

bore the burden of "trying to resolve the attorney-client privilege."¹⁵ On May 23, 1996, Watkins's counsel agreed to produce all the memorandum's drafts to the OIC, with one exception -- a redlined version containing notes of Watkins's previous counsel, Ty Cobb.¹⁶ The OIC agreed that this production would not constitute a waiver of Watkins's asserted attorney-client privilege with Moore.¹⁷ In the end, Watkins never produced the additional drafts to Congress, although he produced them to the OIC.¹⁸

II. The White House Failed to Produce The Memorandum Until January 1996 Even Though it Was Responsive to Numerous Pending Requests For Production.

At the time the Watkins Memorandum was created, one of the individuals working on its creation, Matt Moore, was also responsible for responding to outstanding document requests from the Department of Justice and the General Accounting Office. In March 1993, Matt Moore went to work for David Watkins in the Office of Management and Administration.¹⁹ Moore had a significant role in gathering White House documents for review by the GAO for its

¹⁵ Moore GJ 4/28/99 at 26.

¹⁶ See Letter from Robert J. Mathias, Esq., to John D. Bates, Esq., Eric A. Dubelier, Esq., and Roger M. Adelman, Esq. (May 23, 1996).

¹⁷ Id.

¹⁸ GJ 95-2 Exh. 69-F is the version of the Watkins Memorandum first turned over to Congress, which was discovered among materials that had been archived from Patsy Thomasson's office. Thomasson GJ 7/24/96 at 147-48. It contains Thomasson's handwriting. Moore GJ 6/27/96 at 59-62; Thomasson GJ 7/24/96 at 142-44. Letter from Jack Quinn, Counsel to the President to the Honorable William F. Clinger, Chairman of the Committee on Government Reform and Oversight 1/17/96, OIC Bates No. 442-DC-00006571 (outlining the process by which the Watkins Memorandum was distributed and to whom). Letter from Robert J. Mathias, Esq., to John D. Bates, Esq., Eric A. Dubelier, Esq. and Roger M. Adelman (May 23, 1996).

¹⁹ Moore GJ 6/20/96 at 7.

investigation of the Travel Office firings.²⁰ By late September 1993, Stuart Goldberg of the Department of Justice's Public Integrity Section had also initiated a criminal investigation of Billy Dale, Harry Thomason, and Darnell Martens.²¹ In early 1994, Matt Moore was assisting Neil Eggleston in gathering documents for Goldberg.²²

On December 14, 1993, Neil Eggleston sent a memorandum to Bruce Lindsey regarding the Travel Office investigation, a copy of which was found in Matt Moore's files, although he denied ever seeing it.²³ A portion of this memorandum stated, "The Department of Justice has orally requested documents relating to the activities of Harry Thomason and Darnell Martens involving the White House. The Department is apparently pursuing whether either may have violated the criminal conflict of interest statute."²⁴

On March 14, 1994, Stuart Goldberg sent Eggleston a letter memorializing and formalizing his earlier oral request for information relating to Harry Thomason and Darnell Martens.²⁵ This request soon came to Moore's attention.²⁶ As a result, on April 4, 1994, Matt Moore prepared a memorandum to Neil Eggleston regarding "Documents Relating to Harry

²⁰ Id. at 8-10.

²¹ Eggleston House Depo. 6/3/96 at 45-47; Moore GJ 2/17/99 at 73-74.

²² Eggleston House Depo. 6/3/96 at 75-76; Moore GJ 2/17/99 at 98.

²³ Moore GJ 3/10/99 at 17-18.

²⁴ Memorandum from Eggleston to Lindsey 12/14/93, OIC Bates No. 542-DC-00019312.

²⁵ Letter from S. Goldberg to Eggleston 3/14/94, OIC Bates No. 542-DC-00019314 - 19315.

²⁶ Id. (with a handwritten note to "Matt" asking him to "verify this for [him]" signed "Neil")(emphasis in original).

Thomason."²⁷ Moore testified that this memorandum was prepared on Watkins's orders.²⁸ The memorandum referenced Neil Eggleston's "request for documents . . . regarding Harry Thomason and his presence in the White House."²⁹ Moore's memorandum stated that Patsy Thomasson, David Watkins, and other Office of Management and Administration employees either: 1) "had no documents relevant to the inquiry or to Mr. Thomason . . ."; 2) "turned over any documents . . . to Todd Stern" pursuant to the White House Travel Office Management Review; or 3) "that the only document they had ever had was Mr. Thomason's report." The last sentence of Moore's memorandum contained a certification that was unique to Moore's memorandum: "Likewise, I know of no documents in my possession, or ever in my possession, responsive to the request."³⁰

On April 5, 1994, Neil Eggleston sent a form memorandum and certification to Matt Moore and several other White House employees entitled "TRAVEL OFFICE INQUIRY -- HARRY THOMASON AND DARNELL MARTENS."³¹ The memorandum/certification

²⁷ Memorandum from Moore to Eggleston 4/4/94, OIC Bates No. 542-DC-00028671 (emphasis in original).

²⁸ Moore House Depo. 3/26/95 at 143-44.

²⁹ Memorandum from Moore to Eggleston 4/4/94, OIC Bates No. 542-DC-00028671.

³⁰ Id. According to Moore's House and Grand Jury testimony, sometime between February/ March and June 1994, Moore put all of his White House computer based versions of the Watkins Memorandum (including some from Moore's White House hard drive) onto one diskette, and, along with all his drafts and all his notes turned them over to Watkins. "I believed . . . that he, you know, was the person whose records they should appear in." Moore GJ 6/27/96 at 85.

³¹ Memorandum from Eggleston to several White House employees 4/5/94, OIC Bates No. 542-DC-00019258 at 19258, 19281-19282 (emphasis supplied); Memorandum from Eggleston to Moore 4/5/94, OIC Bates No. 542-DC-00019274 (with Matt Moore's certification that he had no responsive documents).

requested the documents that had been requested in Goldberg's March 14, 1994 letter. The memorandum states as follows:

As you know, the Department of Justice is continuing its investigation into the activities of Harry Thomason and Darnell Martens at the White House in connection with its ongoing investigation of the White House Travel Office.

As part of that investigation, the Department has requested documents relating to the activities of Messrs. Thomason and Martens at the White House. Please conduct a careful and complete search of your files and provide me with any and all documents relating or referring to Harry Thomason and Darnell Martens, excluding those documents relating solely to the Presidential Inauguration. This request includes all documents of any type, written or electronic, and duplicate copies as well as originals.

All documents must be provided to me by the close of business on Thursday, April 7, 1994.

If you do not have any responsive documents, please complete the certification below and return this memorandum to me. My room number is OE0B125.

If you have any questions, please contact me at 6-7901.

W.N.E.

At the bottom of this form document under Eggleston's initials is the following sentence in quotation marks, "I have searched my files, and I have no documents responsive to the requests set forth in this memorandum."³² There is a blank space for a signature underneath this final sentence. Eggleston said Moore was "the one who physically took [the individual certifications] to people to get them signed and brought them back to me," because Eggleston said he "was worried that [if] I had sent it in inter-office mail, I would never see it again."³³

³² Memorandum from Eggleston to several White House employees 4/5/94, OIC Bates No. 542-DC-00019258; Memorandum from Eggleston to Moore 4/5/94, OIC Bates No. 542-DC-00019274 (with Matt Moore's certification that he had no responsive documents).

³³ Eggleston GJ 12/9/97 at 57.

Matt Moore signed his certification.³⁴ Watkins never signed and returned the copy of the certification that had been left for him on his desk.³⁵ Patsy Thomasson, though, signed her certification, claiming that she had searched her files and found no responsive documents.³⁶ Thomasson later testified that she did not know that the Watkins Memorandum remained in her possession from the Fall of 1993 until the end of 1995 because "I moved offices . . . twice during that period of time. I moved once in October of 1993, and then I moved again in January 1994. So every time I moved I had to box up everything that was in my office. And, quite frankly, I never even unpacked all my boxes."³⁷ Contrary to her certification that she had "searched [her] files," Thomasson admitted: "I didn't go through every piece of paper, I let [my staff assistant] do all that work. And I didn't know I had [the Watkins Memorandum draft]. I didn't know I had it in April of '94, I didn't know I had it in April -- May of '95."³⁸

³⁴ Memorandum from Eggleston to Moore 4/5/94, OIC Bates No. 542-DC-00019274 (with Matt Moore's certification that he had no responsive documents); see also Eggleston GJ 12/9/97 at 63-64 (reviewing exhibit and agreeing that Moore signed his certification).

³⁵ See Eggleston GJ 12/9/97 at 64-65. A version of the form certification sent to Watkins was produced to this Office, but unlike the signed versions produced for Patsy Thomasson and Matt Moore, Watkins's version was not signed by him. See GJ 97-1 Exh. 79; Eggleston GJ 12/9/97 at 67 (identifying document). Eggleston testified that he had no recollection of being informed that there had been a problem getting Watkins to sign his certification, and that if there had been such a problem, Eggleston would have expected Moore to tell him. Eggleston GJ 12/9/97 at 67-68.

³⁶ Eggleston GJ 12/9/97 at 63-64. This certification was clearly not accurate, given that the Watkins Memorandum ultimately produced in January 1996, was found among Patsy Thomasson's files by White House records assistant Nellie Doering in December 1995. N. Williams GJ 6/11/96 at 12-14.

³⁷ Thomasson GJ 7/24/96 at 149.

³⁸ Id. at 161.

Moore claims that in the Fall of 1993, when the GAO asked for all Travel Office related documents, Watkins went to Moore and asked him to go to Eggleston and find out if the GAO request required production of the Watkins Memorandum.³⁹ Moore said that he then went to Eggleston and described the Watkins Memorandum "in generalities" by asking whether the GAO wanted documents created before or subsequent to the July 2, 1993 White House Travel Office Management Review.⁴⁰ Moore said that Eggleston's "response was very clear and absolute that they were looking for primary documents as opposed to secondary documents. And by primary, I mean more of the documents that led up to the decision, more of the documents that show what happened at the time, and not documents that rehash the same analysis."⁴¹ Moore said that Eggleston told him they did not need to produce any documents created after the GAO's August 17, 1993 request date.⁴² Moore's explanation for discussing the memorandum in veiled terms rather than showing it to Eggleston is that Moore "treated it with a certain level of confidentiality" equivalent to the level of an attorney-client privileged document, even though

³⁹ Moore GJ 2/17/99 at 86-87.

⁴⁰ Id. at 86. Moore could not remember whether it was his or Watkins's idea to speak to Eggleston about the document only "in generalities." Moore GJ 8/18/99 at 54-55. When Moore was trying to remember whose idea it was to approach Eggleston about the document "in generalities," Moore also seemed to question whether it was he or Watkins who came up with the idea of approaching Eggleston in the first place, "to the degree I have a memory, it was, it sort of centers around the need to have this conversation. But part of that need to have the conversation was for it to be in generalities. So, that idea either came from David or I came up with it on my own. If it came from David, it included the idea of speaking in generalities. If I came up with it on my own, then I conceived of it to speak of it in generalities." Moore GJ 8/18/99 at 54-55.

⁴¹ Moore GJ 2/17/99 at 88.

⁴² Id. at 90-91.

Moore agreed that he did not draft the document for Watkins in any capacity as an attorney so that it accorded such privilege.⁴³

Eggleston flatly denied he had any sort of discussion with Moore, and claimed that if Moore had engaged him in any such discussion, Eggleston would have "paid an enormous amount of attention to that" and asked to see the document Moore was concerned about.⁴⁴

Similarly, when Eggleston was questioned about what he knew of the Watkins Memorandum, he claimed he never saw it while in the White House, and that no one had ever suggested to him Mr. Watkins was writing or contemplating writing such a memorandum.⁴⁵ Moore explained that he did not produce the Watkins Memorandum to the Department of Justice because he looked at it as a Vince Foster related document, rather than one pertaining to Harry Thomason.⁴⁶ Thus, Moore testified that when other requests for documents were made, it did not occur to him that the draft memorandum might be responsive.⁴⁷

⁴³ Moore GJ 8/18/99 at 52-53, 55-57; Moore GJ 6/27/96 at 7-8 (stating in testimony he "didn't believe [he] was acting as [Watkins] personal attorney," and that he was preparing the memorandum "[j]ust as a friend"); Moore stated the he "never practiced law in a personal capacity in any relationship [he] had with Mr. Watkins," and he does not recall Watkins asking him for any legal advice at any time in connection with the preparation of the "Watkins Memorandum." Id. at 91; Moore GJ 6/27/96 at 85 (testifying that he believed that "the document was a personal document to [Watkins] and a privileged -- his personal document"); Moore GJ 6/27/96 at 9, 95 (stating that Watkins told Moore to write "privileged and confidential" on the front of the draft).

⁴⁴ Eggleston GJ 12/9/97 at 58-59, 71.

⁴⁵ Eggleston GJ 7/18/96 at 113.

⁴⁶ Moore GJ 8/18/99 at 36-37.

⁴⁷ Moore GJ 6/27/96 at 128-31, 133.

Moore ultimately conceded that the various requests for documents relating to Harry Thomason required production of the Watkins Memorandum.⁴⁸ Moore also admitted that from September 1993 through Spring 1994, he "was sending some warnings out to David Watkins" and "was worried that [the memorandum] would eventually become public after the Clintons left office, and that it would be embarrassing" because "the contents of the memo" regarding "the discussion of the role of the First Lady" were "different from the public record at that time."⁴⁹

Thus, although the Watkins Memorandum was clearly called for in Department of Justice requests by the Public Integrity Section going back to December 1993, the White House failed to produce it, ultimately resulting in the predicate for the initiation of this Office's investigation of David Watkins and Mrs. Clinton because of the memorandum's representations regarding Mrs. Clinton's involvement in the Travel Office firings. Although Moore ultimately acknowledged that the Watkins Memorandum was clearly responsive to Public Integrity's requests, he said he simply never put two and two together -- that he just was not thinking about the Watkins Memorandum when he learned of Public Integrity's request.⁵⁰

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⁴⁸ Moore GJ 8/18/99 at 44-45.

⁴⁹ Moore GJ 2/17/99 at 60-61.

⁵⁰ Moore GJ 6/27/96 at 133-36; Moore House Depo. 3/26/95 at 141-42.