

In June 1996, a federal grand jury began hearing evidence related to the OIC's investigation of the FBI Files matter. Between June and December 1996, the grand jury issued fifteen subpoenas for testimony and twenty-nine document subpoenas related to the FBI Files matter and this matter. The document subpoenas resulted in the production of over 16,000 documents by the United States Secret Service, the White House, and the FBI as well as other government agencies and individuals. In addition, there were eleven voluntary productions totaling approximately 15,000 documents.

IV. FACTUAL SUMMARY

A. Bernard Nussbaum's Involvement in the Hiring of Craig Livingstone Was Very Limited and Did Not Include Discussions with Mrs. Clinton Regarding Mr. Livingstone.

There is no evidence that Mr. Nussbaum was substantially involved in hiring Craig Livingstone and that such involvement included discussions with Mrs. Clinton or anyone else indicating Mrs. Clinton's desire to hire Mr. Livingstone. Rather, Mr. Livingstone's employment as Director of OPS resulted from the combined efforts of then Deputy White House Counsel Vincent W. Foster Jr.,²³ then Associate White House Counsel Cheryl Mills,

²³ See Vincent Foster Hired Livingstone, Stephanopoulous Says, Los Angeles Times, July 1, 1996, A-13; White House Links Dead Aide to Hiring of Ex-Security Chief, New York Times, July 1, 1996, A-10.

then Cabinet Secretary Christine Varney, and then Associate White House Counsel William Kennedy.

1. Mr. Livingstone Recalled Meeting with Christine Varney, Cheryl Mills, Bernard Nussbaum, and William Kennedy.

Shortly after the inauguration, in late January 1993, Mr. Livingstone spoke with Christine Varney²⁴ about his desire to work at the White House, and inquired about what types of jobs might be available.²⁵ Neither Mr. Livingstone nor Ms. Varney recalled who mentioned the position at OPS.²⁶ According to Mr. Livingstone, Ms. Varney brought him to the White House Counsel's Office where he briefly met White House Counsel Bernard

²⁴ In October 1994, Ms. Varney was a Commissioner at the Federal Trade Commission, a position to which she was appointed by President Clinton. Prior to that, she served as General Counsel for the Democratic National Committee from 1989 to early 1992, Chief Counsel to the 1992 Clinton/Gore Presidential Campaign; after Clinton was elected, Varney was named General Counsel for the inauguration. After the inauguration, Varney was appointed Secretary to the Cabinet in the Clinton Administration and served in that capacity from January 1993 to October 1994. Varney 6/18/96 GJ at 3-6. (The abbreviation "GJ" will be used throughout this report to indicate testimony taken before a grand jury.)

²⁵ Livingstone 7/1/96 GJ at 18; Livingstone 9/13/96 Int. at 2; Varney 11/14/96 Int. at 1-2. Immediately after the inauguration Mr. Livingstone worked on a five-person advance team for a Clinton Administration organizational retreat at Camp David. Mr. Livingstone reported to Ms. Varney who was responsible for planning the retreat. Varney 11/14/96 Int. at 1.

²⁶ Livingstone 9/13/96 Int. at 2. Ms. Varney assumed that Mr. Livingstone must have brought the position to her attention, since she did not think she would have any reason to be aware of the position. Varney 11/14/96 Int. 2.

Nussbaum.²⁷ At that time, he was also introduced to Associate White House Counsel Cheryl Mills who spoke to him in some detail about the position at OPS.²⁸ Ms. Mills described the OPS position to Mr. Livingstone and informed him that once a White House Counsel's Office supervisor for OPS was named, he could make his case for his qualifications to that person.²⁹

Mr. Livingstone stated that he believed his next contact regarding the OPS position was Mr. Kennedy. Upon meeting Mr. Kennedy, he was told that he was being considered for the position of Director of OPS, subject to a successful completion of his FBI background investigation.³⁰

Mr. Livingstone provided conflicting statements regarding who initially told him to report to OPS. Although he testified before Congress in June 1996 that he was at OPS before Mr.

²⁷ Livingstone 5/29/97 Int. at 3.

²⁸ Id. Mr. Livingstone does not have a clear recollection of who arranged the meeting at the White House Counsel's Office and the person to whom he spoke. In the grand jury, Mr. Livingstone testified that he could not remember who in the White House Counsel's Office he spoke with in advance of his meeting with Ms. Mills and whether Ms. Varney arranged the meeting. Livingstone 7/1/96 GJ at 22-23. In a later interview, Mr. Livingstone stated that he had a brief conversation with Mr. Nussbaum, who directed him to speak with Ms. Mills. Livingstone 9/13/96 Int. at 2-3.

²⁹ Livingstone 9/13/96 Int. at 3; Livingstone 5/29/97 Int. at 4. Mr. Livingstone stated that Ms. Mills described the job as an "administrative" position. HCGRO 6/26/96 Hearing at 215 (Livingstone).

³⁰ Livingstone 9/13/96 Int. at 3.

Kennedy was appointed,³¹ he testified before the grand jury that he believed Mr. Kennedy first told him to report to OPS.³² Mr. Livingstone reiterated this belief in an interview with the OIC when he stated that Mr. Kennedy told him to report to OPS to "get a lay of the land."³³ He later stated that Ms. Mills told him to report to OPS.³⁴ Mr. Livingstone's most recent recollection in his OIC interview, that Ms. Mills spoke to him about the OPS position before he met with Mr. Kennedy, is consistent with his earlier congressional testimony that he was working at OPS before Mr. Kennedy was appointed³⁵ and with the statements of others regarding his appointment.³⁶

³¹ HCGRO 6/26/96 Hearing at 214-215 (Livingstone).

³² Livingstone 7/1/96 GJ at 28-30.

³³ Livingstone 9/13/96 Int. at 3.

³⁴ Livingstone 5/29/97 Int. at 4. Mr. Livingstone was shown a memorandum he wrote to Ms. Mills dated February 8, 1993, regarding the OPS position. Livingstone 2/8/93 Memo. to Mills, 707-DC-00000082. (This numbering system reflects a unique identifying number assigned by the Office of Independent Counsel to all documents produced to the Office pursuant to a grand jury subpoena or other document request.) After his memory was refreshed, Mr. Livingstone stated he probably was working in the OPS before he met with Kennedy. Livingstone 5/29/97 Int. at 4.

³⁵ HCGRO 6/26/96 Hearing at 214-15 (Livingstone).

³⁶ Mills 11/12/96 Int. at 2-3; Varney 11/14/96 Int. at 2-3.

2. Ms. Mills Recalled That She and Mr. Foster Met with Mr. Livingstone.

Ms. Mills stated that she met Mr. Livingstone in January or early February 1993.³⁷ Her recollection of the events surrounding Mr. Livingstone's application for a position at OPS differs from Mr. Livingstone's testimony on two points. First, Ms. Mills stated that she believed the position Mr. Livingstone was pursuing was a low-level position and not a supervisory job.³⁸ According to Ms. Mills, Mr. Foster told her some time near the end of January or early in February 1993 that he was going to offer Mr. Livingstone one of the "administrative" positions in OPS.³⁹ Ms. Mills stated that she believed that Mr. Livingstone would be filling a vacancy for one of OPS's administrative assistants.⁴⁰

Second, Ms. Mills stated that both she and Mr. Foster interviewed Mr. Livingstone in her office.⁴¹ Ms. Mills also stated that she did not know how Mr. Foster knew of Mr. Livingstone, but she recalled that Mr. Foster checked with Ms.

³⁷ Mills 11/12/96 Int. at 1.

³⁸ Id. See also HCGRO 6/26/96 Hearing at 215 (Livingstone).

³⁹ Mills 11/12/96 Int. at 1-2.

⁴⁰ Id. at 2.

⁴¹ Id. Mr. Livingstone specifically remembers talking with Ms. Mills about the Director position, but he did not recall Mr. Foster being present during any of their conversations. Livingstone 7/1/96 GJ at 26-27.

Varney for a reference on Mr. Livingstone.⁴² Ms. Mills said there were never any discussions, nor was she aware, of any relationship between Mr. Livingstone and the President or Mrs. Clinton.⁴³ Although Ms. Mills admitted she had frequent contact with Mr. Livingstone because he was the senior Clinton Administration appointee in OPS, she insisted she had no idea how Mr. Livingstone came to be the Director of OPS.⁴⁴

3. Mr. Kennedy Recalled That Mr. Livingstone Was Already in Place at OPS When He Arrived.

Mr. Kennedy consistently maintained Mr. Livingstone was already in place at OPS when he joined the White House Counsel's Office.⁴⁵ Mr. Kennedy recalled that Mr. Livingstone was the acting Director of OPS and was a candidate to hold the job on a

⁴² Mills 11/12/96 Int. at 2. This is consistent with Ms. Varney's recollection. Ms. Varney stated that Mr. Foster called her and asked whether Mr. Livingstone was capable of handling a position in the White House Counsel's Office. Varney 11/14/96 Int. at 3. Ms. Varney stated that she and Mr. Livingstone had a couple of conversations about the job, and she understood that it was a clerical position involving ensuring that each incoming Clinton staffer completed the required paperwork for a background investigation, and not a position involving "security" matters. Id. at 2. Ms. Varney informed Mr. Foster that Mr. Livingstone was suitable for that type of position. Id.

⁴³ Mills 11/12/96 Int. at 2.

⁴⁴ Id.

⁴⁵ Kennedy 9/12/96 GJ at 11-12; Kennedy 9/17/96 SJC Int. at 10-11. Mr. Kennedy joined the White House Counsel's Office during the first week in February and believed he went on the payroll on February 10, 1993. HCGRO 6/26/96 Hearing at 58-59 (Kennedy).

permanent basis.⁴⁶ According to Mr. Kennedy, Mr. Livingstone's status at OPS was not permanent until his FBI background check was completed.⁴⁷

After receiving Mr. Livingstone's interim FBI background report, dated March 5, 1993, Mr. Kennedy raised several suitability issues with Mr. Foster, who directed him to speak with Ms. Varney.⁴⁸ Mr. Kennedy recalled speaking to Ms. Varney about "issues . . . which were of concern to me."⁴⁹ Ms. Varney confirmed that she spoke with Mr. Kennedy, but stated that she was not aware of any problems with Mr. Livingstone's background investigation.⁵⁰ After his conversation with Ms. Varney, Mr. Kennedy told Mr. Foster that Mr. Livingstone could serve permanently as Director of OPS.⁵¹

⁴⁶ HCGRO 6/26/96 Hearing at 58-59 (Kennedy); see also Kennedy 9/12/96 GJ at 5, 9.

⁴⁷ HCGRO 6/26/96 Hearing at 172 (Kennedy).

⁴⁸ Kennedy 9/12/96 GJ at 6.

⁴⁹ Kennedy 9/17/96 SJC Int. at 12-13.

⁵⁰ Varney 11/14/96 Int. at 3. It was Ms. Varney's impression that she was being contacted again by Mr. Kennedy because Mr. Livingstone was being converted from temporary to permanent status. Ms. Varney also stated that she had a vague recollection that Mr. Kennedy mentioned to her that he was aware that she had provided a favorable reference to Mr. Foster concerning Mr. Livingstone. Id.

⁵¹ Kennedy 9/12/96 GJ at 7-9.

4. Craig Livingstone Wrote Memoranda to Cheryl Mills and William Kennedy Regarding OPS Operations.

On February 8, 1993, Mr. Livingstone wrote a memorandum to Ms. Mills, advising her that he had "reviewed the White House Security Offices as requested," and was reporting his "findings."⁵² The memorandum stated that OPS Administrative Assistant Nancy Gemmell would stay in her position and "report to me," and former OPS Director Jane Dannenhauer would remain "as an advisor to me" until he (Mr. Livingstone) received his security clearance.⁵³ In addition, Mr. Livingstone accounted for the remaining two staff positions.⁵⁴ Mr. Livingstone also referred Ms. Mills to an attached draft letter which he proposed that she send to Ms. Dannenhauer. The letter stated, in relevant part:

Please inform your staff of the following:

- (1) Effective February 8, 1993, Craig Livingstone shall serve as Director of the office of White House Security; Jane Dannenhauer shall continue on as advisor to Mr. Livingstone through March 1, 1993 whereupon, it is expected she will submit her resignation.⁵⁵

On February 17, 1993, Mr. Livingstone sent a two-page signed memorandum to Mr. Kennedy describing the functions of OPS and listing thirteen different responsibilities of the White House

⁵² Livingstone 2/8/93 Memo. to Mills, 707-DC-00000082-83, with attachment, 707-DC-00000080.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

Security Office.⁵⁶ A day later, Mr. Kennedy sent a memorandum to Mr. Foster, attaching Mr. Livingstone's memorandum, stating "[t]he results of all of these functions is that the office moves much paper. I need to discuss this subject with you when you have time."⁵⁷ On February 22, 1993, Mr. Kennedy sent a memorandum to Mr. Nussbaum and Mr. Foster reporting a conversation he had with Mr. Livingstone,⁵⁸ and stating that Mr. Livingstone "must have two people besides himself in the office; he cannot operate it with less."⁵⁹ On February 23, 1993, Mr. Kennedy followed with another memorandum to Mr. Nussbaum describing the functions of OPS consistent with Mr. Livingstone's February 17 memorandum.⁶⁰

At the same time, the White House Counsel's Office was negotiating its budget with the White House Office of Management and Administration. According to a memorandum dated February 24, 1993, Mr. Nussbaum, Mr. Foster, and Mr. Kennedy took issue with the White House Counsel's allocation, including the proposed

⁵⁶ Livingstone 2/17/93 Memo. to Kennedy, 705-DC-00004114-4115.

⁵⁷ Kennedy 2/18/93 Memo. to Foster, 705-DC-00003185-3187.

⁵⁸ Kennedy 2/22/93 Memo. to Nussbaum and Foster, OPS-000182.

⁵⁹ Id.

⁶⁰ Kennedy 2/23/93 Memo. to Nussbaum, 705-DC-00003184.

budget for OPS.⁶¹ On March 1, 1993, David Watkins, Assistant to the President for Management and Administration, sent a memorandum to Mr. Nussbaum requesting that he "identif[y] the new staffer to fill Ms. Dannenhauer's position."⁶² Mr. Nussbaum and Mr. Foster responded to Mr. Watkins' March 1 memorandum on March 9, 1993, after the FBI had submitted a partial background investigation report but before the final report was submitted, stating that Mr. Livingstone was hired in February as Assistant Counsel to the President for Security.⁶³ Mr. Kennedy then sent a memorandum to Mr. Watkins on March 10, 1993, requesting that the employment start date for Mr. Livingstone be retroactive to February 8, 1993.⁶⁴ As a result of this correspondence, which substantially relied upon Mr. Livingstone's memoranda, a "Notification of Personnel Action" form was approved on March 11, 1993, placing Mr. Livingstone on the payroll retroactively to February 8, 1993, as "Assistant to the Counsel to the President (Security)."⁶⁵

⁶¹ Nussbaum, Foster, Kennedy 2/24/93 Memo. to Watkins, OPS-175.

⁶² Watkins 3/1/93 Memo. to Nussbaum, 705-DC-00003277.

⁶³ Nussbaum/Foster 3/9/93 Memo. to Watkins, 705-DC-00003172.

⁶⁴ Kennedy 3/10/93 Memo. to Watkins, 705-DC-00001769.

⁶⁵ Notification of Personnel Action, 705-DC-00001740.