advising him of that; giving a heads-up to all who needed to do damage control long before this member or this chairman was advised.

All of these actions point, at least in my view, to a continuation of the Bureau's relationship and I think an inappropriate relationship with the White House. There needs to be a clear firewall, a clear distinction between what goes on in the FBI and the White House, and I don't think that that has been established.

We were promised such a relationship would end and yet it doesn't appear that it has. So the bottom line, I would say, is the result of Mr. Shapiro's actions, those who needed to do damage control were notified first, and those who were investigating were notified last.

And, obviously, that doesn't sit well with those of us who felt it was our responsibility to conduct this investigation and to point out that there were serious discrepancies in testimony that had been given before this committee and statements that had been given to an FBI agent.

I think that the effort to sort of vilify Mr. Sculimbrene, not by you, because I think you have in fact indicated that you had no reason to doubt his word, but there have been serious efforts made to discredit Mr. Sculimbrene, I think is clearly wrongheaded and inappropriate.

So I think that we've had a helpful hearing. I do, however, believe that we need to pursue this matter further. And I do feel very strongly that the actions that Mr. Shapiro has taken in this regard really call in question his ability to have credibility as the General Counsel of the FBI.

With that, the committee will stand adjourned.

[Whereupon, at 3:01 p.m., the committee was adjourned.]

