



Hillary Rodham Clinton



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United States Court of Appeals
For the District of Columbia Circuit

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Special Division

By Hand

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse—Fifth Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

In re: Final Report of the Independent Counsel
(In re: Madison Guaranty Savings & Loan Assn)
In re: William David Watkins and
In re: Hillary Rodham Clinton (Div. No. 94-1)

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2), please accept this correspondence filed on behalf of my client, Mrs. Hillary Rodham Clinton, a person mentioned in the Travel Office Final Report (In re: William David Watkins, and In re: Hillary Rodham Clinton) prepared by the Office of Independent Counsel ("OIC"). This letter constitutes written comments and factual information that Mrs. Clinton requests be included as an appendix to the Final Report.

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The OIC's conclusion that no person committed any crimes¹ in connection with the May 19, 1993, firings of seven White House Travel Office political appointees or in connection with testimony about those events is entirely appropriate, however long in coming.² But the suggestion that Mrs. Clinton's testimony was "factually inaccurate" (Final Report at 234) as to her role in this matter is contradicted by the Final Report itself, which recognizes that she may not even have been aware of any influence she may have had on the firing decision. The OIC's choice of language is thus highly unfair and misleading. This is precisely the kind of unjustified and unfair commentary condemned by Senator Dole and other legislators when the Independent Counsel Act was reauthorized for five years in 1994.³

¹ The Final Report also makes the finding that "[t]he evidence is insufficient to prove a cover-up involving any violations of federal criminal law." (Final Report at 242).

² In his November 19, 1998, testimony before the House Judiciary Committee, then-Independent Counsel Kenneth Starr stated that he expected to announce his decisions on the Travel Office matter "soon." Hearing Before the Committee on the Judiciary Committee, at 38 (House of Representatives)(105th Cong. 2d Sess.)(Ser. No. 66)(Nov. 19, 1998).

³ Congress amended and substantially limited the final report provision of the Independent Counsel law in 1994, against a background of concern about the use that Iran-Contra Independent Counsel Walsh had made of his report powers. Senator Dole offered an amendment, ultimately accepted, which deleted the requirement that the Independent Counsel state "the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted." Senator Dole explained that his amendment eliminated:

"an open invitation to independent counsels to editorialize on cases that they, for whatever reason, chose not to bring, smearing hard-earned reputations in

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Fortunately, the evidence to refute the OIC's innuendo is present in the text of the Final Report itself, albeit often buried and deemphasized. The Final Report endorses as true facts and positions we have long advanced:

- There were no crimes committed either in the firing of Travel Office personnel or in later testimony about it;
- David Watkins, not Mrs. Clinton, made the decision to fire the Travel Office personnel;
- There was, at the time of the firings, abundant evidence of financial misconduct in the operation of the Travel Office;

the process. In the last administration, it was Republicans; in this administration it can be Democrats. I do not think it ought to happen to anybody, regardless of their party, if they have not committed some crime or if they are not indicted for some criminal activity.”

Congressional Record, S15,972 (daily ed.)(Nov. 18, 1993). Senator Cohen expressed strong agreement, asserting that the final report of an independent counsel should be restricted to “the facts without engaging in either speculation or expressions of opinion as to the culpability of individuals unless that culpability or those activities rise to a level of an indictable offense, in which case the independent counsel would be duty bound to seek an indictment.” Congressional Record, S15,886 (daily ed.)(Nov. 17, 1993). Senator Levin, sponsor of the bill, agreed to the amendment, stating that its purpose was “to try to avoid having an independent counsel state conclusory opinions that the subject of an investigation engaged in criminal wrongdoing in the absence of bringing an indictment against the person.” Ibid. The amendment was accepted in the final version of the law, and the Conference Committee report declared:

“The power to damage reputations in the final report is significant, and the conferees want to make it clear that the final report requirement is not intended in any way to authorize independent counsels to make public findings or conclusions that violate normal standards of due process, privacy, or simple fairness.”

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- Mrs. Clinton has always acknowledged her (entirely reasonable) concerns about reports of financial improprieties in the Travel Office in May, 1993;
- Mrs. Clinton did not knowingly intend to influence the Travel Office decision, and she was unaware that her expressions of concern might impel others to take action.

To start with the most obvious point, as the Final Report concedes, “[t]he decision to fire the Travel Office employees was a lawful one. The Travel Office employees served at the pleasure of President Bill Clinton, and they were subject to discharge without cause.” (Final Report at 240).

But, as again the Final Report recognizes, “[e]ven were cause a prerequisite for the employees’ discharge, there was, at the time the firings occurred, evidence of financial mismanagement in the Travel Office.” (Ibid.). Indeed, the Final Report documents the extraordinary fiscal improprieties which characterized Travel Office operations in May, 1993. While some of the rumors of misconduct in that Office did not ultimately prove to be well-founded, a national accounting firm, KPMG Peat Marwick, uncovered and documented numerous instances of serious financial misconduct, including missing and unaccounted for public funds.

In a report presented to David Watkins and others on Monday, May 17, 1993, on the basis of a three-day review, the outside auditors identified discrepancies in the amount of at least \$18,200 in missing checks and improperly recorded or unrecorded petty cash transactions. This report further found several significant accounting system weaknesses in the Travel Office, including “lack of financial control consciousness,” “no formal financial reporting process,” “no reconciliations of

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financial information other than reconciliations of bank statements,” “no documented system of checks and balances on transactions and accounting decisions within the office,” “no general ledger, or cash receipts/disbursements journals,” “lack of accounting expertise,” and “no evidence or documentation of competitive bids or purchase orders for press charter service.” The Final Report also acknowledges that the independent Peat Marwick investigation “revealed a major lack of organization, numerous inconsistent financial practices, and serious financial mismanagement in the Travel Office. Among the missing and crucial sources of information were ledgers, cash logs, and the like [E]vidence of financial irregularities was real.” (Final Report at 130).⁴ The record is also clear that the Travel Office employees were not fired until this evidence was unearthed and documented: “at the time of the decision to fire the Travel Office employees, Watkins had been made aware of evidence of financial mismanagement.” (Final

⁴ For example, the KPMG Peat Marwick auditors discovered that Mr. Dale kept a secret ledger for unexplained financial transactions, and they identified four checks totalling approximately \$14,000 that had been cashed but which had not been recorded in the general petty cash ledger given to them by Mr. Dale. (Final Report at 133). The auditors also found a check in the amount of \$5000 which was inconsistent with the entry in the general petty cash ledger which stated that \$2000 was recorded as the total amount received for the check. (*Id.* at 134). The auditors testified to the Independent Counsel that Mr. Dale “did not recall fully what the [missing] money was used for.” (*Ibid.*). At the end of their three-day review, the auditors concluded that the Travel Office records were in a “shambles” and that they had identified a minimum of \$18,000 of checks with no proper accounting. (*Id.* at 146).

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Report at 40). Indeed, as the Final Report also points out, the evidence of financial misconduct was sufficient to initiate a criminal investigation.⁵

In May, 1993, Mr. Watkins and other White House officials thus had properly come to regard the Travel Office as a serious problem, for which the Clinton Administration would be blamed, unless speedy and decisive action was taken. For those involved in the attempt to deal with the documented financial misconduct in the Travel Office, it was a bitter irony that action taken in good faith to avoid controversy instead plunged the Administration into a firestorm of unjustified criticism.

In any event, there is no basis whatsoever to conclude that Mrs. Clinton misrepresented her concerns or her tangential involvement in this matter. First, as the Final Report recognizes, the decision to fire the Travel Office employees was made by David Watkins, and David Watkins alone: Watkins “testified repeatedly and consistently that the ultimate decision to fire the employees was his alone—testimony that stands virtually uncontradicted at the conclusion of this investigation.” (Final Report at 242). Moreover, “[n]o substantial evidence exists to establish that Mrs. Clinton had any direct responsibility (whether informal or

⁵ The Final Report notes that “based principally upon the Peat Marwick report, the Federal Bureau of Investigation had determined that sufficient evidence existed to provide the requisite predicate for the opening of a criminal investigation.” (Final Report at 240). In 1994, Mr. Billy Dale was indicted by a federal grand jury and was charged with illegally converting to his own use approximately \$54,000 in Travel Office checks and \$14,000 in Travel Office cash. He was acquitted in 1995 after a jury trial.

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formal) for the actual decision to fire the Travel Office employees.” (Final Report at 16) (emphasis added).⁶

Second, Mrs. Clinton has always acknowledged she was concerned about financial mismanagement in the Travel Office when she learned of it in May, 1993. In her sworn testimony to the House Committee on Government Reform and Oversight, in March, 1996, Mrs. Clinton plainly stated that prior to the firings she had expressed her concern to Chief of Staff Thomas F. “Mack” McLarty and others “that if there were any problems in the Travel Office they should be addressed promptly. I would not have had enough information to know what steps, if any, should have been taken, but I believed then and still believe that if there were fiscal mismanagement in any part of the White House, it would be important to take prompt and appropriate corrective action.” Responses to Questions for the First Lady from the Committee on Government Reform and Oversight of the House of Representatives, at 10 (March 21, 1996)(emphasis in original). Mrs. Clinton also acknowledged in those responses that “[a]lthough I had no decision-making role with regard to the removal of the Travel Office employees on May 19, 1993, I expressed my concern [to several persons]. . . that if there were fiscal mismanagement in the Travel Office or in any part of the White House it should be

⁶ “Mr. Watkins had only one direct conversation with Mrs. Clinton, and neither his testimony nor that of Mrs. Clinton supports the allegation that she ordered or directed him to fire the Travel Office employees or that she pressured him to do so . . .” (Final Report at 17).

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addressed promptly.” (Id. at 12-13) (emphasis added). Her chief concern was “that this Administration . . . not be blamed for condoning any existing fiscal mismanagement problems, even though the Travel Office employees had been hired by previous administrations.” (Id. at 13). (See generally Final Report at 32-34 (quoting Mrs. Clinton’s Responses)). Thus, the Final Report acknowledges, as it must, that “Mrs. Clinton strongly expressed her concern for prompt and appropriate action to senior White House staff and advisors.” (Final Report at 16). Indeed, in light of the KPMG Peat Marwick findings, it would be surprising if Mrs. Clinton had not expressed concern at such a credible report of financial misconduct within the White House.

Finally, the Final Report’s innuendo that Mrs. Clinton’s testimony was “factually inaccurate” (Final Report at 234) in denying a role in the firings (as opposed to the Travel Office matter more generally) boils down to a semantic quibble. The Final Report notes that in her testimony to the Independent Counsel in July, 1995, she stated that she “believe[d]” she did not have “input with either Mr. McLarty or Mr. Watkins as to that decision” or a “role” in the decision to fire the Travel Office employees. (Final Report at 27-28). It further notes that in a submission on her behalf to the General Accounting Office in April, 1994, it was stated that she “had no role in the decision to terminate the employees” (id. at 30)

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(emphasis added).⁷ The Final Report concedes that “[t]aken individually, and viewed in isolation, Mrs. Clinton’s comments on the Travel Office might have had little influence.” (*Id.* at 241). But it asserts that because of her position as a “principal” within the Administration, and because others repeatedly invoked her name without her knowledge, other members of the White House staff felt “a significant pressure to act” on account of her. (*Ibid.*). On this basis alone, the Final Report suggests her testimony that she had no “role” in the firings was false.

This innuendo that Mrs. Clinton’s testimony was “factually inaccurate” is thus highly unfair, tendentious in the extreme, and simply doesn’t withstand analysis. The Final Report blandly ignores her sworn statement to Congress, quoted above, that she had no “decision-making role” in the firings (emphasis added) – a statement entirely consistent with her playing some other “role.” The Final Report, in other words, is critical of Mrs. Clinton simply for not realizing or appreciating the fact that her expressions of concern about financial misconduct in the White House might impel others to take actions which resulted in the Travel Office firings. If this conduct was, in fact, a “role” in the firings,⁸ there is no evidence she knew of or intended it. Indeed, the Final Report itself concedes that

⁷ An Associate White House Counsel testified that while Mrs. Clinton had “approved” the answers to the GAO questions he had drafted, “the answers submitted to the GAO on behalf of Mrs. Clinton were not verbatim recitations of his conversations with her.” (Final Report at 30 (footnote omitted)).

⁸ The Final Report notes that Mr. McLarty “resisted characterizing Mrs. Clinton’s involvement in the Travel Office as a ‘role’ or ‘input.’” (Final Report at 235).

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“[t]he evidence . . . is insufficient to show that Mrs. Clinton knowingly intended to influence the Travel Office decision or was aware that she had such influence at this early stage of the Administration.” (Final Report at 242) (emphasis added).⁹

Absent such knowledge, her testimony about her role was absolutely appropriate. Indeed, the Independent Counsel did not even probe or question Mrs. Clinton about the basis of her “belief” that she had no “role” or “input” in the firing decisions (significantly, only snippets of her July 22, 1995, interview by the Independent Counsel are quoted in the Final Report).

There is no evidence anywhere in the Final Report that contradicts Mrs. Clinton’s repeated descriptions of her involvement in the Travel Office firings: she had simply expressed concerns that, if financial mismanagement were found, it be dealt with speedily. We welcome the recognition, however belated, that neither she nor anyone else committed any crimes and that the OIC’s investigation is finally over.

The massive controversy over the May 19, 1993, firing of seven political appointees in the White House Travel Office was largely unjustified by substance, but the ensuing publicity and investigations took on a life of their own and have echoed through the President’s two terms in office. At the end of the day, these

⁹ Moreover, “[t]o a real degree, her interest in the matter was first generated by [Mr. Harry] Thomason’s intervention, and then overstated by him to others.” (Final Report at 243). The Final Report observes that “Mrs. Clinton’s subordinates and advisors invoked her name – in some cases, to serve their own interests” (Id. at 231).

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investigations have largely been a wasteful partisan extravagance.¹⁰ The evidence of Travel Office mismanagement fully justified Mrs. Clinton's concerns in May 1993. The part she played in this matter was very limited, as documented in the Final Report, and she at all times accurately described it. But in summarizing what she actually did, it is regrettable that the Final Report could not have been as fair as it is lengthy.

Sincerely,



David E. Kendall

¹⁰ The Final Report is itself a monument of redundantly expensive investigatory overkill. The Travel Office firings were investigated by a White House internal review, by an FBI internal review, by the Office of Professional Responsibility, by the General Accounting Office, by the Treasury Department, by the Senate Banking Committee, and by the House Committee on Government Reform and Oversight. (Final Report at 209). The Independent Counsel's investigation replicated these earlier investigations, occupying the time of "more than ten attorneys, . . . several other career prosecutors, and senior OIC staff" (Final Report at 10), and numerous other "experienced criminal investigators and FBI agents" (*id.* at 11). By the Final Report's own account, testimony was elicited from 127 witnesses, 58,000 pages of documents were obtained, and 125 grand jury subpoenas for testimony were issued, along with another 89 grand jury subpoenas for documents. (Final Report at 11). The OIC nowhere divulges the cost of producing the Final Report. Seldom has so much money, time and effort been spent by so many, to investigate something so inconsequential.