

A. The Evidence is Insufficient to Prove Beyond a Reasonable Doubt That David Watkins's Statements to the GAO, Congress, or This Office Were False.

Mr. Watkins gave seven separate statements to investigative bodies concerning the Travel Office firings: 1) an FBI interview on August 8, 1993; 2) a GAO interview on December 9, 1993; 3) an OIC interview on June 22, 1994; 4) grand jury testimony on February 28, 1995; 5) deposition testimony before the Senate Committee on Banking, Housing, and Urban Affairs on July 11, 1995; 6) an OIC interview on January 15, 1996; and 7) testimony before the House Committee on Government Reform and Oversight on January 17, 1996.⁹⁷¹ With respect to each of these statements, the evidence is insufficient to prove beyond a reasonable doubt that Mr. Watkins knowingly provide false testimony.

Beginning with his first statement to the FBI, Mr. Watkins disclosed that he had been advised by Harry Thomason of Mrs. Clinton's concerns relating to the Travel Office. He also

⁹⁷¹ Watkins also gave a statement to the White House Travel Office Management Review where, according to Watkins in the second draft of his memo, he deliberately provided incomplete and misleading information. See GJ 95-2 Exh. 69-E at 1 (calling the memo "my first attempt to be sure the record is straight, something I have not done in previous conversations with investigators -- where I have been as protective and vague as possible."). Watkins stated that his reference to investigators was limited solely to the White House Travel Office Management Review. See Watkins Int. 11/22/96 at 41.

Neither Watkins, nor anyone else, can be prosecuted under the then applicable version of 18 U.S.C. ? 1001 for false statements made to Podesta and Stern in the course of their interviews for the White House Travel Office Management Review. See United States v. Espy, 145 F.3d 1369, 1372-73 (D.C. Cir. 1998) (false statements to "the President's Chief of Staff and Counsel" do not violate ? 1001, because the "Executive Office of the President" is neither a "department" nor "agency"). The limitations of the White House Management Review, as described in this Report, also render prosecution inappropriate.

On October 11, 1996, Congress amended the false statements statute to cover the entire Executive Branch, which would include the Executive Office of the President. See The False Statements Accountability Act of 1996, Pub.L. 104-292, 110 Stat. 345 (Oct. 11, 1996). The ex post facto clause of the U.S. Constitution, Article I, sec. 9, however, precludes the prosecution of an offense under the new law for conduct occurring prior to October 11, 1996.

disclosed that he felt considerable pressure to act and that he knew that the Travel Office issue was "in the forefront of Hillary Clinton's mind and action needed to be taken."⁹⁷² Mr. Watkins has also consistently stated that although he felt pressured by Mrs. Clinton to fire the Travel Office employees, it was his decision and Mrs. Clinton never directly ordered him to fire them.⁹⁷³ As Mr. Watkins summarized in his testimony before the House Committee, "I am responsible for the firings of the White House Travel Office people [T]hey did not direct me to fire them. Was there pressure? Did I feel the pressure and desires and wishes of others? Yes, I did."⁹⁷⁴

In addition, the evidence also establishes beyond a reasonable doubt that Mr. Watkins was pressured to act expeditiously in handling the Travel Office allegations. Much of that pressure came from the First Lady. Mr. Watkins, however, had only one direct contact with Mrs. Clinton in which the Travel Office was discussed. Watkins's notes of that conversation reflect that Mrs. Clinton said: "[W]e need those people out. We need our people in. We need the slots."⁹⁷⁵ While a jury could understand those words, on their own, to be an order to fire the Travel Office employees or an effort to apply pressure to Watkins, the evidence here is insufficient to support such a prosecution, given that Watkins himself expressly denied that he considered those words (assuming that they were actually spoken) as an order to fire the Travel

⁹⁷² Watkins FBI Int. 8/10/93 at 5.

⁹⁷³ Watkins GAO Int. 12/9/93 at 17 ("Mr. Watkins did not consider the First Lady to be exerting pressure on him."); Watkins FBI Int. 6/22/94 at 2 ("It was Watkins's decision to fire [the Travel Office employees]."); Watkins FBI Int. 1/15/96 at 10 (While "Hillary Clinton was a 'factor' in the decision to fire the Travel Office staff," it was Watkins's decision). Nevertheless, Watkins admitted his belief that he would have been fired had he not fired the Travel Office employees. Watkins Int. 6/13/00 at 6.

⁹⁷⁴ White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 108-09 (1996)(testimony of David Watkins).

⁹⁷⁵ Watkins's notes 6/2/93, OIC Bates No. 542-DC-00001499.

Office employees. Rather, the evidence establishes that pressure was placed upon Watkins by other senior White House officials and advisors -- Harry Thomason, Vince Foster, and Mack McLarty -- who acted as intermediaries, and conveyed to Watkins with considerable urgency the nature and extent of Mrs. Clinton's concerns about the Travel Office.⁹⁷⁶

Thus, the evidence is insufficient to prove to a jury beyond a reasonable doubt that any of Watkins's statements made in his Independent Counsel interviews on June 22, 1994, and January 15, 1996, or in his grand jury testimony on February 28, 1995, were false. Mr. Watkins told the OIC and the grand jury that although he knew of Mrs. Clinton's interest in the Travel Office, it had been his decision to fire the employees. He also disclosed the May 14, 1993 telephone conversation with Mrs. Clinton where she spoke of getting "our people in there."⁹⁷⁷

Similarly, there is insufficient evidence to establish that Watkins's July 11, 1995 statements in his deposition before the Senate Committee on Banking, Housing & Urban Affairs were false. He testified simply that the decision to fire the Travel Office employees was his

⁹⁷⁶ For example, according to notes dictated to assistant Matt Moore by Watkins, on May 17, McLarty advised Watkins that he had had dinner with the President (TP) and the First Lady, and the Travel Office matter was "high on TC's [the First Lady's] radar screen." GJ 95-2 Exh. 69-A at 4. McLarty's message and tone indicate that Watkins could count on his full support and concurrence in the decision to fire the Travel Office staff. McLarty was relieved when Watkins decided to fire the employees because, if Watkins did not take action, "there would be hell to pay." *Id.* Matt Moore testified that he believed Watkins was saying there would an enormous problem with the First Lady if the Travel Office staff was not fired. Moore GJ 6/27/96 at 49.

⁹⁷⁷ Watkins GJ 2/28/95 at 51-53, 56, 58, 90-91; Watkins FBI Int. 8/10/93 at 4-5 (Hillary Clinton told David Watkins during their conversation on May 14, 1993 that "action needed to be taken immediately" to ensure that "those not friendly with the Administration were removed and replaced with trustworthy individuals."); Watkins FBI Int. 1/15/96 at 7 (During the May 14, 1993 telephone conversation, Hillary Clinton stated to David Watkins, "We need to get them out and our people in."); Watkins Int. 11/22/96 at 23-24 (Hillary Clinton told David Watkins during their May 14, 1993 telephone conversation that "mistakes were made where our people [were] not in early on.").

"decision with the concurrence of the Chief of Staff."⁹⁷⁸ The evidence of pressure from Mrs. Clinton is insufficient to establish that Watkins lied when he testified that he made the decision to fire the Travel Office employees.

This Office has also conducted an exhaustive review of Watkins's statements, in light the various drafts of the Watkins Memorandum, and concluded that the evidence is insufficient to establish that Watkins committed perjury or any other federal crimes during his testimony before the House Committee. In particular, Watkins's testimony about whether and to what extent he was "pressured" by Mrs. Clinton to fire the Travel Office employees substantially tracks the text of his draft memoranda.⁹⁷⁹ Indeed, although the evidence plainly demonstrates that Watkins felt pressure from Mrs. Clinton, later versions of the Watkins Memorandum and his testimony that he did not feel pressured in his one direct conversation with her would be evidence that, at least in his mind, Mrs. Clinton was not aware that he felt pressure from her through others. Thus, in material respects, his testimony before the House Committee cannot be shown to be knowingly false.

For similar reasons, the evidence that Mr. Watkins misrepresented to the GAO that he "did not consider the First Lady to be exerting pressure on him"⁹⁸⁰ is inconclusive and

⁹⁷⁸ Deposition Before Senate Comm. on Banking, Housing and Urban Affairs, 104th Cong., 21 (1995)(testimony of David Watkins).

⁹⁷⁹ See, e.g., White House Travel Office--Day Two: Hearing Before The House Comm. on Govt. Reform and Oversight, 104th Cong., 2d Sess. 121-22 (1996)("I felt intense pressure to act very forcefully and directly I felt there was a lot of internal pressure on me") (testimony of David Watkins in response to questions by Chairman William F. Clinger, Jr.).

⁹⁸⁰ Letter from GAO General Counsel Robert P. Murphy to Chairman William F. Clinger, Jr. (January 30, 1996) (emphasis supplied). The letter also alleged two additional false statements by Mr. Watkins: 1) that the Peat Marwick report was the reason for his decision to fire the Travel Office employees; and 2) that the First Lady's comment about bringing in "our people" did not apply to World Wide Travel. The evidence does not support a conclusion that

insufficient to prove that his statement was knowingly false beyond a reasonable doubt.⁹⁸¹ The evidence simply does not support a conclusion regarding his state of mind -- i.e., whether he considered Mrs. Clinton to be exerting pressure.

And, according to one person who interviewed Mr. Watkins for the GAO, Mr. Watkins admitted during the interview that Mrs. Clinton said: "She wanted to have, quote, our people in the Travel Office."⁹⁸² Mr. Watkins's statement that Mrs. Clinton expressed a specific desire regarding the Travel Office staff is inconsistent with the conclusion that Watkins's statement, in the same interview, that Mrs. Clinton did not exert pressure was deliberately and willfully false.

In any event, the interviewers' handwritten notes are also inconclusive. The summary contained in the GAO interviewers' final report -- that Watkins "did not consider the First Lady to be exerting pressure on him" -- is supported by contemporaneous notes taken by one interviewer. Those notes contain the phrase "no pressure" as used by Watkins to describe his discussions with Mrs. Clinton. However, contemporaneous notes of the interview taken by another interviewer are less clear. They contain the phrase: "didn't consider pressure from FL." This phrase could be construed to reflect the statement that although Mr. Watkins felt pressure from the First Lady, it did not influence his decision. In light of these ambiguities, the GAO investigators' testimony would, in the end, be insufficient.

either of these statements was demonstrably false.

⁹⁸¹ Watkins stated that if he had been asked if he believed pressure was coming from Mrs. Clinton he would have answered "yes." See Watkins Int. 11/22/96 at 45. However, when asked if Mrs. Clinton exerted pressure on him, he said he "tried" to answer the question literally and truthfully by responding, "no." Id.

⁹⁸² Homan GJ 6/27/96 at 8.

Finally, attributing a statement to Watkins that he felt "no pressure" from the First Lady would be inconsistent with the numerous other statements made by Mr. Watkins in which he readily acknowledged feeling pressure indirectly from the First Lady. Any prosecution of Mr. Watkins would have to account for why Mr. Watkins would readily make statements to the Office of Independent Counsel and the FBI (in the case of the FBI, before his GAO interview) acknowledging the effects of Mrs. Clinton's actions, but falsely deny the existence of pressure in statements made to the General Accounting Office. Absent a plausible motive for such a course of conduct, the Independent Counsel has concluded in the exercise of his discretion that no prosecution is warranted and that Mr. Watkins, with the filing of this Report, is discharged from all criminal liability for alleged violations of federal criminal law within this Office's jurisdiction in the Travel Office matter.⁹⁸³

⁹⁸³ There is also a significant legal barrier to initiation of any criminal prosecution based upon false statements allegedly made to the GAO. The GAO is an arm of Congress, independent of the executive branch. See 31 U.S.C. § 702 (the GAO is "an instrumentality of the United States Government independent of the executive departments"); Bowsher v. Synar, 478 U.S. 714, 730-31 (1986) (finding that Congress established the GAO "because it believed that it 'needed an officer, responsible to it alone,'" that "Congress has consistently viewed the Comptroller General as an officer of the Legislative Branch," and that "the Comptrollers General have also viewed themselves as part of the Legislative Branch"). A prosecution for a violation of 18 U.S.C. § 1001 (as in effect at the time of Watkins's statements to GAO) for making a false statement would therefore be barred. See Oakar v. United States, 111 F.3d 146, 153 (D.C. Cir. 1997), (holding that the decision in Hubbard v. United States, 514 U.S. 695 (1995) barred prosecution for false statements to Congress under 18 U.S.C. § 1001). Congress subsequently amended section 1001 to cover false statements to Congress. See also, supra, at n. 971 (regarding ex post facto clause of the U.S. Constitution).