

V. ANALYSIS OF POTENTIAL STATUTORY VIOLATIONS

The Independent Counsel concluded that prosecution of Mr. Nussbaum for perjury was not warranted because there was no substantial credible evidence to contradict Mr. Nussbaum's testimony before the House Committee on June 26, 1996, namely, that he had not discussed Mr. Livingstone with Mrs. Clinton or did not "know who brought [him] into the White House." The evidence shows that he had only limited involvement in the hiring of Mr. Livingstone, and there is no evidence beyond the insert, which itself is of limited probative value, that he discussed hiring Mr. Livingstone with Mrs. Clinton or that he knew who "brought Mr. Livingstone into the White House."

Moreover, other evidence that Mrs. Clinton had a personal relationship with Mrs. Livingstone, as described in the insert, is limited to Agent Aldrich's and Agent Sculimbrene's testimony about what Mr. Kennedy or Mr. Livingstone told them. Even assuming that they accurately described Mr. Kennedy's and Mr. Livingstone's statements, there is no other evidence of such a relationship that at all reflects Mrs. Clinton's involvement in the hiring of Mr. Livingstone or Mr. Nussbaum's knowledge of such involvement. Indeed, even assuming the insert accurately reflects what Mr. Nussbaum said to Agent Sculimbrene in the interview, there is still no other evidence to corroborate that Mr. Nussbaum discussed Mr. Livingstone with Mrs. Clinton.

Finally, the circumstances surrounding the preparation of the insert do not corroborate its accuracy. Agent Sculimbrene

did not keep contemporaneous notes and has no independent recollection of the interview. Mr. Nussbaum has no independent recollection of the interview. The lack of corroborating evidence regarding the circumstances surrounding the preparation of the insert, when viewing these events in their totality, provided an insufficient basis to warrant prosecution.

A. There Is No Evidence, Other Than the Insert, That Mr. Nussbaum's Limited Involvement in the Hiring of Craig Livingstone Included a Discussion With Mrs. Clinton About Mr. Livingstone or That He Knew Who Hired Mr. Livingstone.

There is simply no evidence, other than the insert, of any discussions with Mrs. Clinton, or of any substantial knowledge or involvement of Mr. Nussbaum or Mrs. Clinton in hiring Mr. Livingstone. Even the content of the insert itself, on which the Attorney General's application for the appointment of an independent counsel substantially relied, is not in itself substantial evidence.

The insert arguably does not contradict Mr. Nussbaum's testimony because it does not report that Mr. Nussbaum had a discussion with Mrs. Clinton about Mr. Livingstone and does not contradict a reasonable interpretation that Mr. Nussbaum did not "know who brought Mr. Livingstone into the White House."

The evidence demonstrates that Mr. Livingstone's appointment was almost entirely due to the efforts of individuals other than Mr. Nussbaum. Ms. Mills, Ms. Varney, Mr. Kennedy, Mr. Nussbaum, and Mr. Livingstone all essentially deny the substantial

involvement of Mr. Nussbaum in the hiring of Mr. Livingstone, and the evidence strongly suggests that Mr. Foster was primarily responsible for hiring Mr. Livingstone. Furthermore, Mr. Livingstone's memoranda to individuals in the White House Counsel's Office, describing the operations and his role, suggest that he was already in place before Mr. Kennedy arrived and that he had been slated to run OPS.

Mr. Nussbaum's role was limited to a brief encounter with Mr. Livingstone at which time he introduced him to Ms. Mills who described OPS's responsibilities to him. Mr. Nussbaum relied on Mr. Kennedy and Mr. Foster regarding Mr. Livingstone's final appointment. The circumstances surrounding Mr. Livingstone's appointment do not suggest Mr. Nussbaum's or Mrs. Clinton's involvement in or knowledge of those circumstances.

B. Even Assuming That Mr. Livingstone and Mr. Kennedy Told Others of Mrs. Clinton's Involvement in the Hiring of Mr. Livingstone, There Is No Other Evidence, Except the Insert, of Such Involvement or Any Relationship Between Mrs. Clinton and Mrs. Livingstone.

Having concluded that there was no direct evidence of a discussion between Mrs. Clinton and Mr. Nussbaum regarding Mr. Livingstone or that Mr. Nussbaum "kn[ew] who brought Mr. Livingstone into the White House," the Independent Counsel also concluded that no personal relationship existed between Mrs. Clinton and Mrs. Livingstone that might have formed a basis for Mrs. Clinton's involvement in hiring Mr. Livingstone. Even assuming that Mr. Kennedy and Mr. Livingstone both told Agent