

## **REASON \* APRIL 1996**

### **ALL THE PRESIDENT'S FAULT**

The only way Hillary Clinton can avoid lawsuits over Travelgate is to blame her husband.

By Michael McMenamain and James Oliphant

Hillary Rodham Clinton is not getting much support these days from those close to her, especially on Travelgate, the abrupt, harsh dismissal of seven career government employees from the White House Travel Office in May 1993. The dismissals were followed by FBI and IRS investigations designed to smear the employees' reputations and cover up the real purpose of the purge: getting them out so the Clintons could get their people in. A recently released memo from David Watkins, the former White House director of administration, places Hillary directly in the middle of the decision to fire the Travel Office employees and makes her previous statements of non-complicity look like less than the complete truth. Instead of threatening the nose of *New York Times* columnist Bill Safire for calling her on this, a really loyal husband ought to be out there saying, "Look, my wife had nothing to do with it. If any of my staff thought they felt pressure from her, they're wrong. She was simply conveying my wishes, nothing more. It was my call all the way."

The fact that President Clinton has not said this, indeed had previously gone out of his way to distance himself from Travelgate, is...disturbing. There may be any number of explanations for allowing his wife to twist slowly in the wind, but we prefer to believe that, preoccupied as the Clintons are with their criminal exposure before the Whitewater special prosecutor and the political risks associated with the Senate Whitewater Committee, no one has paid much attention to the first lady's very real exposure to substantial civil liability over her role in Travelgate and its aftermath.

With no one else around to volunteer, REASON asked us to look into the problem on a *pro bono* basis and come up with a legal plan to protect her against any civil suits by the Travelgate Seven. We do this in the same spirit as REASON's efforts in the summer of 1994 to offer President Clinton sound legal advice on how to quickly and expeditiously dispose of Paula Jones's sexual harassment charges so they would not be lingering around to haunt him in his re-election campaign ("Defending the President," August/September 1994). He spurned our advice in favor of the stall-and-delay strategy engineered by his \$400-an-hour Washington lawyer, Robert Bennett, the brother of the nationally prominent Republican William Bennett. Today, Paula Jones's embarrassing sexual harassment case is still in the headlines while she inches toward the Supreme Court, fresh from her victory in the Eighth Circuit U.S. Court of Appeals, which laughed Bennett's immunity defense for Clinton out of court.

We trust that Mrs. Clinton—who finished higher in her class at Yale Law School than the president and actually made a living for a while in private practice—will maintain a more healthy skepticism toward legal advice from high-priced Washington lawyers with Republican connections. So let's get to it. What is Hillary's civil exposure in Travelgate, and how can we get her off without a messy jury trial that would further deplete the Clintons' dwindling resources?

The first point—one often lost in the scandal's serpentine turns—is that the seven Travel Office employees could have been fired at any time for almost any nondiscriminatory reason. As at-will employees without contracts, they served solely at the pleasure of the president. This means that if he wanted to blame any or all of the seven for, say, his \$200 haircut on the California tarmac in 1993, they could have been fired during the evening news. The first lady's exposure lies not in the fact that the employees were fired but in the role

she played to bring this about, the manner in which they were fired, and her subsequent statements about the reasons for the firings.

Mrs. Clinton could face tort liability for her instrumental role in encouraging the firings. No outsider to a contractual or business relationship may intentionally interfere with that relationship unless he (or she) has a privilege to do so. Hillary had no such privilege. As first lady and someone beyond the management structure of the White House, she had no right at law to injure the employment relationship between the seven employees and their employer, the Clinton administration. Any direct pressure by her to fire the seven is a potentially tortious act. And with torts come punitive damages, something the Clintons can ill afford. By dismissing people in a humiliating manner, employers have been found liable for inflicting emotional distress on workers whom they had every right to fire. Thus, any extreme or outrageous conduct on the part of people acting on Hillary's directions in the course of termination or its aftermath which caused severe emotional distress to any of the seven could also make her liable as a tort-feasor.

Finally, Hillary and the White House broke a cardinal rule for employers in termination situations: Don't bad-mouth your employees, even after their terminations. Let your actions—and the employee's personnel file in a formal proceeding—do the talking. In scurrying about for a cover story to justify the firings, the White House told America that the seven had been sacked because of financial mismanagement in the Travel Office. That, of course, turned out to be a lie. Unfortunately, Mrs. Clinton continues, to this day, to push the party line. Now, after all seven have been cleared of any financial misconduct, Hillary may have to defend a defamation action for continuing to drag their reputations through the mud.

Clearly, as her lawyers, we have our work cut out for us. (Of course, we also have the easy part. We don't pay the judgment if she loses.) Trial lawyers will tell you that a useful tool in analyzing the strengths and weaknesses of an opponent's case, especially a fact-intensive one, is to develop a timeline of all relevant facts. Frequently, isolated facts which look good or bad for your client may take on a different light when viewed in juxtaposition with what happened before and after. As we construct the timeline, we will work with the most unflattering version of events and all the negative inferences that come with it. This is the only way to come up with a strategy that avoids a jury trial.

Hillary's first known involvement in Travelgate did not occur until early May 1993. Despite his subsequent attempts to distance himself from the decision, the president was directly involved much earlier. By the time it hit the first lady's radar screen in early May, there was arguably under way a two-pronged conspiracy to smear the reputations of the employees in the White House Travel Office and, in the guise of privatization, replace them with friends of the Clintons.

December 1992. The first prong in the conspiracy appears. Catherine Cornelius, a Clinton cousin who worked on the campaign, sends Administrative Director David Watkins a detailed memo on December 31 urging that the White House Travel Office be privatized. Cornelius will later be uncharitably described by Watkins as a "24-year-old blond with one year's experience."

January 1993. On January 26, Cornelius sends another memo to Watkins on taking over the functions of the White House Travel Office. Later that month, the second prong of the conspiracy appears when Darnell Martens sends a memo to Hollywood producer Harry Thomason, his partner in the aircraft consulting firm TRM and a close Clinton friend, laying out a plan for a large-scale consulting project involving all nonmilitary government aircraft.

February 1993. Martens attempts to insinuate himself into the White House charter business by approaching Billy Dale, director of the White House Travel Office. Dale turns him down flat. The president's fingerprints

first surface on February 10, when he remarks at a Cabinet meeting that he has been advised that lots of money could be saved by reviewing the operation of all government aircraft. The next day, Martens writes a second memo to Thomason, proposing a \$500,000 inventory of the nonmilitary government air fleet to be conducted by TRM. Thomason gives it to Clinton, who notes on the memo that “these guys are sharp” and forwards it to Chief of Staff Mack McLarty and David Watkins for action. Meanwhile, on February 15 Cornelius gives Watkins a third document on taking over the Travel Office.

March 1993. Martens complains to Thomason about being rebuffed by Billy Dale and also passes on rumors of corruption in the Travel Office. Thomason, in turn, passes them on to Clinton and Watkins. Acting on the rumors, Watkins assigns Cornelius to the Travel Office with orders to report back by May 15 on what she observes.

April 1993. Cornelius removes files from the White House Travel Office and takes them home. Martens meets with presidential aide Bruce Lindsay and sends a memo urging him to have the president issue an executive order on the audit of nonmilitary planes and give the job to TRM.

So far, so good. They can't lay a glove on Hillary. By contrast, the president's fingerprints are all over Thomason's prong of the conspiracy. Thomason, in turn, can be seen supporting the Cornelius prong of the conspiracy to put more friendly faces in the Travel Office and give him and Martens a shot at brokering the White House charter business. Watkins is just following orders. As the president already told him, Thomason is “sharp,” and Watkins knows that Thomason and his wife are old-time Arkansas FOBs. Hillary, by contrast, is nowhere to be seen.

If she were smart, she would have kept it that way and stuck to her health care task force or started writing her book a lot earlier. Unfortunately for Hillary, Thomason was a close friend of hers as well. According to David Watkins, he is the one who got her involved: “Thomason briefed the first lady on his suspicion that the Travel Office was improperly funneling business to a single charter company and told her the functions of that office could easily be replaced and reallocated. Once this made it on to the first lady's agenda, Vince Foster [White House deputy counsel and close friend of Hillary] became involved, and he and Harry Thomason regularly informed me of her attention to the Travel Office situation—as well as her insistence that the situation be resolved immediately by...the firing of the Travel Office staff.”

Wednesday, May 12, 1993. Thomason meets with President Clinton for 15 minutes, subsequently with Vince Foster, and thereafter with Mrs. Clinton. Thomason then meets with Watkins, Cornelius, and Foster to discuss the corruption rumors about the Travel Office. Associate White House Counsel William Kennedy joins the meeting, and Foster directs him to contact the FBI about initiating an investigation of the Travel Office. Kennedy does so. This violates government guidelines which prohibit the White House from initiating low-level contacts with the FBI, a post-Watergate reform implemented by the Carter administration to avoid political abuse of the FBI and continued by Reagan and Bush.

Thursday, May 13, 1993. Thomason meets with the president for half an hour. Hillary meets with Foster and Mack McLarty and asks what is being done about the Travel Office. Kennedy calls the FBI again, demands an immediate response about the Travel Office, and threatens to call in the IRS. FBI agents meet at the White House with Kennedy and Foster and tell them insufficient grounds exist for an FBI investigation. The FBI modifies its position after Cornelius tells them about the kickback rumors. Meanwhile, Foster and Watkins devise a plan to conceal the improper contact with the FBI the day before. They determine to conduct a quickie financial audit of the Travel Office using the accounting firm working for Vice President Gore's National Performance Review, which will then serve as an after-the-fact basis for calling in the FBI.

The good news here for Hillary is that the president is still intimately involved in the conspiracy. Presidents are tightly scheduled, yet Bill meets with Thomason for 15 minutes on May 12 and for an extraordinary 30 minutes on May 13. This leaves open the possibility that the president will admit personal knowledge of and responsibility for the terminations, taking Hillary off the hook.

Friday, May 14, 1993. Thomason and Cornelius meet with McLarty in the morning and urge him to fire the Travel Office employees by 5 p.m. that day. Foster objects because they haven't conducted the financial audit which will justify, after the fact, bringing in the FBI and will be offered as the reason for firing the Travel Office employees. McLarty agrees. Hillary doesn't. Watkins also supports the Foster audit cover-up plan, but his notes show a worry it might not work: "What are negative political consequences if NO criminal violations...FBI would not ordinarily get in." Hillary doesn't want to wait for the audit and tells Foster to have Watkins contact her, whereupon she repeats her demand for "immediate action."

Saturday, May 15, and Sunday, May 16, 1993. The audit turns up no evidence of kickbacks, the only basis for the FBI's opening a criminal investigation. The first lady continues to pressure McLarty to fire the Travel Office employees.

Monday, May 17, 1993. McLarty gives in to the pressure and tells Watkins that Mrs. Clinton wants "immediate action." Watkins gives in, too, and later writes to McLarty, "[W]e both knew that there would be hell to pay if...we failed to take swift and decisive action in conformity with the First Lady's wishes." That same day, however, presidential aide Janet Green tells Travel Office Director Billy Dale that the president himself is the "one person responsible for what has taken place with your office."

Wednesday, May 19, 1993. Watkins summarily fires five of the seven members of the White House Travel Office and orders them off the premises by noon. Accompanied by security personnel, they pack their belongings into cardboard boxes and are transported off the premises in the back of a White House van with no seats. The other two are out of the country and learn of their dismissals from news reports. Watkins gives Press Secretary Dee Dee Meyers talking points on the Travel Office firings, which falsely describe the dismissals as "the result of a routine review conducted as part of the Vice President's National Performance Review." The talking points also mention the White House contacts with the FBI. Foster is panicked by the reference to the FBI, presumably because the audit uncovered no evidence of kickbacks and the FBI independently may decide to do no more in assisting in the cover-up. He asks Watkins to remove any mention of the FBI, but they are unable to find Meyers in time. Foster's concern that the FBI not be mentioned also probably accounts for Watkins's failure to tell the five employees he fired about the FBI's criminal investigation. As a result, they find out about the FBI investigation only when Dee Dee Meyers reveals it at the normal press briefing that afternoon. The employees are humiliated by this. The daughter of one asks him, "Dad, did you do anything? Is there really something to this?"

After the terminations, President Clinton does his best Pontius Pilate routine. On the day of the firings, he says: "All I know about it is that I was told that the people who are charged with administering in the White House found serious problems there and thought there was no alternative. I'll have to refer to them for any other questions. *That is literally all I know about it. I know nothing else about it.*" (Emphasis added.) This, of course, is a lie. Ordinarily, this is harmless enough for a politician and certainly routine enough for Clinton. But failing to admit the lie now that David Watkins has spilled the beans on Hillary's role in Travelgate has the unfortunate consequence of leaving his wife holding the bag. But he doesn't know that then.

Clinton changes his story only six days later, on May 25, 1993, revising his lie to admit part of the truth: "I've told you all I know about it. *All I know* is that there was a plan to cut the size of the office, save tax

dollars, save the press money.” (Emphasis added.) Clinton changes his story again the next day and compounds his previous lies: “The press complained to me repeatedly about being gouged by the White House Travel Office. I kept hearing it everywhere.” Right. Everywhere. So why couldn’t Clinton’s Justice Department find any media organization to testify to this effect in the embezzlement case against Billy Dale, who was acquitted in November 1995 by a jury in record time?

FBI agents and IRS agents thoroughly investigated all seven Travelgate employees after their termination, including contacting their neighbors. Two days after Billy Dale’s daughter got back from her honeymoon, she was called by the Justice Department and had to explain where she got the money to pay for her wedding and reception.

June 1993. Clinton and Attorney General Janet Reno write to Chairman Jack Brooks of the House Judiciary Committee and pledge a full investigation of Travelgate by the Justice Department. Senate Minority Leader Bob Dole calls for a special counsel to look into Travelgate.

July 1993. The White House releases the report of its own internal investigation of the firing of the seven employees. On July 20, the House Republican Policy Committee also calls for a special counsel. Later that same day, Vince Foster, the person responsible for calling in the FBI, is found dead in Fort Marcy Park. The “suicide note” left in Vince Foster’s briefcase in the White House office states, among other things: “No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the Travel Office. There was no intent to benefit any individual or specific group.”

November 1993. Five of the seven employees (except Gary Wright, the assistant director, and Billy Dale, the director) receive letters from the Justice Department saying they are not criminal targets. Their lawyers contact the White House, and jobs are found for them elsewhere in government.

April 1994. The White House submits answers to Travelgate questions from the General Accounting Office and claims Hillary “had no role in the decision to terminate the employees.”

January 1996. David Watkins’s memo regarding Hillary’s role in the Travel Office firings is made public. Mrs. Clinton claims that Watkins misconstrued her “mere expression of concern” over the Travel Office. The president’s Paula Jones lawyer, Robert Bennett, goes on national television and continues the White House smear campaign using a proposed misdemeanor plea bargain from Billy Dale improperly leaked by Clinton’s Justice Department. Clinton is impressed by Bennett’s performance and asks him to take a more active role in defending the White House on Travelgate. The Travelgate Seven testify on Capital Hill. Clinton agrees to sign a GOP bill paying all legal expenses of the Travel Office employees—in excess of \$400,000. The president, apparently realizing that Justice Department rules have been broken again, reverses himself and publicly rebukes his lawyer Bennett for “objectionable” comments about Dale’s proposed plea bargain. The GAO issues a critical audit of Clinton’s new Travel Office, finding that it failed to balance its books during the first eight months of 1995, neglecting to record some \$200,000 in deposits. Meanwhile, Hillary is interviewed by Maria Shriver on national television and further smears the reputation of the Travelgate Seven by falsely claiming “financial mismanagement” was the reason they were fired:

Mrs. Clinton: “I have consistently said when reports about financial mismanagement in the White House Travel Office were first raised, I and others said, my goodness, you know, that sounds like something that needs to be examined. Other people did the work of determining that *indeed there was financial mismanagement*. Other people—appropriately, the chief of staff, and others under his authority—made the decisions. But I don’t have any apologies for in any way saying I’ve heard there are reports of financial mismanagement.”

Shriver: “But did you want those people fired? Did you think that was appropriate?”

Mrs. Clinton: “You know, *once the accounting firm found that there was financial mismanagement*, the White House, I believe, acted the only way it could have. Now there have been—”

Shriver: “By firing the people?”

Mrs. Clinton: “Well, yes, by saying, you know, *we have found evidence of this.*” (All italics added.)

My goodness, indeed. Hillary, you sure do make it tough on your lawyers. We’re starting to believe Robert Bennett earns every penny of the \$400 an hour he’s charging you and the president over the Paula Jones indiscretion. Oh, well, on to the task. Tortious interference, intentional infliction of emotional distress, and defamation. Can we get her off? Perhaps. If she pays attention, takes careful notes and listens to her lawyers, some of the claims against her could be knocked out of the box before she ever has to face a jury of her peers.

The most worrisome claim would be the one alleging tortious interference with employment. As a private citizen, Mrs. Clinton was not privileged to intercede in White House employment decisions. If there is credible evidence she did—and Watkins’s memo is enough for that—then a jury is going to have to decide who’s telling the truth.

This is not good. Hillary needs to come clean, to reconsider her mere-expressions-of-concern posture. And the way to do this goes against her ambitious, über-feminist grain like lacquered nails on a chalkboard. She must invoke a defense as traditional as country-fried steak in Arkansas. She must *blame her spouse*: “It was my husband’s fault,” Mrs. Clinton should say. “It was Bill who was deeply involved in the Travel Office conspiracies. It was Bill who met with Thomason in February and March, and twice during the week of May 10. We talked about it at night. Everybody knew it was Bill, even that turncoat, Janet Green. I didn’t get involved until May 10, and then only because Bill wanted me to. I was just relaying Bill’s concerns. I was only a conduit, a buffer. What do I know about government airplanes or charters or the press being gouged by the Travel Office? Why the hell would it matter to me if the press were being gouged anyway? Like I care?”

Look what the truth does. Instantly, Hillary’s off the hook for tortious interference. Her husband, the president, had every legal right to interfere with the employment of the seven staffers. After all, he employed them, and he has immunity for firing them. Mr. Clinton, for his part, should then say something to the effect of: “You know what? She’s right. I did it, and I’m glad. What are friends for?” Sure, the president will have to confess that he lied about Travelgate in 1993, but it won’t be a new experience for him. He’ll get over it. It might even help his re-election, demonstrating his devotion to family values by saving his wife. The conservatives will love him for his chivalry.

Our defense to an emotional-distress claim is similar. The outrageous and extreme nature of the firings, the improper use of the FBI and IRS, the rumor spreading, and the humiliating expulsion from the White House form the gist of this charge. In her defense, Mrs. Clinton must again come clean and *blame the men*: “It’s not my fault. Vince Foster called the FBI in. It’s his fault. I told him it was wrong. I knew it was wrong because of my service as a congressional staff lawyer during the Watergate hearings. Vince felt badly about it, too. He even mentioned it in his suicide note. As for the humiliating manner in which the Travelgate Seven were fired, that’s not my fault either. It’s Watkins’s fault. I know he tried to blame it on me in that self-serving memo where he says, ‘In light of the First Lady’s insistence...the abrupt manner of dismissal...was the only option.’ But that’s a bunch of crap—or rather, I mean, my goodness, people know that’s not my

style. I'm much more sensitive. I even sent birthday cards in late 1993 to two of those poor, unfortunate little people that my husband wanted kicked out in the cold to benefit Thomason and Cornelius—boy, did Watkins have her pegged right. But that's the only thing he had right. If I had been in charge instead of the incompetents my husband had around him in 1993—you notice they're all gone now, every one of them—we wouldn't be in this fix today.”

See? The truth gets Hillary off on the emotional-distress claim as well. Now for the defamation. Well, maybe not. We only agreed to devote 4,000 words to our *pro bono* legal strategy, and REASON seems disinclined to give us any more space. This is a good thing, because the truth won't save her this time. She doesn't have a prayer of keeping a libel case from reaching a jury. Repeating to Maria Shriver the lie that the audit discovered financial mismanagement, and this was the only reason they were fired, was not her finest moment. If Hillary wants to be defended on this, she ought to go see the lawyers who gave her advice before the Shriver interview.

On second thought, since the truth won't help her here, what Hillary really needs is the same stall-and-delay approach being used in the Paula Jones case. Tell her to call Bob Bennett.

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