

The investigations by this Office, the Department of Justice, the GAO, and the House Committee on Government Reform and Oversight all suffered from serious resistance by the White House to provide relevant evidence to which these investigative bodies were lawfully entitled. This resistance took numerous forms which are described in this Appendix.

I. Witnesses Were Uncooperative in this Office's Investigation.

White House Deputy Press Secretary Jeff Eller, who was closely involved in the events leading up to the firings, claimed to remember very little of his involvement. Typical of Eller's testimony before the grand jury was the following:

Q: [D]id Catherine Cornelius tell you anything between January 20th, 1993 and May 19th, 1993 about any issues or problems in the White House Travel Office?

A: I don't recall specifically or generally if she did or didn't.

Q: Do you recall whether or not you heard about any concerns or problems in the White House from any other source other than Catherine Cornelius, prior to May 19th of 1993?

A: Well, I don't recall specifically or generally whether I did or didn't.

Q: Do you recall specifically or generally prior to May 19th, 1993 whether or not Catherine Cornelius told you that there was a possibility there were going to be significant changes made in the White House Travel Office?

A: I don't recall specifically or generally if she did or didn't.¹

In contrast, Cornelius testified to numerous conversations she and Eller had had about the Travel Office, saying she did not have "any doubt" that she had discussed her desire to work in the

¹ Eller GJ 7/17/96 at 15.

Travel Office with Eller since working on the campaign together.² Eller claimed he could not recall such discussions with her.³

Numerous witnesses also recalled that, on May 14, Eller went to Chief of Staff Thomas "Mack" McLarty's office without an appointment and insisted on a meeting, where Eller then argued that the Travel Office employees should be fired immediately.⁴ Eller, though, testified, "I tried to recall why I would have ended up in the Chief of Staff's office and I don't -- I don't recall why I ended up there."⁵ Despite evidence of this involvement, Eller testified, "I don't recall," "I don't remember" or some other variant of claimed failed memory in excess of 200 times during less than two hours of grand jury testimony.⁶

When Harold Ickes, later White House Deputy Chief of Staff, was still a private sector attorney, he logged a two hour meeting with Harry Thomason on May 11, 1993 on his law firm

² Cornelius GJ 7/25/96 at 168-70.

³ Eller GJ 7/17/96 at 9-12. In e-mails recently produced to this Office on June 19, 2000, Cornelius wrote to Jeff Eller: "I have to begin writing my evaluation memo on the Travel Office tonight. . . . I am glad that it will be over by next weekend. . . . Gosh, Jeff[,] by next week I may really be the Director of this office, officially." E-mail from Cornelius to Eller, May 6, 1993, OIC Bates No. WHTO-DC-0010029. Another May 1993 e-mail reflected that Cornelius wrote to Eller that she "w[ould] look to you [Eller] as our press advisor." E-mail from Cornelius to Eller, May 4, 1993, OIC Bates No. WHTO-DC-0010583. The failure to produce these e-mails until June 2000 -- four years after they were called for by subpoena -- prevented this Office from using them to refresh Eller's recollection at the time of his earlier testimony.

⁴ McLarty House Depo. 7/12/96 at 34-35; McLarty GJ 7/31/96 at 65; Seidman GJ 7/18/96 at 20-24; GJ 95-2 Exh. 241 (Deputy White House Counsel Vincent Foster's notes of meeting).

⁵ Eller GJ 7/17/96 at 54.

⁶ Id. at 1-112 (complete transcript).

time sheet.⁷ Ickes claimed he had "no idea" where the meeting was held, that he did not "recall who was there, if anyone," what city it was held in, or what was discussed.⁸ Ickes also received approximately a half dozen phone calls from Harry Thomason from May-July 1993, as corroborated by message slips produced by Ickes.⁹ After examining the phone slips, Ickes said, "I don't know why he was calling. I don't even -- and as I've testified before, I don't even know whether I returned the calls."¹⁰ When Ickes was asked if he had ever subsequently followed up with Thomason on the phone calls, Ickes testified, "[t]hese don't indicate whether or not I talked to him at other times. All these records indicate are that he placed a call; that I did not take the call; and that -- that's all they record."¹¹

Deputy Chief of Staff Mark Gearan was shown a June 1, 1993 memorandum from himself, Deputy Staff Secretary Todd Stern, and Staff Secretary John Podesta to Chief of Staff Mack McLarty in which Gearan had handwritten the notation "Lloyd Cutler -- outside counsel."¹² Gearan said he did not know what the significance of this notation was.¹³ Also on

⁷ Ickes GJ 7/16/96 at 29-31; Ickes's handwritten time sheet for the date 5/11/93, OIC Bates No. 519-DC-00000011.

⁸ Ickes GJ 7/16/96 at 29-32.

⁹ Ickes's telephone message slips May - July 1993, OIC Bates No. 519-DC-00000007-010.

¹⁰ Ickes GJ 7/16/96 at 33.

¹¹ Id. at 34.

¹² Gearan GJ 7/11/96 at 36; Memorandum from Podesta, Stern, and Gearan to McLarty establishing a work plan for the White House Management Review 6/1/93, OIC Bates No. 542-DC-00030208 at 30209.

¹³ Gearan GJ 7/11/96 at 36.

the page was the reference: "We talked to Harry Thomason last Thursday," but Gearan said, "I don't believe so" when asked if he had talked to Harry Thomason in the last week of May 1993.¹⁴ The same memorandum stated: "Mark should participate in a few designated interviews and sit in on others as he sees fit," and that Gearan would sit in on the interviews of Catherine Cornelius, Jeff Eller, David Watkins, and Bruce Lindsey.¹⁵ When confronted with this memorandum, Gearan claimed he had no recollection of sitting in on those or any other interviews conducted as part of the Management Review.¹⁶

David Watkins's deputy at the time of the firings, Patsy Thomasson, testified "[t]hat is correct" when asked to confirm that "there is no question in your mind" that she had a conversation with either Clarissa Cerda or Catherine Cornelius about a February 15, 1993 memorandum they had submitted to David Watkins requesting that they be made co-directors of the Travel Office.¹⁷ Three months earlier she had testified in front of Congress that she could not recall having any discussions with either Cerda or Cornelius about the memorandum.¹⁸

¹⁴ Gearan GJ 7/11/96 at 37; Memorandum from Podesta, Stern, and Gearan to McLarty establishing a work plan for the White House Management Review 6/1/93, OIC Bates No. 542-DC-0030208 at 30209.

¹⁵ Gearan GJ 7/11/96 at 39-42; Memorandum from Podesta, Stern, and Gearan to McLarty establishing a work plan for the White House Management Review 6/1/93, OIC Bates No. 542-DC-00030208 at 30210. This memorandum appears to have been written as a result of a May 25, 1993 meeting attended by McLarty and Gearan. McLarty GJ 7/31/96 at 141-42 (stating that the purpose of the meeting was to start the management review process).

¹⁶ Gearan GJ 7/11/96 at 39-42.

¹⁷ Thomasson GJ 7/24/96 at 225-27; Briefing Book and Proposal by Cornelius and Cerda 2/15/93, OIC Bates No. 542-DC-00007432 at 7440 (proposing a structural reorganization of the Travel Office).

¹⁸ Thomasson GJ 7/24/96 at 227 (reviewing Thomasson House Depo. 4/22/96 at 136).

Confronted with the inconsistency, Thomasson testified that she had refreshed her memory by reviewing reports of FBI interviews she had received from her attorney after her congressional testimony.¹⁹

Ms. Thomasson was then shown those interview reports and asked if she could point out "where in either one of those [reports] it says that you had a discussion with Catherine [Cornelius] or Clarissa [Cerde] about the February 15th memorandum, and that Mr. Watkins told you that he did not read the February 15th memorandum?"²⁰ Ms. Thomasson acknowledged that there was nothing in those interview reports that could have refreshed her memory, as claimed, and said, "[i]s that what the question was that I said was on the [reports]? . . . I thought we were talking about Matt Moore."²¹ Ms. Thomasson also acknowledged, however, that "Matt Moore's question would not be in here [the reports]" either.²² Thomasson then stated that her refreshed recollection resulted from reviewing "my notes, or a deposition."²³

Although Thomasson was asked to produce whatever document had refreshed her recollection, no such document or transcript was ever produced by her.²⁴ This Office also executed a search warrant of her home that evening, and no document that could have refreshed her memory as claimed was found.

¹⁹ Id. at 229.

²⁰ Id. at 231.

²¹ Id.

²² Id. at 232.

²³ Id.

²⁴ Id. at 239-40.

Chief of Staff Mack McLarty had varying recollections of his May 16 conversation with Mrs. Clinton in which she described the Travel Office as a "serious matter" about which a decision needed to be made quickly.²⁵ Mrs. Clinton's statement that it was a "serious matter" was omitted from the July 2, 1993 White House Travel Office Management Review because, McLarty claimed, he had not recalled her statement when Podesta interviewed him for the Management Review.²⁶ McLarty said questions during the press briefing when the Management Review was released then made him remember that fact.²⁷ During the press briefing, a reporter asked McLarty, "[w]hat was the First Lady's role in this?" to which McLarty answered, "Hillary, in a meeting with me -- it was a stand-up meeting of about five minutes -- asked about this. She was aware of it And just simply suggested from what she had understood we could certainly improve efficiency here, it appeared to be mismanagement, had heard some of the rumors that have been alluded to earlier. That was about the extent of the conversation with me. As I recall it, we also covered a couple of other matters in that conversation. And I think she also asked me about it one other time as to the status after the Peat Marwick review."²⁸

But after remembering the meeting at the July 1993 press briefing, McLarty "did not remember the May 16th meeting" again during his March 23, 1994 interview with the GAO.²⁹ McLarty said that he was able to remember it when he testified before this investigation's grand

²⁵ McLarty GJ 7/31/96 at 80-82.

²⁶ Id. at 97-98.

²⁷ Id. at 98.

²⁸ Statement of White House Chief of Staff Thomas M. McLarty, White House Press Briefing (July 2, 1993).

²⁹ McLarty GJ 7/31/96 at 103.

jury because "I think my attorneys have talked to the First Lady's attorneys, and, therefore, I think that's been conveyed to me, what she has said, either in a public interview, which, of course, I could see or read, or in her interrogatories."³⁰

Lisa Caputo claimed that her personal lawyer had informed her that the White House Counsel had asserted a privilege concerning her testimony.³¹ Ultimately, the White House informed her that she was permitted to testify about information discussed during certain meetings, but only if the information had already been made public.³²

Nelson Cunningham testified that the White House Counsel's Office had instructed his private attorney to instruct Cunningham to refuse to answer questions about what Associate White House Counsel Natalie Williams said about the discovery of the Watkins Memorandum in Cunningham's presence in December 1995.³³ At the same time, Natalie Williams was instructed by the White House to refuse to answer questions about her conversations with White House Special Counsel Jane Sherburne regarding the discovery of the Watkins Memorandum by invoking attorney-client and executive privileges.³⁴ Bruce Overton was instructed by the White House Counsel's Office not to testify regarding a phone conversation with that Office about the discovery of the Watkins Memorandum because "[i]t's a privileged matter."³⁵

³⁰ Id. at 111.

³¹ Caputo GJ 7/31/96 at 41-42.

³² Caputo GJ 8/1/96 at 20-21.

³³ Cunningham GJ 6/11/96 at 16-19.

³⁴ N. Williams GJ 6/11/96 at 31.

³⁵ Overton GJ 6/11/96 at 28-29. Ultimately the courts rejected the persistent invocation of attorney-client privilege to prohibit White House Counsel from having to present evidence to

Documents plainly required to be produced were withheld. For example, on March 25, 1996, the grand jury issued a subpoena to the "Executive Office of the President" demanding production by April 12, 1996 of, among other things, "[a]ny and all documents and/or communications created or made from November 1, 1992 to July 2, 1993, inclusive, referring to or relating in any way to the management, operation, or staffing of the White House Travel Office," and "[a]ny and all documents and/or communications referring to or relating in any way to the May 19, 1993 dismissal of employees of the White House Travel Office."³⁶ On April 2, 1996, the grand jury issued a subpoena to "The White House" demanding production by April 30, 1996 of, among other things, "documents and/or communications of . . . Todd Stern," limited to "[a]ny and all documents and/or communications (including notes and diaries) created or

a grand jury, but only after years of unnecessary litigation that prevented this Office from obtaining evidence that the grand jury needed. The United States Court of Appeals for the District of Columbia Circuit held:

[w]hen an executive branch attorney is called before a federal grand jury to give evidence about alleged crimes within the executive branch, reason and experience, duty, and tradition dictate that the attorney shall provide that evidence. With respect to investigations of federal criminal offenses, and especially offenses committed by those in government, government attorneys stand in a far different position from members of the private bar. Their duty is not to defend clients against criminal charges and it is not to protect wrongdoers from public exposure. . . . Unlike a private practitioner, the loyalties of a government lawyer therefore cannot and must not lie solely with his or her client. . . . In sum, it would be contrary to tradition, common understanding, and our governmental system for the attorney-client privilege to attach to White House Counsel in the same manner as private counsel. When government attorneys learn, through communications with their clients, of information related to criminal misconduct, they may not rely on the government attorney-client privilege to shield such information from disclosure to a grand jury.

In re: Lindsey, 158 F.3d 1263, 1272-73, 1278 (D.C. Cir. 1998).

³⁶ Grand Jury Subpoena No. D472 (D.D.C. Mar. 25, 1996).

made on or after November 1, 1992 that refer or relate to Vincent W. Foster, Jr. and the White House Travel Office."³⁷

On June 3, 1993, Todd Stern interviewed Vincent Foster about the Travel Office firings as part of the White House Travel Office Management Review, and Stern took notes.³⁸ The above-mentioned subpoenas required the White House to provide these notes, but no such notes were produced. During Stern's testimony before the grand jury on July 10, 1996, this Office learned that Stern's notes existed and that the White House Counsel's Office had provided Stern's private attorney with a copy of Stern's notes for Stern to review at his attorney's office the day before he testified.³⁹ Stern's private attorney then provided the grand jury with his copy of Stern's notes.⁴⁰

White House lawyers coordinated strategy with private counsel by discussing their testimony and statements. In an interview with this Office on May 24, 2000, Watkins's former attorney, Ty Cobb, admitted having several conferences with Associate White House Counsels Neil Eggleston and Clifford Sloan in which he detailed to them what Watkins had told the FBI.⁴¹

³⁷ Grand Jury Subpoena No. D542 (D.D.C. Apr. 2, 1996)(emphasis in original).

³⁸ Stern GJ 7/10/96 at 102, 120.

³⁹ Id. at 120-21.

⁴⁰ Id. at 214 (GJ 95-2 Exhs. 160, 161 & 162).

⁴¹ Cobb Int. 5/24/00 at 2-3.

Undated notes prepared by an unknown author provided to this Office in August 1996 by the White House reflected a phone conversation between Harry Thomason's counsel, Amy Sabrin, and the White House:

Amy Sabrin

New

Harry ? conversations w/ her in passing ? 1 or 2 in passing ? he recalls being in office abt Little Rock/Inauguration. Travel Office comes up ? status report. Told her abt things he viewed were wrong. [T]hey should be replaced disloyalty. -- Remembers telling DW should be replaced, & that FL shares his view.⁴²

Finally, the White House, even as of the date of filing of this report, has failed to produce all documents to which this Office is entitled. Between December 1995 and August 1996, the grand jury issued thirty-three (33) subpoenas to the White House and its affiliates which required the search of records, significantly including all e-mails with respect to the death of Vincent Foster and the Travel Office firings. At the time the subpoenas were served on the White House, its e-mail records for the time period January 1993 through July 1994 were substantially contained on back-up tapes in the custody of the White House. Yet these records were never searched in response to any subpoena. At least by mid-1999, all White House e-mail records for this time period had been fully transferred from the back-up tapes and loaded into a searchable computer database system known as the Automated Records Management System (ARMS). Still, the e-mail records were never searched, despite the subpoenas' command. After it became clear that these records had not been searched as required by previous subpoenas, on March 22, 2000, the OIC insisted upon an immediate search of all e-mails prior to July 1994 and the

⁴² Notes of Sabrin conversation undated, OIC Bates No. 542-DC-00037067.

production of all responsive records contained therein. This insistence was met with yet further delay.

In early spring of 2000, it was publicly revealed that another large body of records within the custody of the White House was also not searched in response to lawfully issued subpoenas compelling such a search.⁴³ On April 18, 2000, the Washington Post reported Deputy White House Press Secretary Jim Kennedy's statement confirming that back-up tapes of the hard drive records of former White House employees had never been searched.⁴⁴

In light of these public revelations, the OIC wrote to Beth Nolan, Counsel to the President, seeking an answer as to whether the hard-drive records of former employees had ever been searched in response to subpoenas.⁴⁵ On May 5, 2000, the White House acknowledged that other than in three instances, these records had never been searched.⁴⁶ The hard-drive records

⁴³ The Washington Times reported, "Officials at Northrop Grumman Corp. have confirmed that thousands of White House e-mails containing information on 'Filegate,' campaign finance abuses, 'Chinagate' and Monica Lewinsky were never turned over to a federal grand jury or three congressional committees despite pending subpoenas." Jerry Seper, White House e-mails Are Verified [--] Northrop Officials Say Subpoenaed Messages Kept Secret, The Wash. Times, Mar. 9, 2000 at A1.

⁴⁴ On April 18, 2000, the Washington Post reported Deputy White House Press Secretary Jim Kennedy's statement confirming that back-up tapes of the hard drive records of former White House employees had never been searched. George Lardner, Jr., White House Data Unsearched; Hard Drive, Tapes Not Examined for Subpoenaed Records, The Wash. Post, Apr. 18, 2000 at A27. Kennedy was quoted as stating, "a subpoena can ask for the moon, that doesn't mean we have to produce it." Id. Other "officials" were quoted as stating that they "have no intention of examining the electronic records -- memos, speeches, drafts, schedules, notes and other items written on the computers of former staffers -- because of the prohibitive costs involved." Id.

⁴⁵ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, Counsel to the President (April 20, 2000).

⁴⁶ Letter from Beth Nolan, Counsel the President, to Robert W. Ray, Independent Counsel (May 5, 2000).

that had not been searched included the hard-drive records of Vincent Foster. Our efforts (as late as the weeks before the filing of this Final Report) to obtain production of records from Foster's hard-drive have been met with results that are far from full compliance with subpoenas issued over five years ago.

In May 2000, the OIC learned that the White House had asserted during discovery proceedings in Alexander v. Federal Bureau of Investigation, Civil Action Nos. 96-2123/97-1288 (RCL) (D.D.C.), that a search of ? indices? of White House records maintained by the Office of Records Management (ORM) relieved them of the obligation to conduct a full search of all records within the custody of ORM. In light of that argument, the OIC wrote to the Counsel to the President seeking assurances that all appropriate records within ORM were fully searched in response to every subpoena issued by this Office.⁴⁷ As of the date of this report, the White House has declined to provide any such assurance.

Nevertheless, this Office has obtained, as of the date of this Report, certain records that were previously not provided and concluded the investigation of the Travel Office matter may now be closed. Notwithstanding the closure of the Travel Office matter, this Office retains jurisdiction with respect to these same matters as they relate to the remaining jurisdictional mandates of this Office.

II. The Department of Justice Did Not Receive Timely Production of Documents in Its Investigation.

The Department of Justice Office of Professional Responsibility ("OPR") conducted an investigation of the involvement of the FBI in advising and assisting the White House in

⁴⁷ Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, Counsel to the President (May 24, 2000).