

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Division No. 94-1



APPENDIX OF COMMENTS OR FACTUAL
INFORMATION SUBMITTED UNDER
28 U.S.C. § 594(h)(2)

FINAL REPORT OF THE INDEPENDENT COUNSEL
(IN RE: MADISON GUARANTY SAVINGS &
LOAN ASSOCIATION)

IN RE: BERNARD NUSSBAUM

Robert W. Ray
Independent Counsel

July 28, 2000
Washington, D.C.

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1. Comments submitted on behalf of Jane M. Dannenhauer
2. Comments submitted on behalf of M. Dennis Sculimbrene

ATTACHMENT 1

FILED JUN 21 2000

Facsimile 202-457-6315
www.pattonboggs.com

Special Division

June 19, 2000

Gregory S. Walden
202-457-6135
gwalden@pattonboggs.com

Marilyn Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, DC 20001-2866

SUBMITTED UNDER SEAL

Comments on Independent Counsel Final Report

Dear Ms. Sargent:

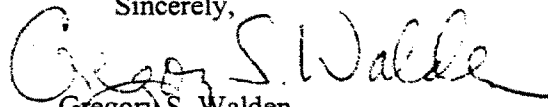
I represent Jane M. Dannenhauer in connection with her review of the Final Report of Independent Counsel Ray in Division No. 94-1, *In re: Madison Guaranty Savings & Loan Association* (In re: Anthony Marceca) ("Final Report"). At Ms. Dannenhauer's request, on June 13, 2000 I reviewed portions of the Final Report. By this letter, Ms. Dannenhauer submits comments and factual information for inclusion in an appendix to the Final Report.

1. In the portion of the Final Report named "In re: Nussbaum," the report refers to a memorandum from Craig Livingston to Cheryl Mills, dated February 8, 1993, in which Mr. Livingston explained that Jane Dannenhauer would remain as an advisor to Mr. Livingston until he received his security clearance. Ms. Dannenhauer's recollection from discussions with Mr. Livingston is that she agreed to remain until a replacement came on board and that when she left the White House at the end of February 1993 Mr. Livingston, to her knowledge, had not obtained his security clearance.

2. In two places, Michael Dannenhauer is identified as Jane Dannenhauer's husband. Michael Dannenhauer is in fact Jane Dannenhauer's nephew.

Thank you for the opportunity to provide comments on the Final Report.

Sincerely,



Gregory S. Walden
Counsel for Jane M. Dannenhauer

ATTACHMENT 2



United States Court of Appeals
For the District of Columbia Circuit

FILED JUL 19 2000

Special Division

UNDER SEAL

July 19, 2000

The Hon. Mark J. Langer,
U.S. COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT
Third and Constitution Avenue, N.W.
Washington, DC 20001

Re: Special Agent M. Dennis Sculimbrene

Dear Mr. Langer:

Special Agent M. Dennis Sculimbrene, by counsel and pursuant to 28 U.S.C. § 594(h)(2), respectfully submits the following comments and factual information regarding the "Travel Office" Report ("the Report") prepared by the Office of the Independent Counsel ("OIC").

Special Agent Sculimbrene was a twenty-three (23) year veteran of the Federal Bureau of Investigation ("FBI") who was detailed to The White House beginning in 1985 to conduct background investigations of White House appointees and employees to determine their suitability for White House access. In the early days of the Clinton Administration, Special Agent Sculimbrene was called upon to conduct a background investigation of the new Director of the White House Office of Personnel Security, David Craig Livingstone. During the course of this investigation, Special Agent Sculimbrene conducted interviews of Counsel to the President Bernard Nussbaum and Associate Counsel to the President William H. Kennedy, III, and had Ms. Lori Stallings of The White House Personnel Office conduct a records check on Livingstone. During a July 1996 interview of Special Agent Sculimbrene at his home by FBI Supervisory Agents Duncan Wainwright and Jennifer Esposito, Special Agent Sculimbrene specifically asked the agents if they were aware of any additional interviews that he had conducted during the course of his 1993 background investigation of Livingstone, and they replied in the negative.

Special Agent Sculimbrene conducted literally thousands of background investigations during his tenure at The White House, and has no independent recollection of this particular interview of Nussbaum. However, an Insert prepared by Special Agent Sculimbrene of the interview states that,

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July 19, 2000
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according to Nussbaum, Livingstone "had come highly recommended to him by HILLARY CLINTON, who has known his mother for a longer period of time."

The Insert is dated. It specifically states that "[t]he following investigation was conducted by SA M. Dennis Sculimbrenne regarding DAVID CRAIG LIVINGSTONE on 3/1-3/93." See Exhibit 1. The Insert is also initialed by Special Agent Sculimbrenne. *Id.* The preparation and form of the Insert was fully consistent with long-standing FBI practices and procedures.

Nonetheless, the Report concludes that the circumstances surrounding Special Agent Sculimbrenne's preparation of the Insert do not corroborate its accuracy, because, among other purported reasons, the Insert allegedly is unsigned and undated. However, and consistent with long-standing FBI practices and procedures, the Insert is both initialed and dated. Moreover, given that Special Agent Sculimbrenne conducted literally thousands of background investigations during his tenure at The White House, it is not at all unusual, and hardly dispositive, that he has no independent recollection of what at the time was an otherwise unremarkable interview. In fact, the purpose of such inserts is to document background investigation interviews.

The Report also concludes that the that the circumstances surrounding Special Agent Sculimbrenne's preparation of the Insert do not corroborate its accuracy because apparently there are no accompanying notes from the interview. Again, however, the note-taking practices described by Special Agent Sculimbrenne and set forth in the Report are fully consistent with long-standing FBI practices and procedures. FBI agents are not required to keep notes if an insert is prepared. In fact, FBI practices and procedure mandate that under no circumstances are agents to retain notes of interviews for more than ninety (90) days. If notes are kept of an interview that is detailed in a FBI 302, the notes are not kept by the agent, but are placed in a special envelope that accompanies the 302.

Moreover, the accuracy of the Insert, and the link between Livingstone and Mrs. Clinton contained therein, is corroborated by several facts. First, in the three (3) years before Livingstone was implicated in the unlawful obtaining and maintaining of hundreds of FBI background investigation files of former Reagan and Bush Administration appointees, employees and staffers, The White House had access to Livingstone's background investigation files -- and the Insert contained therein -- but never sought to retract or otherwise amend Nussbaum's statement linking Livingstone's hiring to Mrs. Clinton. A March 10, 1993 letter from FBI Assistant Director Larry Potts to Nussbaum demonstrates that Livingstone's FBI background investigation file was sent to The White House shortly after Special Agent Sculimbrenne's interview of Nussbaum (Exhibit 2), and Special Agent Sculimbrenne even witnessed Associate White House Counsel Kennedy reviewing the file on one occasion in 1993. Kennedy admitted during his deposition before the House Government Reform and Oversight Committee that he not only reviewed Livingstone's FBI background investigation file, but that he also discussed it with others, including Deputy White House Counsel Vince Foster and Christine Varney. Exhibit 3. The fact that The White House obtained and reviewed Livingstone's FBI background investigation file three (3) years before the "Filegate" controversy erupted, but never

sought to retract or disavow the contents of the file or the Insert contained therein, further confirms its accuracy. The White House clearly knew of the Insert years ago, yet only tried to deny Mrs. Clinton involvement in hiring Livingstone when it became politically expedient.

The accuracy of the Insert, and the link between Livingstone and Mrs. Clinton contained therein, is further corroborated by statements made by Livingstone and Kennedy to both Special Agent Sculimbrene and Special Agent Gary Aldrich, as set forth in the Report, as well as Livingstone's own admission contained in the Report that he likely did tell others, including Special Agent Sculimbrene, that the President and Mrs. Clinton were involved in his being hired by The White House. Far from being inconsistent with the Insert, these statements further demonstrate the likelihood that Nussbaum also believed Mrs. Clinton played a role in hiring Livingstone, and told Special Agent Sculimbrene of this during the interview.

In this regard, Special Agent Sculimbrene's desk calendar from his office in the Old Executive Office Building confirms that Livingstone claimed to know Mrs. Clinton. Special Agent Sculimbrene wrote a note to himself on his March 1993 desk calendar as a reminder to tell his supervisor, Special Agent Tom Reneghan, that Livingstone knew Mrs. Clinton. The note states, "Tell Tom R. New Jane D. [Livingstone] Knows F[irst] L[ady] (claims)."¹ See Exhibit 4. This desk calendar was returned to Special Agent Sculimbrene after he left the FBI in August 1996. Plaintiff only recently discovered that he still had this desk calendar in reviewing materials kept in storage at his home. The desk calendar has been submitted to the U.S. District Court for the District of Columbia in *Alexander, et al. v. FBI, et al.*, Civil Action Nos. 96-2123/97-1288 (RCL) (D. District of Columbia), a class action lawsuit concerning the "Filegate" scandal.

Similarly, Ms. Linda Tripp, who worked in the White House Counsel's Office when Livingstone was Director of the White House Office of Personnel Security, testified in the *Alexander* matter, "I can only tell you who Craig Livingstone told me hired Craig Livingstone . . . He told me Mrs. Clinton hired him." See Exhibit 5.

Finally, the Report also claims that Special Agent Sculimbrene interviewed Francis Sobol during the course of his background investigation of Livingstone. Special Agent Sculimbrene has no recollection of interviewing Mr. Sobol during the course of this investigation, nor does he recall seeing any copy of the Insert that made reference to him having interviewed Mr. Sobol during the course of his background investigation of Livingstone. See Exhibit 1. In addition, Special Agent Sculimbrene was never asked by OIC investigators about any interview of Mr. Sobol, although he specifically was questioned about his interviews of Nussbaum, Kennedy and Ms. Lori Stallings, as well as his records check of Livingstone. Special Agent Sculimbrene recalls that Mr. Sobol worked

¹ During the Bush Administration, Jane Dannenhauer had occupied the position taken over by Livingstone when President Clinton came into office. Thus, "New Jane D." was Special Agent Sculimbrene's way of referring to Livingstone.

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UNDER SEAL

in the White House Counsel's Office during both the Bush Administration and for at least part of the Clinton Administration, but was unlikely to have known Livingstone for any length of time in March 1993. Mr. Sobol thus would have been an unlikely candidate for Special Agent Sculimbrene to have interviewed in conducting his background investigation of Livingstone.

In sum, there is substantial, compelling evidence directly contradicting the Report's conclusion that the Insert prepared by Special Agent Sculimbrene is uncorroborated and that the circumstances surrounding the Insert's preparation do not corroborate its accuracy. The evidence is very much to the contrary.

Respectfully submitted,

JUDICIAL WATCH, INC.

A handwritten signature in cursive script, appearing to read "Paul J. Orfanedes", with a long horizontal flourish extending to the right.

Paul J. Orfanedes

EXHIBIT 1

MS

XXXX: [REDACTED]
OS/MS

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 Scullibrene 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 MUSSEBAUM, 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.

EXHIBIT 2

393

#44208

MAR 10 1993 5-17-93 JED 3/5/93

BY COURIER

Honorable Bernard Nussbaum
Counsel to the President
The White House
Washington, D.C.

Dear Mr. Nussbaum:

Reference is made to my letter to your office dated March 5, 1993, which furnished the partial results of a background investigation concerning Mr. David Craig Livingstone.

Transmitted herewith is a summary memorandum containing the results of additional inquiries in this matter, along with copies of interviews providing details of information contained in this summary memorandum.

This completes our investigation.

Sincerely yours,

L. A. Potts

Larry A. Potts
Assistant Director
Criminal Investigative Division

Enclosures (3)
URGENT (3)

F [REDACTED]

[REDACTED]

EIP

- Mr. Dir. _____
- Asst. Dir. _____
- Adm. Serv. _____
- Ident. Div. _____
- Intell. Div. _____
- Lab. _____
- Legal Coun. _____
- Plan. & Insp. _____
- Rec. Mgmt. _____
- Tech. Serv. _____
- Training _____
- Off. of Cong. & Public Affs. _____
- Off. of EEO _____
- Off. of Liaison & Int. Affs. _____
- Off. of Public Affs. _____
- Telephone Rm. _____
- Director's Sec'y _____

CLOSED

RETURN TO MRS. GRAY, ROOM 4371

[Handwritten signature]

F00217

EXHIBIT
 NUSBAUM
 # 3
 6-4-99

Wag

EXHIBIT 3

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

- - - - - X

:

In the matter of: :

:

WHITE HOUSE TRAVEL : DEPOSITION OF

: WILLIAM H. KENNEDY, III

:

- - - - - X

Tuesday, June 18, 1996

Washington, D.C.

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 9:35 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee:
Barbara Comstock, Investigative Counsel; Barbara Olson, Chief Counsel;
Laurie Taylor, Assistant Counsel; Kristi Remington, Investigator; and
Donald Goldberg, Minority, Assistant to Counsel.

For WILLIAM H. KENNEDY, III:

JOHN CONRAD HANKS, ESQ.

WILLIAM F. COFFIELD, ESQ.

Sharp & Lankford

1785 Massachusetts Avenue, N.W.

Washington, D.C. 20036

Ms. Comstock. We are on the record this morning for the deposition of Bill Kennedy, which will be administered under oath.

I will identify the people present in the room. My name is Barbara Comstock; I am a Majority investigative counsel. Laurie Taylor is assistant counsel. Our chief investigative counsel, Barbara Olson, is here and also Kristi Remington, assistant counsel in our office. Don Goldberg from the Minority staff is also present.

We are conducting this deposition pursuant to House Resolution 369, which I believe you are familiar with, Mr. Kennedy, from a previous deposition so I will not go through the previous statement of scope this morning.

THEREUPON,

WILLIAM H. KENNEDY, III,

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

EXAMINATION BY MS. COMSTOCK:

1 004093

Q Had you informed anyone else besides Mr. Foster?

A No. Well, I mean the answer is yes; when the allegations hit the press, yes, I talked to Mr. Nussbaum.

Q And what did you tell Mr. Nussbaum?

A That the allegations were false.

Q And why was that?

A Why was that what?

Q Why were they false?

A They weren't true.

Mr. Coffield. I remember -- I can't remember with specificity going through the scope of the investigation, but I don't think it's going to wade into his tax problems with his nanny.

Ms. Comstock. No, I am trying to find out who he talked with about these problems.

BY MS. COMSTOCK:

Q Did you ever have any discussions with anybody in the counsel's office about the suitability of Craig Livingston for this position?

A I need to amplify an answer, I have been thinking about your previous question. These allegations about nanny problems came up at a time when Bernie Nussbaum was leaving and Lloyd Cutler was present, so I also discussed them with Lloyd Cutler.

Q Thank you for clarifying that.

A You asked a question?

Q Why don't I go back. You don't know who hired Craig Livingston or how he came to have the position as Director of White House Personnel Security?

A No, Craig Livingston had been identified as being sort of the person for that post when I arrived.

Q Do you know who identified him as that person to be in charge of that?

A No, I do not.

Q Do you know if it was somebody in the counsel's office?

A I do not know.

Q Do you know if Bruce Lindsey was involved in his hiring?

A I don't think Bruce Lindsey was, but I don't know.

Q At that time was Mr. Lindsey in charge of personnel?

A He was in charge of Presidential personnel, yeah.

Q Did there come a time when you had any discussions with Mr. Livingston about any concerns that you had about his background?

A Yes, there were.

Q And could you describe what those conversations were?

Mr. Coffield. I don't think he can under the Privacy Act.

BY MS. COMSTOCK:

1 004095

Q Did you ever express to anybody any --

The Witness. Let me discuss something with my counsel.

[Witness confers with counsel.]

Mr. Goldberg. Would you read the previous question.

[The reporter read back as requested.]

BY MS. COMSTOCK:

Q I think we will stay away from anything that you know for privacy matters.

Mr. Coffield. And his concern is, too, whether it enters into a privileged area, too.

BY MS. COMSTOCK:

Q Why don't we stick to -- did you ever have any discussions with anyone in the counsel's office about any concerns that you had about Craig Livingston's suitability for the position he was in at the White House?

A Yes, I discussed them with Vince Foster, deputy White House counsel at the time.

Q And did Mr. Foster express an opinion on whether Mr. Livingston was a suitable individual for the position of heading up White House Personnel Security?

A No, he didn't -- you know, he didn't know Craig any more than I did when I arrived, and he suggested that I -- I can't remember exactly -- he suggested that I talk with someone named Christine Varney who worked at the White House who had worked with Craig in the campaign.

Q And did you do so?

A I did.

Q Okay. Can you tell us what Ms. --

A I'm sorry; I mean what I was discussing was stuff contained in Craig's background and I don't believe I can discuss that.

Q Did there come a time when you considered having somebody else in that position?

A No, first of all, it wasn't my decision to make, and, second of all, the only concerns I had concerned these matters which were not -- I don't know how to describe them. They were items of concern, but they were not killers as it were. And once they were discussed, that was the end of that.

Q Do you know whose decision it would have been to change Mr. Livingston from that position?

A You're asking me to speculate. I don't know. I do not know how Craig was identified for this job. It was done before I got here. I do not know. You know, it would have probably gone through normal channels in the White House, okay? But at this point in time early in February or -- well, it would have been a little bit later, those channels were still in the process of being worked out.

Q Do you have any idea what channel this went through to hire Mr. Livingston?

A I do not. I'm sorry.

Q And you didn't know who you needed to talk to if you didn't want him

1 004096

to be in that position?

A Well, I mean obviously, I followed -- I talked to Mr. Foster about these concerns. Okay? And that's where I thought I was supposed to go.

Q Do you know if Mr. Foster ever raised this with anybody above him?

A I do not know.

Q Did he ever say anything to you after that he had talked to anybody else about Mr. Livingston?

A He did not. He did not.

Q Do you know if Mr. McLarty was ever consulted on Mr. Livingston's suitability?

A I do not know. To my knowledge, he was not, but I can't say that across the board. I just don't know.

Q Were you aware that reviewing background files was a sensitive position in need of attention to detail and high integrity?

A You bet.

Q Did Craig Livingston meet this description in this position?

A Yeah, I think so.

Q What in his background made you think this was a position that he was suitable for?

A What background are we talking about?

Q What about Craig Livingston made you feel that he would be an appropriate person for this position?

A Craig Livingston had been identified for this position before I got here. That decision was made by others. I came to know Craig as an honest, hard working person. I felt he had sufficient attention to detail to deal with this job. Overall, I thought then and think now he's done an okay job with it. I really have to say I don't understand your question I'm trying to respond to.

Q What efforts did you take to make sure that Craig had the proper training for this position?

A Craig had no experience in these matters. Neither did I, and so we engaged in OJT, on-the-job training. He got as many briefings as his schedule would allow to allow him to learn security procedures. He worked intensively with Ms. Gemell, she was the former director of the office, and learned as much from her as he could. He just did his best to get up to speed. I helped him whenever and wherever I could.

Q Do you know who provided him with briefings?

A You'd have to ask him. I don't know. I think he received some briefings from the Secret Service. I think he received some briefings from the CIA. He may have gotten some from the FBI. You'd have to ask him. But I know he was fairly diligent in trying to get up to speed on the things he should be doing.

Q Were you aware of him also working on advance at this time at the White House?

A I don't recall him -- I mean, you'd have to tell me what your definition of "advance" is.

Q Going on trips, working on setting up advance for trips and making arrangements such as he had done during the campaign.

A What time frame are we talking about here?

1 004097

EXHIBIT 4

EXHIBIT 5

In The Matter Of:

*CARA LESLIE ALEXANDER, et al. v.
FEDERAL BUREAU OF INVESTIGATION, et al.*

*Linda R. Tripp
Vol. 1, December 14, 1998*

*Beta Reporting
910 17th Street, N.W.
Suite 200
Washington, DC 20006
(202) 638-2400 or (800) 522-2382*

*Original File AATRIPPTXT, 313 Pages
Min-U-Script® File ID: 1822305864*

Word Index included with this Min-U-Script®

you off the top (4) of my head the names that I recall, bearing (5) in mind that it won't be a complete list. (6) Given time, I think I could give you a (7) complete list. (8) Always John Podesta, Jennifer (9) Dudly —

(10) BY MR. KLAYMAN:

(11) Q: Who's Jennifer Dudly?

(12) A: At the time, she was John. (13) Podesta's assistant. She, at one point, (14) became Bruce Lindsey's assistant. I don't (15) know what her status is today. Harold (16) Joel Kline, Steve Neuwirth, Cliff Sloan.

(17) Q: Who was Steve Sloan?

(18) A: Cliff Sloan.

(19) Q: What was his position?

(20) A: Associate counsel to the President, (21) whose area, in the beginning, was Travel (22) Office. I don't know if it expanded over

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(1) time. Nuwell Eggleston, Maggie Williams, and (2) I can't say for certain how many of those (3) meetings or whether even Maggie was a (4) regular. I can tell you that there were (5) times when I actually had to deliver (6) documents, requested documents, down to the (7) meeting and so would actually be in the (8) office during the course of the meeting, and (9) there were occasions when I saw Maggie there, (10) which is why I've given you that name; one (11) time, in particular, I recall.

(12) Q: Anyone else?

(13) A: I'd really have to think of it. (14) Off the top of my head, that's it.

(15) Q: How frequently did these meetings (16) occur?

(17) A: Very frequently.

(18) Q: More than once a week?

(19) A: Yes.

(20) Q: How many, roughly speaking?

(21) A: They were regularly scheduled (22) meetings, often spilled over into other

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(1) meetings, following those meetings with (2) smaller groups. I would say at least twice a (3) week and probably more frequently, depending (4) on the escalation of any given issue in the (5) press.

(6) Q: What is it that you call these (7) meetings? How did you first refer to them?

(8) A: Damage control meetings.

(9) Q: They concerned the Clinton (10) scandals?

(11) A: I don't think the Clintons would (12) choose to characterize them that way.

(13) Q: Controversy?

(14) A: Issues of interest, yes.

(15) Q: The Clintons wouldn't call them (16) scandals. To say it nicely, you'd say issues (17) of controversy?

(18) A: Right.

(19) MS. SHAPIRO: Objection to form.

(20) BY MR. KLAYMAN:

(21) Q: You understood them to be scandals, (22) correct?

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(1) MS. SHAPIRO: Again, objection to (2) form.

(3) THE WITNESS: I understood them to (4) be problem issues, yes.

(5) BY MR. KLAYMAN:

(6) Q: Did there come a point in time when (7) the mix of people at those problem (8) issue/scandal meetings changed?

(9) MR. ZACCAGNINI: I'm going to (10) object. I've given you plenty of time, (11) Mr. Klayman, to set some kind of relevance to (12) this line of questioning, and I just don't (13) see it. I really don't.

(14) MR. KLAYMAN: I think you can see (15) it, because these people obviously took a (16) role in the Clinton scandals, and they may (17) actually have information about Filegate.

(18) MS. SHAPIRO: Objection. That is (19) completely speculative, and it's way beyond (20) the boundaries of the order.

(21) MR. KLAYMAN: We'll be happy to (22) discuss this with the court tomorrow.

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(1) MS. SHAPIRO: We're happy to (2) discuss it too, but for purposes right now, (3) we're not going to allow testimony on, quote, (4) other Clinton scandals.

(5) MR. KLAYMAN: Each time you do (6) something like this, you up the cost and (7) expense to Judicial Watch and the plaintiffs. (8) Each time you delay matters. Each time (9) you're pushing things off to let the court (10) use up its time and resources. Does there (11) come a point in time when the Clinton Justice (12) Department says enough is enough and just (13) tries to get at the truth, Ms. Shapiro?

(14) MS. SHAPIRO: Mr. Klayman, you're (15) the one using up the clock with speeches. (16) It's a tired old speech that we've heard. (17) You suggested that we go to the court, and (18) we're happy to do so.

(19) MR. KLAYMAN: Certify it.

(20) MR. ZACCAGNINI: Mr. Klayman, at (21) this point in time, I'm going to ask that we (22) recess these proceedings. Mrs. Tripp has

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(1) expressed to me that she's exhausted. She's (2) been at it since 10:00 today. She's been up (3) since 6:00 a.m. this morning.

(4) THE WITNESS: 5:00.

(5) MR. ZACCAGNINI: I am going to ask (6) that we recess these proceedings.

(7) MR. KLAYMAN: Let me ask you this. (8) Can we have 15 more minutes?

(9) THE WITNESS: If you insist, (10) certainly.

(11) MR. ZACCAGNINI: Mr. Klayman, do (12) you anticipate wrapping up your direct (13) examination in 15 minutes pending those (14) questions that you have certified.

(15) MR. KLAYMAN: No, I just need 15 (16) more minutes to finish up this line of (17) questioning.

(18) MR. ZACCAGNINI: We'll see where we (19) go.

(20) MR. KLAYMAN: I don't know that (21) I'll finish, but I'll try to get as far as I (22) can.

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(1) BY MR. KLAYMAN:

(2) Q: Do you know who hired Craig (3) Livingstone?

(4) A: I don't know for a fact who hired (5) Craig Livingstone, no.

(6) Q: Whom do you think hired Craig (7) Livingstone?

(8) MS. SHAPIRO: Objection. Form.

(9) THE WITNESS: I can only tell you (10) who Craig Livingstone told me hire Craig (11) Livingstone.

(12) BY MR. KLAYMAN:

(13) Q: What did he tell you?

(14) A: He told me Mrs. Clinton hired him.

(15) Q: When did he tell you that?

(16) A: Relatively shortly after my arrival (17) in the counsel's office, when I asked me how (18) I managed to get a job like that. So I asked (19) him, how did I manage to get a job like (20) that?

(21) Q: Where was he when he made the (22) statement?

Page 2

(1) A: In the counsel's office.

(2) Q: Was there a particular office inside the counsel's office?

(4) A: He was outside — he was in the anteroom, the reception area, the support (6) staff area where my desk was located.

(7) Q: Was anyone present that overheard (8) that statement?

(9) A: I have no recollection of who (10) or wasn't there. Generally speaking we were (11) all there at the same time.

it could have (12) been any one of the four of us.

(13) Q: Did he tell you why Mrs. Clinton (14) hired him?

(15) A: No.

(16) Q: Did you ever ask him?

(17) A: No.

(18) Q: Did you ever ask anybody else?

(19) A: No.

(20) Q: From the statement that (21) Mrs. Clinton hired Mr. Livingstone, did you (22) infer that Mrs. Clinton was behind the whole

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(1) FBI files issue?

(2) MS. SHAPIRO: Objection to form.

(3) THE WITNESS: That's a leap. I (4) didn't really make a connection at that (5) point. What I made a connection in my mind (6) was he's well connected. He must be (7) extremely well connected, and that answered a (8) lot of questions I might have had.

(9) BY MR. KLAYMAN:

(10) Q: Did you later make that "leap" in (11) retrospect, up to the time that you exited (12) the Grand Jury on July 28, 1998, and made the (13) statement that I read to you earlier?

(14) MR. GAFFNEY: Objection to form.

(15) MS. SHAPIRO: Objection to form.

(16) BY MR. KLAYMAN:

(17) Q: You can respond.

(18) A: That would not have been why I made (19) the leap. Craig Livingstone's assertions of (20) how he got his job was not precisely what I (21) was referring to in that statement, no.

(22) Q: But you did make the leap?

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(1) MR. GAFFNEY: Objection to form.

(2) MS. SHAPIRO: Join.

(3) BY MR. KLAYMAN:

(4) Q: You can respond.

(5) A: It seemed all of a piece.

(6) Q: Why is that? Tell us the (7) foundation reason why you came to that (8) conclusion, the basis of that conclusion.

(9) MS. SHAPIRO: Objection to form. (10) Speculation.

(11) BY MR. KLAYMAN:

(12) Q: You can respond.

(13) MR. ZACCAGNINI: The question (14) again, Mr. Klayman? I'm sorry.

(15) BY MR. KLAYMAN:

(16) Q: On what basis did you come to the (17) conclusion that Mrs. Clinton was somehow (18) involved in the FBI files matter?

(19) MS. SHAPIRO: Objection to form.

(20) THE WITNESS: Excuse me.

(21) (Witness conferred with counsel)

(22) THE WITNESS: Mr. Klayman, there

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(1) were many contributing small little bits of (2) information to which I was exposed during (3) that period. Some of those came from Craig (4) Livingstone himself, and, as I said, it all (5) eventually became of a piece to me, my (6) opinion, and I think it goes well beyond what (7) we're here to talk about today, but suffice (8) it to say, if you will, that I believe that (9) Craig wanted me to believe that everything he (10) did, he did at the direction of Mrs. Clinton.

(11) BY MR. KLAYMAN:

(12) Q: Did he say that explicitly to you (13) from time to time?

(14) A: I think it was more implied than it (15) was explicitly stated. Craig tended to do (16) things that were somewhat questionable in (17) terms of perhaps overstating his own value in (18) very bizarre ways, frankly, and so one would (19) normally, over time I think, take what he (20) said with a grain of salt.

(21) Q: Give me an example of how he led (22) you to believe that he was acting at the

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(1) direction of Mrs. Clinton.

(2) A: Well, there were times when he was (3) very frustrated with me personally, because I (4) wouldn't let him in to see Mr. Nussbaum, who (5) had an extremely busy schedule, and who (6) clearly had made it rather plain to me that (7) he didn't have any wish to deal with (8) Mr. Livingstone, and that he should deal with (9) Bill Kennedy.

(10) Q: Was Mr. Nussbaum's opinion of (11) Mr. Livingstone to be basically an idiot?

(12) MS. SHAPIRO: Objection to form.

(13) MR. ZACCAGNINI: Only if you know (14) what his opinion is. Did he ever express an (15) opinion to you, Mr. Nussbaum?

(16) BY MR. KLAYMAN:

(17) Q: Did you get that impression from (18) Mr. Nussbaum that this guy's an idiot?

(19) MS. SHAPIRO: Objection to form.

(20) MR. GAFFNEY: Objection.

(21) MR. ZACCAGNINI: Did Mr. Nussbaum (22) ever express an opinion to you about

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(1) Mr. Livingstone?

(2) THE WITNESS: I wouldn't say he (3) expressed an opinion. He kept asking me who (4) I meant, so to me, that told me what his (5) opinion was.

(6) BY MR. KLAYMAN:

(7) Q: In other words, you got a feeling (8) from Mr. Nussbaum that he had disdain towards (9) Mr. Livingstone?

(10) MR. MAZUR: Object to the form of (11) the question.

(12) THE WITNESS: No, I think he (13) honestly didn't have a lot to do with him. I (14) think he honestly knew his face, knew what he (15) did, but didn't get into the weeds that (16) deeply.

(17) BY MR. KLAYMAN:

(18) Q: Didn't want to get into the weeds?

(19) MS. SHAPIRO: Objection.

(20) THE WITNESS: I don't know that he (21) had the time or inclination to get into the (22) weeds that deeply.

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(1) BY MR. KLAYMAN:

(2) Q: To continue, what was it that (3) Mr. Livingstone told you, by way of example, (4) that created your belief that he was trying (5) to convey that he was acting on behalf of (6) Mrs. Clinton?

(7) A: He would talk into his watch and (8) act as though he were her covert agent. He (9) didn't have an ear piece. It wasn't a — it (10) was a regular watch.

(11) Q: Was he talking to Mrs. Clinton at (12) the time?

(13) A: He would like you to believe so.

(14) MS. SHAPIRO: Objection. Form.

(15) BY MR. KLAYMAN:

(16) Q: What other examples where he tried (17) to convey his agency for Mrs. Clinton?

(18) MS. SHAPIRO: Objection to form.

(19) BY MR. KLAYMAN:

(20) Q: You can respond.

(21) A: Overall, the impression I had was (22) that he, as I said, was well connected, and

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(1) that he had a direct pipeline to (2) Mrs. Clinton. Whether or not that was true, (3) I never formed an opinion one way or another. (4) I didn't see them having lunch. It seemed a (5) form of self aggrandizement. It didn't seem (6) necessarily true. However, that said, this (7) is a man whose very existence in that (8) position at The White House was beyond (9) comprehension for someone like me.

(10) Q: In other words, you concluded he (11) must have had friends in high places to get (12) the job?

(13) MS. SHAPIRO: Objection to form.

(14) BY MR. KLAYMAN:

(15) Q: That was your belief?

(16) A: I concluded that he had to be