

PART E

**THE DISCOVERY AND REMOVAL OF DOCUMENTS
FROM VINCENT W. FOSTER JR.'S OFFICE**

I. INTRODUCTION

Vincent W. Foster Jr., White House Deputy Counsel, died Tuesday, July 20, 1993. Because his body was found in Fort Marcy Park, operated by the National Park Service, the United States Park Police investigated his death. The Park Police was helped in some aspects of its investigation by the Federal Bureau of Investigation ("FBI") and the Department of Justice ("DOJ").⁸⁴⁸

On Thursday, July 22, 1993, in front of Park Police, FBI and DOJ personnel, White House Counsel Bernard Nussbaum reviewed documents and other items in Foster's office⁸⁴⁹ in search of a suicide note.⁸⁵⁰ None was found. On Monday, July 26, 1993 (four days later), Associate Counsel to the President Stephen Neuwirth discovered a torn "note" apparently written by Foster, in a briefcase in Foster's office. The White House produced the note to the Park Police on July 27, 1993.⁸⁵¹

After the note's discovery, DOJ told the FBI to conduct an obstruction of justice

⁸⁴⁸ At the press conference concluding the investigation on Aug. 10, 1993, Deputy Attorney General Phillip Heymann said:

The FBI joined the Park Police in the initial stages of the inquiry into Vince Foster's death because of his status as a federal official and assassination statutes. As it became apparent that this was a suicide, the FBI gradually assumed a secondary role to the Park Police.

Press Conference, Department of Justice, United States Park Police and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993).

⁸⁴⁹ See Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office" at 1-2 (Aug. 4, 1993).

⁸⁵⁰ See Markland 4/21/95 Int. at 2; Salter 4/19/94 Fiske Int. at 2.

⁸⁵¹ Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

investigation.⁸⁵² The FBI focused on: 1) whether the note was seen by any individual other than Foster before July 26, 1993; and 2) why it took twenty-seven hours after the note's discovery on July 26 for the White House to give it to investigators.⁸⁵³

The Park Police and DOJ/FBI investigations concluded August 10, 1993, with a joint press conference. The Park Police concluded Foster's death was caused by a self-inflicted gunshot wound in Fort Marcy Park.⁸⁵⁴ The DOJ and FBI had concluded there was insufficient evidence to prosecute any individual or entity for obstruction of justice.⁸⁵⁵

On December 20, 1993, a newspaper article reported that Whitewater documents were in Foster's office when he died, suggesting that White House officials had removed them on the night after his death.⁸⁵⁶ The article did not provide a source for this suggestion.⁸⁵⁷ The disclosure

⁸⁵² Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993) (statement of Phillip Heymann, Deputy Attorney General).

⁸⁵³ See *id.* (statement of Special Agent in Charge Bob Bryant of the FBI Washington field office).

⁸⁵⁴ *Id.* (statement of Chief Robert Langston); see also Detective Peter Markland, U.S. Park Police Report at 2 (Aug. 15, 1993).

⁸⁵⁵ Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993) (statement of Special Agent in Charge Bob Bryant of the FBI Washington field office).

⁸⁵⁶ Jerry Seper, Clinton Papers Lifted After Aide's Suicide; Foster's Office Was Secretly Searched Hours After His Body Was Found, Wash. Times, Dec. 20, 1993, at A1 ("White House officials removed records of business deals between President Clinton, his wife and an Arkansas partnership known as Whitewater Development Corp. from the office of Vincent W. Foster Jr. during two searches after the deputy presidential counsel's suicide, The Washington Times has learned").

⁸⁵⁷ See *id.*

that Whitewater documents were in Foster's office when he died, and that they were not shown to investigators during Nussbaum's search on July 22, led to numerous Foster/Whitewater media stories over the next several weeks.⁸⁵⁸

On January 12, 1994, President Clinton asked Attorney General Janet Reno to appoint a regulatory Independent Counsel.⁸⁵⁹ On January 20, 1994, Attorney General Reno appointed Robert B. Fiske Jr., as regulatory Independent Counsel.⁸⁶⁰ Mr. Fiske opened a new investigation into Foster's death and considered whether any individual or entity obstructed justice or committed any federal crime by the handling of papers and documents from Foster's office. Mr.

⁸⁵⁸ David E. Rosenbaum, The Whitewater Inquiry, Questions That Are Lingering, *The N.Y. Times*, Jan. 13, 1994, at A18 ("On the day last July when Mr. Foster committed suicide, a file on Whitewater was removed from his office before Federal investigators could see it"); William Safire, Foster's Ghost, *N.Y. Times*, Jan. 6, 1994, at A21 ("What terrible secret drove Vincent Foster . . . to put a bullet through his head? . . . From the moment Foster's body was found, White House Counsel Bernard Nussbaum acted to keep those Whitewater files away from prying eyes"); Adam Clymer, G.O.P. in a Bind in Seeking an Inquiry on Clinton Deals, *N.Y. Times*, Dec. 28, 1993, at A9 ("The Whitewater issue first arose during last year's Presidential campaign, then arose again last week after White House officials said a file with material about the Clintons's investment had been removed from the office of [Foster] without being shown to agents investigating his death"); David Johnston, Investigator to Seek Ex-White House Aide's Files on Clinton Land Dealings, *N.Y. Times*, Dec. 22, 1993, at A20 ("Mr. Gearan's statement of Monday night . . . has revived lingering questions about the way the White House responded to Mr. Foster's death and handled papers left in his office").

⁸⁵⁹ See John King, Clinton to Request Special Counsel for Whitewater, *Chicago Sun-Times*, Jan. 12, 1994, at 3.

⁸⁶⁰ See Application to the Court Pursuant to 28 U.S.C. § 592 (c) (1) for the Appointment of an Independent Counsel, In Re Madison Guaranty Savings & Loan Association, (D.D.C.) (No. PN 94-1) (July 10, 1994). Mr. Fiske's jurisdictional statement gave him authority to investigate whether any individuals or entities committed federal crimes "relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with (1) Madison Guaranty Savings & Loan Association, (2) Whitewater Development Corporation, or (3) Capital Management Services." See *id.*

Fiske issued a report on June 30, 1994 concluding that Foster's death was a suicide.⁸⁶¹ He found "no evidence that any issues related to Whitewater, Madison Guaranty or CMS played any part in his suicide."⁸⁶² Mr. Fiske had not yet concluded his obstruction of justice investigation over the Foster documents when Independent Counsel Kenneth Starr was appointed on August 5, 1994.

Independent Counsel Starr was given similar jurisdiction over investigative matters as Fiske.⁸⁶³ The Independent Counsel again investigated Foster's death and the handling of papers and documents from Foster's office. On October 10, 1997, the Independent Counsel issued a report concluding that Foster's death was a suicide.⁸⁶⁴

Foster had performed work for Madison Bank and Trust (whose majority owner was Jim McDougal) in 1981 and 1982.⁸⁶⁵ Mrs. Clinton said Foster was involved in the retention of Madison Guaranty as a client of the Rose Law Firm in 1985,⁸⁶⁶ and was copied on a July 14, 1986 letter from Mrs. Clinton to Jim McDougal about Rose's work for Madison Guaranty.⁸⁶⁷ During the 1992 presidential campaign, Foster had gathered documents, including Rose Law Firm billing

⁸⁶¹ Fiske Report, supra note 12, at 6.

⁸⁶² Id. at 58.

⁸⁶³ See Order Appointing Independent Counsel, In re: Madison Guaranty Savings & Loan Assoc., (D.C. Cir. [Spec. Div.] Aug. 5, 1994). One exception is that James McDougal's name was added to Independent Counsel Starr's order. See id.

⁸⁶⁴ Final Report of Kenneth W. Starr, Independent Counsel, on the Death of Vincent W. Foster Jr. at 114 (Oct. 10, 1997).

⁸⁶⁵ See Reply Br. for Appellants In Re: Madison Bank & Trust, et al. v. First National Bank of Huntsville (Ark.) (No. 81-262) (listing Vincent Foster as attorney for appellant) (Doc. No. 105-00092103).

⁸⁶⁶ H. Clinton 4/22/95 Depo. at 10-11; H. Clinton 4/25/98 Depo. at 50-51.

⁸⁶⁷ Letter from Hillary Rodham Clinton to Jim McDougal (bcc: Vince Foster) at 2 (July

records of Mrs. Clinton's work for Madison Guaranty.⁸⁶⁸ Foster had analyzed Madison Guaranty-related issues for Mrs. Clinton⁸⁶⁹ and provided legal service to the Clintons when they sold their interest in Whitewater to Jim McDougal in December 1992.⁸⁷⁰ He researched the treatment of Whitewater on the Clinton's personal taxes in April 1993.⁸⁷¹ What brought serious attention to Foster's death was the fact that he had Whitewater-related documents in his White House office when he died.⁸⁷²

In light of Foster's work on many of these issues within this Office's jurisdiction, the Independent Counsel sought all information Foster had on Whitewater and Madison Guaranty. To obtain and account for all information that Foster possessed, and to determine whether the investigations about Foster's death were criminally obstructed, the Independent Counsel also focused on the handling of documents from Foster's office in the days and weeks following his death. The investigation included an intensive examination of: activities in the White House on

14, 1986) (Doc. Nos. RLF2 62989 through 2990).

⁸⁶⁸ Hubbell 5/7/96 GJ at 16-18.

⁸⁶⁹ See H. Clinton 4/25/98 Depo. at 30-31.

⁸⁷⁰ See Letter from Vincent Foster Jr., Rose Law Firm attorney, to Yoly Redden, the Clintons' accountant (Dec. 23, 1992) (Doc. No. 133-00006351); Letter with enclosures from Vincent Foster Jr., Rose Law Firm attorney, to Sam Heuer, James McDougal's attorney (Dec. 30, 1992) (Doc. Nos. 133-00006352 through 6356).

⁸⁷¹ See Facsimile Transmission Cover Sheet from Vincent Foster, Deputy White House Counsel, to Yoly Redden, the Clintons' accountant (Apr. 12, 1993) (Doc. No. 133-00006176); Fax Transmission and Letters from Yoly Redden, the Clintons' accountant, to Vince Foster, Deputy White House Counsel (Apr. 6-12, 1993) (Doc. Nos. 133-00006178 through 6180); Letter from Yoly Redden, the Clintons' accountant, to Vince Foster, Deputy White House Counsel (Apr. 2, 1993) (Doc. No. 133-00006183).

⁸⁷² See Excerpt from Williams & Connolly index of documents taken from Foster's office (Doc. No. 325-DC-00000028).

the night of July 20; circumstances surrounding the review of documents in Foster's office on July 22; the subsequent transfer of Clinton personal documents to the Williams & Connolly law firm by way of the White House residence; and discovery of the "note" in Foster's office on July 26.

II. FINDINGS

After concluding the investigation into the discovery and removal of documents from the office of Vincent W. Foster Jr., the Independent Counsel reports the following findings and conclusions.

About the events following Vince Foster's death:

- A precise chronology of events following Vince Foster's death could not be determined with certainty. Although there were numerous logs and telephone records showing times of calls and entry and exit from the White House, many people involved were unable to remember what was said or done, or the reasons for calls or meetings. The following chronology of events was determined with certainty:
 - Tuesday, July 20, 1993:
 - The body of Vince Foster was found in Ft. Marcy Park, VA shortly before 6:00 p.m.⁸⁷³
 - United States Park Police ("USPP") notified the Secret Service about Foster's death at about 8:30 p.m.
 - President Clinton learned of Mr. Foster's death after his appearance on the "Larry King Live" show. The USPP notified Lisa Foster, Vince Foster's wife, about his death at 10:00 p.m.
 - President Clinton called Mrs. Clinton who was visiting her mother in Arkansas. At 10:42 p.m., the alarm to the Counsel's Suite was

⁸⁷³ Unless stated otherwise, all time references are to the U.S. Eastern time zone.

disarmed. Subsequently, Counsel to the President Bernard Nussbaum went to Foster's office to look for a suicide note.

- Patsy Thomasson arrived at the White House at 10:49 p.m. and went to Foster's office to look for a suicide note.
- President Clinton arrived at the Foster residence at 10:51 p.m.
- Maggie Williams arrived at the White House at 11:00 p.m. and went to Foster's office, after having had a telephone conversation with Mrs. Clinton at 10:13 p.m.
- Subsequent telephone calls occurred between Mrs. Clinton, Susan Thomases and Maggie Williams late in the evening of July 20 into the early morning hours of July 21.
- Wednesday, July 21, 1993:
 - Betsy Pond, Nussbaum's secretary, entered the White House Counsel's suite at 7:01 a.m. and went into Foster's office to straighten it up.
 - Craig Livingstone entered the White House at 8:06 a.m. Secret Service uniformed officer Bruce Abbott saw Livingstone and another man coming out of the elevator in the White House on the first floor carrying boxes and perhaps a briefcase. Abbott thought this happened between 6:45 a.m. and 8:30 a.m.
 - A Secret Service officer was posted outside Foster's office at 10:20 a.m.
 - A meeting was held in the afternoon to discuss the investigators' need to search Foster's office. Present at the meeting were members of the FBI, USPP and USSS, as well as Nussbaum, Associate Counsels Stephen Neuwirth, and Clifford Sloan, and David Margolis and Roger Adams, two attorneys from DOJ. It was agreed that a search would take place the next day. Margolis and Adams said there was an agreement that they would be able to examine at least the first page or two of each document in Foster's office.

- A lock was installed in the door to Foster's office; the Secret Service guard was relieved at 10:32 p.m.
- Thursday, July 22, 1993:
 - Margolis and Adams arrived at the White House at 9:56 a.m. to search Foster's office and interview White House employees. Nussbaum told Margolis and Adams that he would review the documents and turn over only what the investigators were entitled to have. Margolis and Adams said this was a breach of their agreement. Nussbaum said there was no agreement.
 - The search of Foster's office began at 1:15 p.m. and lasted until 2:49 p.m. After the search, Maggie Williams collected personal files belonging to the Clintons. Williams and Thomas Castleton, Special Assistant to the White House Counsel, carried one or perhaps two boxes of such documents up to the third floor residence.
 - Williams and Castleton entered the third floor residence at 7:25 p.m. They stayed for seven minutes. Carolyn Huber opened a locked closet and put the box or boxes in it.
- Friday, July 23, 1993:
 - Foster's funeral was held in Little Rock. President Clinton and Mrs. Clinton returned to Washington that evening.
- Monday, July 26, 1993:
 - Stephen Neuwirth was assigned to index the files in Foster's office. He found a torn note written by Foster in an empty briefcase in the office. Neuwirth showed the note to Nussbaum, who shortly thereafter showed it to Mrs. Clinton.
- Tuesday, July 27, 1993:
 - Subsequently, Nussbaum telephoned Attorney General Reno and told her about the note found in Foster's briefcase. She told Nussbaum that he had to deliver the torn note to the investigators. Nussbaum subsequently delivered the note to the USPP at 9:15

p.m.

- Lisa Foster was shown the torn note at 6:00 p.m.

About possible document tampering before the July 22 search as obstruction of the Park Police and FBI investigations:

- Park Police officers testified that on the evening of July 20, they asked David Watkins to have Foster's office sealed. The office was not sealed until the following morning. Watkins testified that he did not remember being asked to seal the office and assumed he would have complied if asked. The officers' contemporaneous notes did not show a request for the office to be sealed. No substantial evidence exists to establish that anyone obstructed justice by declining to comply with a request to seal Foster's office.
- On the evening of July 20, Bernard Nussbaum, Maggie Williams, and Patsy Thomasson all entered Foster's office. Nussbaum and Thomasson later said they were looking for a suicide note. Before Williams went to the White House, she had a telephone conversation with Mrs. Clinton. Secret Service uniformed officer Henry O'Neill later said he thought he saw Williams leaving with documents. Williams passed a polygraph examination in which she was asked whether she removed any documents from Foster's office. Insufficient evidence exists to establish beyond a reasonable doubt that Nussbaum, Thomasson, Williams or Mrs. Clinton obstructed justice by either removing documents from Foster's office or ordering such removal.
- Around 7:00 a.m. on July 21, 1993, Betsy Pond, Nussbaum's secretary, entered the White House Counsel's suite before anyone else and looked around Foster's office. She later said she just straightened it up. Linda Tripp, then a secretary in the White House Counsel's office, later said Pond had told her she was looking for a note in Foster's office. Pond denied saying this to Tripp. Pond passed a polygraph examination on this issue. No substantial evidence exists to establish that Pond obstructed justice by tampering with documents in Foster's office.
- Uniformed Secret Service officer Bruce Abbott was on duty on the White House's first floor on the morning of July 21. He said he saw Craig Livingstone, Director of Personnel Security, exiting the elevator from one of the upper floors (the White House Counsel's suite is on the second floor) with another person and they were carrying boxes and perhaps a briefcase. Abbott initially said the event happened

around 6:45-7:00 a.m. Secret Service logs show Livingstone did not enter the White House until 8:06 a.m. Abbott later said he could have seen Livingstone as late as 8:30 a.m. Livingstone denied removing any documents from Foster's office, although he did not deny that he could have been seen carrying some documents that day. No substantial evidence exists to establish that Livingstone obstructed justice by removing documents from Foster's office.

About the search of Foster's Office on July 22, 1993:

- DOJ attorneys David Margolis and Roger Adams said at the July 21 meeting with Nussbaum and others, it was agreed that the following day they would examine the first page or two of each document in Foster's office to determine whether it was relevant to the investigation. Phil Heymann, Deputy Attorney General, said he understood that to be the agreement with Nussbaum and that he had a conversation with Nussbaum on July 22 in which he criticized Nussbaum for breaching the agreement. Nussbaum and Neuwirth said they had discussed permitting the DOJ attorneys to look at each document but did not agree to it. Nussbaum agreed the DOJ attorneys asserted there was an agreement and were upset that Nussbaum was "breaching" it. Nussbaum said he could not remember Heymann being angry with him over a broken agreement.
- Because no complete index of the documents in Foster's office was ever made, it cannot be determined with any certainty what documents in Foster's office were kept from the DOJ attorneys. It could not be determined the extent to which, if at all, Nussbaum, in limiting the investigators' access to the documents, impeded their investigation.
- A series of phone calls between Mrs. Clinton and others, including Nussbaum, took place, which raised questions concerning whether Mrs. Clinton or others were attempting to influence Nussbaum on how he permitted the search to proceed. There were calls between Mrs. Clinton, Susan Thomases and Maggie Williams, and then phone calls between Thomases and Nussbaum. All of the people involved in the calls denied attempting to influence Nussbaum's decision. While the credible testimony of the DOJ attorneys and the timing of the series of phone calls raised the question whether someone had influenced Nussbaum's decision about how the search would be conducted, without a participant to those conversations testifying that was what happened, insufficient evidence exists to establish that anyone endeavored to obstruct justice.

About the removal of documents from Foster's office after the July 22, 1993 search:

- Several groups of documents were taken out of Foster's office after the July 22 search, including documents taken by Maggie Williams and Thomas Castleton to the third floor White House residence; and documents that were taken to Williams & Connolly, a law firm representing the Clintons individually. No complete index was made of the documents taken from Foster's office, and the White House was unable to later produce or identify the documents that were taken into the residence. Whether documents that were relevant to the investigations were withheld was not determined. Insufficient evidence exists to establish that any person endeavored to obstruct justice by removing documents from Foster's office after the July 22 search.

About the note's discovery in Foster's briefcase on July 26, 1993:

- Associate Counsel Neuwirth found a note in Foster's briefcase in his office on July 26, four days after the search in the DOJ attorneys' presence. Neuwirth showed the note to Nussbaum, who then showed the note to Mrs. Clinton. The note was not reported to federal investigators for approximately thirty hours, when it was reported because Nussbaum told Attorney General Reno and asked her what should be done about the note; she told him he must give it to the federal investigators.
- Insufficient evidence exists to establish beyond a reasonable doubt that Neuwirth's and Nussbaum's explanations of how the note was missed, but found later, were false. The asserted bases for the decision to delay notification to federal investigators of the note for approximately thirty hours after discovery -- to conduct research on whether the note was privileged and to permit Mr. Foster's widow to see the note -- do not appear to justify withholding the fact the note was found. Nevertheless, insufficient evidence exists to establish that anyone intended to obstruct the due administration of justice by delaying the note's production to investigators.

About possible perjury, false statements, and obstruction of subsequent investigations:

- Insufficient evidence exists to establish beyond a reasonable doubt that anyone committed perjury, made false statements or obstructed justice by refusing to furnish subpoenaed records.

About President Clinton and Mrs. Clinton:

- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton or Mrs. Clinton withheld documents from a lawful grand jury subpoena,

gave false testimony or otherwise acted or endeavored to act in a manner intended to obstruct the due administration of justice.

III. FACTUAL SUMMARY

A. Notification of Foster's Death.

Park Police officers notified the United States Secret Service about Foster's death at approximately 8:30 p.m. on July 20, 1993.⁸⁷⁴ Park Police Lieutenant Patrick Gavin said he notified Secret Service Lieutenant David Woltz about Foster's death at 8:30 p.m.⁸⁷⁵ Gavin said he was the first person from the Park Police to notify the White House or the Secret Service about Foster's death.⁸⁷⁶ Lieutenant Woltz confirmed he was notified by Gavin about the apparent suicide,⁸⁷⁷ and remembered Gavin told him it was Park Police policy to notify the Secret Service about the death of a White House pass holder.⁸⁷⁸

Lieutenant Woltz said he then tried to telephone David Watkins, Director of Management and Administration for the White House, who was in charge of White House personnel.⁸⁷⁹

⁸⁷⁴ Memo from FBI Special Agent Scott Marble to FBI Special Agent in Charge Intelligence Division, White House Branch Uniformed Division (July 20, 1993) (Doc. No. 211-DC-00000147) (Marble drafted this memo at 10:01 p.m. that evening).

⁸⁷⁵ Gavin 2/23/95 GJ at 25-27. Gavin's notes from that night showed Woltz's name and number. See Gavin's typed notes with handwritten notes entitled "VINCENT FOSTER SUICIDE" (GJ Exh. 165).

⁸⁷⁶ Gavin 2/23/95 GJ at 26-27.

⁸⁷⁷ Woltz 7/5/95 Int. at 1-2.

⁸⁷⁸ *Id.* at 1. The Park Police had found Foster's White House pass in his car. Braun 4/28/94 Fiske Int. at 3.

⁸⁷⁹ Woltz 7/5/95 Int. at 2.

Watkins was not at home but was paged by a White House operator and called Woltz back.⁸⁸⁰

Lieutenant Woltz told Watkins that Foster had committed suicide in Fort Marcy Park.⁸⁸¹ Watkins agreed he was told about the death in a call from the Secret Service while attending a movie with his wife.⁸⁸²

Lieutenant Woltz also notified his supervisor, Inspector Dennis Martin, as well as personnel at the Secret Service Duty Desk.⁸⁸³ Inspector Martin said he called Craig Livingstone, then Director of Personnel Security at the White House, and told him about Foster's death.⁸⁸⁴ Inspector Martin asked Livingstone to identify the body.⁸⁸⁵ Inspector Martin remembered that

⁸⁸⁰ Id.

⁸⁸¹ Id.

⁸⁸² Watkins 7/11/95 Senate Whitewater Comm. Depo. at 31. Unless expressly noted otherwise, all citations to "Senate Whitewater Comm. Depo." testimony refers to testimony given by the named witness in conjunction with proceedings held by the United States Senate Committee on Banking, Housing, and Urban Affairs In Re: Whitewater, 104th Cong., 1st Sess. (1995); see also Watkins 6/22/94 Fiske Int. at 3. Records showed that Watkins called the Secret Service from his mobile phone at 9:05 p.m. for two minutes. Watkins's Bell Atlantic Mobile Systems billing records (bill dated July 22, 1993) (Doc. No. 210-DC-00002348). This may not have been the initial contact between the Secret Service and Watkins. See Woltz 7/5/95 Int. at 2-3 (indicating that Watkins called back twice after initial notification).

⁸⁸³ Woltz 7/5/95 Int. at 2. Inspector Martin confirmed that he was notified about Foster's death by a call from Woltz who said Woltz said the Park Police had notified him about the death of a White House employee. See Martin 5/23/95 GJ at 3.

⁸⁸⁴ Martin 5/23/95 GJ at 4. Livingstone said soon after arriving home on July 20, he was notified about Foster's death via telephone by Martin. Livingstone 5/26/94 Fiske GJ at 5-6. Records show that Livingstone left the White House at 8:31 p.m. White House gate records (July 20, 1993) (Doc. No. 211-DC-00001103). On July 21, Livingstone prepared a chronology of his activities, which said Martin notified him at 9:00 p.m. on the night of July 20 as he arrived home. Livingstone's typewritten chronology (July 21, 1993) (Doc. No. 033-DC-00001772).

⁸⁸⁵ Martin 5/23/95 GJ at 5, 8.

Livingstone was quite shocked and upset, but said he would take care of it.⁸⁸⁶

Bill Burton, Staff Director to Chief of Staff Mack McLarty, testified he learned about the death just before 9:00 p.m. while at the White House in a call from David Watkins.⁸⁸⁷ McLarty remembered that Burton notified him in the White House shortly after 9:00 p.m. -- after the start of the "Larry King Live" show in which the President was appearing and was broadcast that night from the White House.⁸⁸⁸ Other officials at the White House such as Bruce Lindsey, George Stephanopoulos (Senior Advisor), and Mark Gearan (Director of Communications) remembered learning about Foster's death from Burton.⁸⁸⁹ Webster Hubbell remembered being told by Stephanopoulos while at a restaurant in Washington.⁸⁹⁰ Nussbaum remembered being told by Gearan while dining out in Washington as well.⁸⁹¹

Mrs. Clinton said McLarty told her by phone while at her mother's house in Arkansas⁸⁹² where Secret Service records show she arrived at 9:09 p.m.⁸⁹³ Maggie Williams, Chief of Staff to

⁸⁸⁶ Martin 4/29/94 Fiske Int. at 1.

⁸⁸⁷ Burton 3/22/95 GJ at 43.

⁸⁸⁸ McLarty 4/25/95 GJ at 32-33; see Burton 3/22/95 GJ at 45.

⁸⁸⁹ See Lindsey 6/22/94 Fiske Int. at 3 (notified after the show started); Stephanopoulos 5/24/94 Fiske Int. at 5 (he was notified after the show started); Gearan 4/12/95 GJ at 12 (said he was notified after the show started).

⁸⁹⁰ Hubbell 1/13/95 Int. at 5; see Stephanopoulos 5/24/94 Fiske Int. at 6 (sworn testimony).

⁸⁹¹ Nussbaum 5/26/94 Fiske GJ at 12.

⁸⁹² H. Clinton 6/12/94 Fiske Depo. at 15; see McLarty 4/25/95 GJ at 35.

⁸⁹³ Secret Service Presidential movement logs (July 20, 1993) (Doc. No. 337-DC-00000141).

the First Lady, remembered Mrs. Clinton calling her at home later that night.⁸⁹⁴ At the conclusion of the "Larry King Live" show, McLarty notified President Clinton about Foster's death.⁸⁹⁵ The President called Mrs. Clinton.⁸⁹⁶

B. Evidence about Tampering with Documents or Foster's Note before the July 22 Search.

The morning of July 21, 1993, Associate Counsels Steve Neuwirth and Cliff Sloan told

⁸⁹⁴ M. Williams 8/3/93 FBI Int. at 1; see H. Clinton 6/12/94 Fiske Depo. at 16. Records showed that Williams received a page at 9:46 p.m. indicating that Mrs. Clinton wanted to talk to her. M. Williams's White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002660). Records showed a 16-minute call from Dorothy Rodham's house to Williams's house at 10:13 p.m. Mrs. Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

Williams was uncertain about the time of notification by Mrs. Clinton. In her first interview on August 3, 1993, she said it was 9:30 p.m. At her May 26, 1994 grand jury appearance, she was "unsure" but identified 8:00 p.m. Phone records showed that Williams had a 26-minute call with personal friend Audrey Evans in Little Rock at 9:18 p.m. M. Williams's phone records (bill dated Aug. 29, 1993) (Doc. No. 055-DC-00000008). Williams testified she had not learned about Foster's death then. Senate Whitewater Comm. Hearing, *supra* note 408, at 291-92 (July 26, 1995) (testimony of M. Williams).

⁸⁹⁵ W. Clinton 6/12/94 Fiske Depo. at 23; McLarty 4/25/95 GJ at 34. The usher's logs showed the President went to the second floor with McLarty and two unidentified staff at 10:00 p.m. White House Usher's log (July 20, 1993) (Doc. No. 336-DC-00000857). The Secret Service movement logs showed the time as 10:02 p.m. Secret Service Presidential movement logs (July 20, 1993) (Doc. No. 337-DC-00000154).

⁸⁹⁶ White House residence phone records show a call at 10:10 p.m. for approximately three minutes to Dorothy Rodham's house in Little Rock. White House Residence phone records (bill dated Aug. 3, 1993) (Doc. No. 095-DC-00000007). Secret Service logs show the President departed for the Foster residence in Georgetown at 10:40 p.m., arrived there at 10:51 p.m., and left the Fosters at 11:55 p.m. Secret Service Presidential Movement logs (July 21, 1993) (Doc. No. 337-DC-00000155). Phone records show another approximate twenty-six minute call from the White House residence to Dorothy Rodham's house at 12:18 a.m. White House Residence phone records (bill dated Aug. 3, 1993) (Doc. No. 095-DC-00000008).

Nussbaum that Foster's office should be sealed because the door had no lock.⁸⁹⁷ Nussbaum contacted the Secret Service,⁸⁹⁸ who guarded Foster's office from 10:20 a.m. on July 21 until 10:32 p.m. that night, when a lock was installed.⁸⁹⁹

A Secret Service log for that day shows two people entered Foster's office from the time the office was first guarded until the lock was installed.⁹⁰⁰ At 11:10 a.m., Nussbaum entered the office and retrieved a picture for the President.⁹⁰¹ At 6:34 p.m., Cliff Sloan entered to replace trash that was removed by the cleaning crew.⁹⁰² Records and testimony show the office remained locked from 10:32 p.m. on July 21 until 1:15 p.m. on July 22, when the Secret Service unlocked the office to begin the search.⁹⁰³

⁸⁹⁷ Nussbaum 6/13/95 GJ at 164-65; Nussbaum 5/26/94 Fiske GJ at 32.

⁸⁹⁸ Nussbaum 6/13/95 GJ at 166; Nussbaum 5/26/94 Fiske GJ at 33.

⁸⁹⁹ A chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. Nos. 211-DC-00000149 through 150); Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

⁹⁰⁰ *Id.*

⁹⁰¹ Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151); *see* Nussbaum 5/26/94 Fiske GJ at 35.

⁹⁰² Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151); *see* Sloan 7/7/95 Senate Whitewater Comm. Depo. at 118-19. The trash was retrieved from the cleaning crew later on the night of July 20 by Sylvia Mathews, then a Special Assistant to Assistant to the President for Economic Policy Robert Rubin. The trash was then stored overnight in the office of Roy Neel, then Deputy Chief of Staff. The handling of the trash is discussed in more detail below.

⁹⁰³ A chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150); Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

This Office first investigated why Foster's office was not sealed or secured and, second, whether documents or other items were removed from Foster's office on the night of July 20 or morning of July 21.

1. White House Officials Failed to Seal the Office.

There are two aspects to White House officials' failure to seal Foster's office the night of July 20. The first concerns an alleged request by Park Police Officer Cheryl Braun to David Watkins. The second relates to discussions in the White House among David Gergen, Mack McLarty, Vernon Jordan, Mark Gearan, and perhaps Bill Burton and/or Bernard Nussbaum.

a. Braun and Watkins.

Braun and Watkins were both at the Foster house in Georgetown when the Foster family was notified about Foster's death around 10:00 p.m.⁹⁰⁴ Braun said as she was leaving the Foster home around 11:00 p.m., she asked Watkins to ensure that Foster's office was sealed and that "[Watkins] said that he would have that done."⁹⁰⁵ Braun's subsequent statements are similar,⁹⁰⁶ although she said she meant only that Foster's office be locked, not that it be guarded or sealed with evidence tape.⁹⁰⁷ Watkins testified:

⁹⁰⁴ See Braun 2/9/95 GJ at 77-78; Watkins 2/28/95 GJ at 73-74; Investigator John Rolla, U.S. Park Police Report Addendum at 1 (Aug. 5, 1993).

⁹⁰⁵ See Braun 7/23/94 Senate Banking Comm. Depo. at 107-08; see also Braun 8/3/94 Fiske Int. at 1. Braun also said "[i]f I was to do it again, I would have tried to get a hold of an official from the Secret Service to [e]nsure that it was done." Braun 7/23/94 Senate Banking Comm. Depo. at 109.

⁹⁰⁶ See Braun 2/9/95 GJ at 88.

⁹⁰⁷ Senate Whitewater Comm. Hearing, *supra* note 408, at 54-55 (July 20, 1995) (testimony of C. Braun). She has also said she did not say anything to Watkins like "please

I do not recall that. I can only say that in my dispensing my obligations in every manner in the White House or anything, if I was asked to do anything, and I felt that I could do it, then it was done. I'm pretty meticulous about that, and I would have had no reason not to do it, had they requested it -- or not to attempt to do it. I did not recollect that."⁹⁰⁸

Watkins said, "I think that had I been asked that, I would have recalled it."⁹⁰⁹

There was additional evidence relevant in assessing the differences in the accounts given by Braun and Watkins.

- Officers Braun and John Rolla prepared reports about the night of July 20. Their reports make no mention about the request to Watkins.⁹¹⁰ Nor is there any other Park Police report or note that mentions the request to Watkins.⁹¹¹
- The report of Braun's first interview, conducted by Mr. Fiske's office, does not say she asked Watkins to seal the office.⁹¹²
- Officer Rolla said he did not hear Braun's request to Watkins, although Braun mentioned the request to him later in the evening.⁹¹³ However, Braun did not remember discussing it with Rolla.⁹¹⁴

ensure that no one enter the office." *Id.* at 54.

⁹⁰⁸ Watkins 2/28/95 GJ at 103.

⁹⁰⁹ Watkins 7/11/95 Senate Whitewater Comm. Depo. at 42.

⁹¹⁰ Investigator John Rolla, U.S. Park Police Report at 1 (July 21, 1993); Investigator John Rolla, U.S. Park Police Report Addendum, at 1 (Aug. 5, 1993); Sergeant Cheryl Braun, U.S. Park Police Report at 1 (July 20, 1993);

⁹¹¹ *See* Production from the Park Police (Doc. Nos. 105-DC-00000001 through 390).

⁹¹² *See* Braun 4/28/94 Fiske Int. at 4. The report said, "[A]t some point, President CLINTON and his Secret Service escort arrived at the residence, adding that there were so many people present, attempting to console and help, that she and Officer ROLLA decided that they could accomplish nothing further that night regarding their investigation and they left." *Id.*

⁹¹³ Senate Whitewater Comm. Hearing, *supra* note 408, at 22 (July 20, 1995) (testimony of J. Rolla); Rolla 6/20/95 Senate Whitewater Comm. Depo. at 55-56.

⁹¹⁴ Braun 6/19/95 Senate Whitewater Comm. Depo. at 88.

- Park Police Captain Hume, who along with Detective Peter Markland took over the investigation from Braun and Rolla on the morning of July 21, testified that he believed his request on July 21 was the first request to secure the office.⁹¹⁵
- Detective Markland, in his initial statement to Mr. Fiske's office, said "he determined that the investigators working the night before hadn't made this request" to seal the office.⁹¹⁶ A year later in the grand jury, after Braun testified publicly about her request to Watkins, Markland said he learned the morning after Foster's death that Braun had requested on the night of July 20 the office be sealed.⁹¹⁷

b. White House Discussions.

Secret Service records for July 20, 1993 show President Clinton, Mack McLarty, Counselor David Gergen, and private attorney Vernon Jordan returned to the White House residence kitchen from the Fosters' at approximately 12:05 a.m.⁹¹⁸ Mack McLarty remembered Gergen having a conversation with Mark Gearan, Assistant to the President for Communications, about whether Foster's office was sealed.⁹¹⁹ McLarty's understanding of this conversation was that Gearan told Gergen the office was sealed.⁹²⁰

Gergen said McLarty thought securing the office was necessary to preserve it for law

⁹¹⁵ Hume 5/23/95 GJ at 20.

⁹¹⁶ Markland 4/14/94 Fiske Int. at 1.

⁹¹⁷ Markland 5/23/95 GJ at 6-7.

⁹¹⁸ Secret Service Presidential Movement logs (July 21, 1993) (Doc. No. 337-DC-00000155) (showed the President returned at 12:05 a.m.); Secret Service White House Residence Movement log (July 20, 1993) (Doc. No. 336 DC-00000847) (showed the President, McLarty, Gergen, and Jordan entered the White House residence at 12:08 a.m.).

⁹¹⁹ McLarty 4/25/95 GJ at 40.

⁹²⁰ *Id.*

enforcement authorities.⁹²¹ Gergen contacted Gearan and told him McLarty wanted the office sealed,⁹²² and Gearan soon reported back the office had already been sealed.⁹²³

Typewritten notes written within seven to ten days of July 20 by Sylvia Mathews⁹²⁴ stated Burton said they needed to get Nussbaum to lock the office.⁹²⁵ Mathews's notes show she could not remember who told Nussbaum to lock the office, but she knew that he had the office locked.⁹²⁶ Park Police Major Hines said he spoke with Burton the night of July 20 and said the Park Police needed to go into the office and that it should be secured, though Hines could not remember whether Burton acknowledged this statement.⁹²⁷

Nussbaum said, "I don't recall having any conversation with anyone that night as to

⁹²¹ Gergen 10/21/94 Int. at 4. Jordan recalled that, while they were at the kitchen in the White House, Gergen called someone to ensure the office was sealed. Jordan 1/5/95 Int. at 3.

⁹²² Gergen 10/21/94 Int. at 4.

⁹²³ *Id.* at 4. Although Gearan believed he had checked with Bill Burton to confirm whether the office was locked, Gearan 4/12/95 GJ at 19; see also Gearan 7/6/95 Senate Whitewater Comm. Depo. at 48, Burton said he could not remember a discussion on the evening of July 20 about sealing Foster's office. Burton 3/22/95 GJ at 54.

⁹²⁴ Mathews 2/23/95 GJ at 32.

⁹²⁵ Mathews's typewritten notes (created week after July 20, 1993) (Doc. No. 033-DC-00000620).

⁹²⁶ *Id.*

⁹²⁷ Hines 6/21/95 Senate Whitewater Comm. Depo. at 28-29. However, in his first interview with Mr. Fiske's office, where Hines described his conversations with the White House on July 20 and 21, he mentioned the conversation with Burton, but did not mention that he had made any request to secure the office. According to the interview report, Hines said he simply told Burton on July 20, the Park Police would be available to brief White House officials on the morning of July 21. However, on the morning of July 21, Hines had the definite impression from a comment made by Nussbaum that Foster's office would be immediately "posted," that Foster's office would be physically secured and entry would be denied to all White House personnel. Langston & Hines 5/17/94 Fiske Int. at 2-3.

whether the office should be locked or sealed."⁹²⁸ Nussbaum also said nobody considered Foster's office a crime scene or considered securing Foster's office the night of July 20.⁹²⁹ He believed he locked up the Counsel's suite when he left that evening.⁹³⁰ Records show that Secret Service Officer Henry O'Neill, not Nussbaum, re-alarmed the suite for the night at 11:41 p.m.⁹³¹

2. The Confidential Witness.

This Office also investigated the possible removal of documents, including a note, from Foster's office. The first incident involves a conversation that a confidential witness said they overheard.

On the night of July 20, President Clinton appeared on "Larry King Live" show from 9:00 to 10:00 p.m.⁹³² The show was being broadcast from the White House library on the ground floor. A confidential witness (hereinafter referred to as "CW") was present at the White House.⁹³³ During a break in the interview, CW entered the White House Map Room,⁹³⁴ also on the ground floor near the library, and noticed a group of people huddled and talking to one another.⁹³⁵ CW

⁹²⁸ Nussbaum 6/13/95 GJ at 157; see also Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 57. Marsha Scott said she remembered Webb Hubbell saying the Department of Justice should seal Foster's office. Scott 2/23/95 GJ at 106-07. Hubbell did not remember this but said his wife, Marsha Scott, and Sheila Anthony all told him that he said it. Hubbell 6/9/95 GJ at 28; see also Hubbell 1/13/95 Int. at 9-10.

⁹²⁹ Nussbaum 5/13/94 Fiske Int. at 7.

⁹³⁰ Nussbaum 6/8/95 Int. at 10.

⁹³¹ Secret Service alarm records (July 20-21, 1993) (Doc. No. 211-DC-00000038).

⁹³² See W. Clinton 6/12/94 Depo. at 21.

⁹³³ CW 5/11/94 Fiske Int. at 1.

⁹³⁴ Id.

⁹³⁵ Id.

identified the group's members as Mack McLarty, George Stephanopoulos, Dee Dee Myers (then Press Secretary), Mark Gearan and Bill Burton.⁹³⁶ CW heard a male voice say, "[Y]es, there was a note found."⁹³⁷ CW heard this remark between 9:15 and 9:45 p.m.⁹³⁸ Other than CW, only those five people were in the Map Room.⁹³⁹

The five people who CW said were present in the Map Room denied the statement was made, or any knowledge about a note of any kind before a "note" was discovered in Foster's briefcase on July 26, 1993 by Steve Neuwirth.⁹⁴⁰

3. Thomasson/Nussbaum/Williams in Foster's Office.

a. Discussion at Foster's House.

Responsibility for notifying the Foster family fell to Park Police Officers Cheryl Braun and John Rolla. David Watkins contacted Rolla and Braun before they went to the Fosters; Rolla and Braun then drove to Watkins's house and took him to the Foster house.⁹⁴¹ An addendum to

⁹³⁶ *Id.*

⁹³⁷ *Id.* at 1-2.

⁹³⁸ *Id.* at 2. Alarm records showed the Counsel's suite was not reopened that night until 10:42 p.m., well after the time CW overheard the conversation. Secret Service alarm records (July 20, 1993) (Doc. Nos. 211-DC-00000037 through 38). If a note were found in Foster's office, it presumably would have been found after 10:42 p.m. If CW's memory was accurate, the note referred to in the overheard conversation was found in a place other than Foster's office.

⁹³⁹ CW 5/11/94 Fiske Int. at 2. CW relayed the above information to Greta Van Susteren of CNN on July 21, 1993. *Id.* at 3. Van Susteren confirmed in her interview with Mr. Fiske's office that CW told her CW overheard someone affiliated with the White House mention that a suicide note was found. Van Susteren 6/29/94 Fiske Int. at 2.

⁹⁴⁰ Burton 5/25/94 Fiske Int. at 14 (sworn testimony); Gearan 5/25/94 Fiske Int. at 13, 18 (sworn testimony); McLarty 4/25/95 GJ at 66-67; Myers 5/27/94 Fiske Int. at 21 (sworn testimony); Stephanopoulos 5/24/94 Fiske Int. at 8 (sworn testimony).

⁹⁴¹ Investigator John Rolla, U.S. Park Police Report Addendum, at 1 (Aug. 5, 1993).

the report Rolla prepared later that night said they arrived at the Foster house at approximately 10:00 p.m.⁹⁴²

Pager records show that at 10:34 p.m., David Watkins paged Patsy Thomasson, who was at the Sequoia Restaurant in Washington, D.C.⁹⁴³ Thomasson and Watkins said when Thomasson returned the call, he told her about the death and asked her to go to the White House to look into Foster's White House office for a note.⁹⁴⁴

b. Gail Kennedy's Account of the Night of July 20.

Gail Kennedy, then married to Bill Kennedy, said she remembered a conversation at the Foster house among Webb Hubbell and Bill Kennedy, and perhaps David Watkins and Marsha Scott, that "there was some concern of what was in Vince's office"⁹⁴⁵ that might be harmful or embarrassing to Foster or the Clintons.⁹⁴⁶ She did not know of concern over particular documents, but merely "a general concern from my perception."⁹⁴⁷ She did not know whether any action was taken because of these conversations.⁹⁴⁸ Those named by Mrs. Kennedy said they

⁹⁴² *Id.* Webster Hubbell, his wife, and Marsha Scott arrived at approximately the same time. See Scott 2/23/95 GJ at 97.

⁹⁴³ Thomasson's White House pager records (July 20-25, 1993) (Doc. No. 210-DC-00002654); Thomasson 5/10/94 Fiske GJ at 14.

⁹⁴⁴ Thomasson 7/11/95 GJ at 29; Watkins 2/28/95 GJ at 78; Watkins 6/22/96 Int. at 4.

⁹⁴⁵ G. Kennedy 1/24/95 GJ at 14-15.

⁹⁴⁶ *Id.* at 14.

⁹⁴⁷ *Id.* at 16.

⁹⁴⁸ *Id.*

did not remember any such conversation.⁹⁴⁹ The evidence suggests that Mrs. Kennedy could not have heard that conversation, if it took place at all, before Watkins talked with Thomasson.

Thomasson talked to Watkins some time after 10:34 p.m. (when she was paged) and before 10:48 or 10:49 p.m. (when she entered the White House).⁹⁵⁰ The weight of the evidence suggests that Gail Kennedy did not arrive at the Fosters until some time after the Watkins-Thomasson conversation. William Kennedy and Craig Livingstone went to Fairfax Hospital to identify Foster's body.⁹⁵¹ After leaving Fairfax Hospital, they returned to the Kennedy house in suburban Virginia.⁹⁵² There, they met Gail Kennedy and the three of them drove in her car to the Foster home in Georgetown.⁹⁵³ Secret Service logs show the President arrived at the Foster home at 10:51 p.m.⁹⁵⁴ Most witnesses said the President was at the Fosters' home when the Kennedys and Livingstone arrived.⁹⁵⁵ The first call shown on records of Gail Kennedy's car phone that day was at 11:08 p.m. (a call to the White House).⁹⁵⁶ Gail Kennedy remembered using the phone en

⁹⁴⁹ Hubbell 6/9/95 GJ at 28; W. Kennedy 3/2/95 GJ at 120; Scott 2/23/95 GJ at 108; Watkins 2/28/95 GJ at 115.

⁹⁵⁰ See Secret Service alarm records (July 20-21, 1993) (Doc. No. 211-DC-00000038); White House gate records (July 20, 1993) (Doc. No. 211-DC-00001098).

⁹⁵¹ W. Kennedy 3/2/95 GJ at 112; Livingstone 5/16/95 GJ at 26-29.

⁹⁵² W. Kennedy 3/2/95 GJ at 114; Livingstone 5/16/95 GJ at 30.

⁹⁵³ W. Kennedy 3/2/95 GJ at 114; Livingstone 5/16/95 GJ at 30.

⁹⁵⁴ Secret Service Presidential movement logs (July 21, 1993) (Doc. No. 337-DC-00000155).

⁹⁵⁵ See W. Kennedy 5/6/94 Fiske Int. at 7; G. Kennedy 12/1/94 Fiske Int. at 3; Livingstone 7/10/95 Senate Whitewater Comm. Depo. at 57 ("The President apparently had just arrived"). In a later statement, Kennedy said he believed that they had arrived immediately before the President. W. Kennedy 3/2/95 GJ at 115.

⁹⁵⁶ Kennedy's cellular phone records (bill dated 8/12/93) (Doc. No. 066-DC-00000019).

route to Foster's house to call the Metropolitan Police Department.⁹⁵⁷ The phone records show this call happened at 11:18 p.m.,⁹⁵⁸ so that they arrived at the Fosters after 11:18 p.m.

c. The White House.

In 1993, access to Nussbaum's or Foster's offices required passing through the outer Counsel's suite reception area, located in a suite of offices on the West Wing's second floor. Three secretarial assistants -- Linda Tripp, Betsy Pond and Deborah Gorham -- and Special Assistant to the Counsel -- Thomas Castleton -- sat there. The door connected the Counsel's suite reception area with the hallway on the West Wing's second floor.⁹⁵⁹

Next to the Counsel's suite was the First Lady's suite of offices. The next door down the hall after the First Lady's suite was an office used by Maggie Williams.⁹⁶⁰

The door to the Counsel's suite had a lock;⁹⁶¹ in addition, an alarm system located in the Deputy Counsel's office⁹⁶² monitored the Counsel's offices.⁹⁶³ The practice as of July 20, 1993 was for the alarm to be activated each night when the last person left and deactivated the following morning when the first person arrived.⁹⁶⁴ Throughout the evening, the alarm would be

⁹⁵⁷ G. Kennedy 12/1/94 Int. at 2.

⁹⁵⁸ Kennedy's cellular phone records (bill dated 8/12/93) (Doc. No. 066-DC-00000019).

⁹⁵⁹ See Nussbaum 5/26/94 Fiske GJ at 17-18; White House West Wing diagram (as of July, 1993) (Doc. No. 105-DC-00000047).

⁹⁶⁰ See M. Williams 5/26/94 Fiske GJ at 12-14; White House West Wing diagram (as of July, 1993) (Doc. No. 105-DC-00000047).

⁹⁶¹ Nussbaum 6/13/95 GJ at 167.

⁹⁶² Castleton 6/27/95 Senate Whitewater Comm. Depo. at 42.

⁹⁶³ See *id.*

⁹⁶⁴ *Id.* at 42-43.

deactivated and reactivated by a Secret Service uniformed officer, accompanied by cleaning personnel.⁹⁶⁵ The cleaning personnel removed the regular trash, and the Secret Service officer would collect the burn bag trash.⁹⁶⁶

Alarm records showed that Thomas Castleton, Special Assistant to the White House Counsel, was the last Counsel's staff member to leave the suite on July 20, 1993. At 8:04 p.m., he flipped the switch in Foster's office and called the Control Center.⁹⁶⁷ After the alarm to the Counsel's suite was activated in the Secret Service Control Center at 9:14 p.m., there was no record of another entry until 10:42 p.m. when Henry O'Neill, a uniformed officer with the Secret Service, opened the door and deactivated the alarm.⁹⁶⁸ The suite was open until 11:41 p.m. when O'Neill reactivated the alarm.⁹⁶⁹

Three White House employees testified they were in Foster's office on the night of July

⁹⁶⁵ To activate the alarm, a number of steps were followed. The individual leaving the Counsel's suite would flip a switch located in the Deputy Counsel's office. This individual would call the Secret Service White House Control Center to tell them that he or she has activated the alarm and was leaving. The Secret Service officer would enter the individual's name in a computer system that monitors the White House alarms. When the departing individual left the Counsel's suite, the alarm would sound in the Control Center. The Secret Service officer would reset the alarm. *See* Cheatham 3/8/95 Int. at 1-4; Martin 4/29/94 Fiske Int. at 4-5.

⁹⁶⁶ O'Neill 6/6/95 GJ at 4.

⁹⁶⁷ Secret Service alarm records (July 20, 1993) (Doc. No. 211-DC-00000034). No one in the Control Center actually reset the alarm until 9:14 p.m. Secret Service alarm records (July 20, 1993) (Doc. Nos. 211-DC-00000035 through 36). The Counsel's suite was unalarmed for 70 minutes. Castleton said he did not learn about Foster's death until the morning of July 21 when Nussbaum's secretary, Betsy Pond, called him. Castleton 4/4/95 GJ at 37; Castleton 5/3/94 Fiske Int. at 3.

⁹⁶⁸ Secret Service alarm records (July 20, 1993) (Doc. Nos. 211-DC-00000037 through 38).

⁹⁶⁹ *See* Secret Service alarm records (July 20, 1993) (Doc. No. 211-DC-00000038).

20: Counsel to the President Bernard Nussbaum, Mrs. Clinton's Chief of Staff Margaret Williams and Director of the Office of Administration Patsy Thomasson. They arrived there differently, and each had distinct versions of the events.

i. Patsy Thomasson.

Secret Service gate records show Thomasson left the White House on July 20 at 7:49 p.m.⁹⁷⁰ She ate dinner at the Sequoia Restaurant in Georgetown.⁹⁷¹ She received a page from David Watkins at 10:34 p.m.⁹⁷² to "Please page David Wat[]kins with your location number."⁹⁷³ Thomasson said Watkins asked her to go to the White House and look in Foster's office for a suicide note.⁹⁷⁴

Watkins's initial interview with the FBI on August 5, 1993 reflects that Watkins said he learned that a suicide note had not been found from Park Police officers.⁹⁷⁵ People at Foster's home thought it might be in his office.⁹⁷⁶ Watkins contacted Thomasson and asked her to check.⁹⁷⁷

⁹⁷⁰ White House gate records (July 20, 1993) (Doc. No. 211-DC-00001106).

⁹⁷¹ Thomasson 5/10/94 Fiske GJ at 14.

⁹⁷² Thomasson's White House pager records (July 20-25, 1993) (Doc. No. 210-DC-00002654).

⁹⁷³ Id.

⁹⁷⁴ Thomasson 8/3/93 FBI Int. at 1. Thomasson has consistently described her conversation with Watkins since her first interview with the FBI on August 3, 1993. See Thomasson 5/10/94 Fiske GJ at 15; Thomasson 7/11/95 GJ at 29; Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 44.

⁹⁷⁵ Watkins 8/5/93 FBI Int. at 1.

⁹⁷⁶ Id.

⁹⁷⁷ Id.

Thomasson took a taxi to the White House with her friends.⁹⁷⁸ Thomasson entered the White House compound at 10:49 p.m.⁹⁷⁹ Thomasson went to the West Wing and saw numerous White House officials, including Bernard Nussbaum.⁹⁸⁰ Thomasson said she told Nussbaum she had come to the White House to look for a note; Nussbaum went with her to the Counsel's suite on the West Wing's second floor.⁹⁸¹ Thomasson said she was "sure" she went to the office with Nussbaum.⁹⁸² Nussbaum said he went to the Counsel's suite alone and found Thomasson already seated at Foster's desk when he entered Foster's office.⁹⁸³ Thomasson said the Counsel's suite was open and a cleaning woman was leaving Foster's office when she and Nussbaum arrived.⁹⁸⁴

Thomasson testified:

I sat down in Vince's chair and sort of just perused the top of the desk and the other pieces of furniture that were close at hand. There were no notes anywhere. I opened the drawers of Vince's desk A briefcase of Vince's was sitting on the floor by his desk. I opened the flap of that briefcase to see if anything was stuck in the top of that Sometime during that period of time, . . . [Bernie] walked out of the room, and he hadn't been gone but a few -- not very long, a few seconds, a few minutes, something less than a few minutes. And Maggie Williams came in and sat down across from me, and she was crying, and she had Kleenex in her hand when she came in. . . . We went through this whole

⁹⁷⁸ Thomasson 7/11/95 GJ at 30.

⁹⁷⁹ White House gate records (July 20, 1993) (Doc. No. 211-DC-00001098). Alarm records show Thomasson opened Watkins's office in the West Wing at 10:48 p.m., Secret Service alarm records (July 20, 1993) (Doc. No. 211-DC-00000038), but the gate records showed that she entered the compound at 10:49 p.m. One of the records appeared to be slightly inaccurate by a few minutes.

⁹⁸⁰ Thomasson 7/11/95 GJ at 31.

⁹⁸¹ Id.

⁹⁸² Id.

⁹⁸³ Nussbaum 5/26/94 Fiske GJ at 14-15.

⁹⁸⁴ Thomasson 7/11/95 GJ at 31.

emotional stress how she couldn't believe that Vince had done this. . . . Maggie got up and left, and Bernie came back in. . . . [W]e both walked out together. I went in with nothing to that office. I came out with nothing from that office. . . . I did not take anything out of the briefcase. . . . [b]ut I'm sure I touched the papers in there.⁹⁸⁵

Thomasson said she did not see Williams or Nussbaum take anything out of Foster's office.⁹⁸⁶ Thomasson also said Nussbaum and Williams were never in Foster's office at the same time.⁹⁸⁷ Thomasson said she and Nussbaum left Foster's office together, but she was not certain whether Nussbaum left the Counsel's suite with her or went back into his own office.⁹⁸⁸

When she returned to the first floor, Thomasson paged Watkins to tell him she had not found a note.⁹⁸⁹ Pager records show she paged Watkins twice, once at 11:36 p.m. and again at 11:59 p.m.⁹⁹⁰ The first page said "456-7052 CALL PATSY"; the second said "456-7052 PLEASE CALL RE VINCE'S OFFICE PATSY LEE."⁹⁹¹ When they spoke, Thomasson told Watkins she had not found a note in Foster's office.⁹⁹²

The report of Thomasson's first FBI interview on August 3, 1993 does not mention the

⁹⁸⁵ *Id.* at 31-34.

⁹⁸⁶ Thomasson 7/11/95 GJ at 34-35.

⁹⁸⁷ Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 59.

⁹⁸⁸ Thomasson 7/11/95 GJ at 33; Thomasson 7/11/95 Senate Whitewater Comm. Depo at 99. In earlier testimony, Thomasson said she and Nussbaum went to the first floor together upon leaving Foster's office. Thomasson 5/10/94 GJ at 26.

⁹⁸⁹ Thomasson 7/11/95 GJ at 37.

⁹⁹⁰ *See* White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002693); White House pager records (July 20-27, 1993) (Doc. No. 210-DC-00002687).

⁹⁹¹ White House pager records (July 20-27, 1993) (Doc. No. 210-DC-00002687).

⁹⁹² *See* Watkins 8/5/93 FBI Int. at 1; Thomasson 7/11/95 GJ at 38.

briefcase.⁹⁹³ In testimony on May 10, 1994, she said she "just folded the flap back to see if there was anything on top of that. There was nothing there, and I flipped it back down."⁹⁹⁴ When asked, "Did you look into the briefcase," she said, "No."⁹⁹⁵ In an August 31, 1994 interview with this Office, she said she opened the briefcase and saw file folders.⁹⁹⁶ She said she did not look through all the file folders, explaining that if there was a note, she expected it would be left where it would be easy to find.⁹⁹⁷

In her grand jury appearance on July 11, 1995, she said she "did not take anything out [of] the briefcase. . . . but I'm sure I touched the papers in there."⁹⁹⁸ In her Senate deposition (also July 11, 1995), Thomasson said, "I would not say I even really thumbed through them."⁹⁹⁹ Thomasson was asked whether she tore up a note found in Foster's office, and she said she neither saw a note nor tore one up.¹⁰⁰⁰

⁹⁹³ See Thomasson 8/3/93 FBI Int.

⁹⁹⁴ Thomasson 5/10/94 Fiske GJ at 30.

⁹⁹⁵ Id.

⁹⁹⁶ Thomasson 8/31/94 Int. at 32 (sworn testimony).

⁹⁹⁷ Id.

⁹⁹⁸ Thomasson 7/11/95 GJ at 34.

⁹⁹⁹ Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 94.

¹⁰⁰⁰ Thomasson 5/10/94 Fiske GJ at 42.

ii. Bernard Nussbaum.

Nussbaum said he was eating dinner at Galileo Restaurant when he received a page from Mark Gearan,¹⁰⁰¹ who told him about Foster's death.¹⁰⁰² Nussbaum went to the ground floor of the White House where President Clinton was finishing his appearance on the "Larry King Live" show.¹⁰⁰³ Nussbaum briefly saw the President before the President left for the Foster house,¹⁰⁰⁴ and Nussbaum says he then went to the Counsel's suite to look for a note and make phone calls.¹⁰⁰⁵

Nussbaum was interviewed July 21, 1993 by Park Police Captain Charles Hume and Detective Peter Markland. The USPP report said Nussbaum told them that the night before "he went through Mr. Foster's office with Patsy Thomass[o]n and Maggie Williams. Mr. [Nussbaum] stated that they conducted a brief, quick search to see if Mr. Foster may have left a suicide note on his desk. This search lasted from 2200 to 2400 hours. Mr. Nussbaum stated that no documents were removed from the office."¹⁰⁰⁶

¹⁰⁰¹ A page was not shown on White House pager records. See Nussbaum's White House pager records (July 20-16, 1993) (Doc. No. 210-DC-00002648).

¹⁰⁰² Nussbaum 5/26/94 Fiske GJ at 12. Gate records show that Nussbaum left the White House at 6:44 p.m. White House gate records (July 20, 1993) (Doc. No. 211-DC-00001112).

¹⁰⁰³ Nussbaum 5/26/94 Fiske GJ at 13-14.

¹⁰⁰⁴ *Id.* at 14.

¹⁰⁰⁵ *Id.* at 14-15. A number of people confirmed that Nussbaum called them at home to tell them about Foster's death. See Neuwirth 2/28/95 GJ at 72; Sloan 4/4/95 GJ at 47.

¹⁰⁰⁶ Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993). The 2200-2400 appears to have been a mistake in recording by Markland; records showed the office was open for only an hour. See Secret Service alarm records (July 20-21, 1993) (showing the White House Counsel's suite was opened at 22:42 and closed at 23:42) (Doc. Nos. 211-DC-00000037 through 38). Moreover, the report itself said Nussbaum referred to a "brief, quick search," which

Nussbaum was again interviewed on May 13, 1994, by investigators from Mr. Fiske's office:

It occurred to him that it would be a good idea to look for a note. At approximately 10:00 p.m., he went up to his office, entered FOSTER's office and saw PATSY THOMASSON sitting at FOSTER's desk. MAGGIE WILLIAMS was sitting on the couch crying. NUSSBAUM stood by FOSTER's desk and looked at the top of the desk. THOMASSON opened a few drawers. They were looking at surfaces. They were looking for something noticeable; not a briefcase and not into anything very deeply. MAGGIE WILLIAMS was "a basketcase." She was not looking for anything.¹⁰⁰⁷

Nussbaum estimated that he was there for less than ten minutes¹⁰⁰⁸ and all three people left Foster's office at the same time.¹⁰⁰⁹ They did not take anything with them.¹⁰¹⁰ They did not find anything that helped to explain Foster's suicide.¹⁰¹¹

About whether files or documents were removed from Foster's office, Nussbaum said in his first Foster-related appearance in the grand jury, "I have no recollection that they [Williams and Thomasson] had any files or papers with them at that time."¹⁰¹² Asked whether he "recall[ed] them having any sort of documents, file folders, papers, anything of that nature in their arms when they were in or around Mr. Foster's office," he said, "No."¹⁰¹³ He also said:

appeared inconsistent with a two-hour period. Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

¹⁰⁰⁷ Nussbaum 5/13/94 Fiske Int. at 6-7.

¹⁰⁰⁸ Nussbaum 5/26/94 Fiske GJ at 72; Nussbaum 5/13/94 Fiske Int. at 7.

¹⁰⁰⁹ Nussbaum 6/13/95 GJ at 152; Nussbaum 5/13/94 Fiske Int. at 7.

¹⁰¹⁰ Nussbaum 5/26/95 GJ at 24; Nussbaum 5/13/94 Fiske Int. at 7.

¹⁰¹¹ Nussbaum 5/13/94 Fiske Int. at 7.

¹⁰¹² Nussbaum 5/26/94 Fiske GJ at 21.

¹⁰¹³ *Id.* at 22-23.

I just don't remember whether they did or they didn't, or whether they had something of their own. You know, somebody could be walking around with his own file, walking into the [O]val [O]ffice, looking for a note and walking out, you know, with their files. But I was positive, you know, that . . . I would have remembered very clearly if they had taken something out of that office, out of Foster's office. And I don't remember. . . . [T]o my recollection they did not take anything out of that office, out of Foster's office.¹⁰¹⁴

Before the grand jury on June 13, 1995, Nussbaum elaborated:

I don't remember them picking anything up, or taking anything out of the office. I would have seen it if they took something out, you know. I guess somebody could secret something if they wanted to, but I didn't -- you know -- I didn't see anything. I mean, I trusted them. . . . [N]obody said "I want to take a file," or "I want to take this, I want to --" because I wouldn't let anybody do that anyway. This was -- you know, this is my suite and I've got control of the office. So we all go out together.¹⁰¹⁵

Nussbaum remembered that after they all left he went to his office to make telephone calls to tell his staff and others about Foster's death,¹⁰¹⁶ whereas Thomasson and Williams left the Counsel's suite.¹⁰¹⁷

iii. Maggie Williams.

Maggie Williams said she learned about Foster's death from Mrs. Clinton.¹⁰¹⁸ Both Mrs. Clinton and Williams said Mrs. Clinton did not ask Williams to go to the White House or

¹⁰¹⁴ *Id.* at 24.

¹⁰¹⁵ Nussbaum 6/13/95 GJ at 152.

¹⁰¹⁶ *Id.* at 153.

¹⁰¹⁷ *Id.*

¹⁰¹⁸ M. Williams 5/26/94 Fiske GJ at 7. Phone records show a call from Dorothy Rodham's residence in Little Rock to Maggie Williams's home in Washington at 10:13 p.m. for 16 minutes. Dorothy Rodham's phone records (bill dated Aug. 3, 1993) (Doc. No. 065-DC-00000009).

perform any task.¹⁰¹⁹ Williams then called Evelyn Lieberman, Assistant to the Chief of Staff to the First Lady,¹⁰²⁰ and told her about Foster's death and said she wanted to go to the White House.¹⁰²¹ Lieberman picked Williams up.¹⁰²² When they arrived, they went to the First Lady's office on the West Wing's second floor.¹⁰²³ Lieberman said she sat at the reception desk in the First Lady's office.¹⁰²⁴

The FBI first interviewed Williams on August 3, 1993.¹⁰²⁵ Williams said she went to the White House to get the First Lady's schedule for July 21, 1993 to see if any scheduled events needed to be cancelled.¹⁰²⁶ Williams arrived at approximately 11:00 p.m.¹⁰²⁷ After speaking with people in the Press Office, she went to Foster's office and saw Thomasson sitting at his desk.¹⁰²⁸ Williams said Thomasson conducted a cursory search of papers on the desk, looking for a note.¹⁰²⁹ In the approximately ten minutes Williams was in Foster's office, she said she did not

¹⁰¹⁹ H. Clinton 6/12/94 Fiske Depo. at 17; M. Williams 5/25/94 Fiske Int. at 3.

¹⁰²⁰ M. Williams 5/26/94 Fiske GJ at 10.

¹⁰²¹ Id.

¹⁰²² Id. at 11; Lieberman 7/26/94 Fiske Int. at 13-14 (sworn testimony).

¹⁰²³ M. Williams 5/26/94 Fiske GJ at 11; Lieberman 7/26/94 Fiske Int. at 19-20 (sworn testimony). The entrance to the First Lady's office was located next to the entrance to the Counsel's suite of offices.

¹⁰²⁴ Lieberman 7/26/94 Fiske Int. at 20 (sworn testimony).

¹⁰²⁵ See M. Williams 8/3/93 FBI Int.

¹⁰²⁶ M. Williams 8/3/93 FBI Int. at 1.

¹⁰²⁷ Id.

¹⁰²⁸ Id.

¹⁰²⁹ Id.

see Thomasson find a note.¹⁰³⁰ Thomasson remained in Foster's office after Williams left.¹⁰³¹ In later statements, Williams remembered that Nussbaum came into Foster's office "a few seconds" after she did.¹⁰³²

Williams was questioned on whether she removed documents from Foster's office on July 20. Williams denied doing so.¹⁰³³ Williams took an FBI polygraph examination on September 16, 1994, and twice denied removing any documents from Foster's office the evening of his death or in the early morning. The FBI polygraph examiner concluded that Williams was being truthful, which the FBI Laboratory also confirmed.¹⁰³⁴

Williams tried to remember whether she may have carried something into Foster's office that she was still carrying when she left. Williams said at some point that night she went to Mark Gearan's office on the first floor to get a copy of the press release about Foster's death.¹⁰³⁵ Williams also said she may have gone to her own office on the West Wing's second floor to get a copy of the First Lady's schedule for the following day,¹⁰³⁶ but she did not believe she was

¹⁰³⁰ *Id.*

¹⁰³¹ *Id.*

¹⁰³² M. Williams 6/2/95 GJ at 25. Thomasson said Nussbaum and Williams were never in Foster's office at the same time. Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 59.

¹⁰³³ See M. Williams 5/26/94 Fiske GJ at 27; M. Williams 6/2/95 GJ at 28; M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 53-54; Senate Whitewater Comm. Hearing, *supra* note 408, at 162 (Jul. 26, 1995) (testimony of M. Williams); M. Williams 5/25/94 Fiske Int. at 4.

¹⁰³⁴ FBI Polygraph Report of Margaret Williams at 3-4 (Sept. 16, 1994).

¹⁰³⁵ M. Williams 5/26/94 Fiske GJ at 16; M. Williams 5/25/94 Fiske Int. at 3.

¹⁰³⁶ M. Williams 5/26/94 Fiske GJ at 18-19.

carrying either of these items, or anything else, when she went into Foster's office.¹⁰³⁷

iv. Henry O'Neill.

Officer Henry O'Neill has been employed as a uniformed Secret Service officer since 1977.¹⁰³⁸ At the time of Foster's death, he was assigned as an escort officer on the 10:30 p.m. through 7:00 a.m. shift.¹⁰³⁹ His primary responsibility was to accompany General Services Administration cleaning crews to offices in the White House West Wing.¹⁰⁴⁰ O'Neill collected burn bags with sensitive or classified waste.¹⁰⁴¹

Alarm records show that on July 20, Officer O'Neill entered the Counsel's suite of offices at 10:42 p.m., and re-set the alarm at 11:41 p.m.¹⁰⁴² He was accompanying two female cleaning workers as they picked up trash in the West Wing offices.¹⁰⁴³

Officer O'Neill said he saw Maggie Williams leaving the Counsel's suite of offices carrying documents.¹⁰⁴⁴ O'Neill said while he was in the Counsel's suite to collect the burn bags, he saw two women enter the Counsel's suite with Nussbaum.¹⁰⁴⁵ He left the suite, but later

¹⁰³⁷ *Id.* at 27.

¹⁰³⁸ O'Neill 6/6/95 GJ at 2.

¹⁰³⁹ O'Neill 6/8/94 Fiske Int. at 1.

¹⁰⁴⁰ *Id.*

¹⁰⁴¹ *Id.*

¹⁰⁴² Secret Service alarm records (July 20-21, 1993) (Doc. Nos. 211-DC-00000037 through 38).

¹⁰⁴³ O'Neill 6/6/95 GJ at 7-8.

¹⁰⁴⁴ *Id.* at 14-15.

¹⁰⁴⁵ *Id.* at 8.

returned¹⁰⁴⁶ and saw a woman sitting behind Foster's desk.¹⁰⁴⁷ He left again and later, while in the hallway outside the suite, saw Maggie Williams and another woman¹⁰⁴⁸ leaving the Counsel's office, with Williams carrying folders or files of some sort to her office.¹⁰⁴⁹

O'Neill was confused when interviewed about the identities of the women, other than Maggie Williams, in and around the Counsel's suite at various points. In his Senate deposition in 1995, he also showed confusion about whether Williams was carrying something in addition to what appeared to be folders or documents.

April 28, 1994 Interview:

[After entering the suite], he turned to see a man that he recognized as Bernard Nussbaum, another man whom he did not recognize, Margaret "Maggie" Williams, of Hillary Clinton's staff, and another woman whom he thinks was Patsy Thomasson. . . . He and the cleaning crew stepped out of the suite into the hall and he asked the man who was a part of this group "what seems to be the problem?" He said that this man introduced himself as a White House staffer in charge of legislative affairs . . . and now knows that this man was Howard Paster. This man then advised Officer O'Neill "something terrible has happened -- Vince Foster has taken his own life." This man, Nussbaum, and the two women went into Nussbaum's office. Shortly after this encounter, the second woman (not Maggie Williams) introduced herself to him. He said that, while he is not entirely certain, he believes that she said her name was Patsy Thomasson. She also told him Maggie Williams' name and that Williams was a staffer for Hillary Clinton.¹⁰⁵⁰

According to the report, O'Neill re-entered the suite a few minutes later and:

[S]aw a third woman sitting behind Vincent Foster's desk in a chair going through

¹⁰⁴⁶ *Id.* 8, 10-11.

¹⁰⁴⁷ *Id.* at 11.

¹⁰⁴⁸ *Id.* at 13-14.

¹⁰⁴⁹ *Id.* at 14.

¹⁰⁵⁰ O'Neill 4/28/94 Fiske Int. at 1-2.

papers on his desk as if she were looking for something. He said that this woman was alone in Vincent Foster's office when he saw her. He advised that he did not recognize this woman and added that it was not Maggie Williams nor was it the woman he met and thought to be Patsy Thomasson.¹⁰⁵¹

In this interview, O'Neill described this third woman as a white female, approximately 5'6" to 5'8", slender to medium build, dark brown or black hair, light complexion, and in her mid-forties. He described Patsy Thomasson separately in that interview as a white female, 5'5" to 5'6", slender to medium build, brown with some gray hair, medium complexion with blemished appearance, and forty to forty-five years old.¹⁰⁵²

The report of O'Neill's interview further reflected:

At one point, about 30 minutes after he saw the woman behind Foster's desk, while he was standing in the hallway outside the entrance to the suite, he observed Patsy Thomasson and Maggie Williams walking out of the suite and turn toward the office of the First Lady next door to the suite. He said that while Patsy Thomasson's hands were empty, Maggie Williams was carrying a significant quantity of "office stuff " Officer O'Neill said that she "had her arms full" of papers, folders, and perhaps accordion files, and other office related paper products. He advised that he watched Maggie Williams walk into her (Williams) office with these items. He then saw her exit her office almost immediately with nothing in her hands and re-enter the Counsel suite. Patsy Thomasson did not go into Williams' office with her but went elsewhere down the hall. Officer O'Neill advised that after perhaps forty to forty-five minutes, but less than one hour, he observed Bernard Nussbaum, Maggie Williams, and the woman he thought to be Patsy Thomasson exit the suite. Bernard Nussbaum went down the staircase. He said that at that point the woman he thinks to have been Patsy Thomasson asked him to lock up the suite which he did. He then rode down the elevator with her and Maggie Williams to the ground level and watched them exit the [W]est [W]ing.¹⁰⁵³

¹⁰⁵¹ *Id.* at 2.

¹⁰⁵² *Id.* at 2, 4.

¹⁰⁵³ *Id.* at 2-3 (emphasis added).

The report of his first interview also reflects O'Neill stating that when continuing his security rounds later that night on the West Wing's ground floor, he again saw the woman that he had previously seen sitting behind Foster's desk, standing in the doorway of Watkins's office.¹⁰⁵⁴

June 8, 1994 Interview -- The report of a June 8, 1994 interview reflects that O'Neill said that he was "100 percent sure this woman was not PATSY THOMASSON."¹⁰⁵⁵ He also said he did not see Patsy Thomasson in Foster's office.¹⁰⁵⁶

June 9, 1994 Interview -- One day later, O'Neill called Mr. Fiske's office and said he obtained and reviewed photographs after the June 8 interview.¹⁰⁵⁷ According to the report of interview, O'Neill said he "now believes that it is possible that PATSY THOMASSON was the woman sitting behind the desk."¹⁰⁵⁸ The report also reflected that after O'Neill reviewed photographs of Susan Thomases, he believed she may have been the woman who introduced herself to him in the second floor West Wing hallway during the late evening hours of July 20, 1993.¹⁰⁵⁹ Travel, phone and pager records and testimony, however, show that Thomases was in New York.¹⁰⁶⁰

¹⁰⁵⁴ *Id.* at 3.

¹⁰⁵⁵ O'Neill 6/8/94 Fiske Int. at 2 (emphasis added).

¹⁰⁵⁶ *Id.* at 3.

¹⁰⁵⁷ O'Neill 6/9/94 Fiske Int. at 1.

¹⁰⁵⁸ O'Neill 6/9/94 Fiske Int. at 1 (emphasis added).

¹⁰⁵⁹ O'Neill 6/9/94 Fiske Int. at 1.

¹⁰⁶⁰ For example, Williams received a page at 12:15 a.m. saying "pls call Susan Thomas[e]s at 212-772-6019." M. Williams's White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002660); *see also* Thomases 5/2/96 GJ at 10; Thomases 7/17/95 Senate Whitewater Comm. Depo. at 50. Dorothy Rodham's phone records (bill dated Aug. 3, 1993)

June 16, 1994 Interview -- O'Neill was shown photographs by investigating agents. He identified photographs of Bernard Nussbaum, Howard Paster and Margaret Williams.¹⁰⁶¹ He was unable to identify Patsy Thomasson.¹⁰⁶² The report said "while he is still not certain as to the identity of the woman he saw sitting in a chair behind VINCENT FOSTER's desk, he believes 'it is possible' that PATSY THOMASSON was that woman."¹⁰⁶³ The report repeated O'Neill's belief that it was Susan Thomases who introduced herself to him on the West Wing's second floor hallway.¹⁰⁶⁴

July 20 & 26, 1994 Interviews -- O'Neill was interviewed by Mr. Fiske's office to "clarify, resolve and finalize questions and issues that have arisen as a result of the information he provided during prior interviews."¹⁰⁶⁵ The interview report contained the following summary: After walking into the Counsel's suite initially, O'Neill saw Nussbaum enter with two other people, he believes women. O'Neill was unsure about the identities of the two women with Nussbaum.¹⁰⁶⁶ O'Neill left the suite and walked down the hall and then walked back into the Counsel's suite. At this time, he saw Howard Paster (then Director of Legislative Affairs) in the hall, and Paster told him about Foster's death. O'Neill could not say whether Paster entered the

(Doc. No. 065-DC-00000009), showed a 20-minute call 11:19 p.m. from Hillary Clinton in Little Rock to Thomases in New York.

¹⁰⁶¹ O'Neill 6/16/94 Fiske Int. at 1.

¹⁰⁶² *Id.* at 2.

¹⁰⁶³ *Id.* at 2.

¹⁰⁶⁴ O'Neill 6/16/94 Fiske Int. at 2.

¹⁰⁶⁵ O'Neill 7/20 & 26/94 Fiske Int. at 1.

¹⁰⁶⁶ *Id.* at 2.

suite.¹⁰⁶⁷

O'Neill also said he saw a woman in the hall, who he believed was Susan Thomases. O'Neill went downstairs with this woman and then returned to the Counsel's suite to see if he could secure the office. He walked into the suite and noticed a woman behind Foster's desk.

According to the interview report, O'Neill also explained:

[I]nitially he was unable to identify this woman [behind Foster's desk] but now feels fairly certain that she is identical to Patsy Thomasson, a White House staff person. He stated that back in July of 1993, he did not make any effort to identify these people. After having been interviewed by the Independent Counsel's office, he did review photographs available to him of all White House staffers and felt fairly certain that it was Patsy Thomasson who he observed behind Foster's desk that evening.

O'Neill stated that after leaving the Chief Counsel's suite of offices, he can't recall where he went but he did not remain close to or in view of the entrance to the Chief Counsel's suite of offices. He returned to that area approximately 10 or 15 minutes later (approximately 11:30 p.m.) and was standing in the hall near the entrance when he observed Mr. Nussbaum exit the Chief Counsel suite and leave the second floor. He can't say for sure but he believes Mr. Nussbaum took the stairway down. As Mr. Nussbaum was leaving, the same woman that he saw earlier in the evening, who he now believes may be Susan Thomases, was standing in the area, either in the hallway or by the entrance way to the Chief Counsel's office.

At this point in time, a woman who he recognized as Maggie Williams . . . walked out of the Chief Counsel's office space into the hall. . . . Ms. Williams was carrying some files and folders in her arms. He estimated that the files and folders in her arms were three to five inches in height. As best he recalls, Maggie Williams remarked to the other woman words to the effect that she was just going to put these in her office and then walked past him and the doorway to the First Lady's office, stopping at the doorway to her own office.¹⁰⁶⁸

¹⁰⁶⁷ *Id.* at 2-3. Paster said he did not remember actually entering the Counsel's suite that evening. Paster 5/13/94 Fiske Int. at 3.

¹⁰⁶⁸ O'Neill 7/20 & 26/94 Fiske Int. at 3-5 (emphasis added).

O'Neill said Williams put the materials in her office and left empty-handed, at which time she and the other woman went to the elevator.¹⁰⁶⁹ Later that night, O'Neill saw Patsy Thomasson standing in the doorway to David Watkins's office.¹⁰⁷⁰ O'Neill remembered that she was upset and distraught.¹⁰⁷¹

During this interview, O'Neill was shown photos of Evelyn Lieberman and Patsy Thomasson. He said Lieberman "looked similar" to the woman he saw that night in the hallway (previously the "Susan Thomases" woman) and he identified Thomasson as the woman behind the desk.¹⁰⁷²

O'Neill was asked why he never reported the information about Williams to his superiors or to law enforcement before April 1994. According to the interview report, he said "until he was approached by investigators from the Independent Counsel's office in late April 1994, he had never been asked any questions or discussed his observations and conversations on the night of July 20-21, 1993 with anyone. He stated that he wasn't quite sure of the significance of these observations and was not about to volunteer it to anyone."¹⁰⁷³

August 9, 1994 Interview -- O'Neill was shown several photographs, one of which was a photograph of Susan Thomases. He picked out her photograph and according to the interview report, said he felt "fairly certain that THOMASES is the woman who was with and left with

¹⁰⁶⁹ *Id.* at 5.

¹⁰⁷⁰ *Id.*

¹⁰⁷¹ *Id.*

¹⁰⁷² *Id.* at 7.

¹⁰⁷³ *Id.* at 6.

MAGGIE WILLIAMS from the second floor . . . on July 20, 1993."¹⁰⁷⁴ When asked whether he might be confused about dates and nights, O'Neill also said he remembered the Paster conversation about Foster's death occurring the same night that he saw Williams carrying items out of the Counsel's suite.¹⁰⁷⁵

Grand Jury June 6, 1995 -- O'Neill made one new relevant statement during this appearance before the grand jury. O'Neill said he now believed the woman sitting behind Foster's desk was Patsy Thomasson.¹⁰⁷⁶ As for the woman in the hallway when Williams was leaving the suite, who O'Neill first identified as Thomasson and then as Thomases, O'Neill testified he now believed it was Evelyn Lieberman.¹⁰⁷⁷

Senate Deposition June 23, 1995 -- O'Neill testified in a Senate deposition consistently with his earlier testimony, except that he did not show any of his earlier confusion about the identity of various people he saw.¹⁰⁷⁸ Near the conclusion of his examination by counsel for the Senate minority, O'Neill said he remembered only that Maggie Williams was carrying something in front of her: "I remember that she was carrying something in front of her. I think I remember folders as I saw her approach in my direction, and it was like folders. But I can't remember if

¹⁰⁷⁴ O'Neill 8/9/94 Int. at 2.

¹⁰⁷⁵ *Id.* at 1.

¹⁰⁷⁶ O'Neill 6/6/95 GJ at 22-23.

¹⁰⁷⁷ *Id.* at 23.

¹⁰⁷⁸ Susan Thomases did not come up at all in his Senate deposition. *See, e.g.*, O'Neill 6/23/95 Senate Whitewater Comm. Depo. at 174-77.

there was a box on top of them, like a cardboard box that is used for files also."¹⁰⁷⁹ He also did not know where the folder or box came from, or whether Williams had these things with her when she went into the counsel's office.¹⁰⁸⁰

Senate Hearing July 26, 1995 -- Testifying before the Senate Whitewater Committee, counsel for the Senate minority first raised questions -- based on the number of interviews O'Neill said he had undergone with Mr. Fiske's office -- about whether O'Neill was consistent in his previous statements. O'Neill said although he knew Williams and Nussbaum, he did not know Thomasson or Lieberman.¹⁰⁸¹

v. Other Evidence about O'Neill and Williams.

Nussbaum and Thomasson said they did not see Williams take anything out of the office.¹⁰⁸² Evelyn Lieberman, who sat at a desk in the First Lady's office after arriving at the White House with Maggie Williams,¹⁰⁸³ said she did not see Williams carrying a box or pile of papers or folders.¹⁰⁸⁴ She also did not see Williams go into her own [Williams's] office that evening.¹⁰⁸⁵

¹⁰⁷⁹ O'Neill 6/23/95 Senate Whitewater Comm. Depo. at 175.

¹⁰⁸⁰ *Id.* at 177.

¹⁰⁸¹ Senate Whitewater Comm. Hearing, *supra* note 408, at 33 (Jul. 26, 1995) (testimony of H. O'Neill).

¹⁰⁸² Nussbaum 6/13/95 GJ at 152; Thomasson 7/11/95 GJ at 34-35.

¹⁰⁸³ Lieberman 7/26/94 Fiske Int. at 20 (sworn testimony). Lieberman believed it was "possible" that she went into the Counsel's suite at some point that evening. However, she said, "I don't think I did." *Id.* at 29.

¹⁰⁸⁴ Lieberman 6/13/94 Fiske Int. at 4.

¹⁰⁸⁵ *Id.*

Terri Cobey, part of the White House cleaning crew on duty that night, remembered a black female and a white female walking, on at least two occasions, between the Counsel's office and the First Lady's office.¹⁰⁸⁶ Her interview report said "[s]he was unable to state whether either of these women were carrying any type of paper or documents or files while they were walking between the two offices."¹⁰⁸⁷ When Cobey was asked in the grand jury whether she saw any individual carrying documents or papers or files out of Mr. Foster's office or out of the Counsel's suite of offices that night, she said no.¹⁰⁸⁸

O'Neill said in the Senate hearing that Williams gave him a "glancing smile" when introduced to him in the hall.¹⁰⁸⁹ He also said from Williams's appearance "nothing registered to me that she was upset at that point."¹⁰⁹⁰ Testimony from other people described Williams as sobbing.¹⁰⁹¹

vi. Telephone Conversations the Evening of July 20 and Early Morning Hours of July 21.

Phone records establish several phone calls between Mrs. Clinton, Maggie Williams, and Susan Thomases on the evening of July 20 and early morning hours of July 21. This sequence of

¹⁰⁸⁶ Cobey 8/5/94 Int. at 2.

¹⁰⁸⁷ *Id.*

¹⁰⁸⁸ Cobey 6/14/95 GJ at 10.

¹⁰⁸⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 118-19 (Jul. 26, 1995) (testimony of H. O'Neill).

¹⁰⁹⁰ *Id.* at 118 (testimony of H. O'Neill).

¹⁰⁹¹ *See, e.g.*, Nussbaum 6/13/95 GJ at 150 ("Maggie was sitting on the couch crying, she wasn't functioning at all"); Nussbaum 5/13/94 Fiske Int. at 7 ("Maggie Williams was 'a basketcase.' She was not looking for anything"); Thomasson 7/11/95 GJ at 32 ("Maggie was crying"); Cobey 7/14/94 Senate Banking Comm. Depo. at 37 ("I think that [she] was crying").

telephone calls led to an inquiry into whether they discussed Foster's office or any documents in his office.

July 20-21

TIME	ACTIVITIES
10:13 p.m.	Sixteen-minute call made from Dorothy Rodham's residence in Little Rock (where Mrs. Clinton was staying) to Williams's residence ¹⁰⁹²
11:19 p.m.	Twenty-minute call made from Dorothy Rodham's residence to Thomases's residence ¹⁰⁹³
12:15 a.m.	Williams received a page asking her to "PLS CALL SUSAN THOMAS[E]S at 212-772-6019" ¹⁰⁹⁴
12:56 a.m.	Eleven-minute call made from Williams's residence to Dorothy Rodham's residence ¹⁰⁹⁵
1:10 a.m.	Fourteen-minute call made from Williams's residence to Thomases's residence ¹⁰⁹⁶

Mrs. Clinton testified in July 1995 about the evening of Vince Foster's death on July 20,

1993. Mrs. Clinton said:

I was not thinking about documents in Mr. Foster's office. I mean, that is something that I don't think crossed my mind at all. Having heard that my friend was dead, I don't think that's what I was thinking about.¹⁰⁹⁷

¹⁰⁹² Dorothy Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

¹⁰⁹³ Id.

¹⁰⁹⁴ M. Williams's White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002660).

¹⁰⁹⁵ M. Williams's phone records (bill dated Aug. 29, 1993) (Doc. No. 055-DC-00000008).

¹⁰⁹⁶ Id.

¹⁰⁹⁷ H. Clinton 7/22/95 Depo. at 22.

She also said she did not remember talking to Williams or Thomases about Foster's documents or office on July 20.¹⁰⁹⁸

Thomases said that in her conversation with Mrs. Clinton, there was no discussion of documents in Foster's office.¹⁰⁹⁹ Thomases said it was possible that she spoke with Williams that night, but she said she had no independent memory of it.¹¹⁰⁰

Williams said the subject of Foster's office and documents did not arise in conversations with Thomases or Mrs. Clinton.¹¹⁰¹ Williams remembered both the fact and the general substance of her calls with Mrs. Clinton that evening and said the subject of Foster's office or documents did not arise.¹¹⁰² Williams said she was not able to remember any conversation with Thomases that evening.¹¹⁰³

In addition to calling Williams and Thomases, Mrs. Clinton placed a call to the home of Harry Thomason in California at 11:03 p.m.¹¹⁰⁴ Mrs. Clinton testified in the grand jury that she did not remember talking to Thomason that night, but that she was "trying to inform people that I

¹⁰⁹⁸ *Id.* at 17, 19-20, 22.

¹⁰⁹⁹ Thomases 9/9/94 Fiske Int. at 32 (sworn testimony).

¹¹⁰⁰ *Id.* at 37 (sworn testimony); Thomases 7/17/95 Depo. at 60.

¹¹⁰¹ M. Williams 5/26/94 Fiske GJ at 8, 34-35.

¹¹⁰² *Id.* at 32-35; M. Williams 6/2/95 GJ at 18-20; Senate Whitewater Comm. Hearing, *supra* note 408, at 79-80 (Nov. 2, 1995) (testimony of M. Williams).

¹¹⁰³ *See* Senate Whitewater Comm. Hearing, *supra* note 408, at 13-14 (Nov. 2, 1995) (testimony of M. Williams); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 57.

¹¹⁰⁴ Dorothy Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

thought would want to know about Vince's death before they heard it on the television."¹¹⁰⁵

Telephone records also showed a ten-minute call from Dorothy Rodham's residence to telephone number (202) 628-7087 at 10:41 p.m. on July 20.¹¹⁰⁶ After much publicity about the telephone company's inability to identify this telephone number,¹¹⁰⁷ Mrs. Clinton submitted in December 1995, a sworn affidavit to the Senate Whitewater Committee, stating that she did not remember calling that number on July 20.¹¹⁰⁸ The White House said the telephone number was "an unlisted trunk line that rang on the White House switchboard. . . . The number was installed as a bypass to the main White House switch, so that calls could be made from the White House in the event the main switch failed. The number was also used as a means to get through to the White House when the switchboard was overloaded, and were provided to certain individuals for that purpose."¹¹⁰⁹ The White House reported that Bill Burton received a call from Mrs. Clinton

¹¹⁰⁵ H. Clinton 1/26/96 GJ at 86.

¹¹⁰⁶ Dorothy Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

¹¹⁰⁷ See Sara Fritz, Whitewater Panel Probes First Lady's Mystery Phone Call; Inquiry: Senators submit written questions asking her to help identify number she apparently dialed after the death of Vincent Foster, L. A. Times, Dec. 1, 1995, at A6; Pete Yost, White House Dispute With D'Amato Over Whitewater Subpoena Narrows, A.P., Dec. 13, 1995; Whitewater panel to question attorney White House says lawyer reviewed Foster files, The Fort Worth Star-Telegram, Dec. 1, 1995 ("the White House said yesterday that Hillary Clinton will respond in writing to questions about a telephone number that was called the night about Foster's death from her mother's home in Little Rock, Ark., where Clinton was staying. Phone company records do not identify to whom the now-disconnected number belonged").

¹¹⁰⁸ H. Clinton 12/7/95 Aff. at 2.

¹¹⁰⁹ Letter from Jane Sherburne, Associate White House Counsel to Michael Chertoff, Senate Whitewater Committee Special Counsel, and Richard Ben-Veniste, Senate Whitewater Committee Minority Special Counsel (Dec. 7, 1995).

on the night of July 20.¹¹¹⁰

Burton testified in March 1995 before the grand jury that he remembered a telephone conversation with Mrs. Clinton that night.¹¹¹¹ Burton said he had a personal conversation with her about Foster's death: "It was more a conversation you might have with a close friend after a close mutual friend has passed away."¹¹¹² Burton gave similar testimony in the Senate following the revelation about the White House telephone number.¹¹¹³ Burton said he and Mrs. Clinton talked about notifying people in Arkansas about Foster's death and about the details the Park Police had provided concerning the death.¹¹¹⁴

4. The Trash from Foster's Office.

When the cleaning crew went to the Counsel's suite, they removed the trash.¹¹¹⁵ Sylvia Mathews, Special Assistant for Robert Rubin, later asked Bill Burton, Dee Dee Myers and David Dreyer (then Deputy White House Communications Director) whether the trash in Foster's office should be retrieved.¹¹¹⁶ Notes she prepared within a week to ten days of the incident¹¹¹⁷ show that

¹¹¹⁰ *Id.*

¹¹¹¹ Burton 3/22/95 GJ at 67.

¹¹¹² *Id.* at 68.

¹¹¹³ Senate Whitewater Comm. Hearing, *supra* note 408, at 41-42 (testimony of W. Burton).

¹¹¹⁴ *Id.* at 50-51, 56.

¹¹¹⁵ Cobey 6/14/95 GJ at 7; D. Walters 6/21/95 GJ at 5.

¹¹¹⁶ Mathews 4/5/95 GJ at 11.

¹¹¹⁷ *Id.* at 32.

Burton agreed they needed to retrieve the trash.¹¹¹⁸ Mathews located the cleaning crew, who took her to where they had dumped the trash.¹¹¹⁹ Mathews retrieved Foster's trash and stored it in Deputy Chief of Staff Roy Neel's office that night.¹¹²⁰ Associate Counsel Cliff Sloan said he retrieved the bag from Neel's office the next day.¹¹²¹ Secret Service records show Sloan put the bag back in Foster's office at 6:34 p.m.¹¹²² Foster family attorney Michael Spafford's notes show the trash was reviewed during the search on July 22.¹¹²³

Mathews also made efforts to determine whether Foster's burn bag was emptied.¹¹²⁴ After she retrieved the commingled burn bag for all West Wing offices from Officer O'Neill,¹¹²⁵ Gene Sperling (then Deputy Assistant to the President for Economic Policy) told her that she probably should not be examining sensitive and confidential burn bag material.¹¹²⁶ Mathews said Nussbaum later told her Foster did not have a burn bag in his office, so the burn bag material she

¹¹¹⁸ Mathews's typewritten notes (created the week after July 20, 1993) (Doc. No. 033-DC-00000620); see also Mathews 4/5/95 GJ at 11.

¹¹¹⁹ Mathews's typewritten notes (created the week after July 20, 1993) (Doc. No. 033-DC-00000620); see also Mathews 4/5/95 GJ at 11-12.

¹¹²⁰ Mathews 4/5/95 GJ at 16; see Neel 5/25/94 Fiske Int. at 3 ("When Neel arrived at his office the following morning . . . he found an opaque plastic bag of trash which had been tied up in the middle of his desk").

¹¹²¹ Sloan 5/11/94 Fiske Int. at 11.

¹¹²² Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

¹¹²³ Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000018).

¹¹²⁴ Mathews 4/5/95 GJ at 18-19.

¹¹²⁵ Id. at 20; see O'Neill 6/6/95 GJ at 16.

¹¹²⁶ Mathews 4/5/95 GJ at 21; Sperling 12/20/94 Int. at 7.

had retrieved could be returned to the Secret Service.¹¹²⁷ Nussbaum did not remember any conversations about the burn bag with Mathews; he remembered discussing only trash with her.¹¹²⁸ Although Foster apparently had a burn bag in his office,¹¹²⁹ O'Neill said he did not empty Foster's burn bag that evening.¹¹³⁰ The burn bag from Foster's office remained in his office and was reviewed by Nussbaum on July 22 during his search.¹¹³¹

5. Betsy Pond Entered Foster's Office on the Morning of July 21.

On the morning of July 21, alarm records show that Nussbaum's secretary, Betsy Pond, opened the Counsel's suite at 7:01 a.m.¹¹³² Pond said before anyone else arrived, she entered Foster's unsecured office to look around and straighten up.¹¹³³ Linda Tripp, another secretary in the Counsel's suite, said Pond told her on July 21 that she even looked for a note in Foster's office.¹¹³⁴ Tripp said Pond "was concerned that it would appear questionable," so Pond would tell investigators that she entered simply to straighten up.¹¹³⁵ Pond denied saying this.¹¹³⁶

¹¹²⁷ Mathews 4/5/95 GJ at 21-22.

¹¹²⁸ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 54.

¹¹²⁹ See Gorham 3/16/95 Int. at 7.

¹¹³⁰ O'Neill 6/6/95 Int. at 16.

¹¹³¹ See Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000021).

¹¹³² Secret Service alarm records (July 21, 1993) (Doc. No. 211-DC-00000042).

¹¹³³ Pond 4/26/95 GJ at 43; Captain Charles Hume, U.S. Park Police Report at 2 (Aug. 4, 1993) ("She went into his office and 'squashed' the papers together that were on his desk"). Nussbaum informed the Park Police on July 21, 1993, that "he learned that from about 0700-0715 hours one of the secretaries had entered Mr. Foster's office and 'piled papers' on his desk top 'to make it neat.'" Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

¹¹³⁴ Tripp 6/21/95 GJ at 11-12.

¹¹³⁵ *Id.* at 12.

6. Craig Livingstone's Activities on July 21.

The morning of July 21, Officer Bruce E. Abbott of the Uniformed Division of the Secret Service was assigned to work the 6:30 a.m. to 3:00 p.m. shift at Post E-1 on the ground floor entrance to the West Wing.¹¹³⁷ Shortly before his shift began, Abbott learned about Foster's death.¹¹³⁸

Abbott said shortly after he assumed his post,¹¹³⁹ he heard the elevator door near his post¹¹⁴⁰ and saw two men get out, Craig Livingstone and another man unknown to him.¹¹⁴¹ Abbott saw the man he did not recognize carrying a cardboard box with an open top.¹¹⁴² The box contained several dark-colored loose-leaf binders.¹¹⁴³ Livingstone carried a briefcase, possibly

¹¹³⁶ Pond 4/13/95 Int. at 2-3. Pond was found "not deceptive" in a polygraph exam on this issue. Pond FBI Polygraph Report at 7-8 (May 31, 1994).

¹¹³⁷ Abbott 6/14/95 GJ at 5-7.

¹¹³⁸ *Id.* at 5.

¹¹³⁹ Abbott initially identified the time as 6:45 to 6:50 a.m. Abbott 4/18/94 Fiske Int. at 2. Abbott subsequently said that he might have seen the men as late as 8:30 a.m. Abbott 6/14/95 GJ at 17; Abbott 10/12/94 Int. at 2. He also said "given that my initial request to recollect the times was nine months, or approximately nine months after they occurred, I was unable to be certain of the time, other than to say it was in the morning." Abbott 6/14/95 GJ at 17. He did not think "that the time was significant when I talked to Inspector Martin [on the morning of the 21st] -- only the observation of what I had seen, not that the time was critical, because I was unaware of any factors involving time." *Id.*

¹¹⁴⁰ Abbott 4/18/94 Fiske Int. at 2.

¹¹⁴¹ *Id.* Abbott was shown 212 photographs of male White House employees and identified Livingstone as the man with the briefcase. He could not identify the other man. Abbott 6/22/94 Fiske Int. at 4.

¹¹⁴² Abbott 4/18/94 Fiske Int. at 2.

¹¹⁴³ *Id.*

brown in color.¹¹⁴⁴ The two men walked past him and out the West Wing door.¹¹⁴⁵

Abbott reported this to Secret Service Inspector Dennis Martin.¹¹⁴⁶ Martin thought Abbott provided this information in front of Park Police investigators.¹¹⁴⁷ Park Police Captain Hume said Martin escorted him and Park Police Detective Peter Markland that morning when they arrived at the White House to gain access to Foster's office.¹¹⁴⁸ Markland remembered Abbott telling him he saw Livingstone with a box of documents earlier that morning.¹¹⁴⁹

Later that day, when Markland questioned Livingstone, Livingstone said he had not been in Foster's office or carried documents from Foster's office, although he might have been carrying documents.¹¹⁵⁰ Markland said Livingstone showed "no surprise or apprehension" when told he

¹¹⁴⁴ *Id.*

¹¹⁴⁵ Abbott 6/14/95 GJ at 20.

¹¹⁴⁶ *Id.* at 12. According to a report of his interview, Martin said:

[A]s he was escorting U.S. Park Police officers either in or out of the [W]est [W]ing, Officer Abbott approached. . . . Abbott spoke to him in a low confidential voice relating to him that earlier that morning (approximately 6:30-7:00 a.m.) he had seen Craig Livingstone and another man (identity unknown) on the ground floor of [t]he White House West Wing having just gotten off the elevator Abbott said that he saw these two men carrying a briefcase and some boxes."

Martin 4/29/94 Fiske Int. at 3.

¹¹⁴⁷ Martin 4/29/94 Fiske Int. at 3.

¹¹⁴⁸ Hume 5/23/95 GJ at 8.

¹¹⁴⁹ Markland 7/11/94 Fiske Int. at 1.

¹¹⁵⁰ Markland 5/23/95 GJ at 14; Markland 7/11/94 Fiske Int. at 2. Markland wrote the statement "Livingstone [said] he was not in office today" in his notes. Markland's handwritten notes (July 21, 1993) (Doc. No. 105-DC-00000347). Markland did not produce a report recounting the information provided by Abbott. See Markland 7/11/94 Fiske Int. at 1.

had been seen carrying a box from the White House's second floor.¹¹⁵¹

Gate records showed Livingstone entered the White House at 8:06 a.m. on July 21.¹¹⁵² Livingstone said he was not in the White House before 8:06 a.m.; he had gone to Foster's house early that morning.¹¹⁵³ Livingstone said "[b]y coming there [Foster's house] early he hoped to assure that any members of the media who were present gave appropriate understanding and consideration to the Foster family."¹¹⁵⁴ Livingstone said he then left the Fosters and went to the White House.¹¹⁵⁵ On July 21, Livingstone assigned Kelli McClure, an Office of Management Administration employee, to type a report of his activities on July 20-21.¹¹⁵⁶ Livingstone said he created the document to assist press personnel in compiling a chronology of activities during the

¹¹⁵¹ Markland 7/11/94 Fiske Int. at 3.

¹¹⁵² White House gate records (July 21, 1993) (Doc. No. 211-DC-00001076).

¹¹⁵³ Livingstone 5/16/95 GJ at 46-48; see also Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773).

¹¹⁵⁴ Livingstone 5/12/94 Fiske Int. at 4. Livingstone initially said there were a "few press types" at the Fosters' house that morning, id., but subsequently was unsure. Livingstone 5/16/95 GJ at 47.

¹¹⁵⁵ Livingstone 5/16/95 GJ at 48-49. David Leavy of the White House press office remembered Livingstone calling him from the Fosters' that morning. Leavy 8/3/94 Fiske Int. at 2. Webb Hubbell remembered a conversation that someone should go to the Foster house in the morning for press control. Hubbell 7/18/94 Fiske Int. at 2. Bruce Lindsey vaguely remembered Livingstone mentioning on July 21 that he was at the Fosters' house that morning. Lindsey 6/22/94 Fiske Int. at 3.

¹¹⁵⁶ See Livingstone's typewritten chronology of events (July 21, 1993) (Doc. Nos. 033-DC-00001772 through 1773); see also McClure 7/13/94 Fiske Int. at 1. An FBI review of computer backup records confirmed the document in question was created on the computer system of Tracy Beckett, a White House Office of Administration and Management employee, on July 21. Federal Bureau of Investigation, Laboratory Report, FBI File No. 40713042 D ZC at 2-3 (July 19, 1994). McClure remembered typing the document that day using Beckett's computer. McClure 7/13/94 Int. at 1.

aftermath of Foster's death.¹¹⁵⁷ That report was consistent with Livingstone's statement that he went to the Fosters that morning: "I drove by the house at 6:30 a.m. and stayed until 8:00 a.m. There was no press activity."¹¹⁵⁸

Livingstone denied removing or carrying documents from the Counsel's suite, or transporting any documents that were in Foster's office on the morning of July 21.¹¹⁵⁹ Livingstone said that soon after he arrived at the White House, he went to the Counsel's suite,¹¹⁶⁰ and later at 11:00 a.m. he attended a meeting with the Park Police.¹¹⁶¹ He said he did not remember carrying a briefcase or moving any documents that morning, and was certain he did not carry any documents from the Counsel's suite or Foster's office.¹¹⁶²

¹¹⁵⁷ Livingstone 5/17/98 GJ at 7-8. The report was found in the files of various White House press personnel, including Director of Communications Mark Gearan. Gearan 7/11/94 Fiske Int. at 1.

¹¹⁵⁸ Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773).

¹¹⁵⁹ Livingstone 5/16/95 GJ at 62-63; Livingstone 5/17/95 GJ at 4-5.

¹¹⁶⁰ Livingstone 5/12/94 Fiske Int. at 4; *see* Gorham 4/19 & 26/94 Fiske Int. at 9 ("Bill Kennedy and Craig Livingstone dropped by. . . . [Livingstone] looked emotionally upset").

¹¹⁶¹ Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773); Livingstone 5/17/95 GJ at 7.

¹¹⁶² Livingstone 5/17/95 GJ at 4-5; *see* Livingstone 5/16/95 GJ at 64. Charles Easley, Security Officer for the Executive Office of the President, said Livingstone asked him in 1994 whether he had ever told him that he had removed documents from Foster's office. Easley 4/11/95 GJ at 26, 35; Easley 8/6/94 Int. at 2. When Easley said no, Livingstone commented that he believed he had told him that and that someone from the Secret Service or the Park Police reported Livingstone for taking a box out of Foster's office. Easley 4/11/95 GJ at 26, 35; Easley 8/6/94 Int. at 2-3. In his grand jury testimony, Easley doubted Livingstone had really removed anything from Foster's office, explaining that he thought Livingstone was a braggart who wanted people to think he was important. Easley 4/11/95 GJ at 35.

C. The Procedure for Searching Foster's Office.

The morning of July 21, two high-level Park Police officials, Chief Robert Langston and Major Robert Hines, told the White House about the findings of the Park Police on Foster's death and its investigative needs. The briefing occurred in David Watkins's office in the White House's West Wing around 11:00 a.m.¹¹⁶³ In addition to Chief Langston and Major Hines, Nussbaum, Kennedy, Livingstone, Stephanopoulos, Watkins, Burton, Hubbell, Donald Flynn (USSS), Arnie Cole (USSS) and Jim Hamilton, an attorney representing the Foster family, were there.¹¹⁶⁴ The Park Police said the death appeared to be a suicide.¹¹⁶⁵ The Park Police also said they would need access to Foster's office.¹¹⁶⁶ Nussbaum said the Attorney General should coordinate it.¹¹⁶⁷

After the meeting, Nussbaum contacted Phil Heymann, then Deputy Attorney General, to ask DOJ to coordinate the investigations.¹¹⁶⁸ Two DOJ attorneys -- David Margolis and Roger

¹¹⁶³ Livingstone's chronology showed the meeting at 11:00 a.m. Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773). Hines and Langston were scheduled to arrive at 10:35 a.m. White House WAVES records (Doc. No. 336-DC-00000431); White House WAVES records (Doc. No. 336-DC-00000505).

¹¹⁶⁴ See Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773); Hamilton 10/23/95 Int. at 4. Burton did not remember if he attended the meeting but Langston and Hines named him as an attendee. Burton 3/22/95 GJ at 71; Langston & Hines 5/17/94 Fiske Int. at 2.

¹¹⁶⁵ Langston & Hines 5/17/94 Fiske Int. at 2.

¹¹⁶⁶ *Id.*

¹¹⁶⁷ *Id.*; Nussbaum 6/13/95 GJ at 170-71. Jim Hamilton's notes of the meeting said "[A]ttorney [G]eneral -- access to Vince's office" and "Bernie to call Phil Heymann." See Hamilton 10/23/95 Int. at 5.

¹¹⁶⁸ Heymann 6/13/95 GJ at 6; Nussbaum 6/13/95 GJ at 171.

Adams -- went to the White House that afternoon to meet with Nussbaum.¹¹⁶⁹

Meanwhile, two investigators from the Park Police, Captain Hume and Detective Markland, took over the investigation from Officers Rolla and Braun.¹¹⁷⁰ Unaware that Langston and Hines had gone to the White House, Hume and Markland arrived at the White House the morning of July 21 to interview White House employees and to review or take possession of documents from Foster's office.¹¹⁷¹ They arrived some time before 11:20 a.m. and waited in a Secret Service office.¹¹⁷² They were told later by Nussbaum that he would meet with them after the DOJ attorneys arrived.¹¹⁷³ At some point, Hume contacted the FBI,¹¹⁷⁴ and Agents Condon, Danna and Salter met Hume and Markland at the White House and also waited for the DOJ attorneys.¹¹⁷⁵

1. White House Meeting on July 21.

In the afternoon on July 21, after the DOJ attorneys had arrived at the White House, a meeting was held to discuss, among other things, the procedure to be used for reviewing

¹¹⁶⁹ A Secret Service record shows they arrived at 4:40 p.m. A chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150).

¹¹⁷⁰ Hume 5/23/95 GJ at 4-5.

¹¹⁷¹ *Id.* at 7-8.

¹¹⁷² *See id.* at 7. Hume said he asked Markland to mark down the time after they arrived. Markland noted the time as 11:20 a.m. Markland's handwritten notes (July 21, 1993) (Doc. No. 105-DC-00000341).

¹¹⁷³ Hume 5/23/95 GJ at 12; Nussbaum 6/13/95 GJ at 175.

¹¹⁷⁴ Hume 5/23/95 GJ at 12.

¹¹⁷⁵ Condon 4/20/94 Fiske Int. at 1; Danna 4/25/94 Fiske Int. at 1; Salter 4/19/94 Fiske Int. at 1.

documents in Foster's office.¹¹⁷⁶ Participants say the meeting was attended by at least Nussbaum, Neuwirth and Sloan from the White House Counsel's Office; Margolis and Adams from the Justice Department; Danna, Condon and Salter from the FBI; Hume and Markland from the Park Police (although Hume mentioned that he waited in the hall and did not hear the entirety of the meeting); and Flynn from the Secret Service.¹¹⁷⁷ The investigators (Condon and Salter, Hume and Markland) were present at a second afternoon meeting with Nussbaum about White House employee interviews.¹¹⁷⁸

Nussbaum remembered the investigators said they wanted to go into Foster's office to look for a suicide note, an extortion note, or other evidence of why he committed suicide.¹¹⁷⁹ Nussbaum said he expressed concern about the sensitive nature of the materials kept in Foster's office, and the possibility of executive privilege.¹¹⁸⁰ Nussbaum said he told the investigators he would try to accommodate their legitimate interests.¹¹⁸¹

Nussbaum said he remembered at that point "there were no agreements as to how we

¹¹⁷⁶ See Chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150).

¹¹⁷⁷ Nussbaum 6/13/95 GJ at 175; Neuwirth 2/28/95 GJ at 99; Sloan 4/4/95 GJ at 58; Margolis 6/14/95 GJ at 8; Adams 5/9/95 GJ at 6; Danna 4/25/94 Fiske Int. at 1; Condon 4/20/94 Fiske Int. at 1; Salter 5/16/95 GJ at 5; Hume 5/23/95 GJ at 16-18; Markland 5/23/95 GJ at 5-6; Flynn 5/23/95 GJ at 10.

¹¹⁷⁸ See Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

¹¹⁷⁹ Nussbaum 6/13/95 GJ at 176.

¹¹⁸⁰ *Id.* at 177-78.

¹¹⁸¹ *Id.* at 178.

would do it, because we [were] still sort of evolving as to how we would do this."¹¹⁸² Nussbaum acknowledged there was discussion of a procedure where investigators would view the first page of each file in Foster's office.¹¹⁸³ Nussbaum said he did not agree: "I said to them I would consider it. It was a serious option. I had to think about it. I said I would consider it and seriously consider it, but I never agreed to it."¹¹⁸⁴ Nussbaum said "[w]e left it, basically, for the next day."¹¹⁸⁵

Neuwirth supported Nussbaum: "I don't think any agreement was reached, because I know that the next day there were continuing discussions about what would be the appropriate procedure to use."¹¹⁸⁶ Neuwirth said the first page review process "may have been suggested, but that was certainly never agreed to at any time I was present."¹¹⁸⁷

Margolis and Adams contradicted Nussbaum and Neuwirth. They maintained that Nussbaum agreed on July 21 to allow investigators to review at least a portion of each

¹¹⁸² *Id.* at 179.

¹¹⁸³ *Id.* at 178; Senate Whitewater Comm. Hearing, *supra* note 408, at 40 (Aug. 9, 1995) (testimony of B. Nussbaum).

¹¹⁸⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 40 (Aug. 9, 1995) (testimony of B. Nussbaum).

¹¹⁸⁵ Nussbaum 6/13/95 GJ at 179-80.

¹¹⁸⁶ Neuwirth 2/28/95 GJ at 104.

¹¹⁸⁷ Neuwirth 2/28/95 GJ at 103. Sloan said he did not remember either that an agreement was reached on the search procedure at the meeting on July 21 or that the issue was left explicitly for resolution the following day. Sloan 4/4/95 GJ at 61. Sloan remembered the ultimate decision on July 22 about the procedure to be used, but says he is "hazy on the preliminaries before that resolution." *Id.* at 62.

document.¹¹⁸⁸ Margolis said when he was dispatched to the White House, Heymann told him that "he had reached a tentative agreement with Mr. Nussbaum that [Adams and Margolis] were to go through at least the first page or two of each document to determine whether they were relevant to our investigation."¹¹⁸⁹ Margolis said Heymann told him that "he believed he'd had an agreement in principle with Bernie Nussbaum to do it that way, so I should go finalize it and then begin the search process."¹¹⁹⁰ Margolis said investigators planned to look for "either a suicide note or something that could be characterized as a suicide note, or some other bright-line item which would indicate a reason for Mr. Foster to take his life, such as an extortion letter or anything like that, or anything else that jumped out at us that would indicate a reason for taking his life -- that we would go through at least the first page or two of each item and make a call as to relevancy."¹¹⁹¹

Margolis testified in the Senate that he had "discussed it with Mr. Nussbaum. And I believed then, and I believe today that we finalized that agreement, and that we both agreed to it."¹¹⁹² Margolis said he was confident because Neuwirth had tried to restate the agreement as permitting Nussbaum to review the documents and provide only those that were relevant and non-privileged.¹¹⁹³ Margolis objected to this and Nussbaum agreed that Neuwirth had incorrectly

¹¹⁸⁸ Margolis 6/14/95 GJ at 11; Adams 5/9/95 GJ at 12-13.

¹¹⁸⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 161 (Aug. 10, 1995) (testimony of D. Margolis).

¹¹⁹⁰ *Id.* at 179 (testimony of D. Margolis).

¹¹⁹¹ *Id.*

¹¹⁹² *Id.*

¹¹⁹³ *Id.*

stated the agreement.¹¹⁹⁴ Margolis gave similar testimony before the grand jury on June 14, 1995.¹¹⁹⁵

Adams's testimony was consistent with Margolis's. Adams said "the agreement was that Mr. Margolis and I would examine each file as it was pulled out of wherever they were in Mr. Foster's office -- file drawer, desk, credenza, anything like that -- for the purpose of determining privilege and determining if they should be seen by the Park Police and the FBI or not."¹¹⁹⁶ Adams said the review was to be "very, very summary."¹¹⁹⁷ Before the Senate Whitewater Committee, he said investigators would review only the title page and possibly the first page of every document.¹¹⁹⁸ In his own notes about the meeting, which were written after the Foster note was discovered on July 26, Adams wrote that "the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or the FBI."¹¹⁹⁹ He testified "it was our understanding this would be a joint review."¹²⁰⁰ Adams, like Margolis, remembered Neuwirth's

¹¹⁹⁴ *Id.*

¹¹⁹⁵ Margolis 6/14/95 GJ at 11.

¹¹⁹⁶ Adams 5/9/95 GJ at 11-12.

¹¹⁹⁷ Senate Whitewater Comm. Hearing, *supra* note 408, at 95 (Jul. 27, 1995) (testimony of R. Adams).

¹¹⁹⁸ *Id.* at 95-96 (testimony of R. Adams).

¹¹⁹⁹ R. Adam's typewritten notes re: the July 22, 1993 search of Foster's office (prepared after July 28, 1993) (Doc. No. 070-DC-00000132).

¹²⁰⁰ Senate Whitewater Comm. Hearing, *supra* note 408, at 96 (Jul. 27, 1995) (testimony of R. Adams).

unsuccessful attempt to summarize the understanding.¹²⁰¹

Heymann said he was "very foggy" about his conversation with Nussbaum on July 21.¹²⁰² He remembered "having a very clear impression . . . that each document in turn would be held up so that -- with the hand over most of the content with the headings there, so that they could see what the content was about, and if it had nothing -- if it apparently had nothing at all to do with Vince Foster's death then they could say, 'We have no interest in that document.'"¹²⁰³ Supervisory FBI Special Agent John Danna said "[t]he procedure agreed to was that Margolis and Adams would review the documents in Foster's office with Nussbaum."¹²⁰⁴ Danna prepared a teletype on July 22, with a final version dated July 23, for the FBI Director about the meeting confirming this agreement.¹²⁰⁵

But FBI Special Agent Salter said after the July 21 meeting, he did not expect the Justice

¹²⁰¹ *Id.* at 95.

¹²⁰² Heymann 6/13/95 GJ at 7.

¹²⁰³ *Id.* at 7-8.

¹²⁰⁴ Danna 4/25/94 Fiske Int. at 1.

¹²⁰⁵ The teletype said:

An initial meeting was held with White House Counsel Bernard Nussbaum at which time it was agreed the victim's office, which is located adjacent to Mr. Nussbaum's, would continue to be sealed by the U.S. Secret Service (USSS) until 10:00 a.m. on 7/22/93, at which time Margolis and Adams would conduct a preliminary examination of documents located within the office. The purpose of this examination is to identify and segregate any privileged documents between the President and the White House Counsel's office. Subsequent, to this examination, the USPP and WMFO investigative team will review all pertinent documents in an effort to gather evidence in this matter.

J. Danna, FBI Teletype to WMFO re: Unsub, Vincent W. Foster Jr., Deputy White House Counsel to the President -- Victim; 175B-WF-187743-1, at 2-3 (July 23, 1993) (emphasis added).

Department lawyers to review the documents in Foster's office.¹²⁰⁶ When asked about the lawyers' role, Salter said: "[M]y impression was that they would not have a role in actually conducting the review of the items in the office."¹²⁰⁷ When he learned of Adams's testimony about an agreement with Nussbaum, Salter said, "I wasn't aware of the role that had been agreed on for the Department of Justice lawyers."¹²⁰⁸

2. Morning Meeting on July 22: Department of Justice Attorneys Object to Method of Search.

Adams and Margolis arrived at the White House at 9:56 a.m. on July 22.¹²⁰⁹ Margolis and Adams said when they met with Nussbaum, he changed the search procedure agreed to on July 21.¹²¹⁰ Adams said Nussbaum told them he had decided that he alone would look at the documents in Foster's office and determine whether they were privileged.¹²¹¹ Adams said he and Margolis immediately protested that this new procedure was not what they had agreed to, and would have to speak with Heymann.¹²¹² Adams said Nussbaum was "definitely cognizant" there

¹²⁰⁶ Salter 6/30/95 Senate Whitewater Comm. Depo. at 54. *But see* Senate Whitewater Comm. Hearing, *supra* note 408, at 101 (Jul. 27, 1995) (testimony of S. Salter) ("I wasn't familiar with all the details of it, but I believed that the investigators would have access to the documents themselves").

¹²⁰⁷ Salter 6/30/95 Senate Whitewater Comm. Depo. at 54.

¹²⁰⁸ Senate Whitewater Comm. Hearing, *supra* note 408, at 132 (Jul. 27, 1995) (testimony of S. Salter).

¹²⁰⁹ White House WAVES records (July 22, 1993) (Doc. No. 336-DC-00000165); White House WAVES records (July 22, 1993) (Doc. No. 336-DC-00000542).

¹²¹⁰ Adams 5/9/95 GJ at 19-20; Margolis 6/14/95 GJ at 16.

¹²¹¹ Adams 5/9/95 GJ at 19-20.

¹²¹² *Id.* at 20.

was a change.¹²¹³

Margolis also said Nussbaum told them there was a change of plans.¹²¹⁴ Under his new plan, Nussbaum would first look at the materials in Foster's office "because of their sensitivity, executive privilege, attorney/client privilege issues, national security issues, sensitivity issues."¹²¹⁵

If the materials met Nussbaum's standards, and the investigators wanted to see them, then Nussbaum would let them.¹²¹⁶

Margolis said he called Heymann, who told Margolis he firmly opposed the new Nussbaum plan.¹²¹⁷ Margolis said Heymann then spoke with Nussbaum on the telephone,¹²¹⁸ and following their conversation Nussbaum said he would think about the arguments and make a final decision.¹²¹⁹ Margolis and Adams went downstairs to wait.¹²²⁰

Heymann said he received a call from Margolis who explained Nussbaum's plan.¹²²¹ Heymann next spoke to Nussbaum and the conversation became "heated."¹²²² Heymann remembered telling Nussbaum "I thought it was very foolish, and, above all, I didn't want two

¹²¹³ *Id.* at 20.

¹²¹⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 164 (Aug. 10, 1995) (testimony of D. Margolis).

¹²¹⁵ *Id.* at 182-83.

¹²¹⁶ *Id.* at 183.

¹²¹⁷ *Id.*

¹²¹⁸ *Id.*

¹²¹⁹ *Id.* at 186.

¹²²⁰ *Id.*

¹²²¹ Heymann 6/13/95 GJ at 13.

¹²²² *Id.* at 13-14.

Justice Department employees hanging around looking as if they were playing some useful role when if all they were going to do is be sitting in the room."¹²²³ Heymann said Nussbaum said he would talk to some other people and call back.¹²²⁴

Heymann said he was worried about the "credibility of the institutions of the Department of Justice and the White House" ¹²²⁵ He wanted a procedure that respected both "the investigators' need to satisfy themselves that they were getting whatever information they ought to have, and the White House's need for protection of confidentiality of documents."¹²²⁶

Cynthia Monaco, Special Assistant and Counsel to Heymann, recorded her observations of the telephone call between Heymann and Nussbaum in notes.¹²²⁷ The notes, which Monaco said were dictated that day or a few days later,¹²²⁸ read:

Phil [Heymann] was on the phone with Bernie Nussbaum and he said: "You are messing this up very badly. I think you are making a terrible mistake." And what I took it to mean, in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents.¹²²⁹

Nussbaum said that when he met with Margolis and Adams, he told them about the

¹²²³ *Id.* at 14.

¹²²⁴ Heymann 6/13/95 GJ at 14-15; Senate Whitewater Comm. Hearing, *supra* note 408, at 47 (Aug. 2, 1995) (testimony of P. Heymann).

¹²²⁵ Senate Whitewater Comm. Hearing, *supra* note 408, at 68 (Aug. 2, 1995) (testimony of P. Heymann).

¹²²⁶ *Id.* (testimony of P. Heymann).

¹²²⁷ Monaco 7/6/95 Senate Whitewater Comm. Depo. at 70; *see* Monaco's typewritten notes (dictated after July 22, 1993) (Doc. No. 070-DC-00000149 through 152).

¹²²⁸ Monaco 7/6/95 Senate Whitewater Comm. Depo. at 73.

¹²²⁹ Monaco's typewritten notes (dictated after July 22, 1993) (Doc. No. 070-DC-00000149).

procedure he planned to use for the search:

We'll walk in together, and I will go through the files. You'll all come in with me. You will see what I'm looking at. I will describe to you what I'm looking at. I will describe to you what I'm looking at in some general terms, but I will do the looking. I may show you the first page of something or the title of something, but we'll see as it goes along and obviously if I find a suicide note or extortion note, I'll give it to you.¹²³⁰

Nussbaum said Margolis and Adams "weren't happy."¹²³¹ He testified to "a vague recollection" that somebody mentioned the procedure in which investigators would review the first page of each document,¹²³² but said he did not remember a telephone conversation with Heymann that morning.¹²³³ He maintained there was no agreement to a particular procedure on July 21, and that he did not break an agreement on the morning of July 22.¹²³⁴

D. Events between the Meeting on July 21 and the Search on July 22.

The forgoing events raised questions about why Nussbaum limited investigators' access to the documents. The Independent Counsel examined two principal areas: 1) telephone conversations before the search between Nussbaum, Hillary Clinton, Susan Thomases, and Margaret Williams; and 2) conversations the morning of July 22 between Nussbaum, McLarty,

¹²³⁰ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 170-71.

¹²³¹ *Id.* at 171.

¹²³² *Id.*

¹²³³ *Id.* at 173-74.

¹²³⁴ See Nussbaum 5/26/94 Fiske GJ at 42-43 (Nussbaum said he came up with what he thought to be a "fair and balanced procedure" which was "made explicit" during discussions with the Park Police and Margolis); Nussbaum 6/13/95 GJ at 180; Senate Whitewater Comm. Hearing, *supra* note 408, at 113 (Aug. 9, 1995) (testimony of B. Nussbaum); Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 117; Nussbaum 7/13/95 Senate Whitewater Comm. Depo. at 462-63; Nussbaum 6/8/95 Int. at 12; Nussbaum 7/8/94 Fiske Int. at 2-3.

Jack Quinn (then Chief of Staff to the Vice President), Burton, Lindsey, and Neuwirth.

1. Telephone Conversations before the July 22 Morning Meeting of Nussbaum, Margolis, and Adams.

Records show the following pertinent telephone calls and events between 5:00 p.m. July 21 and 10:00 a.m. on July 22:¹²³⁵

July 21

TIME	ACTIVITY
5:00 p.m. (approx.)	Meeting among Nussbaum, Neuwirth, Sloan, Margolis, Adams, and perhaps others
7:45 p.m.	Twelve-minute call made from Dorothy Rodham's residence in Little Rock to Bruce Lindsey's office ¹²³⁶

¹²³⁵ Analyses of telephone conversations have been aided by telephone records, which were produced to the Independent Counsel (and the Senate) during the investigation. Home telephone records for Williams's residence in Washington, D.C. and Dorothy Rodham's residence in Arkansas were produced in late 1994. White House pager records were produced to the Independent Counsel in June 1995. Thomases produced phone records in July 1995 and December 1995. All of the records were not available, however, when some witnesses were questioned at earlier stages of the investigation. Some witnesses were recalled by the Senate and/or the grand jury to answer questions about phone tolls produced at later stages. See Certified Records of Regularly Conducted Business Activity form from Bell Atlantic to Law Enforcement Liaison Unit to the Independent Counsel's Office re: production of M. Williams's phone records (Dec. 16, 1994) (Doc. No. 055-DC-00000001); Fax Transmission from Southwestern Bell to Brett M. Kavanaugh, Associate Independent Counsel re: production of Dorothy Rodham's phone records (Nov. 11, 1994) (065-DC-00000001); Production letter from Miriam R. Nemetz, Associate Counsel to the President, to Mark H. Tuohey III, Deputy Independent Counsel, re: production of White House phone records (May 3, 1995) (210-DC-00002252 through 53); Production letter from Miriam R. Nemetz, Associate Counsel to the President, to Brett M. Kavanaugh, Associate Independent Counsel, re: production of White House pager records (Aug. 25, 1995) (210-DC-00005139 through 40); Letter from Benito Romano, Susan Thomases's attorney, to Brett M. Kavanaugh, Associate Independent Counsel, re: production of Thomases's phone records (Dec. 22, 1995) (387-DC-00000001).

¹²³⁶ Dorothy Rodham's phone records (bill dated Aug. 3, 1993) (Doc. No. 065-DC-00000010).

TIME	ACTIVITY
9:11 p.m.	Thomases exits White House compound (entry at 2:51 p.m.) ¹²³⁷
9:23 p.m.	Two-minute call from Thomases's cellular phone to Maggie Williams's home residence ¹²³⁸
11:00 p.m.	One-minute call charged to Thomases's calling card from Thomases's hotel in Washington to Dorothy Rodham's residence ¹²³⁹

July 22

TIME	ACTIVITIES
7:43 a.m.	Nussbaum arrives at White House compound ¹²⁴⁰
7:44 a.m.	Seven-minute call from Maggie Williams's residence to Dorothy Rodham's residence ¹²⁴¹
7:57 a.m.	Three-minute call from Dorothy Rodham's residence to Thomases's hotel in Washington, D.C. ¹²⁴²
8:01 a.m.	Page for Nussbaum: "PLS CALL SUSAN THOMAS[E]S AT 202 659-8787" ¹²⁴³
8:25 a.m.	Four-minute call, charged to Thomases's calling card, from Thomases's hotel in Washington, D.C. to Dorothy Rodham's residence ¹²⁴⁴

¹²³⁷ White House gate records (July 21, 1993) (Doc. No. 211-DC-00000926); White House gate records (July 21, 1993) (Doc. No. 211-DC-00000984).

¹²³⁸ Thomases's cellular phone records (bill dated Aug. 20, 1993) (Doc. No. 387-DC-00000160).

¹²³⁹ Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000151).

¹²⁴⁰ White House gate records (July 22, 1993) (Doc. No. 211-DC-00000908).

¹²⁴¹ M. Williams's phone records (bill dated Aug. 29, 1993) (Doc. No. 055-DC-00000008).

¹²⁴² Dorothy Rodham's phone records (bill dated Aug. 3, 1993) (Doc. No. 065-DC-00000010).

¹²⁴³ Nussbaum's White House pager records (July 22, 1993) (Doc. No. 210-DC-00002648).

¹²⁴⁴ Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-

TIME	ACTIVITIES
9:00 a.m.	Message for Maggie Williams at White House from Thomases: "call when you get in the office" ¹²⁴⁵

This sequence of telephone calls led to an inquiry into whether Williams, Hillary Clinton and Thomases tried to persuade Nussbaum to keep investigators from viewing materials in Foster's office, and, if so, why.

a. July 21: Evening Discussions.

Thomases was in the White House the afternoon of July 21 when Margolis and Adams said they reached agreement with Nussbaum to review the materials in Foster's office on July 22. White House records show she entered the compound at 2:51 p.m. and left at 9:11 p.m.¹²⁴⁶

Thomases said she was at the White House on the afternoon and evening of July 21 to visit with friends about Foster's death.¹²⁴⁷ She talked with the President and "some of the young people" who worked for Mrs. Clinton.¹²⁴⁸ She "assume[d]" that she saw Mack McLarty.¹²⁴⁹ Thomases first testified that she could "not with certainty" say whether she saw Williams on July

00000151).

¹²⁴⁵ M. Williams's phone message slip (July 22, 1993) (Doc. No. 210-DC-00003437).

¹²⁴⁶ White House gate records (July 21, 1993) (Doc. No. 211-DC-00000984); White House gate records (July 21, 1993) (Doc. No. 211-DC-00000926). Mr. Fiske's office was told by the Secret Service the White House gate records do not necessarily show all entries and exits, so it is possible that Thomases left and reentered the White House between 2:51 p.m. and 9:11 p.m. See Imbordino 6/8/94 Fiske Int. at 1-2.

¹²⁴⁷ Thomases 7/7/95 GJ at 43.

¹²⁴⁸ Thomases 9/9/94 Int. at 40, 43 (sworn testimony).

¹²⁴⁹ Thomases 7/7/95 GJ at 43.

21,¹²⁵⁰ later she said she did remember seeing Williams that day.¹²⁵¹

Thomases remembered a conversation with Williams on July 21 "about emotions, but she did mention in that initial conversation I had with her, as I recollect it, that she had gone into Vince's office and had found -- had seen, not found but seen Patsy Thomasson there, and Patsy was there to look for a note."¹²⁵² Thomases said she did not think she had a private conversation with Nussbaum on July 21,¹²⁵³ yet she did not think the search was discussed while she was at the White House on July 21.¹²⁵⁴ She testified the possibility of an investigation "just wasn't on my radar screen" on July 21.¹²⁵⁵

Thomases said she had "no specific recollection" of speaking with Mrs. Clinton on July 21.¹²⁵⁶ Toll records show a one-minute call to Dorothy Rodham's residence at 11:00 p.m. charged to Thomases's credit card.¹²⁵⁷ Thomases testified, "I have reason to believe that some time late in that day before I went to bed, I tried to reach her. I don't know whether I was successful."¹²⁵⁸ In her Senate deposition, Thomases was asked whether she could be "certain under oath" that she

¹²⁵⁰ Thomases 9/9/94 Int. at 43 (sworn testimony).

¹²⁵¹ Thomases 7/7/95 GJ at 42.

¹²⁵² Senate Whitewater Comm. Hearing, *supra* note 408, at 111 (Aug. 8, 1995) (testimony of S. Thomases).

¹²⁵³ Thomases 7/7/95 GJ at 43.

¹²⁵⁴ *Id.*

¹²⁵⁵ Thomases 9/9/94 Int. at 42 (sworn testimony).

¹²⁵⁶ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 69.

¹²⁵⁷ Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000151).

¹²⁵⁸ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 69.

did not discuss concerns with Mrs. Clinton about the examination of Foster's office's contents on July 21.¹²⁵⁹ Thomases answered, "I can't swear unequivocally because I don't have any memory about any -- about the fact that I did have a conversation or what the conversation was about."¹²⁶⁰

Williams testified that she thought Thomases stopped by her office at the White House July 21.¹²⁶¹ Williams said, "I don't remember talking to her about the Park Police searching the office as a focus of any conversation that we had."¹²⁶² She said Thomases was worried and sad: "She was like everybody else trying to figure out why he had killed himself."¹²⁶³ Williams said she spoke with Mrs. Clinton once on July 21, but not about the search.¹²⁶⁴

Williams was questioned in the grand jury about the two-minute call from Thomases's cellular phone to Williams's residence at 9:23 p.m. on July 21, twelve minutes after Thomases left the White House.¹²⁶⁵ Williams said she did not remember this phone call from Thomases.¹²⁶⁶

Thomases also was asked about the call and said she did not remember it.¹²⁶⁷ When asked whether she may have left a message about Foster's office, Thomases thought it was "unlikely" and responded, "I have no memory at this period of time talking to anybody about Mr. Foster's

¹²⁵⁹ *Id.* at 101.

¹²⁶⁰ *Id.*

¹²⁶¹ M. Williams 6/2/95 GJ at 30-31.

¹²⁶² *Id.* at 31.

¹²⁶³ *Id.*

¹²⁶⁴ *Id.* at 30.

¹²⁶⁵ M. Williams 4/23/96 GJ at 14-15.

¹²⁶⁶ *Id.* at 17.

¹²⁶⁷ Thomases 5/2/96 GJ at 30.

office, except when I talked to Bernie Nussbaum the next day."¹²⁶⁸

b. July 22: Telephone Traffic.

The timing and duration of telephone calls on Thursday morning raised a question about whether there was a relationship between the calls and the search. This concern was sharpened by Associate Counsel Stephen Neuwirth's testimony about a phone conversation between Nussbaum and Thomases on July 22.¹²⁶⁹ Neuwirth said Nussbaum told him about the conversation before the search on July 22.¹²⁷⁰ Neuwirth said his "impression" was that Thomases had told Nussbaum that Mrs. Clinton was concerned about the search.¹²⁷¹

Neuwirth was questioned about the precise nature of this "impression":

Q. Do you have any recollection of the substance of what Mr. Nussbaum told you?

A. I walked away from what Mr. Nussbaum told me feeling what I say here that I felt. And I can't tell you what's -- I can't tell you that Mr. Nussbaum said to me, "Susan Thomases told me the First Lady is worried about this." What I can tell you is that that was the impression I had, based on whatever it was that Mr. Nussbaum told me.

....

A. . . . I would not have had that impression if it didn't reflect the substance of what I was told. All I was trying to do was make clear that I can't tell you that Bernie said exactly this to me. It was just what I took from the conversation we'd had.

Q. But you infer from the fact you had this impression based solely on what

¹²⁶⁸ Id. at 31-32.

¹²⁶⁹ Neuwirth 2/28/95 GJ at 97.

¹²⁷⁰ Id.

¹²⁷¹ Id.

he told you that that is the substance of what he told you -- is that fair?

A. I mean, it's fair that the substance of what he told me caused me to have this impression. I just can't tell you that he said this specific thing to me.

....

Q. And do you have a specific recollection that he mentioned the First Lady in that conversation?

A. Well, I don't remember exactly what he said. It would surprise me if he hadn't, if I got this impression. But again, I just cannot confirm for you what exact words he used or who he specifically mentioned.

Q. It would surprise you, though, if you had extrapolated, shall we say, to include the First Lady, if he had not mentioned her?

A. That's correct. But again, I can't tell you with certainty that he did.¹²⁷²

Neuwirth offered a slightly different description of the conversation to the Senate Committee in July 1995. Asked what Nussbaum told him about his conversation with Thomases, Neuwirth answered:

Again, while I don't remember his exact words, in a very brief discussion, my understanding was that Mr. Nussbaum felt that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office.¹²⁷³

Neuwirth also said he was "not sure" whether the conversation took place before the search: "I think it may have been but I'm not positive."¹²⁷⁴

¹²⁷² Neuwirth 4/2/96 GJ at 57-58, 63 (emphasis added).

¹²⁷³ Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 112 (emphasis added).

¹²⁷⁴ *Id.* at 111.

i. Bernard Nussbaum.

Nussbaum said Thomases mentioned Foster's office search in a conversation around July 22;¹²⁷⁵ Nussbaum said Thomases told him other people were concerned about the procedure used to search Foster's office.¹²⁷⁶

Although Nussbaum's testimony did not make clear whether he discussed the search with Thomases before the search, after the search, or both, Thomases said Nussbaum spoke with her about the search before it took place.¹²⁷⁷ Sloan told Mr. Fiske's office he remembered Nussbaum speaking with Thomases about the search on the telephone shortly after the search concluded.¹²⁷⁸

In the grand jury on June 13, 1995, Nussbaum said:

- A. . . . I remember one conversation with Susan Thomases which took place after the search. But there may have been two. If she remembers two, there could have been two. But they were both the same, didn't make any difference if there was one or two.

The comment -- she would say to me, "What are you doing, and why are you doing it?" The same kind of thing [Bill] Burton would say to me. And I would say, "This is what I'm doing, and this is why I'm doing it, and I'm going to do it." And so -- and she would just say, "Okay, I'm just -- I'm just asking, because I know there is some discussion going on in the White House as to what you are doing, and why you are doing it, and how you are doing it."

. . . .

I had two such conversations -- I had one such conversation, I remember, with Susan Thomases. It could have been two. I recall it being afterward

¹²⁷⁵ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 139.

¹²⁷⁶ *Id.* at 142.

¹²⁷⁷ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 71-72.

¹²⁷⁸ Sloan 7/7/94 Fiske Int. at 2.

which I said this to her, that it has been done in this fashion, this is the reason we did it. But it was possible I had one before and one after.

Q. She didn't say that she had talked to the First Lady and -

A. No, she just said she understood there were conversations going on in the White House with respect to some people just wanted to know what I was doing, and what I wasn't doing. Something like that. She said people, or something like that.

I didn't ask her whether she talked to the First Lady, she didn't tell me she talked with the First Lady. . . .¹²⁷⁹

Nussbaum testified in his Senate deposition that although he remembered having the conversation with Thomases before the search, it could have been after.¹²⁸⁰ Shown a record showing he was paged to call Susan Thomases at 8:01 a.m. on July 22, Nussbaum concluded he spoke with her before the search, but said he could not remember the conversation.¹²⁸¹

He also said Thomases told him that people were concerned about the procedure and the invasion of people's privacy;¹²⁸² yet, she did not specifically identify the First Lady as one of those who was concerned.¹²⁸³ Nussbaum said, "No, it wasn't my impression that she was referring to the President or the First Lady specifically. It wouldn't surprise me. I mean, Susan talks to a lot of people."¹²⁸⁴

Sloan told Mr. Fiske's office that he remembered a telephone conversation between

¹²⁷⁹ Nussbaum 6/13/95 GJ at 194-95 (emphasis added).

¹²⁸⁰ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 139.

¹²⁸¹ *Id.* at 155-56.

¹²⁸² *Id.* at 142-43.

¹²⁸³ *Id.* at 141-42.

¹²⁸⁴ *Id.* at 144.

Nussbaum and Thomases after the search was done.¹²⁸⁵ Sloan said while he and Nussbaum were in Foster's office, Nussbaum "was on the telephone with SUSAN THOMASES and relating the procedure that had been followed during the search of the FOSTER's office."¹²⁸⁶

In a Senate deposition, Neuwirth testified that he understood from Nussbaum that "Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office."¹²⁸⁷ When asked if he made this comment to Neuwirth, Nussbaum testified,

I don't have any memory of Susan Thomases mentioning the First Lady to me in this conversation. I do remember her saying what I said, that people were concerned. Now, is it possible that I extrapolated after that conversation and said something to Neuwirth along those lines? I guess it's possible that I did that. I'm not saying if Neuwirth has testified or says that, I have no memory of that.¹²⁸⁸

Nussbaum said he assumed the First Lady's view would be "that permitting unfettered access to a lawyer's office is not proper. That was my assumption. It was not the result of any conversation with her."¹²⁸⁹ He did not discuss the First Lady's view with Thomases.¹²⁹⁰

ii. Susan Thomases.

In her first appearance before the grand jury, Thomases was shown the records of her 7:57 a.m. call from Dorothy Rodham's residence in Little Rock, Arkansas to Thomases's hotel in

¹²⁸⁵ Sloan 7/7/94 Int. at 2.

¹²⁸⁶ *Id.*

¹²⁸⁷ Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 112.

¹²⁸⁸ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 146.

¹²⁸⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 17 (Aug. 9, 1995) (testimony of B. Nussbaum).

¹²⁹⁰ *Id.*

Washington, D.C., and then the 8:01 a.m. page from Thomases to Nussbaum.¹²⁹¹ She testified, "I don't remember having a conversation with the First Lady about any documents ... [o]r the search of the office."¹²⁹² Thomases claimed she did not remember the 7:57 a.m. call, but assumed that she reported to Mrs. Clinton on the President's and Williams's states of mind.¹²⁹³

Thomases said she had "no recollection" of paging Nussbaum, but added, "I don't know that I didn't."¹²⁹⁴ When asked whether she conveyed to Nussbaum a concern by Mrs. Clinton that investigators not have unfettered access to Foster's office, Thomases testified, "I don't remember having that conversation I don't remember her articulating that concern, and I don't remember having that conversation with Bernie."¹²⁹⁵

In a deposition conducted by the Senate Whitewater Committee, Thomases again said, "I have no recollection of talking to Mrs. Clinton about the contents of Vince Foster's office."¹²⁹⁶ Testifying before the Senate Whitewater Committee hearing on August 8, 1995, Thomases said she firmly believed that she had no such conversation with Mrs. Clinton: "I'm absolutely firm that had she discussed documents with me at this time, I would have noticed it."¹²⁹⁷

Thomases consistently testified that she had a conversation with Nussbaum on July 22 in

¹²⁹¹ Thomases 7/7/95 GJ at 45. Record of the 8:25 a.m. call from Thomases's guesthouse to Dorothy Rodham's residence had not yet been produced.

¹²⁹² Id. at 45 (emphasis added).

¹²⁹³ Id.

¹²⁹⁴ Id.

¹²⁹⁵ Id. (emphasis added).

¹²⁹⁶ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 83.

¹²⁹⁷ Senate Whitewater Comm. Hearing, supra note 408, at 180 (Aug. 8, 1995) (testimony

which Nussbaum described the procedure he was going to use for the review of Foster's office.¹²⁹⁸

Thomases said Nussbaum, not she, raised the topic.¹²⁹⁹ She said Nussbaum called her and said there was an investigation and the investigators wanted to go through the documents in Foster's office.¹³⁰⁰ Nussbaum implied that he was not going to let the investigators see the documents.¹³⁰¹ Thomases said this conversation took place before the meeting with the Justice Department, the Park Police, and the FBI about the office's search.¹³⁰²

Thomases gave similar testimony in a Senate deposition.¹³⁰³ Thomases told Nussbaum it sounded like he had thought through the search carefully, and she wished him luck because she knew it would be emotionally difficult.¹³⁰⁴

Thomases again testified about the Nussbaum conversation before the Senate Whitewater Committee on August 8, 1995. She said she had wanted to speak with him to find out how he was doing, but Nussbaum was focused on the documents in Foster's office and raised the

of S. Thomases) (emphasis added).

¹²⁹⁸ Thomases 7/7/95 GJ at 43-44; Thomases 5/2/96 GJ at 43; Thomases 9/9/94 Int. at 54 (sworn testimony); Thomases 7/17/95 Senate Whitewater Comm. Depo. at 71-72; Senate Whitewater Comm. Hearing, *supra* note 408, at 62-64 (Aug. 8, 1995) (testimony of S. Thomases).

¹²⁹⁹ Thomases 5/2/96 GJ at 43-44. She first mentioned this conversation in a sworn interview with this Office on September 9, 1994. *See* Thomases 9/9/94 Int. at 55 (sworn testimony).

¹³⁰⁰ Thomases 9/9/94 Int. at 55 (sworn testimony).

¹³⁰¹ *Id.* at 56.

¹³⁰² *Id.*

¹³⁰³ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 71.

¹³⁰⁴ *Id.* at 78.

subject.¹³⁰⁵ He said he was going to give Foster's personal documents to his wife's lawyer, the Clintons' documents to their lawyer, protect the Presidential papers and redistribute the work on White House matters.¹³⁰⁶ Thomases told him it "made sense" to her, and did not express any view that there should be limits placed on what the law enforcement people were allowed to see.¹³⁰⁷

In light of Nussbaum's admission that Thomases told him that "people [were] concerned" about the procedure he planned to use for the search,¹³⁰⁸ Thomases was asked in her Senate deposition about her conversations with people other than Nussbaum about the search.¹³⁰⁹ She said she did not remember discussing the procedure to review the documents in Foster's office with anyone before discussing it with Nussbaum.¹³¹⁰ She also did not remember expressing any concerns over the search, nor anyone else expressing their concerns to her.¹³¹¹

At the time of Thomases's Senate deposition and her first appearance before the Senate Whitewater Committee in August 1995, the Committee did not yet have the records showing the 7:57 a.m. call from Dorothy Rodham's residence to Thomases. In her Senate appearance, Thomases, who by that time had already been asked in the secrecy of grand jury proceedings

¹³⁰⁵ Senate Whitewater Comm. Hearing, *supra* note 408, at 64-65 (Aug. 8, 1995) (testimony of S. Thomases).

¹³⁰⁶ *Id.* at 64-66.

¹³⁰⁷ *Id.* at 66-67.

¹³⁰⁸ *See* Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 142.

¹³⁰⁹ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 95-96.

¹³¹⁰ *Id.* at 96.

¹³¹¹ *Id.* at 96-97.

about the July 22 call at 7:57 a.m.,¹³¹² said she thought she had spoken to Mrs. Clinton on July 22 earlier than that evening at 7:12 p.m.¹³¹³ (the time of the telephone toll record that the Committee did then have). Thomases believed that she spoke with Mrs. Clinton about whether Thomases would be able to attend the funeral in Arkansas.¹³¹⁴ Thomases said, "After that call, I really don't think I spoke to her until the following week."¹³¹⁵

The Senate Whitewater Committee subsequently received the telephone records showing the 7:44 a.m. call from the Williams's residence to Dorothy Rodham's residence, and the 7:57 a.m. call from Dorothy Rodham's residence to Thomases's in Washington, D.C. The Senate asked about those records, including the 8:01 a.m. page to Nussbaum from Thomases.¹³¹⁶ Thomases testified there was no relationship between the 7:57 a.m. call from Mrs. Clinton and the subsequent 8:01 a.m. page to Nussbaum,¹³¹⁷ saying that she wanted to reach her friend, Nussbaum, to see how he was doing. She simply was trying to reach him before she started her busy day at work.¹³¹⁸

After the hearing on November 2, 1995, the Senate Whitewater Committee and the

¹³¹² See Thomases 7/7/95 GJ at 45.

¹³¹³ Senate Whitewater Comm. Hearing, *supra* note 408, at 205-06 (Aug. 8, 1995) (testimony of S. Thomases).

¹³¹⁴ *Id.* at 206.

¹³¹⁵ *Id.*

¹³¹⁶ Senate Whitewater Comm. Hearing, *supra* note 408, at 20-21 (Nov. 2, 1995) (testimony of M. Williams); Senate Whitewater Comm. Hearing, *supra* note 408, at 84-87 (Dec. 18, 1995) (testimony of S. Thomases).

¹³¹⁷ Senate Whitewater Comm. Hearing, *supra* note 408, at 57-58 (Dec. 18, 1995) (testimony of S. Thomases).

Independent Counsel's Office received the telephone record for the four-minute July 22 call at 8:25 a.m. from Thomases's in Washington, D.C. to Dorothy Rodham's residence in Little Rock.¹³¹⁹ The Committee and the Independent Counsel called Thomases back for additional testimony. Thomases again testified that she did not believe she talked to Mrs. Clinton about the search before it happened: "I do not ever remember discussing the documents with the First Lady."¹³²⁰ Thomases said she only remembered one call with Mrs. Clinton on that day, and did not even know whether she spoke with Mrs. Clinton during the 7:57 a.m. call.¹³²¹

Thomases was questioned once again about the 7:57 a.m. call in a subsequent grand jury appearance in May 1996. Although she did not dispute the phone records, Thomases said she was not sure she even received the 7:57 a.m. call from Dorothy Rodham's residence.¹³²² Thomases said she only remembered speaking with Mrs. Clinton once on July 22.¹³²³

iii. Maggie Williams.

Maggie Williams testified that she did not speak with Mrs. Clinton about the search before July 22.¹³²⁴ In a sworn interview with this Office on October 28, 1994, Williams said it could be possible that the conversation may have happened, though she did not remember any

¹³¹⁸ *Id.* at 58.

¹³¹⁹ Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000151).

¹³²⁰ Senate Whitewater Comm. Hearing, *supra* note 408, at 45 (Dec. 18, 1995) (testimony of S. Thomases).

¹³²¹ *Id.* at 84-87.

¹³²² Thomases 5/2/96 GJ at 38-39.

¹³²³ *Id.* at 38.

conversation with Mrs. Clinton about the search.¹³²⁵ To her it seemed that everyone was discussing it.¹³²⁶

In later testimony before the grand jury on June 2, 1995, Williams said definitively that Mrs. Clinton did not communicate her views on the search and no one had asked her to find out Mrs. Clinton's view.¹³²⁷

In a Senate deposition on July 7, 1995, Williams again allowed for the possibility that she discussed the search with Mrs. Clinton: "I don't remember it coming up. But I don't -- I don't remember it coming up. If it came up, it wouldn't surprise me. But I don't remember it coming up."¹³²⁸

After Williams's July 1995 testimony, the Senate Committee obtained telephone records showing the 7:44 a.m. call from the Williams's residence to Dorothy Rodham's residence on July 22. Williams said although she remembered making the call, she did not remember who she spoke with or the conversation's substance.¹³²⁹

Williams also was questioned in the grand jury about the phone call to the Rodham residence in Arkansas. She testified she was not sure whether she spoke with Mrs. Clinton, her

¹³²⁴ M. Williams 4/23/96 GJ at 22.

¹³²⁵ M. Williams 10/28/94 Int. at 6-7 (sworn testimony).

¹³²⁶ *Id.* at 7.

¹³²⁷ M. Williams 6/2/95 GJ at 30.

¹³²⁸ M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 73.

¹³²⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 19-22 (Nov. 2, 1995) (testimony of M. Williams).

mother, Mrs. Rodham, or Capricia Marshall.¹³³⁰ Williams said, "The first time that I recall talking to Mrs. Clinton about anything having to do with documents in Vince Foster's office, as I have testified, was on Thursday [July 22] -- sometime Thursday afternoon. Before that, documents were just not on my mind, quite frankly."¹³³¹

iv. Hillary Rodham Clinton.

Mrs. Clinton testified that she did not remember discussing the search with Thomases or Williams the morning of July 22. Mr. Fiske first addressed the subject without the aid of telephone records:

Q. Did you ever express any concern to anyone about the Park Police having direct access to documents in Mr. Foster's office?

A. You know, I don't remember what I expressed concern about, but I'm sure I expressed a lot of concerns to a lot of people about what was to me an overwhelmingly awful experience. And I don't remember what I said about anything. But I don't remember saying anything about the Park Police to anybody that I remember now.

Q. But the specific question was whether you ever expressed any concern about the Park Police seeing the documents that were in Mr. Foster's office.

A. Not that I remember, no.¹³³²

On July 22, 1995, Mrs. Clinton was questioned about records showing the 7:44 a.m. call from Williams's home to Dorothy Rodham's residence, the 7:57 a.m. call from Dorothy Rodham's residence to Thomases's in Washington, D.C., and the 8:01 a.m. page from Thomases

¹³³⁰ M. Williams 4/23/96 GJ at 19-20.

¹³³¹ *Id.* at 22.

¹³³² H. Clinton 6/12/94 Fiske Depo. at 21-22 (emphasis added).

to Nussbaum. Mrs. Clinton said she did not remember a conversation with Maggie Williams or Susan Thomases on July 22, and specifically did not remember any discussions about documents in Foster's office.¹³³³

On January 26, 1996, Mrs. Clinton appeared before the grand jury and was told about the toll record for the 8:25 a.m. call from Thomases to Dorothy Rodham's residence.¹³³⁴ Unlike her previous testimony, Mrs. Clinton said she did remember talking to Thomases and Williams about funeral arrangements and whether she should return to Washington to "see people personally," about their grief over Foster's death, how President Clinton was doing, and whether she "should call people or just wait until [she] saw them personally."¹³³⁵ She said she did not remember discussing the search.¹³³⁶

2. More Discussions at the White House.

Nussbaum said on the morning of July 22, he discussed the search with Sloan, Neuwirth, Burton, McLarty, Quinn and Lindsey.¹³³⁷ Some witnesses testified about a meeting in the late morning or mid-afternoon, between Nussbaum, Burton, Quinn, Neuwirth and Lindsey.¹³³⁸ Nussbaum said Burton, in particular, questioned the procedure.¹³³⁹ Nussbaum also said Quinn

¹³³³ H. Clinton 7/22/95 Depo. at 26-28.

¹³³⁴ H. Clinton 1/26/96 GJ at 88.

¹³³⁵ *Id.* at 89-90.

¹³³⁶ *Id.* at 91.

¹³³⁷ Nussbaum 5/13/94 Fiske Int. at 10.

¹³³⁸ *See* Neuwirth 2/28/95 GJ at 110-11 (was unsure whether the meeting occurred on July 21 or 22); Nussbaum 5/26/94 Fiske GJ at 62-65; Quinn 3/28/95 GJ at 32.

¹³³⁹ Nussbaum 6/13/95 GJ at 188.

"thought it was a mistake for me to let any law enforcement people go into Foster's office."¹³⁴⁰

Nussbaum said that he would make the decision, and "I told them we're going to do it my way."¹³⁴¹

Neuwirth, Burton, McLarty, Quinn and Lindsey all said they were involved in some discussions about the search.¹³⁴² McLarty said he did not remember having discussions with Nussbaum about the procedure for searching Foster's office.¹³⁴³ McLarty said he confirmed with Nussbaum on July 21 or July 22 that Nussbaum was responsible for the matter,¹³⁴⁴ and said he had no concern about Nussbaum's ability to handle the situation.¹³⁴⁵ McLarty said he did not remember talking to Quinn about the search until McLarty's attorney reminded him during preparation for a grand jury appearance.¹³⁴⁶

Burton testified in a Senate deposition that the morning of July 22, he discussed the procedure for searching Foster's office with Nussbaum. Burton said "[t]he discussion was about how the search would be conducted and how the White House would assert and protect the various privileges that might be unveiled by the process."¹³⁴⁷ Burton said "at some point during

¹³⁴⁰ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 180.

¹³⁴¹ *Id.* at 184.

¹³⁴² *See* Neuwirth 2/28/95 GJ at 89-91; Burton 3/22/95 GJ at 74-76; McLarty 4/25/95 GJ at 57-58; Quinn 3/28/95 GJ at 32; Lindsey 6/22/94 Fiske Int. at 3.

¹³⁴³ McLarty 4/25/95 GJ at 58.

¹³⁴⁴ *Id.*

¹³⁴⁵ *Id.* at 59.

¹³⁴⁶ *Id.* at 58.

¹³⁴⁷ Burton 7/5/95 Senate Whitewater Comm. Depo. at 81.

the morning," he had a conversation with McLarty, and "Jack Quinn of the Vice President's staff was also brought in at some point to offer his input."¹³⁴⁸ Burton said he was "fairly confident" that Neuwirth and Sloan also were involved in discussions about the search.¹³⁴⁹ Asked when these discussions took place, Burton said "morning, approaching the noon hour and possibly going into the early afternoon."¹³⁵⁰

Burton said he did not think McLarty said how the search should be conducted.¹³⁵¹ He said Lindsey "tended to be for a more conservative approach," and that Quinn, who "was kind of brought in late in the discussion . . . favored a more conservative approach as well."¹³⁵² Burton said he did not remember Mrs. Clinton being involved in those discussions.¹³⁵³

A 9:45 a.m. telephone message slip from McLarty to Burton on July 22 said "talk to him re[:] Jack Quinn (they met)."¹³⁵⁴ Quinn said that sometime July 21 or 22, McLarty told him Nussbaum was handling the search.¹³⁵⁵ Quinn said McLarty was "eager to have a second opinion as to whether or not this was being handled properly, and that he would appreciate it if I would find out what Bernie was doing and give Bernie my advice as to how it ought to be done."¹³⁵⁶

¹³⁴⁸ *Id.* at 82.

¹³⁴⁹ *Id.* at 82-83.

¹³⁵⁰ *Id.* at 83.

¹³⁵¹ Burton 3/22/95 GJ at 77-78.

¹³⁵² *Id.* at 78.

¹³⁵³ *Id.*

¹³⁵⁴ Burton phone message slips (July 22, 1993) (Doc. No. 442F-DC-00000661).

¹³⁵⁵ Quinn 3/28/95 GJ at 27.

¹³⁵⁶ *Id.*

Quinn said he firmly opposed Nussbaum's plan to permit law enforcement officers into Foster's office because many materials were privileged or classified.¹³⁵⁷ He proposed that a White House employee with the proper security clearance who he thought shared the attorney/client privilege with the President, review the materials to make sure that privileged matters, as well as national security matters, were segregated before the investigators "come in and conduct the search."¹³⁵⁸

Maggie Williams told Mr. Fiske's office she may have attended a meeting where a conversation took place between McLarty and Nussbaum about the search.¹³⁵⁹ Williams later said "I don't remember a specific conversation, but I have a feeling that either I was standing around in the conversation or sitting around in a conversation about it, but I remember executive privilege as being part of that discussion."¹³⁶⁰

In a July 1994 interview, Nussbaum "speculated that perhaps BILL BURTON had spoken with [Mrs. Clinton]."¹³⁶¹ But Nussbaum testified in the grand jury that he could not remember anyone expressing concern during the morning discussions that any documents subject to review could embarrass the President or the First Lady.¹³⁶² Nussbaum said he could not determine whether others had spoken with the President or the First Lady about Foster's office: "I mean, is

¹³⁵⁷ *Id.* at 35-36.

¹³⁵⁸ *Id.* at 39, 41-42.

¹³⁵⁹ M. Williams 5/25/94 Fiske Int. at 5.

¹³⁶⁰ M. Williams 10/28/94 Int. at 5 (sworn testimony).

¹³⁶¹ Nussbaum 7/8/94 Fiske Int. at 5.

¹³⁶² Nussbaum 5/26/94 Fiske GJ at 64.

it possible that there were discussions with the President or the First Lady? Yes, it is possible, but it wouldn't surprise me if it was. But no directions or orders were given to me to do anything other than I -- than what I determined to do."¹³⁶³

3. Susan Thomases's Multiple Phone Calls to the White House on July 22.

Telephone records show that the morning of July 22, when Nussbaum was discussing the search with others at the White House, six calls were placed from Thomases's or her secretary's phone to the White House; three to the Chief of Staff's office, and three to the First Lady's office.¹³⁶⁴ Thomases said none of these calls were about the documents in Foster's office.¹³⁶⁵ She said she called the Chief of Staff's office to reach McLarty, but was unsuccessful.¹³⁶⁶ "I was reaching out for Mack and I was anxious to speak to him because he had a very special relationship with Vince, and I wanted to talk to him. And unfortunately I do not believe that I was able, nor can I remember, that I was able to reach him that day."¹³⁶⁷ Thomases said she had "no idea" that Nussbaum was meeting with others in McLarty's office about the search, so "I did not call to interrupt or reach anybody in a meeting that I didn't know even existed."¹³⁶⁸

¹³⁶³ *Id.* at 64-65.

¹³⁶⁴ Willkie, Farr & Gallagher phone records (July 20, 1993 – Aug. 19, 1993) (Doc. Nos. 303-DC-00000004 & 11).

¹³⁶⁵ Senate Whitewater Comm. Hearing, *supra* note 408, at 61-62 (Nov. 2, 1995) (testimony of S. Thomases).

¹³⁶⁶ Senate Whitewater Comm. Hearing, *supra* note 408, at 201 (Aug. 8, 1995) (testimony of S. Thomases).

¹³⁶⁷ Senate Whitewater Comm. Hearing, *supra* note 408, at 95 (Nov. 2, 1995) (testimony of S. Thomases).

¹³⁶⁸ Senate Whitewater Comm. Hearing, *supra* note 408, at 107 (Aug. 8, 1995) (testimony of S. Thomases).

Thomases could not remember who she was trying to reach at the First Lady's office or who she spoke with during the calls.¹³⁶⁹ She said the telephone number she used was a central number she used to reach a variety of people at the White House, particularly in the First Lady's office.¹³⁷⁰ She said if she were trying to reach Maggie Williams, she usually would call Williams's direct line rather than the general number for the First Lady's office.¹³⁷¹ Other witnesses said the number Thomases used was a general number for the First Lady's office,¹³⁷² but Thomases said if she were unsuccessful in reaching Williams on her direct line, she would attempt to reach her through the general number for the First Lady's office.¹³⁷³

When pressed about who she spoke with after calling the First Lady's office on July 22, Thomases said she could not remember, as it could have been Williams, Evelyn Lieberman or anyone else who worked for the First Lady.¹³⁷⁴ Thomases did remember speaking with Williams on July 22, but not when.¹³⁷⁵

Thomases told the grand jury she did not reach McLarty that morning, and could not remember if she spoke with Burton.¹³⁷⁶ She also could not remember who she spoke to when she

¹³⁶⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 90, 98 (Nov. 2, 1995) (testimony of S. Thomases).

¹³⁷⁰ *Id.* at 128.

¹³⁷¹ *Id.* at 90.

¹³⁷² *See* Cicetti 4/16/96 GJ at 8; M. Williams 4/23/96 GJ at 23.

¹³⁷³ Thomases 5/2/96 GJ at 54.

¹³⁷⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 102, 108 (Aug. 8, 1995) (testimony of S. Thomases).

¹³⁷⁵ *Id.* at 104-05.

¹³⁷⁶ Thomases 5/2/96 GJ at 50.

called the general number for the First Lady's office.¹³⁷⁷ Thomases acknowledged for the first time that she had a brief phone conversation with Williams the morning of July 22 to find out how Williams was doing.¹³⁷⁸

Maggie Williams testified before the Senate Whitewater Committee that she remembered only one conversation with Thomases on July 22; Thomases stopped by her office and discussed whether Foster's family would receive insurance money.¹³⁷⁹ Williams could not remember speaking with Thomases by phone and did not know if any calls were directed to her, because Thomases usually called her direct line instead of the main number.¹³⁸⁰ Williams rejected any implication that the series of telephone calls from Thomases to the First Lady's office was part of "something sinister."¹³⁸¹

Williams was questioned in the grand jury about the calls. Williams did not remember speaking with Thomases by phone the morning of July 22.¹³⁸² She did not know who Thomases spoke to when Thomases called the First Lady's office three times that morning.¹³⁸³

Evelyn Lieberman, who Thomases said she might have called, was asked if she spoke

¹³⁷⁷ *Id.* at 52.

¹³⁷⁸ *Id.* at 57.

¹³⁷⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 185 (Jul. 26, 1995) (testimony of M. Williams).

¹³⁸⁰ *Id.* at 231-33.

¹³⁸¹ *Id.* at 233.

¹³⁸² M. Williams 4/23/96 GJ at 29-30.

¹³⁸³ *Id.* at 31.

with Thomases that morning. She answered, "I don't remember. I wouldn't remember."¹³⁸⁴

Lieberman said she did not remember Thomases calling her in the First Lady's office that day, but said they "could have had phone conversations, and [Thomases] could have had phone conversations with other people in the office."¹³⁸⁵ Lieberman said Thomases had regular contact with several people in the First Lady's office: Williams, Lieberman, Deputy Chief of Staff to the First Lady, Melanne Verveer and Press Secretary to the First Lady, Lisa Caputo.¹³⁸⁶ Patti Solis, the First Lady's scheduler, also claimed regular telephone contact with Thomases.¹³⁸⁷

E. The Search of Foster's Office.

After his discussions with others at the White House the morning of July 22, Nussbaum began the search. Despite his statement that he would call Heymann with his final decision on the procedure, Nussbaum did not call Heymann back.¹³⁸⁸ The search began at approximately 1:15 p.m.¹³⁸⁹

Secret Service logs show the following people present: Bernard Nussbaum, Stephen

¹³⁸⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 187 (Jul. 26, 1995) (testimony of E. Lieberman).

¹³⁸⁵ *Id.* at 251.

¹³⁸⁶ *Id.* at 252.

¹³⁸⁷ Solis 4/2/96 GJ at 14. Although Solis acknowledged a conversation with Thomases about Foster's death, she did not remember when that conversation took place. *Id.* at 30-31.

¹³⁸⁸ Heymann 6/13/95 GJ at 15; Senate Whitewater Comm. Hearing, *supra* note 408, at 48 (Aug. 2, 1995) (testimony of P. Heymann). *See* Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 176.

¹³⁸⁹ *See* Chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150); Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151); Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office," at 1 (Aug. 4, 1993).

Neuwirth, Cliff Sloan, Bill Burton, Michael Spafford, David Margolis, Roger Adams, Charles Hume, Peter Markland, Scott Salter, Dennis Condon, Paul Imbordino and Donald Flynn.¹³⁹⁰

Nussbaum sat behind Foster's desk and reviewed the files.¹³⁹¹ Neuwirth, Sloan and Burton stood behind Nussbaum while the Foster family attorney Spafford stood at the end of the desk.¹³⁹² The investigators and Justice Department lawyers gathered on the opposite side, seated on the sofa or in chairs brought in by the U.S. Secret Service.¹³⁹³

Hume said Nussbaum's review was conducted in a "very hurried and casual fashion."¹³⁹⁴ Nussbaum made three groups or "piles" of files:¹³⁹⁵ 1) files that investigators said they wanted to see; 2) Foster's personal papers, which Nussbaum intended to turn over to Spafford; and 3) "miscellaneous documents" that Nussbaum put in another pile or left in the file cabinets.¹³⁹⁶ Margolis and Adams remembered a fourth pile: Clinton family documents.¹³⁹⁷

Margolis agreed with Nussbaum the Foster personal papers should go to Spafford.¹³⁹⁸ He

¹³⁹⁰ Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

¹³⁹¹ Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office," at 1 (Aug. 4, 1993).

¹³⁹² *Id.*

¹³⁹³ *Id.* at 2.

¹³⁹⁴ *Id.*

¹³⁹⁵ *See* Flynn 4/5/94 Fiske Int. at 3.

¹³⁹⁶ *See* Nussbaum 5/26/94 Fiske GJ at 47-48, 50; Sloan 4/4/95 GJ at 74-75.

¹³⁹⁷ Margolis 6/14/95 GJ at 27; Margolis 6/8/94 Fiske Int. at 3; Adams 5/9/95 GJ at 27; Senate Whitewater Comm. Hearing, *supra* note 408, at 176-77 (August 10, 1995) (testimony of D. Margolis).

¹³⁹⁸ Margolis 6/14/95 GJ at 36-37; Senate Whitewater Comm. Hearing, *supra* note 408, at

suggested to Nussbaum that he keep the official files and the Clintons' personal files segregated temporarily to answer questions.¹³⁹⁹ Nussbaum replied that he would think about it, but that he probably would not keep custody of the personal files.¹⁴⁰⁰ The search concluded at approximately 2:49 p.m., when the Secret Service discontinued security on the door to Foster's office.¹⁴⁰¹ Flynn left the office keys with Nussbaum.¹⁴⁰²

Heymann said when he learned how the search was conducted he was "surprised, angry, and felt betrayed."¹⁴⁰³ He called Nussbaum the evening of July 22 and complained.¹⁴⁰⁴ Heymann said he asked, "Bernie, are you hiding something? Is there some terrible secret here that you're hiding?"¹⁴⁰⁵ Nussbaum replied, "[N]o, there's nothing like that. I give you my word on that, Phil. There's nothing like that."¹⁴⁰⁶ Nussbaum said he did remember having a conversation with Heymann on the evening of July 22 after the search was concluded, but did not remember

175 (August 10, 1995) (testimony of D. Margolis).

¹³⁹⁹ Margolis 6/14/95 GJ at 36; Senate Whitewater Comm. Hearing, *supra* note 408, at 176-77 (August 10, 1995) (testimony of D. Margolis).

¹⁴⁰⁰ Margolis 6/14/95 GJ at 36; Senate Whitewater Comm. Hearing, *supra* note 408, at 176-77 (August 10, 1995) (testimony of D. Margolis).

¹⁴⁰¹ See Chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150); Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No 211-DC-00000151).

¹⁴⁰² Flynn 4/5/94 Fiske Int. at 3.

¹⁴⁰³ Heymann 6/13/95 GJ at 16.

¹⁴⁰⁴ *Id.* at 16-17; Senate Whitewater Comm. Hearing, *supra* note 408, at 49-50 (Aug. 2, 1995) (testimony of P. Heymann); Heymann 7/21/95 Senate Whitewater Comm. Depo. at 91-92.

¹⁴⁰⁵ Heymann 7/21/95 Senate Depo. at 92.

¹⁴⁰⁶ *Id.*

Heymann addressing any change in procedure or being angry with him.¹⁴⁰⁷ Nussbaum said Heymann called to ask that Foster's office remain intact.¹⁴⁰⁸

F. Handling of Foster's Documents after the Search.

1. Overview.

No one created a complete index of documents in Foster's office at the time of the search on July 22.¹⁴⁰⁹ Sloan and Spafford took handwritten notes, and Markland made a couple of minor notations in his notebook.¹⁴¹⁰

Associate Counsel Cliff Sloan took possession of all documents that investigators said they wanted to review.¹⁴¹¹ The Park Police reviewed those documents on July 30.¹⁴¹² Many of Foster's White House work files remained in the office.¹⁴¹³ Nussbaum took possession of Foster's

¹⁴⁰⁷ Nussbaum 6/13/95 GJ at 216-17.

¹⁴⁰⁸ *Id.*

¹⁴⁰⁹ Deborah Gorham, Foster's secretary, said she maintained indices of the contents of the White House Counsel's Office safe, as well as, subject matter files which were kept in the outer office of the Counsel's suite. Gorham 3/17/95 Int. at 7. She also maintained an index (which she did not update as regularly) of some, but not all, of the files in Foster's office. *Id.* at 6, 8. Gorham also said she kept a duplicate index in the drawers in Foster's office, but she did not re-enter Foster's office from the time of his death until July 26. *Id.* at 6, 9.

¹⁴¹⁰ See Sloan's handwritten notes (July 22, 1993) (Doc. Nos. 033-DC-00001212 through 1241); Spafford's handwritten notes (July 22, 1993) (Doc. Nos. 296-DC-00000014 through 22); Markland handwritten notes (July 22, 1993) (Doc. No. 105-DC-00000265).

¹⁴¹¹ Sloan 4/4/95 GJ at 77; Sloan 5/11/94 Fiske Int. at 12; Nussbaum 5/26/94 Fiske GJ at 53.

¹⁴¹² Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office," at 1 (Aug. 4, 1993).

¹⁴¹³ Nussbaum 5/26/94 Fiske GJ at 54.

travel office file after the search.¹⁴¹⁴ On Monday, July 26, Steve Neuwirth indexed the files that were in Foster's office.¹⁴¹⁵ The Neuwirth index listed files, but not the documents contained within the files.¹⁴¹⁶ These files remained in the office until November 1993, when they were indexed, boxed and moved to the Old Executive Office Building by Thomas Castleton.¹⁴¹⁷

Nussbaum and Spafford said that at the conclusion of the July 22 search, a stack of Foster's personal documents was boxed up,¹⁴¹⁸ which Spafford took with him when he left that day.¹⁴¹⁹ Spafford created an index of those files,¹⁴²⁰ and later received a second box of personal items that were in Foster's office on July 26.¹⁴²¹

The stack of Clinton personal documents was taken to the White House residence on July

¹⁴¹⁴ *Id.* at 58.

¹⁴¹⁵ Neuwirth 2/28/95 GJ at 130.

¹⁴¹⁶ *See* Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc. Nos. 033-DC-00000013 through 18).

¹⁴¹⁷ Castleton 4/4/95 GJ at 68-69.

¹⁴¹⁸ Nussbaum 6/13/95 GJ at 202-03; Spafford 6/28/95 GJ at 25; Spafford 5/24/94 Fiske Int. at 3. On July 27, 1993, Spafford returned to Nussbaum a file entitled "Clinton Memos" along with a cover letter that said the file was "placed inadvertently in a box of personal items that I removed from Mr. Foster's office at your request last week." Letter from Michael L. Spafford, the Foster family's attorney, to Bernard W. Nussbaum, White House Counsel (July 27, 1993) (Doc. No. AK-DC-00000002).

¹⁴¹⁹ Spafford 6/28/95 GJ at 24; Spafford 7/11/95 Senate Whitewater Comm. Depo. at 105; Spafford 5/24/94 Fiske Int. at 3.

¹⁴²⁰ *See* Spafford's index of documents taken from Foster's office (July 22, 1993) (Nos. 296-DC-00000007 through 13).

¹⁴²¹ Spafford 6/28/95 GJ at 25; Spafford 5/24/94 Fiske Int. at 3; Letter from Bernard W. Nussbaum, White House Counsel, to Jim Hamilton, the Foster family's attorney (July 26, 1993) (Doc. No. 210-DC-00002618).

22 and then to Williams & Connolly on July 27.¹⁴²² Williams & Connolly prepared an index of those documents.¹⁴²³ Bob Barnett said the index was complete, and after the documents came to Williams & Connolly, no documents were destroyed, removed, or returned to the White House before or after the completion of the index.¹⁴²⁴

In short, three indices of Foster's office files were prepared shortly after his death. These indices did not show all files that were in Foster's office when he died. Moreover, the Neuwirth index did not list each document; it merely listed files.¹⁴²⁵

2. Collecting the Clintons' Personal Documents.

The White House Counsel's failure to catalogue, preserve, or copy Foster's documents, combined with how the documents were distributed after the July 22 search, made it impossible to establish what documents were or were not in Foster's office during the July 22 search, or

¹⁴²² M. Williams 10/28/94 Int. at 14-15, 20, 22 (sworn testimony); see Senate Whitewater Comm. Hearing, *supra* note 408, at 11 (Dec. 12, 1995) (testimony of R. Barnett).

¹⁴²³ Williams & Connolly index of the Clintons' personal files taken from Foster's office (prepared after July 27, 1993) (Doc. Nos. 325-DC-00000022 through 55). One of the files that was in the box was entitled "Whitewater Development." Excerpt from Williams & Connolly index (prepared the week after July 27, 1993) (Doc. No. 325-DC-00000028). No other files that were in the box referred or related to Madison Guaranty Savings & Loan. See Williams & Connolly index of the Clintons' personal files taken from Foster's office (prepared the week after July 27, 1993) (Doc. Nos. 325-DC-00000022 through 55).

¹⁴²⁴ Kendall & Barnett 5/6/94 Fiske Int. at 2; Senate Whitewater Comm. Hearing, *supra* note 408, at 50 (Dec. 11, 1995) (testimony of R. Barnett); Barnett 5/2/96 GJ at 50-51.

¹⁴²⁵ See Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc. Nos. 033-DC-00000013 through 18); Spafford's index of documents taken from Foster's office (July 22, 1993) (Doc. Nos. 296-DC-00000007 through 13); Williams & Connolly index of the Clintons' documents taken from Foster's office (week after July 27, 1993) (Doc. Nos. 325-DC-00000022 through 55).

when the office was sealed on July 21 -- much less when Foster died on July 20.¹⁴²⁶ That uncertainty raised questions about how the documents were handled in the hours and days following the search. The most serious questions concerned the handling of the Clintons' personal documents that were stored in the White House residence for five days before they were taken to Williams & Connolly.

After the conclusion of the search on July 22, Maggie Williams came to Foster's office to collect what she and Nussbaum identified as the Clintons' personal files.¹⁴²⁷ With Special Assistant to the White House Counsel Thomas Castleton's help, Williams brought these files to the third floor of the residence and put them in an office closet used by Mrs. Clinton.¹⁴²⁸

The search concluded around 2:49 p.m. on July 22.¹⁴²⁹ One entry in Sloan's notes from the search said "get Maggie -- go thru office -- get HRC, WJC stuff."¹⁴³⁰ At 3:05 p.m., Williams

¹⁴²⁶ As the office was not sealed on the night of July 20 and people entered the office that night, it was impossible even as of July 21 to create a definitive index of documents that were in Foster's office when he died.

¹⁴²⁷ M. Williams 6/2/95 GJ at 31-34; M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 91-92; Senate Whitewater Comm. Hearing *supra* note 408, at 300-02 (Jul. 26, 1995) (testimony of M. Williams).

¹⁴²⁸ M. Williams 6/2/95 GJ at 34-37; Williams 7/7/95 Senate Whitewater Comm. Depo. at 103; Senate Whitewater Comm. Hearing, *supra* note 408, at 305-06 (Jul. 26, 1995) (testimony of M. Williams); Castleton 4/4/95 GJ at 56; Castleton 6/27/95 Senate Whitewater Comm. Depo. at 122; Senate Whitewater Comm. Hearing, *supra* note 408, at 7-13 (Aug. 3, 1995) (testimony of T. Castleton); Gorham 6/2/95 GJ at 30-31; Tripp 6/24/95 GJ at 26 (Tripp mentioned that she could not be sure that Castleton was carrying documents).

¹⁴²⁹ Special Agent in Charge Flynn's typewritten notes (July 21-22, 1993) (Doc. No. 211-DC-00000150); Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

¹⁴³⁰ Sloan's handwritten notes (July 22, 1993) (Doc. No. 033-DC-00001239). Sloan said he had no personal knowledge whether Williams was contacted or whether documents were

received a telephone message from Burton asking her to "please call" the telephone number of the Chief of Staff's office.¹⁴³¹ At 3:08 p.m., there was a ten-minute call from Thomases's cellular telephone to the central number for the First Lady's Office.¹⁴³² At 3:25 p.m., Williams received a message from Neuwirth asking her to call him at an extension in the Counsel's suite.¹⁴³³

Williams agreed she received a call from Nussbaum around 3:00 or 4:00 p.m. about transferring the Clintons' personal files in Foster's office to their personal attorney, Bob Barnett.¹⁴³⁴ She also said after Nussbaum called her at the OEOB, but before she went to the

retrieved from the office. Senate Whitewater Comm. Hearing, *supra* note 408, at 84-85 (Aug. 3, 1995) (testimony of C. Sloan). However, in Sloan's Senate deposition, he said he learned in August 1993, that documents from Foster's office were sent to Williams & Connolly. Further, he learned in December 1993 that Williams was involved in taking documents from Foster's office. Sloan 7/7/95 Senate Whitewater Comm. Depo. at 204-05. The testimony is unclear about how he learned of these events, although he mentioned that it was possible that Williams was the source of this information. *Id.* at 210.

¹⁴³¹ M. Williams's phone message slip (July 22, 1993) (Doc. No. 210-DC-00003428). Burton, who was present at the search, said he did not remember why he called Williams. Senate Whitewater Comm. Hearing, *supra* note 408, at 76 (Dec. 13, 1995) (testimony of W. Burton). Williams, on the other hand, said she did not remember receiving a message from Burton. Senate Whitewater Comm. Hearing, *supra* note 408, at 165-66 (Jul. 26, 1995) (testimony of M. Williams).

¹⁴³² Thomases's cellular phone records (bill dated Aug. 20, 1993) (Doc. No. 387-DC-00000160). Williams testified in the grand jury that she did not remember talking to Thomases then. M. Williams 4/23/96 GJ at 33. Thomases testified in the grand jury that she did not know whom she called in the First Lady's office at 3:08 p.m. on July 22. Thomases 5/2/96 GJ at 56.

¹⁴³³ M. Williams's phone message slip (July 22, 1993) (Doc. No. 210-DC-00003427). Williams could not remember talking to Neuwirth that afternoon in her testimony. M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 111. Neuwirth did not have a memory of calling Williams that afternoon, but said Williams was "one of the people I spoke to a lot." Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 159. When asked whether it was possible that he called Williams that afternoon about documents in Foster's office, Neuwirth said, "I really don't think so." Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 159.

¹⁴³⁴ M. Williams 10/28/94 Int. at 9-10 (sworn testimony).

West Wing to collect the Clintons' personal files, she called Barnett and told him that she would have some files for Williams & Connolly to pick up.¹⁴³⁵ Williams thought Barnett must have already known the files would be coming, because he did not question her about them.¹⁴³⁶

Shortly thereafter, Williams went to the White House to meet with Nussbaum to collect the Clintons' personal files.¹⁴³⁷ When she entered the Counsel's office, she saw that "files were stacked up everywhere."¹⁴³⁸ Nussbaum told her to "look around and see if there was anything that he might have missed."¹⁴³⁹ Williams specifically remembered adding one file dealing with President Clinton's taxes to Nussbaum's collection of the Clintons' personal files.¹⁴⁴⁰

Nussbaum testified in the grand jury that he contacted Williams because he wanted her to take the records to the residence so the Clintons would have them.¹⁴⁴¹ He further testified that he told Williams to check with the Clintons to see what they wanted to do with them, although Nussbaum said he was "99 percent sure" the Clintons would want the files to go to Barnett.¹⁴⁴²

Telephone records show a ten-minute call at 5:13 p.m. on July 22 from Thomases's law office in New York to the central number at the First Lady's office.¹⁴⁴³ Thomases testified in the

¹⁴³⁵ M. Williams 6/2/95 GJ at 32.

¹⁴³⁶ M. Williams 10/28/94 Int. at 22 (sworn testimony).

¹⁴³⁷ M. Williams 6/2/95 GJ at 32-33.

¹⁴³⁸ *Id.* at 33.

¹⁴³⁹ *Id.*

¹⁴⁴⁰ *Id.* at 33-34.

¹⁴⁴¹ Nussbaum 5/26/94 Fiske GJ at 55-56.

¹⁴⁴² Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 259-60.

¹⁴⁴³ Willkie, Farr & Gallagher phone records (July 21-22, 1993) (Doc. No. 387-DC-

grand jury that she thought she spoke to Williams during this call about Williams's emotional status and whether she would be able to attend the funeral.¹⁴⁴⁴ Thomases said they did not discuss the review of documents in Foster's office or the gathering of the Clintons' personal documents with Nussbaum that afternoon.¹⁴⁴⁵ Although Williams did not remember this phone call, she did remember that she was working on the plane manifest for seating arrangements and needed to know whether Thomases was going to attend the funeral.¹⁴⁴⁶

3. The Clintons' Personal Files Go to the Residence.

Williams said after the Clintons' personal files were identified, they were put in a box,¹⁴⁴⁷ but she could not remember where the box came from or who put the files in the box.¹⁴⁴⁸

Williams said she called Barnett at Williams & Connolly after Nussbaum notified her about the documents.¹⁴⁴⁹ After gathering the documents in Foster's office she decided not to send the files to Williams & Connolly on July 22. Williams said it was getting late, so she spoke with either Barnett or his secretary, Sylvia Faison, and told them she would contact them later to pick up the documents.¹⁴⁵⁰

Barnett said he learned from Williams, sometime between Foster's death on July 20 and

00000002).

¹⁴⁴⁴ Thomases 5/2/96 GJ at 56, 59.

¹⁴⁴⁵ *Id.* at 60.

¹⁴⁴⁶ M. Williams 4/23/96 GJ at 36-37.

¹⁴⁴⁷ M. Williams 10/28/94 Int. at 20 (sworn testimony).

¹⁴⁴⁸ *Id.*

¹⁴⁴⁹ M. Williams 6/2/95 GJ at 32.

¹⁴⁵⁰ M. Williams 10/28/94 Int. at 21 (sworn testimony).

July 27, that he needed to take possession of files and assume some legal responsibility for the President and Mrs. Clinton.¹⁴⁵¹ Barnett produced to the Independent Counsel his telephone logs for July 19 through 30, 1993.¹⁴⁵² Barnett described his logs as his system of keeping track of phone calls, and that it was his practice, although not "flawless," to record each incoming and outgoing call he receives or makes.¹⁴⁵³ Barnett's telephone logs showed no telephone calls to or from Williams on Thursday, July 22 -- the date Williams said she called Barnett's office twice about the Clintons' personal documents from Foster's office.¹⁴⁵⁴ Notes taken by an attorney at the White House Counsel's office of an interview with Barnett in the summer of 1994 state "no incoming messages > [after] 3:30 on 7/22."¹⁴⁵⁵

Barnett was questioned about the absence of any record of a contact with Williams on July 22. His explanation for not having a record of the call, if one was made, was that he could not say that he wrote down every phone call he received, or that it was possible that he saw

¹⁴⁵¹ Barnett 5/2/96 GJ at 6.

¹⁴⁵² Barnett's phone logs (July 19-30, 1993) (Doc. Nos. 325-DC-00000150 through 161).

¹⁴⁵³ Barnett 5/2/96 GJ at 7-8.

¹⁴⁵⁴ Barnett's telephone logs showed that he had two contacts with Williams on July 21 (the day before the search). Barnett's phone logs (July 21, 1993) (Doc. Nos. 325-DC-00000150, 151, 153). In addition, Williams's message slips showed that Barnett tried to reach her by telephone at 8:18 a.m. and 9:05 a.m. on July 21. M. Williams's phone message slips (July 21, 1993) (Doc. Nos. 210-DC-00003451, 3450). According to a report of an interview, Barnett told the Independent Counsel that on July 21 he had general conversations with Williams about the death of Foster and about Barnett assuming the Clintons' personal legal work. Barnett 12/14/95 Int. at 5. Williams testified that on July 21, she did not speak to Barnett about documents in Foster's office. M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 80-81.

¹⁴⁵⁵ White House Counsel handwritten notes (Summer, 1994) (Doc. No. 543-DC-00000229).

Williams in person.¹⁴⁵⁶ In light of Williams's testimony that she may have talked to Barnett's secretary, Sylvia Faison, about the documents from Foster's office, Faison was questioned about that possibility. Faison was "positive" that she did not have a conversation with Williams after Foster's death about picking up documents from the White House.¹⁴⁵⁷

Williams said after she talked to Barnett's office for the second time on July 22, "I had pretty much decided I was going to take them over to the residence. So then I thought I should call Hillary and find out where she would like them put in the residence."¹⁴⁵⁸ Williams said because the files were personal and Nussbaum was moving the files out of Foster's office, she thought they should go to the residence.¹⁴⁵⁹ Williams contacted Mrs. Clinton to find out where to put them in the residence.¹⁴⁶⁰ Williams said Mrs. Clinton told her, "I think Carolyn has a closet up on the third floor that you could use to store them. You should call Carolyn."¹⁴⁶¹ Mrs. Clinton testified that she directed Williams to talk to Carolyn Huber.¹⁴⁶²

Williams said she then called Carolyn Huber, and Huber said Williams should put the documents on the third floor of the residence in a closet where she "stored stuff."¹⁴⁶³ Williams

¹⁴⁵⁶ Barnett 5/2/96 GJ at 21-22.

¹⁴⁵⁷ Faison 5/2/96 GJ at 5.

¹⁴⁵⁸ M. Williams 10/28/94 Int. at 22 (sworn testimony).

¹⁴⁵⁹ *Id.* at 22-23.

¹⁴⁶⁰ *Id.* at 25.

¹⁴⁶¹ *Id.*

¹⁴⁶² H. Clinton 7/22/95 Depo. at 24.

¹⁴⁶³ M. Williams 10/28/94 Int. at 26 (sworn testimony).

arranged to meet Huber and gain entry to the closet.¹⁴⁶⁴ Huber said Williams contacted her between 4:00 and 6:00 p.m. on July 22¹⁴⁶⁵ and said Williams told her that Mrs. Clinton had asked her to call and arrange for a box to be stored in a closet on the third floor of the residence.¹⁴⁶⁶ Huber also said she asked Williams to call her when she was ready to move the box, and she agreed to meet Williams at the elevator that goes directly to the White House residence.¹⁴⁶⁷

Williams testified that after she spoke with Huber, she arranged for a Counsel's office intern, Thomas Castleton, to carry the box with the Clintons' personal documents to the residence.¹⁴⁶⁸ White House logs show they entered the residence at 7:25 p.m. and remained until 7:32 p.m.¹⁴⁶⁹ Williams said she and Castleton met Huber on the residence's ground floor "[a]nd we went up on the elevator to the third floor. Either I had the key or Carolyn came and undid the -- unlocked the door [to the closet]."¹⁴⁷⁰ Williams said the box was put in the closet, which she then locked.¹⁴⁷¹ Williams said Huber gave her the key: "I know that I had the key and I remember I used to have a plastic key chain that I would keep on my wrist, and I remember

¹⁴⁶⁴ *Id.* at 26-27. Subsequent testimony shows this closet is located in White House residence Room 323, which was the same office used by Huber and Mrs. Clinton to store the Clinton family personal documents. See Senate Whitewater Comm. Hearing, *supra* note 408, at 16 (Aug. 3, 1995) (testimony of C. Huber); H. Clinton 1/26/96 GJ at 93.

¹⁴⁶⁵ Senate Whitewater Comm. Hearing, *supra* note 408, at 14 (Aug. 3, 1995) (testimony of C. Huber).

¹⁴⁶⁶ *Id.* at 14-15.

¹⁴⁶⁷ *Id.* at 16.

¹⁴⁶⁸ M. Williams 10/28/94 Int. at 29 (sworn testimony).

¹⁴⁶⁹ Secret Service residential movement logs (July 22, 1993) (Doc. No. 336-DC-00000849).

¹⁴⁷⁰ M. Williams 10/28/94 Int. at 31 (sworn testimony).

putting that key on my key chain."¹⁴⁷²

Huber said she retrieved the key to the closet from a desk drawer where it was stored.¹⁴⁷³ When the three arrived on the third floor, Huber said the "banker's box" was put in the closet with similar boxes already in the closet.¹⁴⁷⁴ Contrary to Williams's testimony, Huber did not say that Williams kept the key to the closet: "I locked the door, put the key back in the drawer and we went downstairs."¹⁴⁷⁵

Foster's secretary, Deborah Gorham, said she remembered Williams and Nussbaum meeting in Foster's office to collect the Clintons' personal files.¹⁴⁷⁶ Gorham said Nussbaum and Williams asked her to describe the files in Foster's office that were about the Clintons' personal and financial matters,¹⁴⁷⁷ but she did not see them packing documents.¹⁴⁷⁸ Gorham said Williams and Nussbaum later asked for help moving boxes from Foster's office,¹⁴⁷⁹ and she arranged for Castleton to assist.¹⁴⁸⁰ She testified that she witnessed Castleton carry out two boxes,

¹⁴⁷¹ *Id.* at 32-33.

¹⁴⁷² *Id.* at 33.

¹⁴⁷³ Senate Whitewater Comm. Hearing, *supra* note 408, at 16 (Aug. 3, 1995) (testimony of C. Huber).

¹⁴⁷⁴ *Id.* at 16-17.

¹⁴⁷⁵ *Id.* at 17.

¹⁴⁷⁶ Gorham 6/2/95 GJ at 30-31. Contrary to all of the other witnesses, Gorham said this happened the week after Foster's death, on about July 28. *Id.* at 30.

¹⁴⁷⁷ *Id.* at 30-31.

¹⁴⁷⁸ *Id.* at 31.

¹⁴⁷⁹ Gorham 6/23/95 Senate Whitewater Comm. Depo. at 140-41.

¹⁴⁸⁰ *Id.* at 140.

accompanied by Williams.¹⁴⁸¹

Castleton testified consistently that he carried a box or boxes of documents to the residence with Maggie Williams on July 22, 1993.¹⁴⁸² In his most recent testimony, August 8, 1995, Castleton said he did not have a clear memory about who asked him to help carry a box, and he could not remember whether he picked up the box in Williams's office or the First Lady's office.¹⁴⁸³ He said it was "possible" that he picked up the box in Foster's office or the White House counsel's suite, but his best memory was that he picked it up outside the suite.¹⁴⁸⁴

Castleton's June 9, 1994 report of interview, contains the following discussion:

Mr. CASTLETON said that MAGGIE WILLIAMS or someone else told him later that same day that the box contained personal documents belonging to the CLINTON[s] that had been held in VINCENT FOSTER's office. CASTLETON does not know exactly what was in the box nor does he recall MAGGIE WILLIAMS or anyone else advising him as to how, by whom, or when the material in the box was moved from FOSTER's office to HILLARY CLINTON's office. CASTLETON advised that he cannot even be certain who told him that the documents belonged to the CLINTON's and had previously been in FOSTER's office.¹⁴⁸⁵

In his September 15, 1994 interview, Castleton remembered that someone told him the Clintons would review the documents that he carried to the residence. He limited the possibility to three people, including Williams:

One person, whose identity CASTLETON cannot recall, told CASTLETON that

¹⁴⁸¹ Gorham 6/2/95 GJ at 31; Gorham 6/23/95 Senate Whitewater Comm. Depo. at 142.

¹⁴⁸² Castleton 4/4/95 GJ at 60-65.

¹⁴⁸³ Senate Whitewater Comm. Hearing, *supra* note 408, at 7, 9-10 (Aug. 3, 1995) (testimony of T. Castleton).

¹⁴⁸⁴ *Id.* at 8-9.

¹⁴⁸⁵ Castleton 6/9/94 Fiske Int. at 2 (emphasis added).

the box contained files which involved personal issues pertaining to the CLINTONS. This person did not say to CASTLETON, as has been reported in a Newsweek magazine article, that the files would be reviewed by the CLINTONS' personal attorney. CASTLETON was told by this person that HILLARY RODHAM CLINTON, and possibly President BILL CLINTON, would review the materials and make a determination what had to be done with them. CASTLETON cannot recall the identity of this person, but he is able to eliminate a number of people as having been the person who made this remark to him. The person was not BERNARD NUSSBAUM because he was not present. The person could have been BETSY POND, LINDA TRIPP or possibly MAGGIE WILLIAMS but was probably not DEBORAH GORHAM.¹⁴⁸⁶

In testimony before the grand jury, Castleton said "[an] individual or a group of individuals, I believe, told me directly or told me in parts that there were documents in the box or boxes."¹⁴⁸⁷ He said he was told the documents were stored in Foster's inner office, but "I don't have a specific recollection as to who told me that."¹⁴⁸⁸ He also said it was his understanding the President and Mrs. Clinton were going to sort through the documents.¹⁴⁸⁹ This understanding came from the same source that told him he was carrying documents of a personal and financial nature.¹⁴⁹⁰ Castleton could not remember the source: "I would say that at least in part it was Maggie Williams. As I said before, it could have been a group of -- or a number of individuals that could have been one, two, or three different people who told me either in whole or in part what was contained in these boxes."¹⁴⁹¹

¹⁴⁸⁶ Castleton 9/15/94 Int. at 6 (emphasis added).

¹⁴⁸⁷ Castleton 4/4/95 GJ at 58.

¹⁴⁸⁸ Id. at 60.

¹⁴⁸⁹ Id. at 63.

¹⁴⁹⁰ Id.

¹⁴⁹¹ Id. at 64-65.

In his Senate deposition, Castleton said Williams may have been the person who told him about the purpose of taking the documents to the residence.¹⁴⁹² Castleton said "[s]he said that the President or the First Lady had to review the boxes' contents to determine what was in them."¹⁴⁹³

Finally, Castleton told the Senate Whitewater Committee on August 3, 1995 that Williams said the box was going to the residence because the contents needed to be reviewed by the First Lady.¹⁴⁹⁴ Castleton said: "[M]y understanding was that they contained documents of a personal and financial nature that pertained to the First Family and they needed to be reviewed because there was an unfamiliarity with what exactly was in those files."¹⁴⁹⁵

Williams said she did not remember telling Castleton the documents were taken to the residence for review by Mrs. Clinton:

Q. Did you tell him [Castleton] that the President or the First Lady had to review the contents of the boxes to determine what was in them?

.....

A. I'm sorry; no, I don't recall. I'm sorry, I do not recall that.

Q. I want to be clear. When you say you don't recall, you mean you don't recall one way or the other?

A. It's -- I don't remember. I don't remember having a conversation with Tom Castleton other than, you know, we're going to the residence. He had to

¹⁴⁹² Castleton 6/27/95 Senate Whitewater Comm. Depo. at 139.

¹⁴⁹³ Id.

¹⁴⁹⁴ Senate Whitewater Comm. Hearing, supra note 408, at 13-14 (Aug. 3, 1995) (testimony of T. Castleton).

¹⁴⁹⁵ Id. at 25-26.

know where we were going. That was the amount of that conversation as far as I --

Q. As far as you can remember?

A. Yeah. As far as I can remember.

Q. Did you -- in your conversation with Mrs. Clinton, did Mrs. Clinton indicate to you that she or the President wanted to review the contents of the files?

A. No.

Q. No?

A. The conversation that I had with her was about putting the files some place.

Q. My question, though, to be clear, is did the First Lady tell you that she or the President wanted to personally review the contents of the files?

A. No, she did not.

Q. And that's a definite no. That's not an I don't remember?

A. I don't recall her saying that to me.¹⁴⁹⁶

Williams testified before the Senate Whitewater Committee and in a subsequent grand jury appearance that she did not tell Castleton the documents were being taken to the residence so that they could be reviewed by the President or Mrs. Clinton.¹⁴⁹⁷

¹⁴⁹⁶ M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 141-42 (emphasis added).

¹⁴⁹⁷ Senate Whitewater Comm. Hearing, *supra* note 408, at 306-07 (Jul. 26, 1995) (testimony of M. Williams); M. Williams 4/23/96 GJ at 44-45.

4. Conflicting Testimony over Whether One or Two Boxes of Documents Were Taken to the White House Residence.

Testimony differed on whether Castleton carried one or two boxes to the White House residence on July 22. Representatives of Williams & Connolly refer to "the" box they retrieved from the White House on July 27.¹⁴⁹⁸ Other witnesses said there might have been two boxes.

a. Thomas Castleton.

In his June 9, 1994 interview, Castleton said he carried one box to the residence.¹⁴⁹⁹ In his September 15, 1994 interview, Castleton also said he carried one box.¹⁵⁰⁰ In the grand jury on April 4, 1995, Castleton said, "I actually don't even recall if it was just a single box or whether it was two boxes."¹⁵⁰¹ In his Senate deposition on June 27, 1995, Castleton said when he walked into the office, he "[p]icked up a box or possibly two boxes. I don't recall exactly how many."¹⁵⁰² Before the Senate Whitewater Committee on August 3, 1995, Castleton said, "[M]y best recollection is there was one. It may have been two."¹⁵⁰³

¹⁴⁹⁸ See Senate Whitewater Comm. Hearing, *supra* note 408, at 19-20 (Dec. 11, 1995) (testimony of R. Barnett).

¹⁴⁹⁹ Castleton 6/9/94 Fiske Int. at 1.

¹⁵⁰⁰ Castleton 9/15/94 Int. at 5.

¹⁵⁰¹ Castleton 4/4/95 GJ at 58 (emphasis added).

¹⁵⁰² Castleton 6/27/95 Senate Whitewater Comm. Depo. at 132 (emphasis added).

¹⁵⁰³ Senate Whitewater Comm. Hearing, *supra* note 408, at 25 (Aug. 3, 1995) (testimony T. Castleton) (emphasis added).

b. Bernard Nussbaum.

A report of an interview of Nussbaum dated May 13, 1994 said Nussbaum "boxed" the Clintons' personal files; Castleton helped Williams carry the "items" to the residence portion of the White House; and no other documents were put into "that box" thereafter.¹⁵⁰⁴

Before the grand jury on May 26, 1994, Nussbaum described his conversation with Williams about the Clinton personal files, as follows: "It consists of a box, two boxes ultimately"¹⁵⁰⁵

According to a report of interview of Nussbaum on July 8, 1994, Nussbaum told investigators that "[e]ither he himself or he asked CLIFF SLOAN to call MAGGIE WILLIAMS into the office to take files pertaining to the First Family matters. Both WILLIAMS and NUSSBAUM looked at the files and packed them up in a box."¹⁵⁰⁶

Before the grand jury on June 13, 1995, Nussbaum testified:

Maggie and I, we take a couple of files -- it is not huge, it is like two boxes of things, and -- you know -- there is a lot of files in his office -- sent a lot of files, we take those two, we -- I take the files out, we put them in two boxes, and then she calls one of my young kids who works on my staff, like a paralegal type, and basically she instructs him what to do with them. I don't even know what she does with them. She ends up -- I find out later they end up taking them to the residence.¹⁵⁰⁷

In a Senate deposition on July 12, 1995, Nussbaum said:

I don't think we looked in very many other places, if we looked in any other place

¹⁵⁰⁴ Nussbaum 5/13/94 Fiske Int. at 12-13.

¹⁵⁰⁵ Nussbaum 5/26/94 Fiske GJ at 56.

¹⁵⁰⁶ Nussbaum 7/8/94 Fiske Int. at 5 (emphasis added).

¹⁵⁰⁷ Nussbaum 6/13/95 GJ at 213-14 (emphasis added).

at all. We looked in the credenza primarily. We identified together files which appeared to be, and which were, Clinton personal files, investments, taxes and the like, and they were put into a box -- I don't remember who put them into the box - and they were taken out of the office.¹⁵⁰⁸

During an appearance before the Senate Whitewater Committee on August 9, 1995, Nussbaum testified:

I don't recall any particular file that she picked up. I recall her looking to see if there were any additional personal files. I don't remember if she spotted any additional personal files. In any case, this was fairly brief. I don't remember how long it was, but she was there a little while, and then we collected the files that I had pointed out, and they were put in a box, and ultimately taken to the residence.¹⁵⁰⁹

On May 7, 1996, Nussbaum was asked about the discrepancies in his testimony, and he said, "It was either one box, obviously, or two boxes. To this day, I don't remember, you know, which it was."¹⁵¹⁰

c. Deborah Gorham.

Gorham said Williams took files from a drawer in Foster's office, and "[i]t was packed up in two boxes with the help of TOM CASTLETON."¹⁵¹¹

In a later interview, Gorham said she was present in Foster's office with Williams and Nussbaum when they reviewed the Clintons' personal files.¹⁵¹² Nussbaum called Gorham into the

¹⁵⁰⁸ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 238 (emphasis added).

¹⁵⁰⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 145-46 (Aug. 9, 1995) (testimony of B. Nussbaum) (emphasis added).

¹⁵¹⁰ Nussbaum 5/7/96 GJ at 22.

¹⁵¹¹ Gorham 4/19 & 26/94 Fiske Int. at 15.

¹⁵¹² Gorham 3/17/95 Int. at 2.

office and said the box or boxes there needed to be taken out.¹⁵¹³ The report says that "GORHAM does not now recall if there were one or two such boxes."¹⁵¹⁴ In her grand jury appearance on June 2, 1995, Gorham said she "saw two boxes being moved" by Castleton.¹⁵¹⁵ In a Senate deposition on June 23, 1995, Gorham continued to say there were two boxes removed from Foster's office and carried by Castleton.¹⁵¹⁶ During an appearance before the Senate Whitewater Committee on August 1, 1995, Gorham was asked about the movement of a box or boxes from the White House counsel's suite by Castleton, and she again said she remembered seeing two boxes.¹⁵¹⁷

d. Linda Tripp.

Tripp was asked by the Senate Whitewater Committee, on August 1, 1995, what she remembered about Castleton carrying a box or boxes from Foster's office: "My recollection is that the box or boxes were placed in front of Deb Gorham's desk. My next recollection is that Tom Castleton was physically carrying a box out of the suite."¹⁵¹⁸ Tripp also told the grand jury that it was her impression the boxes of documents were going to different locations: the

¹⁵¹³ *Id.* at 3.

¹⁵¹⁴ *Id.* (emphasis added).

¹⁵¹⁵ Gorham 6/2/95 GJ at 31.

¹⁵¹⁶ Gorham 6/23/95 Senate Whitewater Comm. Depo. at 140.

¹⁵¹⁷ Senate Whitewater Comm. Hearing, *supra* note 408, at 136 (Aug. 1, 1995) (testimony of D. Gorham).

¹⁵¹⁸ Senate Whitewater Comm. Hearing, *supra* note 408, at 21 (Aug. 8, 1995) (testimony of L. Tripp).

Clintons' attorney, the residence, and Foster's attorney.¹⁵¹⁹

5. The Boxes Taken to the Foster Family Attorneys at Swidler & Berlin.

The question of how many boxes there were was complicated by the fact that more than one box of documents was also taken to the offices of Swidler & Berlin, the Foster family attorneys. First, Michael Spafford took a box of documents from Foster's office on July 22.¹⁵²⁰ Spafford said after investigators left Foster's office, he and Sloan put personal documents of Foster's into a box.¹⁵²¹ Spafford said when he finished that process, he took the box and left the White House.¹⁵²² The following week, more personal items of Foster were sent to Swidler & Berlin in another box.¹⁵²³

6. The Box Seen by the White House Plumbing Foreman.

On February 23, 1996 this Office interviewed Gary Williams, the White House Plumbing Foreman. Williams said that on August 25, 1993, he entered the closet in Room 323, Mrs. Clinton's office.¹⁵²⁴ This was the closet where the box (or boxes) of personal documents from Foster's office went on July 22, 1993. Williams said the closet was locked, and Carolyn Huber

¹⁵¹⁹ Tripp 6/21/95 GJ at 26.

¹⁵²⁰ Spafford 6/28/95 GJ at 24; Spafford 7/11/95 Senate Whitewater Comm. Depo. at 105; Spafford 5/24/94 Fiske Int. at 3.

¹⁵²¹ Spafford 7/11/95 Senate Whitewater Comm. Depo. at 92.

¹⁵²² *Id.* at 95.

¹⁵²³ Letter from Bernard W. Nussbaum, White House Counsel, to Jim Hamilton, the Foster family's attorney (July 26, 1993) (Doc. No. 210-DC-00002618).

¹⁵²⁴ G. Williams 2/23/96 Int. at 3.

opened it for him, so that he could work on a shower in Room 324B.¹⁵²⁵ Williams saw two or three boxes with lids in the closet.¹⁵²⁶ He said the boxes were the size and type that hold Xerox paper; they were faded white in color.¹⁵²⁷

Williams said one of the boxes had the name "VINCENT FOSTER" printed in black magic marker ink approximately two inches high across the lid¹⁵²⁸ and he said the letters "JR" (for "Junior") may also have been written on the lid.¹⁵²⁹ Williams said he moved the boxes out of the closet to do his work.¹⁵³⁰ He said they were not very heavy, and he did not see the contents.¹⁵³¹ Williams put the boxes back in the closet when he was finished.¹⁵³²

Williams entered the closet again on November 2, 1993.¹⁵³³ He said he moved boxes out of the closet again.¹⁵³⁴ Williams thought the boxes were the same ones he had moved out on August 25, 1993.¹⁵³⁵ The report of his interview indicated that Williams said he remembered seeing Foster's name on a lid at least once, and he may have seen it on both occasions.¹⁵³⁶

¹⁵²⁵ *Id.*

¹⁵²⁶ *Id.*

¹⁵²⁷ *Id.*

¹⁵²⁸ *Id.*

¹⁵²⁹ *Id.*

¹⁵³⁰ *Id.* at 4.

¹⁵³¹ *Id.*

¹⁵³² *Id.*

¹⁵³³ *Id.*

¹⁵³⁴ *Id.*

¹⁵³⁵ *Id.*

¹⁵³⁶ *Id.*

On May 28, 1996, the White House was served with a grand jury subpoena for any box and/or lid located in the White House residence bearing the name "Foster."¹⁵³⁷ On May 31, 1996, the White House Counsel's Office advised by telephone that a search of the entire residence and of Carolyn Huber's East Wing office had located no responsive materials. Jane Sherburne of the Counsel's Office confirmed that result by letter dated May 31, 1996.¹⁵³⁸

7. The Return of a White House Renovation File.

This Office investigated whether the documents in the box or boxes taken to the White House residence on July 22 were reviewed by anyone before they were delivered to Williams & Connolly on July 27 and, if so, whether any were removed. As discussed above, Thomas Castleton testified he was told the documents were going to be reviewed by the Clintons or Mrs. Clinton.¹⁵³⁹ Nussbaum initially testified about the return to Foster's office of a file that was removed from the office by Nussbaum and Williams on July 22, though he later retracted his statement.¹⁵⁴⁰ Nussbaum said this file concerned the White House residence's renovation.¹⁵⁴¹ The return of a file would suggest the Clintons' personal files were reviewed by someone after they

¹⁵³⁷ Grand Jury Subpoena No. D575 (D.D.C. May 23, 1996). The date of service printed on the subpoena is May 23, 1996, but the subpoena was not served until May 28, 1996. See Letter from John D. Bates, Associate Independent Counsel, to Jane Sherburne, Associate White House Counsel (May 28, 1996).

¹⁵³⁸ Letter from Jane Sherburne, Associate White House Counsel, to John D. Bates, Associate Independent Counsel (May 31, 1996).

¹⁵³⁹ Castleton 4/4/95 GJ at 63; Castleton 6/27/95 Senate Whitewater Comm. Depo. at 139; Senate Whitewater Comm. Hearing, *supra* note 408, at 13 (Aug. 3, 1995) (testimony of T. Castleton).

¹⁵⁴⁰ Nussbaum 5/26/94 Fiske GJ at 57.

¹⁵⁴¹ *Id.*

left Foster's office. Mrs. Clinton and Williams have said they did not review the personal files before they were sent to Williams & Connolly and did not remove any such documents.¹⁵⁴²

a. Nussbaum's Testimony.

In grand jury testimony in May 1994, Nussbaum said Williams returned one of the files originally identified as a Clinton personal file:

Q. Who selected the files that were Clinton personal files?

A. Maggie and I. I mean, we looked and we selected the files. And one of the files we selected Maggie returned, because it wasn't a personal file. It was really a residence file. It looked like a personal file; it was a file concerning the residence, you know the operation of the White House, which is not a personal file. The operation of the White House residence. But we selected them. But other than that file the other files were personal files.¹⁵⁴³

In his Senate deposition testimony about the movement of the Clintons' personal files to the residence, Nussbaum again suggested a file on the White House residence was returned to the Counsel's office after it was packed up with the Clintons' personal papers and moved out of Foster's office.¹⁵⁴⁴ Nussbaum said he was not certain whether the returned file had originated in Foster's office:

Q. In the files, did you check to see whether commingled in particular files were official documents?

A. We sent over -- we did check to see whether we were sending over personal records as opposed to White House counsel records. And we

¹⁵⁴² H. Clinton 1/26/96 GJ at 101; H. Clinton 7/22/95 Depo. at 28; M. Williams 6/2/95 GJ at 38.

¹⁵⁴³ Nussbaum 5/26/94 Fiske GJ at 56-57 (emphasis added).

¹⁵⁴⁴ Nussbaum 7/13/95 Senate Whitewater Comm. Depo. at 406-07.

made an effort to send over solely personal records. And actually, one record was sent over and returned.

Q. Which record was that?

A. A record with respect to the residence, a residence file.

Q. Who returned it?

A. I think Ms. Williams returned it.

Q. When did she return it?

A. Sometime thereafter.

Q. When thereafter?

A. Within a matter of days.

Q. Before the documents went to Williams & Connolly?

A. I don't know. I don't remember at this point.

Q. But you're quite sure Ms. Williams returned the document?

A. No, I'm not quite sure Ms. Williams returned the document. I believe Ms. Williams returned the document. A residence file was returned. . . .

Q. Did Ms. Williams tell you who had made the decision to return that document?

A. No.

Q. Did she say anything about how she came to return it?

A. It's just some statement, merely that this concerns the residence. It's not really a private file, although the Clintons live in the residence -

.....

A. And consequently the documents should remain in the White House counsel's office.

.....

After conferring with counsel, Nussbaum returned and testified:

A. As I indicated in my testimony, look back at the record, I'm not certain I even had this discussion with Ms. Williams. I'm not positive. It's either Ms. Williams or Mr. Neuwirth I had a discussion with.

I remember a discussion with regard that a residence file, a file concerning the residence should remain in our office rather than be sent over as part of the Clinton personal files to the Clintons and their new personal attorneys.
And I had the discussion either with Ms. Williams or with Mr. Neuwirth. It was one of them. That's what I remember.

Q. This conversation occurred after the documents had been taken out on July 22; correct?

A. Yes.

....

Q. Who brought the file back?

A. That I don't remember. Either Ms. Williams or Mr. Neuwirth, even though they're quite distinct, one of them brought the file back.

Q. Where did they bring it back from?

A. I don't know because I wasn't there when the file was brought back, and I'm not sure it was brought back from the residence or from Ms. Williams' office where this file was. It was a residence file, and we made a determination that it was not a personal file that we should send to the Clinton's personal lawyers.

That's all that happened here. We came across a residence file which was returned to Mr. Foster's office for Mr. Neuwirth to work on in the future, just like Mr. Foster had worked on residence matters with Ms. Williams and Mr. Neuwirth.

Q. It was originally a Foster file; right?

A. No, it is a White House residence file on which Mr. Foster worked on.

Q. Which was in his office?

A. I'm not positive it was in his office. It was either in his office or Ms. Williams's office but it was a matter he worked on.

Q. But it originated in Mr. Foster's office?

A. I'm not 100 percent positive of that. It may have originated in Mr. Foster's office and gone out and was returned or it may have been in Ms. Williams' office and was put into Mr. Foster's office, but it was a residence file.¹⁵⁴⁵

When Nussbaum testified before the Senate Whitewater Committee, he said the returned file may not have come from Foster's office: "I am not positive at this point where the file was returned from. It could have been from the residence, or it could have been from Maggie's office, perhaps."¹⁵⁴⁶ When he was asked in the grand jury on May 7, 1996, why he changed his testimony between his grand jury appearance and his appearance before the Senate Committee, Nussbaum acknowledged that he "clearly was saying" in his 1994 grand jury testimony that one of the files that he and Williams gathered from Mr. Foster's office was sent out and then returned back to Mr. Foster's office.¹⁵⁴⁷ He was pressed on why he changed his testimony:

Q. Were you aware in May of 1994, when you testified in the Grand Jury, that Mrs. Williams and the Clintons were saying that the files had never been reviewed before they left the White House and went to Williams & Connolly?

A. I don't remember if I knew that in May of 1994.

Q. Did you know that as of July of '95, when you testified at the Senate?

¹⁵⁴⁵ Nussbaum 7/13/95 Senate Whitewater Comm. Depo. at 406-12 (emphasis added).

¹⁵⁴⁶ Senate Whitewater Comm. Hearing, *supra* note 408, at 185 (Aug. 9, 1995) (testimony of B. Nussbaum).

¹⁵⁴⁷ Nussbaum 5/7/96 GJ at 12.

A. Oh, yes. Yes, I knew that in July of '95.

Q. Did that fact have an impact on your recollection whether --

A. No.

Q. -- the file had been returned?

A. No, it wasn't -- it wasn't that fact that had an impact on my recollection. It was, I think, testimony -- I don't even remember the precise testimony, you know. I think it was testimony by Maggie that we had a discussion about whether or not residence files should stay in the counsel's office or be sent over to the -- to the residence. And we decided that residence files should stay in the counsel's office.

Q. But isn't it still your testimony that the file was returned from somewhere, as opposed to the file never leaving the office?

A. Yes, it's still my testimony that a file was returned from somewhere. But I'm not sure this file was necessarily the file that was in Foster's office.¹⁵⁴⁸

b. Williams's Testimony.

Williams remembered discussing with Nussbaum whether a renovation file was an office file or a Clinton personal file, but she said she did not remember returning it to him:

A. I asked about the renovation file. I asked Bernie about it, the house, the private quarters renovation file.

Q. What did you ask him?

A. I said, either, "Is that file in here with the personal ones?" or whatever.

Q. And what did he say?

A. He said, "That belongs to the office, the counsel's office. That's something we're working on." But I thought since it was, you know, in their house,

¹⁵⁴⁸ Id. at 12-15 (emphasis added).

but, you know -- so I was just trying to think of stuff that was happening.

....

Q. Was there a time that you returned a document or documents to the counsel's office or to Bernie Nussbaum, indicating that they didn't belong with the personal papers?

A. I don't remember that, but I wouldn't have done that on my own, I think.

Q. Do you remember somebody telling you to do that?

A. No. I'm just trying to think how I would decide that it wasn't -- shouldn't have been in -- I don't remember returning anything to Bernie. I do remember the discussion about a renovation file.¹⁵⁴⁹

In a subsequent Senate deposition, Williams again mentioned a discussion with Nussbaum about renovation files that took place while she and Nussbaum were sorting out the Clintons' personal files in Foster's office.¹⁵⁵⁰ Williams suggested the renovation file was sorted out from the Clintons' personal papers before they were removed from Foster's office: "I may -- I remember having a discussion with him about the renovation files. And I said should I take the renovation files, and he said no, that has to do with the White House counsel's office. So I remember that was the only discussion, and then I remember either leaving to get a box or leaving because I took a few more calls."¹⁵⁵¹

¹⁵⁴⁹ M. Williams 10/28/94 Int. at 16-17, 37-38 (sworn testimony) (emphasis added).

¹⁵⁵⁰ M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 95.

¹⁵⁵¹ Id. (emphasis added).

c. Neuwirth's Testimony.

When Neuwirth was questioned before the grand jury about the renovation file, he said he never told Nussbaum a renovation file was returned to Foster's office after having been somewhere else.¹⁵⁵² He said sometime after he made an inventory of files in Foster's office on July 26, 1993, he received documents relating to the residence's renovation from either Nussbaum or Williams, or both.¹⁵⁵³ He said he was given a large yellow envelope that contained the documents.¹⁵⁵⁴ Neuwirth said after a document request from either Mr. Fiske's office or the Independent Counsel in 1994, he gave the yellow envelope and the contents to an attorney with the White House Counsel's Office, probably Neil Eggleston.¹⁵⁵⁵

Neuwirth believed the yellow envelope that he received from Williams and/or Nussbaum contained a renovation file folder labeled "Renovation/Oval Office and Executive Residence," and loose papers about the renovation.¹⁵⁵⁶ He also believed the envelope may have contained a binder labeled "VWF Residence Renovation 1993."¹⁵⁵⁷ During this Office's investigation, the White House Counsel produced a redwell file folder that contained copies of documents relating

¹⁵⁵² Neuwirth 4/2/96 GJ at 17-18.

¹⁵⁵³ *Id.* at 10-11.

¹⁵⁵⁴ *Id.* at 11.

¹⁵⁵⁵ *Id.* at 20-21, 25. According to a memo prepared by Neuwirth on May 17, 1994, he produced the White House Renovations/Usher File to Neil Eggleston. Memo from Stephen R. Neuwirth, Associate White House Counsel, to File re: Subpoena compliance at 1 (May 17, 1994) (Doc. No. F124103).

¹⁵⁵⁶ Neuwirth 4/2/96 GJ at 11, 30-31.

¹⁵⁵⁷ *Id.* at 11, 36.

to the White House renovation.¹⁵⁵⁸ The redwell was marked with a note that the materials came from Neuwirth.¹⁵⁵⁹ The materials included documents from the file and the binder described above.¹⁵⁶⁰

A file labeled "Renovation/Oval Office and Exec. Residence" was among those listed on the index prepared by Neuwirth on July 26 of files located in Foster's office on that date.¹⁵⁶¹ The index suggested the renovation file was not removed on July 22 and returned after July 26. The evidence allowed for at least two other possibilities: 1) the file remained in Foster's office until Neuwirth created the index; or 2) the file was removed from Foster's office on July 22 and returned before Neuwirth created the index.

The renovation binder, on the other hand, was not listed on Neuwirth's index of July 26.¹⁵⁶² Neuwirth said because the binder was not listed on the index, he could not be certain whether the binder was in Foster's office on July 26.¹⁵⁶³ The last page of Neuwirth's index contained one entry for the bookcase in Foster's office: "Med Malpractice materials."¹⁵⁶⁴ There

¹⁵⁵⁸ See Letter to Mark H. Tuohey III, Deputy Independent Counsel, from Miriam R. Nemetz, Associate White House Counsel (Aug. 13, 1995) (Doc. No. 210-DC-00003538); White House Renovation binder and file (1993) (Doc. Nos. 210-DC-00003539 through 3899).

¹⁵⁵⁹ Note attached to White House Renovation binder and file (Doc. No. 210-DC-00003552).

¹⁵⁶⁰ Neuwirth 4/2/96 GJ at 30-32. See White House Renovation binder and file (1993) (Doc. Nos. 210-DC-00003539 through 3899).

¹⁵⁶¹ Excerpt from Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc. No. 033-DC-00000015).

¹⁵⁶² See *id.* (Doc. Nos. 033-DC-00000013 through 18).

¹⁵⁶³ Neuwirth 4/2/96 GJ at 36-37.

¹⁵⁶⁴ Excerpt from Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc.

were also several books and binders that were identified in Castleton's index as having been in the bookcase in Foster's office but that were not listed on Neuwirth's index.¹⁵⁶⁵

Because there was no inventory of materials in Foster's office at the time of the July 22 search by Nussbaum, it was also uncertain whether the binder was in Foster's office on July 22. One entry in Sloan's notes reads "residence renovations."¹⁵⁶⁶ Sloan said he did not know whether his notes referred to the binder labeled "VWF Residence Renovation 1993."¹⁵⁶⁷ The Office of the Independent Counsel did not locate any other file folder or binder that corresponded to Sloan's notes. The evidence thus leaves open the possibility the renovation binder was moved from Foster's office to the residence on July 22 and then returned to Foster's office -- perhaps in the yellow envelope -- after July 26.

d. The Yellow Envelope.

After Neuwirth's testimony, the Independent Counsel obtained a photocopy of the yellow envelope from the White House. Jane Sherburne said the Counsel's office discarded the original envelope in March 1995 in assembling material that was in Foster's office when he died for the

No. 033-DC-00000018).

¹⁵⁶⁵ Compare *id.* (Doc. Nos. 033-DC-00000013 through 18), with Castleton's index of documents in Foster's office (May 10, 1994) (Doc. Nos. 033-DC-00000031 through 35). Thomas Castleton prepared an index identifying the location of particular binders and files when Foster's office was finally cleaned out in late 1993. See *id.* (Doc. Nos. 033-DC-00000031 through 35). According to his index, the bookcase held binders labeled "National Performance Review," "Supreme Court candidates," "Court of Appeals nominations," "District Court Profiles: A-N & O-Z," and others, as well as books entitled "President Clinton's Economic Plan" and "NARA Act Book." See *id.* (Doc. Nos. 033-DC-00000034 and 35).

¹⁵⁶⁶ Excerpt from Sloan's handwritten notes (July 22, 1993) (Doc. No. 033-DC-00001235).

Independent Counsel to review.¹⁵⁶⁸ In an interview, Miriam Nemetz, Associate White House Counsel, said she did not know that Neuwirth had received the renovation file and binder in the yellow envelope, and therefore she did not realize the envelope had independent evidentiary significance.¹⁵⁶⁹

The photocopy of the yellow envelope has two labels. The standard address label is torn off, and neither the addressee nor the sender is legible.¹⁵⁷⁰ The second label reads as follows:

UPS SHIPPER NO.
NY 134-658
G ID# HC¹⁵⁷¹

Anthony Adkinson, Manager, Loss Prevention Department, United Parcel Service, said UPS shipping number 134-658 was assigned to the National Council of Jewish Women, ("NCJW") an organization located in New York City.¹⁵⁷²

¹⁵⁶⁷ Sloan 4/15/96 Int. at 2-3.

¹⁵⁶⁸ Letter from Jane C. Sherburne, Associate White House Counsel, to Brett M. Kavanaugh, Associate Independent Counsel (Apr. 3, 1996); Nemetz 6/11/96 Int. at 1 (Nemetz said the "we" in Sherburne's letter was actually her).

¹⁵⁶⁹ Nemetz 6/11/96 Int. at 2. Nemetz said, according to notes prepared by Jane Sherburne and Sheila Cheston of the White House Counsel's Office, Steve Neuwirth told Jane Sherburne and Sheila Cheston in July 1994 that he received these files in the yellow envelope. See *id.* at 3. Although Nemetz admitted that she had read the notes of Sherburne and Cheston before April 3, 1996, when Sherburne sent her letter, Nemetz said in her interview that she was unaware of the entry in the notes when she discarded the envelope in 1995. Nemetz 6/11/96 Int. at 3, 5.

¹⁵⁷⁰ Photocopy of yellow envelope, with UPS Shipper No. NY 134-658 G ID# HC, marked "FRAGILE" (Doc. No. AA-DC-00000006).

¹⁵⁷¹ *Id.*

¹⁵⁷² Memo from Chief Investigator Coy Copeland to Deputy Independent Counsel John Bates (Apr. 4, 1996).

Maggie Williams was questioned in the grand jury, on April 23, 1996, about her knowledge of the NCJW. She said she probably did some work with the NCJW, but she could not remember off the top of her head.¹⁵⁷³ She said she probably worked with NCJW if they had invited Mrs. Clinton to speak somewhere.¹⁵⁷⁴

e. Fingerprint Analysis.

The original renovation files were analyzed for fingerprints by the FBI laboratory. The laboratory examined 366 items and found 334 fingerprints or palm prints. None of the prints matched those of President Clinton, Mrs. Clinton, Margaret Williams, Susan Thomases, Webster Hubbell, or Marc Rolfe (of Williams & Connolly).¹⁵⁷⁵

f. The File Returned by Swidler & Berlin.

Regarding a "returned" file -- as distinct from the question of the renovation file's handling -- Barnett said his firm did not return any documents to the White House after his firm received a box of Foster documents.¹⁵⁷⁶ Swidler & Berlin, the firm representing the Foster family, did return a file to Nussbaum. On July 27, Michael Spafford returned a file to Nussbaum entitled "Clinton Memos" along with a cover letter saying the file was "placed inadvertently in a box of personal items that I removed from Mr. Foster's office at your request last week."¹⁵⁷⁷

¹⁵⁷³ M. Williams 4/23/96 GJ at 43.

¹⁵⁷⁴ Id.

¹⁵⁷⁵ Federal Bureau of Investigation Laboratory Report at 1-2 (July 15, 1996).

¹⁵⁷⁶ Barnett 5/2/96 GJ at 50-51.

¹⁵⁷⁷ Letter from Michael L. Spafford, the Foster family's attorney, to Bernard W. Nussbaum, White House Counsel (July 27, 1993) (Doc. No. AK-DC-00000002).

G. The Foster Funeral: Discussions of Documents.

The President and the First Lady, along with many White House staff members, attended Foster's funeral in Arkansas on Friday, July 23, 1993. The President flew to Arkansas from Washington on the morning of July 23,¹⁵⁷⁸ and Mrs. Clinton was already in Little Rock.¹⁵⁷⁹ Following the funeral, the Clintons flew from Little Rock to Washington late on July 23 and arrived at the White House at 12:11 a.m. on July 24.¹⁵⁸⁰

Nussbaum, Williams, Barnett, and Neuwirth also attended the funeral.¹⁵⁸¹ Nussbaum said while on Air Force One, he told Barnett that he was transferring some of the Clintons' personal documents from Foster's office.¹⁵⁸² He said he told Barnett this because he thought the Clintons would be sending them to him and he wanted Barnett to know.¹⁵⁸³

Williams testified in a sworn interview with the Independent Counsel that she, too, spoke with Barnett on July 23 about the documents that Williams had moved from Foster's office to the residence.¹⁵⁸⁴ She said she told Barnett she would get the documents to him.¹⁵⁸⁵ Neuwirth

¹⁵⁷⁸ Secret Service Presidential movement logs (July 23, 1993) (Doc. No. 337-DC-00000161).

¹⁵⁷⁹ Secret Service First Lady's movement logs (July 23, 1993) (Doc. No. 337-DC-00000144).

¹⁵⁸⁰ Secret Service Presidential movement logs (July 23, 1993) (Doc. No. 337-DC-00000161). The record actually showed a 12:11 p.m. arrival, but from context it is a misprint. Secret Service First Lady's movement logs (July 23, 1993) (Doc. No. 337-DC-00000144).

¹⁵⁸¹ See Nussbaum 5/26/94 Fiske GJ at 71; M. Williams 4/23/96 GJ at 48; Barnett 5/2/96 GJ at 24; Neuwirth 2/28/95 GJ at 127.

¹⁵⁸² Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 270.

¹⁵⁸³ *Id.* at 270-71.

¹⁵⁸⁴ M. Williams 10/28/94 Int. at 34-35 (sworn testimony).

testified in the grand jury that Barnett approached him and told him he would speak with Maggie Williams over the weekend about documents going to Williams & Connolly.¹⁵⁸⁶ When asked whether Barnett said he had spoken with anyone about the movement of documents to Williams & Connolly, Neuwirth added, "I think he had said that he had spoken to Maggie Williams."¹⁵⁸⁷

When Barnett was asked in the grand jury whether he thought he was told to pick up documents before the funeral trip, Barnett said Neuwirth's testimony that they had a conversation about the documents led him to believe he had such a previous discussion.¹⁵⁸⁸ But Barnett could not remember it.¹⁵⁸⁹

H. The Weekend.

The Clintons were in Washington, D.C. over the weekend of July 24 and 25, 1993. On the morning of Saturday, July 24, the President went to the Oval Office and attended a ceremony in the Rose Garden,¹⁵⁹⁰ while Mrs. Clinton remained in the residence.¹⁵⁹¹ The President returned

¹⁵⁸⁵ *Id.* at 35.

¹⁵⁸⁶ Neuwirth 2/28/95 GJ at 127.

Q. Why did he volunteer this information -- do you know?

A. I believe that he had been told by someone -- perhaps Maggie -- that I was someone in the counsel's office who might be picking up some of the work that Vince had been handling for the first family, and I think that he approached me because of that.

Id. at 128.

¹⁵⁸⁷ Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 162-63.

¹⁵⁸⁸ Barnett 5/2/96 GJ at 26.

¹⁵⁸⁹ *Id.* at 26-27.

¹⁵⁹⁰ Secret Service Presidential movement logs (July 24, 1993) (Doc. No. 337-DC-00000164).

to the residence at 2:15 p.m.¹⁵⁹² At 4:09 p.m., the Clintons went to the family theater.¹⁵⁹³ At 5:56 p.m., they returned to the residence.¹⁵⁹⁴ At 8:22 p.m., they left the White House for the Hotel Washington, where they remained until 10:37 p.m.¹⁵⁹⁵

On Sunday morning, July 25, the President went to the Robert Trent Jones golf club, returning to the residence at 3:40 p.m.¹⁵⁹⁶ Mrs. Clinton remained in the residence for the entire day.¹⁵⁹⁷

At 2:06 p.m. on Sunday, July 25, Williams entered the White House compound.¹⁵⁹⁸ Records show that she turned off the alarm in the First Lady's West Wing office at 2:27 p.m., and turned it on at 2:32 p.m.¹⁵⁹⁹ At 2:36 p.m., Secret Service logs show Williams entered the White House residence and went to the second floor.¹⁶⁰⁰ Once on the second floor, access to both the

¹⁵⁹¹ Secret Service First Lady's movement logs (July 24, 1993) (Doc. No. 337-DC-00000145).

¹⁵⁹² Secret Service Presidential movement logs (July 24, 1993) (Doc. No. 337-DC-00000163).

¹⁵⁹³ Id.

¹⁵⁹⁴ Id.

¹⁵⁹⁵ Id.

¹⁵⁹⁶ Secret Service Presidential movement logs (July 25, 1993) (Doc. No. 337-DC-00000167).

¹⁵⁹⁷ Secret Service First Lady's movement logs (July 25, 1993) (Doc. No. 337-DC-00000146).

¹⁵⁹⁸ White House gate records (July 25, 1993) (Doc. No. 211-DC-00000517).

¹⁵⁹⁹ Secret Service alarm records (July 25, 1993) (Doc. No. 211-DC-00000098).

¹⁶⁰⁰ Secret Service residential movement logs (July 25, 1993) (Doc. No. 336-DC-00000853).

second and third floors is unrestricted, and no further record was kept of her location.¹⁶⁰¹ The logs show that Williams left the residence at 2:50 p.m.¹⁶⁰² and left the White House compound at 3:30 p.m.¹⁶⁰³

Williams was questioned about this visit to the residence in a Senate hearing on December 11, 1995. She said, "I don't recall what I was doing, but because I am often at the residence and often on the White House complex during the weekend, Saturday and Sunday, I don't recall, but it doesn't strike me as highly unusual. As I said in my deposition, I did not recall being there. I don't think that I was there, but it doesn't strike me as extraordinary that I was there."¹⁶⁰⁴ Williams said she did not remember seeing Mrs. Clinton "but it wouldn't have been extraordinary for me to have seen her."¹⁶⁰⁵

Williams testified that after July 22, when she put the box of documents in the closet in Room 323, she did not go into the closet until July 27, when the box was transferred to Williams & Connolly.¹⁶⁰⁶ She also said she had no knowledge of anyone going into the closet between July 22 and July 27.¹⁶⁰⁷

When Williams was questioned again about the afternoon of July 25 during a subsequent

¹⁶⁰¹ G. Walters 1/24/96 Int. at 7.

¹⁶⁰² Secret Service residential movement logs (July 25, 1993) (Doc. No. 336-DC-00000853).

¹⁶⁰³ White House gate records (July 25, 1993) (Doc. No. 211-DC-00000516).

¹⁶⁰⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 5-6 (Dec. 11, 1995) (testimony of M. Williams).

¹⁶⁰⁵ *Id.* at 6.

¹⁶⁰⁶ M. Williams 10/28/94 Int. at 36 (sworn testimony).

grand jury appearance, she said although she would not disagree with the Secret Service logs, she did not remember being in the residence that day or whether she saw Mrs. Clinton.¹⁶⁰⁸ Williams assumed that she had her key chain with her that day, including the key to the closet in Room 323 which she maintained.¹⁶⁰⁹ She did not give the key to anyone that day and she did not open the closet where she had put the box of documents from Foster's office.¹⁶¹⁰

Mrs. Clinton testified in the grand jury that Williams did not show her any documents from Foster's office during the weekend.¹⁶¹¹ She also said she did not go to her office on the third floor of the residence over that weekend and denied that Williams showed her any documents from Foster's office.¹⁶¹² Mrs. Clinton had previously stated in July 1995 that she did not see or review the documents from Foster's office that were stored in the residence before they were turned over to Williams & Connolly on July 27.¹⁶¹³

The FBI laboratory conducted fingerprint analysis on all documents identified by Williams & Connolly as those obtained from the White House on July 27. The laboratory tested 2,581 items and found 1,721 fingerprints or palm prints. None of the prints matched those of President Clinton, Mrs. Clinton, Margaret Williams, or Susan Thomases.¹⁶¹⁴ Four fingerprints of

¹⁶⁰⁷ Id.

¹⁶⁰⁸ M. Williams 4/23/96 GJ at 51, 53-54.

¹⁶⁰⁹ Id. at 51.

¹⁶¹⁰ Id. at 52.

¹⁶¹¹ H. Clinton 1/26/96 GJ at 101.

¹⁶¹² Id. at 100-01.

¹⁶¹³ H. Clinton 7/22/95 Depo. at 28.

¹⁶¹⁴ Federal Bureau of Investigation Laboratory Report at 1 (July 16, 1996); Federal

Webster Hubbell were found on three documents.¹⁶¹⁵ Those documents were 1) a page headed "PROPOSED PRESIDENTIAL RETREAT PROPERTIES" dated December 7, 1992;¹⁶¹⁶ 2) a facsimile cover sheet from Ron Maxwell to Hubbell dated November 13, 1992;¹⁶¹⁷ and 3) a page headed "WILLIAM AND HILLARY CLINTON STATEMENT OF FINANCIAL CONDITION," which was dated December 31, 1991, and which bore a facsimile transmission line dated December 10, 1992.¹⁶¹⁸

Telephone records showed that three calls were placed from Thomases's weekend residence in Rhode Island to Williams's home telephone number on July 24 and 25, 1993.¹⁶¹⁹ Each call lasted one or two minutes.¹⁶²⁰ Thomases testified that she did not remember speaking to Williams that weekend,¹⁶²¹ but said based on the calls' duration, she believed she reached Williams's answering machine.¹⁶²² Telephone records also showed one call from Thomases's

Bureau of Investigation Laboratory Report at 1 (July 17, 1996).

¹⁶¹⁵ Federal Bureau of Investigation Laboratory Report at 1-2 (July 16, 1996); Federal Bureau of Investigation Laboratory Report at 1-2 (July 17, 1996).

¹⁶¹⁶ See Proposed Presidential Retreat Properties (Dec. 7, 1992) (Doc. No. DEK016182).

¹⁶¹⁷ See Fax Transmission cover sheet from Ron Maxwell, of Ron Calhoun & Associates Residential Division Home Equity Relocation Center, to Webb Hubbell, Rose Law Firm attorney (Nov. 13, 1992) (Doc. No. DEK016217).

¹⁶¹⁸ See William and Hillary Clinton statement of financial condition (Dec. 13, 1991) (Doc. No. DEK011825).

¹⁶¹⁹ Thomases's phone records (bill dated Aug. 18, 1993) (Doc. No. 387-DC-00000167).

¹⁶²⁰ Id.

¹⁶²¹ Thomases 5/2/96 GJ at 68-69.

¹⁶²² Id. at 70-71.

residence to the home number of the First Lady's scheduler -- Patti Solis -- on July 24.¹⁶²³

Thomasases said she did not remember talking to Solis that weekend.¹⁶²⁴

I. The Foster Note.

1. Discovery.

On Monday, July 26, Associate Counsel Steve Neuwirth discovered torn pieces of yellow paper in Foster's briefcase.¹⁶²⁵ Neuwirth discovered the torn pieces of paper, which he later pieced back together to form the note, as he concluded his inventory of the remaining documents in Foster's office.¹⁶²⁶

¹⁶²³ Thomasases's phone records (bill dated Aug. 18, 1993) (Doc. No. 387-DC-00000167).

¹⁶²⁴ Thomasases 5/2/96 GJ at 71.

¹⁶²⁵ Neuwirth 2/28/95 GJ at 134-35.

¹⁶²⁶ *Id.* at 134. The note, which was pieced back together, said:

I made mistakes from ignorance, inexperience and overwork

I did not knowingly violate any law or standard of conduct

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

The FBI lied in their report to the AG

The press is covering up the illegal benefits they received from the travel staff

The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation

The Ushers Office plotted to have excessive costs incurred, taking advantage of Kaki and HRC

The public will never believe the innocence of the Clintons and their loyal [*] staff

The WSJ editors lie without consequence

I was not meant for the job or the spotlight of public life in Washington.

Bernard Nussbaum gave the note to the Park Police on Tuesday, July 27.¹⁶²⁷ The White House confirmed the note's existence to the press on July 28.¹⁶²⁸ The note's contents were not disclosed until an August 10 joint press conference conducted by the Park Police and DOJ.¹⁶²⁹

On July 29, Neuwirth was first interviewed by the Park Police about the note's discovery.

The report said:

[H]e was in the process of gathering and packing Mr. Foster's personal effects for delivery to the family when he turned the briefcase sideways in order to fit it into a box without causing damage to a photograph of the President with Mr. Foster's daughter, Laura. When he did this some torn yellow paper scraps fell out of the briefcase and he noticed handwriting on them. He then retrieved a number of

Here ruining people is considered sport.

Fiske Report, *supra* note 12, at Tab 5. Note the Park Police identified the word "loyal" as "legal." U.S. Park Police's unreleased transcription of the note (July 1993) (Doc. No. 105-DC-00000011).

¹⁶²⁷ Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

¹⁶²⁸ Press Statement issued by Bernard Nussbaum (July 28, 1993) (Doc. No. 033-DC-00001050) (White House Doc. No. 001023).

¹⁶²⁹ Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993). Fingerprint and handwriting examinations were performed on the note. The FBI lab identified one palm print of value on the note and identified it as Nussbaum's print. Federal Bureau of Investigation Laboratory Report at 1 (July 5, 1995). See Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 284 (Nussbaum handled the note at various points, including when Neuwirth first showed it to him, when he stored it that night, and when he showed it to Lieutenant Megby).

Three separate handwriting analyses were performed -- one by the Capitol Police and two by the FBI lab -- comparing the note to three different sets of samples of known handwriting of Vince Foster. Each of the three analyses concluded the handwriting was Foster's. See Fiske Report, *supra* note 12, at Tab 1 (Federal Bureau of Investigation Laboratory Report at 1 (June 17, 1994)); Federal Bureau of Investigation Laboratory Report at 1 (Nov. 9, 1995); United States Capitol Police Sergeant Larry G. Lockhart, Laboratory Report, U.S. Park Police Case No. 30502-93, at 2 (July 29, 1993); (Doc. Nos. 105-DC-00000022 through 24).

other similar scraps from the bottom of the case and took them to the table in Mr. Nussbaum's office where he assembled the document¹⁶³⁰

On July 30, Neuwirth again was interviewed, this time by the FBI. He said on Friday, July 23, while he was in Arkansas, attending Foster's funeral, Nussbaum asked him to conduct a review of the work files in Foster's office and to take any remaining personal items to Foster's attorney.¹⁶³¹ Neuwirth said he began the review around 10:00 a.m. on July 26.¹⁶³² He then essentially repeated what he had told the Park Police about the note's discovery.¹⁶³³ Neuwirth's many subsequent statements were consistent with these accounts.¹⁶³⁴

When Nussbaum turned the note over to Park Police Lieutenant Joseph Megby at 9:15 p.m. on July 27, Nussbaum said that he had directed Neuwirth to "take a detailed inventory of the files and material" in Foster's office.¹⁶³⁵ Neuwirth said: "In a brief[case], known to be in the office and thought to be empty, he [Neuwirth] found the torn pieces of a hand[-]written page. The scraps were dumped out and then taken to Mr. Nussbaum's [o]ffice where they were assembled and Mr. Nussbaum was notified."¹⁶³⁶

According to the report of Nussbaum's interview with the FBI on July 30, Neuwirth told Nussbaum "that as he was packing items of FOSTER's personal property in a box, he discovered

¹⁶³⁰ Detective Peter Markland, U.S. Park Police Report at 2 (Aug. 5, 1993).

¹⁶³¹ Neuwirth 7/30/93 FBI Int. at 1.

¹⁶³² Id.

¹⁶³³ See id.

¹⁶³⁴ See Neuwirth 2/28/95 GJ at 134-35; Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 185-87; Neuwirth 5/13/94 Fiske Int. at 8.

¹⁶³⁵ Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

the scraps of paper in the bottom of FOSTER's briefcase. NEUWIRTH had been in [the] process of placing the briefcase in a box when he tipped the briefcase over on its side and several of the scraps of paper fell out. NEUWIRTH then discovered the rest of the scraps of paper located at the bottom of the briefcase."¹⁶³⁷

Because of Neuwirth's discovery of the note in a briefcase that was in Foster's office on July 22 and was reviewed by Nussbaum during the search that day, various questions were raised: whether the note was in the briefcase on July 22; whether Nussbaum or anyone other than Foster saw the note before Neuwirth discovered it.¹⁶³⁸ Separate questions were raised about why it took White House officials until approximately thirty hours to tell law enforcement of the note's existence. These very questions, of course, were the focus of the July-August 1993 FBI

¹⁶³⁶ Id.

¹⁶³⁷ Nussbaum 7/30/93 FBI Int. at 2.

¹⁶³⁸ There was a small, missing piece near the bottom of the note. U. S. Park Police Officer Peter J. Simonello, Mobile Crime Lab Report Supplement, U.S. Park Police Case No. 30502-93 at 1 (July 29, 1993) (Doc. No. 105-DC-00000018). It was unclear when or how the piece came to be missing. Neuwirth did not remember a missing piece. Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 191. On the other hand, Nussbaum did remember the missing piece. Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 282. A number of possibilities exist. The piece may have been lost when the note was torn and/or put into the briefcase. It may have been lost when Neuwirth was picking the pieces out of the briefcase. It may have been lost on the various occasions on July 26 and July 27 when Nussbaum was showing the note to people, such as Lisa Foster (note, also, that Heymann remembered the pieces falling on the floor when Lieutenant Megby took possession of it. Heymann 6/13/95 GJ at 29). There is even a possibility the piece may have been lost after the note was turned over to law enforcement. Megby's report, for example, does not mention a missing piece; it simply said: "Mr. Nussbaum had before him on the table small pieces of yellow lined note paper which he was assembling into a whole page. The assembled pieces revealed a note." Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993). The whereabouts of the missing piece, and when and how it came to be missing, remain unresolved.

investigation conducted at the Department of Justice's direction. The FBI concluded there was insufficient evidence to prosecute any person for obstruction of justice.¹⁶³⁹ This Office's investigation uncovered additional evidence relating to the note.

2. Handling of Briefcase before Discovery of Note.

Because Neuwirth found the note in Foster's briefcase, and the note was not found during the search on July 22, the Independent Counsel investigated whether the note was in the briefcase on July 22. As described in detail above, Patsy Thomasson testified that she saw the briefcase on the night of July 20 and that it appeared to be filled with documents.¹⁶⁴⁰ No other witness acknowledged seeing or handling Foster's briefcase before the search on July 22.

Many of the thirteen people present at the search on July 22 (including Nussbaum) remembered Nussbaum removing documents from Foster's briefcase and describing their contents to the assembled group.¹⁶⁴¹ Two people, the Park Police's Markland and Hume, specifically remembered Nussbaum looking into the briefcase after he had removed the documents from the briefcase.¹⁶⁴²

¹⁶³⁹ See Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993) (statement of SAC, FBI Washington field office, Bob Bryant).

¹⁶⁴⁰ Thomasson 8/31/94 Int. at 32 (sworn testimony).

¹⁶⁴¹ Adams 5/9/95 GJ at 32-33; Burton 3/22/95 GJ at 93-94; Condon 5/16/95 GJ at 13; Flynn 5/25/95 GJ at 14-15; Hume 5/23/95 GJ at 41-43; Margolis 6/14/95 GJ at 32-33; Markland 5/23/95 GJ at 31; Neuwirth 2/28/95 GJ at 118-19; Nussbaum 5/26/94 Fiske GJ at 50; Salter 5/16/95 GJ at 15-16; Spafford 6/28/95 GJ at 16-17.

¹⁶⁴² Hume 5/23/95 GJ at 44-45; Markland 5/23/95 GJ at 31; Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office" at 2 (Aug. 4, 1993).

Nussbaum was interviewed by the Park Police on Thursday, July 29, 1993, and again by the FBI on Friday, July 30, 1993. In the Park Police interview, Nussbaum described his memory of the briefcase's search on July 22. The interview/report said:

Mr. Nussbaum stated it was his recollection that he removed materials from the briefcase, which remained on the floor, and placed them on the desk in front of them. He then went through the materials. He inferred that because of this he had missed the small scraps of paper that obviously remained in the bottom of the briefcase.¹⁶⁴³

Nussbaum also remembered that he later moved the briefcase back to the wall behind him.¹⁶⁴⁴

A report of Nussbaum's interview with the FBI on July 30 said:

During the inventory, NUSSBAUM removed the files and papers from VINCENT FOSTER's briefcase and reviewed those items. After the contents of the briefcase were removed he picked up the briefcase and placed it against the wall behind FOSTER's desk.¹⁶⁴⁵

Neuwirth, according to the report of his 1993 FBI interview:

speculated that the pieces of paper may have been stuck down in a corner of the briefcase and therefore not seen during the July 22, 1993 inventory of Foster's office. . . . [He] confirmed that the briefcase from which the scraps were recovered was the same briefcase which BERNARD NUSSBAUM reviewed during the inventory of VINCENT FOSTER's [o]ffice on July 22, 1993.¹⁶⁴⁶

The report of Neuwirth's 1994 statement to Mr. Fiske's office said:

¹⁶⁴³ Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

¹⁶⁴⁴ Id.

¹⁶⁴⁵ Nussbaum 7/30/93 FBI Int. at 1; see also Nussbaum 5/26/94 Fiske GJ at 50-51; Nussbaum 6/13/95 GJ at 205-07. Nussbaum said in the grand jury the briefcase contained Foster's file on the Travel Office. Nussbaum 6/13/95 GJ at 205-06. Spafford's notes also showed that Travel Office documents were in the briefcase. Excerpt from Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000016).

¹⁶⁴⁶ Neuwirth 7/30/93 FBI Int. at 1-2.

he [Neuwirth] is not sure if he was in Foster's office on July 22 when the contents of Foster's briefcase were removed and described. It is his "understanding" that "something" was taken out of the briefcase during the search. He said that it was sitting on the floor behind Foster's desk but that he has no recollection of the briefcase or specifically its interior, being shown to those present.¹⁶⁴⁷

The FBI report of Cliff Sloan's July 30, 1993 interview said: "Sloan believed that all the items were taken out of the briefcase however he did not examine the empty briefcase at that time."¹⁶⁴⁸

Sloan wrote notes to himself after that FBI interview. His notes said:

They questioned me extensively about the briefcase. I explained that Bernie had taken some files out -- I was not sure whether they were in file folders or not. The briefcase was relatively thin and was not bulging. I cannot remember exactly whether I looked in the briefcase or not, but I think I recall thinking it was empty because I thought it was a personal effect which could have been sent to Jim Hamilton.¹⁶⁴⁹

The report of Burton's July 30, 1993 interview said he:

recalled that FOSTER's briefcase was emptied by BERNARD NUSSBAUM and the contents, which consisted of files and papers, were reviewed by NUSSBAUM. BURTON stated that after NUSSBAUM removed the papers and files, he observed the briefcase to be empty with the exception of several paperclips and a single "post-it" paper located in the bottom of the briefcase.¹⁶⁵⁰

Burton contended in the grand jury that he did not view his memory as inconsistent with his belief that Neuwirth discovered the note on July 26 in that briefcase:

I just want to say that there's nothing about what I saw that day at the search and having seen Bernie take all the paper out of the briefcase and later hearing that as

¹⁶⁴⁷ Neuwirth 5/13/94 Fiske Int. at 7; see also Neuwirth 2/28/95 GJ at 118-19.

¹⁶⁴⁸ Sloan 7/30/93 FBI Int. at 1; see Sloan 4/4/95 GJ at 79 (claiming no clear memory because the briefcase did not feature prominently).

¹⁶⁴⁹ Sloan's handwritten notes (after July 30, 1993) (Doc. AE-DC-00000003); see Sloan 4/4/95 GJ at 80.

¹⁶⁵⁰ Burton 7/30/93 FBI Int. at 1 (emphasis added).

somebody was cleaning out the briefcase that 28 small slips of paper that had been tucked away in the corner of the briefcase fell out. That is as consistent to me as anything else.

. . . .
I mean, Bernie did not pick up the briefcase and dump it out and scatter all the dirt and paperclips and everything that you would have if you did that, you know, on the desk. I mean, that -- again, the purpose of the search was to look for documents"¹⁶⁵¹

The two FBI agents present, Agents Salter and Condon, prepared a report that was dictated August 5, 1993, after the note's discovery, that included their memories of the search.

This report said:

During the inventory, BERNARD NUSSBAUM removed the contents of a leather, satchel type briefcase which had been on the floor adjacent to the desk. The briefcase was identified as belonging to VINCENT FOSTER. The items which were in the briefcase (papers and files) were removed and reviewed by NUSSBAUM. After those items were reviewed they were not placed back in the briefcase but they remained on top of the desk. NUSSBAUM then pick[ed] up the briefcase and placed the briefcase against the back wall of the office. At the time, NUSSBAUM placed the briefcase against the back wall of the office it appeared as though the briefcase was empty. At no time did the undersigned agents [Salter and Condon] observe the inside of the briefcase.¹⁶⁵²

Neither Salter nor Condon remembered whether Nussbaum looked into the briefcase again after removing documents from it.¹⁶⁵³

Park Police Captain Hume also wrote a report on the search:

At one point, Nussbaum pulled some papers out of a leather valise/briefcase that was sitting on the floor behind the desk. He put them on the desk and went through them. He then looked in the valise/briefcase again, but did not take

¹⁶⁵¹ Burton 3/22/95 GJ at 105-06.

¹⁶⁵² Dennis Condon and Scott Salter, FBI Report, FBI File # WMFO 175B-WF-187743 at 1-2 (July 22, 1993; dictation date Aug. 5, 1993).

¹⁶⁵³ Salter 5/16/95 GJ at 16-17; Condon 5/16/95 GJ at 14.

anything out of it. A little later he moved the valise/briefcase away from the desk and placed it on the floor adjacent to the exterior wall directly behind him and the desk.¹⁶⁵⁴

In addition, the FBI interviewed Hume on August 2, 1993. The interview report said:

HUME advised that during the inventory BERNARD NUSSBAUM removed documents from a briefcase which was in the office and identified as belonging to FOSTER. HUME believed that when these items which consisted of files and papers had been taken out of the briefcase it was believed that the briefcase was empty. After BERNARD NUSSBAUM reviewed the items which were in the briefcase, HUME recalled that NUSSBAUM picked up the briefcase looked in it and indicated that the briefcase was empty. HUME recalled that a short while later during the inventory, NUSSBAUM picked up the briefcase again and at that time moved it against the back wall of FOSTER's office. HUME advised the interviewing agent that at no time was he able to see the bottom portion inside the briefcase.¹⁶⁵⁵

Park Police Detective Markland, in his interview report of Nussbaum that occurred on July 29, 1993, wrote:

I informed Mr. Nussbaum that I was seated on the small couch directly across from and facing him and that I had a clear view of the briefcase when he removed its contents, also that after the contents were removed I could see that he spread open the briefcase and visually inspected it as if to confirm that it was, indeed, empty. Mr. Nussbaum did not recall doing what I described.¹⁶⁵⁶

The FBI report of an interview with Markland on August 2, 1993, said: "After those items had been reviewed, Markland observed Nussbaum pick up the briefcase, open the top of

¹⁶⁵⁴ Captain Charles Hume, U.S. Park Police Report by entitled "Review of documents from Vincent Foster's Office" at 2 (Aug. 4, 1993) (emphasis added).

¹⁶⁵⁵ Hume 8/2/93 FBI Int. at 1 (emphasis added).

¹⁶⁵⁶ Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993) (emphasis added).

the briefcase, look inside it and declared that it was empty."¹⁶⁵⁷ Markland subsequently told the grand jury that he did not believe the briefcase ever left the floor.¹⁶⁵⁸ He opined, in any event, that "if the note was in the briefcase, Mr. Nussbaum would have seen it, so it was either in the briefcase and he didn't tell us about it or it was not in the briefcase on that morning."¹⁶⁵⁹

David Margolis, according to a report of his 1993 interview with the FBI:

[R]ecalled that at one point during the inventory, items were removed from a briefcase in FOSTER's office and that the items were reviewed by BERNARD NUSSBAUM. MARGOLIS believed those items to be papers and files. After reviewing these items, NUSSBAUM picked up the briefcase which was apparently empty at that time and placed it against the back wall of FOSTER's office. MARGOLIS was not able to observe if there were any other items remaining in the bottom of the briefcase.¹⁶⁶⁰

Margolis did not remember whether Nussbaum looked into the briefcase again after removing documents from it.¹⁶⁶¹

According to a report of his 1993 statement to the FBI, Roger Adams:

[R]ecalled that at one point during the inventory NUSSBAUM located a briefcase somewhere behind VINCENT FOSTER's desk. ADAMS recalled that there was some conversation concerning whether or not FOSTER carried that briefcase with him to and from work on a daily basis. NUSSBAUM removed items from the briefcase, those items consisting primarily of papers and files and reviewed those items. ADAMS stated that from his vantage point he was not able to observe whether there were any items remaining in the bottom of the briefcase after the papers and files had been removed by NUSSBAUM.¹⁶⁶²

¹⁶⁵⁷ Markland 8/2/93 FBI Int. at 1 (emphasis added).

¹⁶⁵⁸ Markland 5/23/95 GJ at 32.

¹⁶⁵⁹ Id.

¹⁶⁶⁰ Margolis 8/3/93 Int. at 1; see Margolis 6/14/95 GJ at 33-34.

¹⁶⁶¹ Margolis 6/14/95 GJ at 33-34.

¹⁶⁶² Adams 8/3/93 FBI Int. at 1.

Adams said he could not remember whether Nussbaum looked into the briefcase after removing items from it.¹⁶⁶³

Michael Spafford remembered that Nussbaum picked up the briefcase, took out the files, and put the briefcase back down. Spafford did not remember Nussbaum saying the briefcase was empty or looking back into the apparently empty briefcase after taking the files out.¹⁶⁶⁴

Spafford testified that after the search's conclusion on July 22, he witnessed a discussion after the investigators had left Foster's office:

[A]t the conclusion when I had loaded up the documents into a box, all the investigators left. So then it was just myself, Mr. Nussbaum, and Mr. Sloan. Mr. Sloan had picked up the black briefcase, because I think he was going to give it to me as a personal item. And he looked in the briefcase, and he said there appeared to be scraps of paper in the bottom of the briefcase.

And Mr. Nussbaum said, Don't worry about it; we're going to look through all of this stuff later. And then Mr. Sloan just put the briefcase down. And I left and met with Mr. Margolis and Mr. Markland downstairs.¹⁶⁶⁵

Spafford said he could not see into the bag¹⁶⁶⁶ and "[o]ne of the reasons I remember [this incident] so clearly is the following week then, when the torn-up note was discovered and I

¹⁶⁶³ Adams 5/9/95 GJ at 34. The two Secret Service agents present added little. The report of Secret Service Agent Flynn's 1993 interview said: "Flynn could not recall any details of this portion of the inventory but knew that items were removed from the briefcase and he did not recall any items being put back into the briefcase. Flynn could not recall any other details about that portion of the inventory." Flynn 8/3/93 FBI Int. at 1. Secret Service Agent Imbordino "advised that he could not provide specific . . . information regarding the portion of the inventory during which VINCENT FOSTER's briefcase was handled." Imbordino 8/2/93 FBI Int. at 1.

¹⁶⁶⁴ Spafford 6/28/95 GJ at 16. Spafford's notes also showed the briefcase was searched and that its contents included Travel Office documents. Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000016).

¹⁶⁶⁵ Spafford 6/28/95 GJ at 25-26 (emphasis added).

became aware of that, I immediately connected the two."¹⁶⁶⁷

When Spafford was interviewed on May 24, 1994, he did not provide this information to the FBI agent interviewing him.¹⁶⁶⁸ Spafford was asked in the grand jury why he had not told investigators about this observation in his interview on May 24, 1994, or at any other time before 1995. He responded, "Nobody asked me."¹⁶⁶⁹

When Nussbaum was asked about the incident, Nussbaum said he did not remember any conversation with anyone on July 22 about scraps of paper in Foster's briefcase.¹⁶⁷⁰ He said he neither engaged in, nor overheard such a conversation.¹⁶⁷¹ Nussbaum believed he would definitely remember the conversation had it happened.¹⁶⁷² Nussbaum also believed that Sloan would have remembered the discussion because Sloan had a very good memory.¹⁶⁷³ Sloan similarly said:

As I understand Mr. Spafford's account he says that I picked up Mr. Foster's briefcase, held it open by the handles and remarked to Mr. Nussbaum that there appeared to be scraps of paper in the bottom of the briefcase. All I can say about that . . . is that to my recollection that did not happen. By that I mean I have no recollection of anything remotely like that incident, and I think that I would recall if it had happened. Mr. Spafford and I have an honest difference in recollection on this point, and I think he is mistaken. My consistent recollection on this

¹⁶⁶⁶ *Id.* at 26.

¹⁶⁶⁷ *Id.*

¹⁶⁶⁸ *See* Spafford 5/24/94 Fiske Int. at 2-3.

¹⁶⁶⁹ Spafford 6/28/95 GJ at 31-32.

¹⁶⁷⁰ Nussbaum 7/11/95 Int. at 1.

¹⁶⁷¹ *Id.*

¹⁶⁷² *Id.*

¹⁶⁷³ *Id.*

subject has been, and continues to be, that I learned of the scraps of paper for the first time the night of Tuesday, July 27th, 1993.¹⁶⁷⁴

Deborah Gorham, Foster's secretary, was interviewed about the briefcase's post-search handling. The interview report said:

GORHAM advised that on Monday, July 26, 1993, she was assigned to assist STEPHEN NEUWIRTH in the review of items in FOSTER's office. GORHAM recalled that at one point, FOSTER's briefcase was "in the way" so she picked it up and placed it with a group of personal items which were to be returned to the FOSTER family. GORHAM stated that it [is] her practice never to look in another's individual[s] briefcase but that as she picked it up she was aware that it was empty with the exception of what she believed to be some yellow "post-it" notes. GORHAM was not certain that these were "post-it" notes but she stated that whatever it was in the bottom of the briefcase was generally of the size and color of a "post-it" note. GORHAM stated that the items she saw in the bottom of the briefcase may have been "post-it" notes or it may have been pieces from a sheet of yellow paper.¹⁶⁷⁵

Gorham also said in later interviews that she saw a single dark gold folder and a single white sheet of paper in the briefcase in addition to the yellow item.¹⁶⁷⁶

3. Disclosure of Note to Law Enforcement.

The note was not disclosed to law enforcement officials until the evening of July 27 when Nussbaum told Attorney General Janet Reno.¹⁶⁷⁷ The Attorney General told Nussbaum to turn it over to the Park Police, and Nussbaum complied.¹⁶⁷⁸ The Independent Counsel investigated the reason for the approximate thirty-hour delay before the Attorney General, and then the Park

¹⁶⁷⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 67 (Aug. 3, 1995) (testimony of C. Sloan) (emphasis added).

¹⁶⁷⁵ Gorham 8/3/93 FBI Int. at 1-2 (emphasis added).

¹⁶⁷⁶ Gorham 4/19 & 26/94 Fiske Int. at 13; *see* Gorham 6/2/95 GJ at 24.

¹⁶⁷⁷ Nussbaum 7/30/93 FBI Int. at 2.

Police, were notified about the note.¹⁶⁷⁹

The statements of five White House officials involved in discussions on the night of July 26 and the morning of July 27 about the note (Nussbaum, Neuwirth, McLarty, Burton, and Gergen) were essentially consistent. First, they said they wanted to research whether any privileges applied to the note or portions thereof.¹⁶⁸⁰ Second, they wanted to show the note to Mrs. Foster who was in Arkansas.¹⁶⁸¹ Third, they wanted to notify the President, who was in Chicago on July 26, before the note was disclosed to law enforcement officials.¹⁶⁸²

Nussbaum said Burton questioned whether there were attorney-client privileges applicable to the note, whether there were "privacy issues," and whether there would be an obstruction of justice issue if the note were not turned over to law enforcement.¹⁶⁸³ Neuwirth

¹⁶⁷⁸ See *id.* at 2-3.

¹⁶⁷⁹ See *id.* at 1-2 (the note was found at approximately 4:00 p.m. on July 26 and the Park Police was notified at approximately 9:00 p.m. on July 27); Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 19, 1993) (statement of SAC, FBI Washington field office, Bob Bryant). Agent Bryant of the FBI, said the note was discovered at approximately 4:00 p.m. on July 26 and the Park Police were notified at approximately 9:00 p.m. on July 27; Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993) (the Park Police were notified at 9:15 p.m. on July 27).

¹⁶⁸⁰ See Neuwirth 2/28/95 GJ at 140-41; McLarty 4/25/95 GJ at 65; Burton 3/22/95 GJ at 111; Gergen 10/21/94 Int. at 6. Jim Hamilton, who had a conversation with some of the White House officials on July 27, said there was discussion of possible redaction of the note. Hamilton 10/23/95 Int. at 12.

¹⁶⁸¹ See Nussbaum 5/13/94 Fiske Int. at 14; Neuwirth 5/13/94 Fiske Int. at 9; McLarty 4/25/95 GJ at 65; Burton 7/30/93 FBI Int. at 2; Gergen 10/21/94 Int. at 7.

¹⁶⁸² See Nussbaum 5/13/94 Fiske Int. at 14; Neuwirth 5/13/94 Fiske Int. at 9; McLarty 7/30/93 FBI Int. at 1; Burton 7/30/93 FBI Int. at 2; Gergen 10/21/94 Int. at 7.

¹⁶⁸³ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 303.

conducted research on the night of July 26, and concluded that no privileges applied.¹⁶⁸⁴ Lisa Foster was shown the note around 6:00 p.m. on July 27.¹⁶⁸⁵ Nussbaum discussed the note with President Clinton around the same time.¹⁶⁸⁶ Nussbaum said the President already appeared to be aware of the note's contents.¹⁶⁸⁷ When Nussbaum was asked if the appearance that President Clinton knew about the note's contents struck him as odd he replied, "No. . . . one of the reasons it didn't strike me as odd is I had read it to McLarty and it's inconceivable to me that McLarty, in one form or another, didn't convey what I read."¹⁶⁸⁸

Nussbaum showed Mrs. Clinton the note on July 26, in his office and in front of Burton and Neuwirth, shortly after Neuwirth pieced the note together and showed it to Nussbaum.¹⁶⁸⁹ In their initial interviews with the FBI in 1993, neither Nussbaum, Burton, nor Neuwirth mentioned this incident.¹⁶⁹⁰ The reports of their interviews did not indicate whether they were asked to list

¹⁶⁸⁴ Neuwirth 5/13/94 Fiske Int. at 9. The note did not record any attorney-client communications. Parts of the note (e.g., "the FBI lied in their report to the AG") arguably constitute Foster's mental impressions, conclusions, or opinions. See Fed. R. Civ. P. 26(b) (3). They almost certainly were not written in anticipation of litigation, although they may have been written in anticipation of congressional hearings. In other contexts, the White House has claimed to the Independent Counsel that such material is protected work product.

¹⁶⁸⁵ Entry records show she entered the White House at 5:56 p.m. White House WAVES records (July 27, 1993) (Doc. No. 336-DC-00000351).

¹⁶⁸⁶ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 315.

¹⁶⁸⁷ *Id.* at 320. Nussbaum said President Clinton told him something to the effect of "I know all about it [the note]." *Id.*

¹⁶⁸⁸ *Id.* at 317.

¹⁶⁸⁹ *Id.* at 293-94.

¹⁶⁹⁰ See, e.g., Nussbaum 7/30/93 FBI Int.; Burton 7/30/93 FBI Int.; Neuwirth 7/30/93 FBI Int.

all people who had seen the note after its discovery.¹⁶⁹¹ According to an official, albeit incomplete, log of Presidential calls maintained at the White House, the President and Mrs. Clinton had a nine-minute phone conversation at 5:57 p.m. on July 26, shortly after Mrs. Clinton was shown the note and shortly before she departed the West Wing for the residence.¹⁶⁹²

In addition to Nussbaum showing Mrs. Clinton the note on July 26,¹⁶⁹³ Susan Thomases ultimately acknowledged that she also learned about the Foster note from Nussbaum on July 26.¹⁶⁹⁴ In Thomases's first sworn testimony on that question, she said she learned about the note from the media, and did not discuss it with Nussbaum until long after it was found.¹⁶⁹⁵ In her Senate deposition, Thomases changed her testimony about how she learned about the note: "The first person who told me about it was Bernie Nussbaum."¹⁶⁹⁶ In her most recent grand jury appearance, Thomases was questioned about the change:

Q. And do you remember, in rereading your testimony, that you had said previously that you didn't even talk to Bernie Nussbaum about it at any time proximate to the discovery of the note?

A. That's what I initially said.

Q. And you're now saying you believe that is incorrect?

¹⁶⁹¹ Nussbaum 7/30/93 FBI Int.; Burton 7/30/93 FBI Int.; Neuwirth 7/30/93 FBI Int.

¹⁶⁹² White House telephone memo (July 26, 1993) (Doc. No. 442F-DC-00002514).

¹⁶⁹³ Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 284-88.

¹⁶⁹⁴ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 119-20. Although Nussbaum said he did not remember telling Thomases of the note that day, he understood why he would tell Thomases and he saw nothing wrong with that. Senate Whitewater Comm. Hearing, *supra* note 408, at 19-20 (Aug. 10, 1995) (testimony of B. Nussbaum).

¹⁶⁹⁵ Thomases 9/9/94 Int. at 74 (sworn testimony).

¹⁶⁹⁶ Thomases 7/17/95 Senate Whitewater Comm. Depo. at 119-20.

....

A. Yeah, I mean, I think that's a possibility, because I have a clear recollection of my conversation with Bernie when he told me that he'd found the note and about the note.

....

A. I don't remember whether it was the public hearing or him talking about it, but I now remembered a conversation that he and I had about it -- or a conversation that I subsequently initiated with him about it.

Q. But what I'm trying to make clear is: Are you saying that there was a conversation that you had with Bernie sometime in 1994 or '95 that caused you to refresh your recollection about '93?

A. No, a '95 conversation has caused me to refresh my recollection about '93.

....

A. I don't know. It's not that like he called me and said to me, "Lookit [sic], Susan, do you remember when we had a conversation?" There was just something about his testimony or something else that caused me to flash on the fact that he had called me and told me about it at the time. I mean, that -- and I could say, "Gee, I don't remember it," but now I do have a relatively -- "clear" is too strong a word, but I have a sense that he called me and what he said to me at that time.¹⁶⁹⁷

After Nussbaum disclosed the note to the Attorney General, the Park Police was contacted, and Lieutenant Megby came to the White House and took custody of the note.¹⁶⁹⁸

J. The Transfer of Documents to Williams & Connolly.

1. Monday, July 26, 1993.

As previously discussed, Steve Neuwirth inventoried Foster's office on July 26 and

¹⁶⁹⁷ Thomases 5/2/96 GJ at 75-77.

¹⁶⁹⁸ Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993); Megby 8/2/93

discovered the torn-up writing or note in Foster's briefcase.¹⁶⁹⁹ By this point, the Clinton personal documents had not yet been transferred from the residence to Williams & Connolly. Telephone records showed discussion among several of the people discussed in Section H of this report on July 26.¹⁷⁰⁰

Barnett's telephone logs show he spoke with Thomases and Williams (at her home) on July 26.¹⁷⁰¹ Barnett told this Office and the grand jury that he talked about Foster's death with Thomases on July 26, and that he remembered no discussion of picking up documents from the White House.¹⁷⁰² Barnett said he did not remember a specific conversation with Williams on July 26.¹⁷⁰³

Thomases produced a telephone log reflecting that she received a telephone call from Barnett at her New York office on July 26.¹⁷⁰⁴ That log did not show the call was returned.¹⁷⁰⁵ Thomases testified in a Senate hearing that she did not remember this call from Barnett.¹⁷⁰⁶

FBI Int. at 1.

¹⁶⁹⁹ Neuwirth 2/8/95 GJ at 134-35.

¹⁷⁰⁰ Barnett's telephone logs (July 26, 1993) (Doc. No. 325-DC-00000156); Thomases's telephone records (July 26, 1993) (Doc. No. 387-DC-00000226).

¹⁷⁰¹ Barnett's telephone logs (July 26, 1993) (Doc. No. 325-DC-00000156).

¹⁷⁰² Barnett 5/2/96 GJ at 28; Barnett 12/14/95 Int. at 5.

¹⁷⁰³ Barnett 5/2/96 GJ at 28.

¹⁷⁰⁴ Thomases's phone records (July 26, 1993) (Doc. No. 387-DC-00000226). See Thomases's redacted phone records (July 26, 1993) (Doc. No. 387-DC-00000126).

¹⁷⁰⁵ See Thomases's phone records (July 26, 1993) (Doc. No. 387-DC-00000226).

¹⁷⁰⁶ Senate Whitewater Comm. Hearing, supra note 408, at 23 (Dec. 18, 1995) (testimony of S. Thomases).

Thomases said she did not believe that she returned Barnett's call or spoke to him on July 26.¹⁷⁰⁷

Thomases produced telephone records showing that a three-minute call was placed at 5:24 p.m. on July 26 from Thomases's cellular telephone to the White House number of the scheduler for Mrs. Clinton, Patti Solis.¹⁷⁰⁸ Thomases testified before the Senate Whitewater Committee that she could not remember that specific call.¹⁷⁰⁹ Solis also said she did not remember any conversation with Thomases on July 26.¹⁷¹⁰

2. Tuesday, July 27, 1993.

On Tuesday, July 27, Barnett arranged for I. P. Barlow, an employee of Williams & Connolly, to pick up a box of documents from the closet in the White House residence.¹⁷¹¹ Also on July 27, the White House disclosed to law enforcement the note discovered in Foster's briefcase on July 26.¹⁷¹²

There was also the issue of whether Thomases visited Mrs. Clinton at the White House on July 27, and if so, what they discussed. Thomases testified that as of July 26, she planned to travel to Washington on July 27.¹⁷¹³ Phone records show that a call was placed from Thomases's

¹⁷⁰⁷ *Id.* at 24.

¹⁷⁰⁸ Thomases's cellular phone records (billing Aug. 20, 1993) (Doc. No. 387-DC-00000160).

¹⁷⁰⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 27 (Dec. 18, 1995) (testimony of S. Thomases).

¹⁷¹⁰ Solis 2/9/96 Senate Whitewater Comm. Depo. at 34.

¹⁷¹¹ Barnett 5/2/96 GJ at 40.

¹⁷¹² *See* Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

¹⁷¹³ Thomases 5/2/96 GJ at 79-80.

cellular phone to Mrs. Clinton's scheduler, Solis, on July 26.¹⁷¹⁴ But Thomases testified that as of July 26, she had no plans to see the First Lady.¹⁷¹⁵

Telephone logs from Thomases's New York office show that she received a call on July 27 from Solis with the following message, "HRC wants to see you today."¹⁷¹⁶ The record reflects the call was returned.¹⁷¹⁷ Telephone records show that a call was placed from Thomases's extension at her Washington law office to Solis's number at 11:33 a.m.¹⁷¹⁸ Another telephone message produced by Thomases's Washington law office shows that "Evelyn" left a message for Thomases at 1:30 p.m., saying "Please call Hillary."¹⁷¹⁹ Solis testified before the Senate Whitewater Committee that she believed Evelyn Lieberman placed that call to Thomases.¹⁷²⁰ Solis testified before the grand jury and in a Senate deposition that she did not remember placing a call to, or receiving a call from, Thomases on July 27.¹⁷²¹

White House records showed that Thomases, Williams, Barnett, Hubbell and Mrs.

¹⁷¹⁴ Thomases's cellular phone records (bill dated Aug. 20, 1993) (Doc. No. 387-DC-00000160).

¹⁷¹⁵ Senate Whitewater Comm. Hearing, *supra* note 408, at 28 (Dec. 18, 1995) (testimony of S. Thomases).

¹⁷¹⁶ Thomases's phone logs (July 27, 1993) (Doc. No. 387-DC-00000227).

¹⁷¹⁷ *Id.*

¹⁷¹⁸ Willkie, Farr & Gallagher phone records (July 27, 1993) (Doc. No. 387-DC-00000208).

¹⁷¹⁹ Thomases's phone message slip (July 27, 1993) (Doc. No. 387-DC-00000230).

¹⁷²⁰ Senate Whitewater Comm. Hearing, *supra* note 408, at 63 (May 14, 1996) (testimony of P. Solis).

¹⁷²¹ Solis 4/2/96 GJ at 43; Solis 2/9/96 Senate Whitewater Comm. Depo. at 36. Note that Ms. Solis was using her married name "Doyle" at this time.

Clinton all were in the White House residence on July 27. The following is a summary of their times in the residence:

PERSON	ENTER	EXIT
Mrs. Clinton	All day ¹⁷²²	
Maggie Williams	10:31 a.m. 1:35 p.m. 3:20 p.m.	12:05 p.m. 2:25 p.m. 4:43 p.m. ¹⁷²³
Susan Thomases	3:08 p.m. (5:27 p.m.)	4:31 p.m. 8:19 p.m. ¹⁷²⁴
Robert Barnett	3:03 p.m.	4:30 p.m. ¹⁷²⁵
Webster Hubbell	6:29 p.m.	8:19 p.m. ¹⁷²⁶

Ushers' logs showed that Barnett and Thomases left the residence together at 4:30 p.m.¹⁷²⁷

¹⁷²² Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855).

¹⁷²³ *Id.*

¹⁷²⁴ *Id.* Secret Service logs showed that Thomases entered the residence a second time at 8:19 p.m. No exit time was listed for that visit. *Id.* Other evidence showed the log is inaccurate, and that 8:19 p.m. is actually the exit time. First, Secret Service gate records showed that Thomases left the entire White House compound at 8:20 p.m. The same records showed that Hubbell left the compound with Thomases at 8:20 p.m. White House gate record (July 27, 1993) (Doc. No. 211-DC-00000160). The F-1 Secret Service logs showed that Hubbell left the residence at 8:19 p.m. Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855). These records suggested that Thomases, too, left the residence at 8:19 p.m. with Hubbell. In addition, telephone toll records showed that calls placed from the White House residence at 5:27 p.m. and 5:29 p.m. on July 27 were charged to Thomases's personal calling card. Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000149). Those records suggested that Thomases was in the residence at 5:27 p.m.

¹⁷²⁵ Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855).

¹⁷²⁶ *Id.*

¹⁷²⁷ Secret Service Presidential schedule (July 27, 1993) (Doc. No. 336-DC-00000864).

Secret Service records showed that Hubbell and Thomases left the White House compound together at 8:20 p.m.¹⁷²⁸

In light of the Foster note's discovery on July 26 and the July 27 transfer to Williams & Connolly of Foster's documents, Thomases was questioned extensively before the Senate Whitewater Committee and the grand jury about her visit to the White House on July 27. Thomases said she did not remember seeing Mrs. Clinton or going to the White House on that day,¹⁷²⁹ and said further that she did not discuss the Foster note with Mrs. Clinton until weeks or months after it was found, and only when Mrs. Clinton raised the topic.¹⁷³⁰

When Thomases was asked whether she saw Webb Hubbell in the residence on the evening of July 27, she replied, "No, I don't believe I did. I don't have any memory of doing it. Again, if he says that he saw me, then he probably saw me."¹⁷³¹ Thomases subsequently testified before the Senate Whitewater Committee that she remembered a meeting with Hubbell and Mrs. Clinton shortly after Foster's death, although she cannot remember the exact date.¹⁷³² She said "[w]e just talked about the tragedy of Vince's death and we talked about how sad it was, and I remember the first time that the three of us were together, we talked a little bit about some good times that we had had together in old times before Bill Clinton was elected President, and in the

¹⁷²⁸ White House gate records (July 27, 1993) (Doc. No. 211-DC-00000160).

¹⁷²⁹ Thomases 5/2/96 GJ at 86-87, 94; Senate Whitewater Comm. Hearing, *supra* note 408, at 41-42 (Dec. 18, 1995) (testimony of S. Thomases).

¹⁷³⁰ Thomases 5/2/96 GJ at 96.

¹⁷³¹ *Id.* at 102.

¹⁷³² Senate Whitewater Comm. Hearing, *supra* note 408, at 30 (May 14, 1996) (testimony of S. Thomases).

days in which I used to see them."¹⁷³³ Thomases also said she did not remember discussing the subject of Foster's note during this meeting with Hubbell and Mrs. Clinton.¹⁷³⁴

Hubbell received a message from Mrs. Clinton at 2:30 p.m. on July 27 before he went to the White House.¹⁷³⁵ Hubbell said he did not remember seeing Thomases at the White House on July 27.¹⁷³⁶ Hubbell also said he first learned of Foster's writing on July 28, after the White House had disclosed the writing to Reno and Heymann.¹⁷³⁷ DOJ attorney David Margolis said he showed the note to Hubbell on the morning of July 28, and Hubbell "gasp[ed] when he saw it."¹⁷³⁸ The report recounted that Hubbell was very "shaken," and that "it was apparent to MARGOLIS that HUBBELL was previously unaware of the contents of the note."¹⁷³⁹

Mrs. Clinton did not remember seeing Ms. Thomases on July 27.¹⁷⁴⁰ But when asked whether they discussed the note, she testified:

A. I don't believe I did.

Q. Do you remember ever -- do you remember talking with her about that at all that week?

A. I do not remember doing that.

¹⁷³³ Id.

¹⁷³⁴ Id. at 31

¹⁷³⁵ Hubbell's phone message slips (July 27, 1993) (Doc. No. 050-DC-00009633).

¹⁷³⁶ Hubbell 5/7/96 GJ at 11.

¹⁷³⁷ Id. at 6.

¹⁷³⁸ Margolis 2/8/95 Int. at 5.

¹⁷³⁹ Id.

¹⁷⁴⁰ H. Clinton 1/26/96 GJ at 101.

Q. Do you remember talking with her at that time about the documents that were being transferred over to Williams & Connolly?

A. I don't believe I did that.

Q. And do you remember whether a conversation with Ms. Thomases at that time would have had anything to do with who should take over private legal work that Mr. Foster had been doing for you or your husband?

A. I don't think that was a subject of conversation. These documents were going to our private lawyers.¹⁷⁴¹

Barnett, Williams, and Thomases were all in the residence between about 3:20 p.m. and 4:30 p.m. Barnett arranged for an assistant from Williams & Connolly to pick up a box of documents from the closet in Room 323. Williams said Barnett was in the White House to visit Mrs. Clinton, and Williams just happened to see him.¹⁷⁴² Williams said Barnett suggested he take the documents to Williams & Connolly.¹⁷⁴³ Williams said Barnett phoned an assistant from the law firm to move a box of documents to the firm and that she unlocked the closet for the assistant.¹⁷⁴⁴ Williams said Barnett and Mrs. Clinton conversed during the time it took the assistant to arrive and remove the box.¹⁷⁴⁵

Before the Senate Whitewater Committee on December 11, 1995, Barnett said he went to the residence on July 27 for the specific purpose of picking up the Clinton personal

¹⁷⁴¹ *Id.* at 103.

¹⁷⁴² M. Williams 10/28/94 Int. at 37 (sworn testimony); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 144-45.

¹⁷⁴³ M. Williams 6/2/95 GJ at 38; M. Williams 10/28/94 Int. at 37 (sworn testimony); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 145.

¹⁷⁴⁴ M. Williams 10/28/94 Int. at 38-39 (sworn testimony); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 145-47.

documents.¹⁷⁴⁶ He said he arranged to pick up the documents when he spoke with Williams "at some point during that time of day" ¹⁷⁴⁷

In the Senate hearing, when asked if he spoke to the First Lady while he was there, Barnett testified that he had:

[A]bsolutely no recollection of seeing the First Lady or speaking with the First Lady on that day. I cannot rule it out. It's 2-1/2 years later, but I have no recollection of seeing her on that day[.]¹⁷⁴⁸

At the same hearing, Maggie Williams reiterated that Barnett had a discussion with Mrs.

Clinton.¹⁷⁴⁹ Mrs. Clinton said she did not remember seeing Barnett or Williams on July 27.¹⁷⁵⁰

Capricia Marshall said she cleared Barnett into the White House on a day when he came to pick up a box, and per his request, Marshall brought him to Room 323 on the residence's third floor where he said he was to meet with Williams.¹⁷⁵¹

I. P. Barlow of Williams & Connolly testified before the Senate Whitewater Committee that he went to the White House to pick up a box on July 27.¹⁷⁵² Records show he was in the

¹⁷⁴⁵ M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 146.

¹⁷⁴⁶ Senate Whitewater Comm. Hearing, *supra* note 408, at 11 (Dec. 11, 1995) (testimony of R. Barnett).

¹⁷⁴⁷ *Id.*

¹⁷⁴⁸ *Id.* at 12-13.

¹⁷⁴⁹ Senate Whitewater Comm. Hearing, *supra* note 408, at 13 (Dec. 11, 1995) (testimony of M. Williams).

¹⁷⁵⁰ H. Clinton 1/26/96 GJ at 103-04.

¹⁷⁵¹ Marshall 1/25/96 GJ at 119-21.

¹⁷⁵² Senate Whitewater Comm. Hearing, *supra* note 408, at 26-28 (Dec. 11, 1995) (testimony of I. Barlow).

residence from 4:38 p.m. to 4:42 p.m.¹⁷⁵³ Barlow said he was escorted to the third floor, where he met Williams.¹⁷⁵⁴ This is when Barlow says that Williams opened a locked closet and showed him the box.¹⁷⁵⁵ Barlow testified the box was already taped when he removed it from the closet.¹⁷⁵⁶ Barlow then brought the box to Williams & Connolly.¹⁷⁵⁷

3. Susan Thomases's Memory.

Thomases's health and memory have become relevant. On April 8, 1996, the Wall Street Journal reported that Thomases suffers from multiple sclerosis (MS), and that memory loss is a symptom of MS that afflicts 40-60 percent of those afflicted with MS.¹⁷⁵⁸ The article quoted Thomases as saying: "I have experienced memory problems, and I have been told it is a common occurrence with MS, but I can't say my not remembering phone calls on that occasion was because of MS."¹⁷⁵⁹

In a subsequent appearance before the grand jury, Thomases testified the quotation was accurate.¹⁷⁶⁰ She said she first began to notice memory problems in the late 1980s.¹⁷⁶¹ About her

¹⁷⁵³ Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855).

¹⁷⁵⁴ Senate Whitewater Comm. Hearing, *supra* note 408, at 27 (Dec. 11, 1995) (testimony of I. Barlow).

¹⁷⁵⁵ *Id.* at 28.

¹⁷⁵⁶ *Id.* at 28, 37.

¹⁷⁵⁷ *See* Kendall & Barnett 5/6/94 Fiske Int. at 2.

¹⁷⁵⁸ Jill Abramson & Ellen Joan Pollock, 'Hillary's Enforcer': How Susan Thomases, Top Clinton Adviser, Fell Hard From Grace, Wall St. J., Apr. 8, 1996, at A1.

¹⁷⁵⁹ *Id.*

¹⁷⁶⁰ Thomases 5/2/96 GJ at 106.

lack of memory on matters occurring in July 1993, she said:

- A. But I'm still not willing to necessarily blame this on MS, because I do -- I do dozens of things every day, and sometimes I remember them very precisely, and sometimes I don't. And that's why when it's something that I'm supposed to remember, I am very careful about writing it down, so I will remember it.

And I just don't think it's realistic for anybody -- not just myself -- to expect to have a clear recollection of something weeks, months, years after the events, if one doesn't have some sort of notation or something to trigger the memory. And maybe it's because I'm -- you know, you can always kind of make up something that seems to fit with the day and the time and everything. But I'm just not willing to do that because my memory is something that I'm very, you know, careful about -- and certainly under oath.

....

- Q. But you right now can't give us a specific example of how your memory had been affected, beyond what a normal person's memory would be as to events or -
- A. It's just -- it's a different -- it's a different kind of thing. It's like you go searching in the closet for something -- I mean, I'm talking about the memory closet -- and you think that it's there, but then, there's no there there.

I mean, it's just -- you know, I mean -- I don't want to give a lecture on MS, but MS is a disease that people feel affects the limbs and the eyes and other things, but in fact, it's a disease of the brain. And sometimes it just -- you know, it either -- I don't know how to explain this. Sometimes you go on a detour. Your mind will send you on a detour, and suddenly, at the end of the detour, there's no there there. And other times they'll send you on a detour, and you will get exactly where you wanted to go, only you realize that in order to get there, you've gone a rather convoluted route.

And it's just what I have learned to live with -- relatively successfully -- but it just takes a little extra work. And I just -- and I don't want to -- I

¹⁷⁶¹ *Id.* at 107.

don't want to use it as an excuse. It's just part of my life now. I used to -- I used to rely exclusively on my memory, because I had a very good memory, and I just don't dare do that anymore. That's why I've had copious notes on a lot of things.¹⁷⁶²

On May 3, 1996, the day after her appearance before the grand jury, Thomases's attorneys -- Benito Romano and Andy Levander -- further explained Thomases's medical condition. Romano said Thomases's memory problem was with retrieval.¹⁷⁶³ He said there was "a hole" on July 27, 1993¹⁷⁶⁴ that was consistent with memory problems associated with MS.¹⁷⁶⁵ When asked why Thomases could remember a private client matter on July 27 but not her visit to the White House, Romano said the client meeting on July 27 was a major event, because it led to a major presentation on July 28.¹⁷⁶⁶ The White House visit was probably just a routine visit among friends.¹⁷⁶⁷

IV. ANALYSIS

This section sets forth the Independent Counsel's analysis about potential charges arising from the handling of papers and documents from Vincent Foster's office after his death. The Independent Counsel considered the potential charges of perjury (18 U.S.C § 1621), false statements (18 U.S.C. § 1001), and obstruction of justice (18 U.S.C. § 1505) for concealing

¹⁷⁶² *Id.* at 108-10.

¹⁷⁶³ Memo from SMC [Steve M. Colloton], Associate Independent Counsel, to File re: Susan Thomases (May 8, 1996).

¹⁷⁶⁴ *Id.*

¹⁷⁶⁵ *Id.*

¹⁷⁶⁶ *Id.*

¹⁷⁶⁷ *Id.*

papers and documents from the lawful subpoenas of this Office and Congress.

The Independent Counsel has concluded the evidence was insufficient to prove beyond a reasonable doubt that any documents were removed from Foster's office with the intent to obstruct justice. Although there exists eyewitness testimony and additional circumstantial evidence that documents relevant to the Independent Counsel's investigation, as well as congressional inquiry, were removed, the Independent Counsel was unable to resolve the antecedent factual question of what papers or documents were contained in Vince Foster's office when he died. As there existed no complete index of the office's contents before his death or during the office's search, the Independent Counsel was unable to establish beyond a reasonable doubt that any documents were removed from Foster's office and withheld from this Office or from Congress.

A. Maggie Williams's Testimony about Her Removal of Documents from Foster's Office on the Night of His Death.

Secret Service Officer Henry O'Neill said he saw Williams leaving the Counsel's suite of offices on the night of Foster's death, carrying folders or files and taking them into her office, down the hall from the Counsel's suite. Additional testimony and evidence has established, however, that this eyewitness testimony was insufficient to prove beyond a reasonable doubt that Williams removed documents from Foster's office, thereby providing false statements to the Independent Counsel or Congress.

Williams said at some point during the evening of July 20, 1993, she got a copy of the press release about Foster's death and may also have obtained a copy of the First Lady's schedule

for the following day. Williams was unable to remember whether she was carrying any documents with her when she entered Foster's office and still carrying them when she left the office.

Williams also submitted to an FBI polygraph examination in which she answered, in the negative, two questions about whether she removed any documents from Foster's office that evening or during the early morning hours after his death. The polygraph examiner concluded that Williams was truthful when responding to such questions, and an independent review by the FBI Laboratory confirmed these results.

Officer O'Neill was interviewed by Mr. Fiske's office six times, because of O'Neill's confusion about the two women's identities he saw with Williams around the Counsel's suite that night.¹⁷⁶⁸ He also expressed confusion during his Senate Deposition about whether Williams might have been carrying something in addition to what appeared to be folders or documents. He testified he could not remember whether Williams also was carrying a box on top of the folders. Further, he could not explain whether the folders or box came from Foster's office or whether Williams had these items with her when she entered the Counsel's suite.

Nussbaum, Thomasson and Williams each said no documents were removed from Foster's office on the evening of July 20. Nussbaum said while he and Thomasson were searching for a note in Foster's office, Williams was not searching for anything. Both Nussbaum and Thomasson said Williams was sitting on the couch in Foster's office crying. Although

¹⁷⁶⁸ The two women whose identities O'Neill confused were Patsy Thomasson and Evelyn Lieberman.

Nussbaum consistently testified that no one removed any documents from Foster's office, he equivocated about whether Williams was carrying any papers while she was in or around Foster's office.

Evelyn Lieberman said she sat at a desk in the First Lady's office on the night of July 20 after arriving at the White House with Williams. Lieberman said she did not see Williams carrying a box or a pile of papers or folders that evening, nor did she see Williams go into her office that evening.

Terri Cobey, a cleaning custodian on duty that night, remembered seeing a black female and a white female walking between the Counsel's office and the First Lady's office. She was unable to remember during an interview whether these women were carrying any papers or files with them. During an appearance before the grand jury, she said she did not see anyone carrying documents from Foster's office that night.

B. Bernard Nussbaum's Search of Foster's Office.

The Independent Counsel concluded that although the search of Foster's office had the effect of frustrating a legitimate law enforcement inquiry, the evidence was insufficient to prove beyond a reasonable doubt that Nussbaum intended to obstruct justice.

Two DOJ attorneys and an FBI agent testified that an agreement was reached with Nussbaum on July 21 whereby the DOJ attorneys would review at least a portion of each document in Foster's office to determine whether it was relevant to the investigation and whether it contained any privileged information. When everyone returned on July 22 to perform the search, Nussbaum said he alone would review the documents.

From the time of the initial agreement on July 21 and the search on July 22, records showed numerous phone calls between Mrs. Clinton, Susan Thomases, and Maggie Williams, and calls between Thomases and Nussbaum. The pattern of telephone calls on the morning of July 22 raised questions about whether there was a relationship between the calls and the search. Mrs. Clinton, Thomases and Williams have each testified that they were consoling each other over the death of a close friend and that they did not remember discussing the search during these conversations.

Associate Counsel Steve Neuwirth testified about a conversation with Nussbaum before the office's search. Although Neuwirth could not remember the exact words used by Nussbaum, he testified that based on what Nussbaum had told him, it was Neuwirth's "impression" that Thomases had told Nussbaum that Mrs. Clinton was concerned about the search. Thomases did not remember having such a conversation with either Mrs. Clinton or Nussbaum. Thomases testified that Nussbaum brought up the topic of the search and described to her the procedure he planned on using. Although the evidence was inconclusive about whether Nussbaum spoke with Thomases before, after, or both before and after the search, Nussbaum testified that Thomases raised the subject with him and told him that people were concerned about the procedure to search Foster's office, but did not mention whether she had spoken with Mrs. Clinton. Mrs. Clinton testified that she did not remember expressing any concerns about the search with Thomases or Williams on the morning of July 22.

C. Susan Thomases's Testimony to this Office and Congress about Her Discussions with Mrs. Clinton and Bernard Nussbaum about the Search.

Thomases testified that she did not express in any way to Nussbaum on the morning of July 22 the view that there should be a limitation placed on the ability of law enforcement officials to review documents in Foster's office. Although some evidence exists contradicting Thomases's testimony, the Independent Counsel concluded the evidence was insufficient to prove beyond a reasonable doubt that Thomases's testimony was knowingly false.

Telephone records establish a sequence of telephone calls on the early morning of July 22: Williams to Mrs. Clinton; Mrs. Clinton to Thomases; Thomases to Nussbaum; and Thomases to Mrs. Clinton. In particular, Thomases paged Nussbaum one minute after the completion of a three-minute call from the Rodham residence to Thomases's. Telephone records also show that five calls were placed from Thomases's law office to either the Office of the Chief of Staff or the First Lady's office between 10:00 a.m. and noon on July 22.

Mrs. Clinton, Williams, and Thomases each testified that during these telephone conversations, they were merely consoling each other over the death of a friend. None of them remembered discussing the search or any documents in Foster's office. Thomases testified that she did not believe that she spoke with Mrs. Clinton about the search before the office's search on July 22, 1993.

Nussbaum testified that Thomases raised the topic of Foster's office search during a telephone conversation on July 22. This testimony contradicts Thomases's assertion that Nussbaum raised the search during their conversation. Nussbaum testified that Thomases told

him she had heard that people at the White House were discussing the search and were concerned about the procedure that Nussbaum planned to use. Additionally, Neuwirth testified that Nussbaum told him about a phone conversation with Thomases on the morning of July 22. Neuwirth testified that he was left with the impression that Thomases had told Nussbaum that Mrs. Clinton was concerned about investigators having unfettered access to documents in Foster's office. Nussbaum testified that Thomases did not discuss with him Mrs. Clinton's views about the search.

D. Maggie Williams's and Mrs. Clinton's Testimony about the Removal of the Clintons' Personal Documents from Foster's Office and Their Placement in the White House Residence.

Although some conflicting testimony exists about why the documents were put in the residence and whether the documents were reviewed by Maggie Williams or Mrs. Clinton, the Independent Counsel has concluded the evidence was insufficient to prove beyond a reasonable doubt the statements were false. Williams testified that she put the personal documents in the residence on July 22 at the request of Mrs. Clinton until they could be delivered to the law firm of Williams & Connolly. Williams also testified that she did not have Williams & Connolly pick up the documents that day because of the late hour. Both Williams and Mrs. Clinton have testified that they did not review those documents before Williams & Connolly removed them from the residence.

Williams also testified that she contacted Bill Barnett or his secretary twice on July 22 about the documents. Barnett's secretary, Sylvia Faison, testified that she was "positive" that she did not speak with Williams after Foster's death about picking up documents from the White

House. Barnett's telephone logs do not show any calls to or from Williams on July 22. Barnett testified that his telephone logs are not perfect and he could not say whether he recorded every call he received.

Thomas Castleton, Special Assistant to the Counsel, was asked to carry the box of documents to the residence. He testified that on the way to the residence, he was told the Clintons would review the documents. Initially, he was unable to identify who told him that but limited the possibility to Betsy Pond, Linda Tripp, or Maggie Williams. In subsequent testimony, Castleton was able to identify Williams as the person who told him the documents were being brought to the residence for the First Lady to review, as they contained documents of a personal and financial nature. Williams disputed Castleton's testimony that she told him the Clintons would be reviewing the documents. Williams was unable to remember whether Mrs. Clinton told her that she or the President wanted to personally review the files.

On July 25, 1993, Secret Service records show Mrs. Clinton remained in the residence the entire day and also show that Williams entered the residence for fourteen minutes. When questioned about this, Williams could not remember what she was doing in the residence, but responded that she was often there during the weekends. Mrs. Clinton testified that Williams did not show her any documents from Foster's office that weekend. She also testified that she did not review or see the documents from Foster's office that were stored in the residence before they were turned over to Barnett on July 27.

Although Williams testified that she did not review the documents once they were delivered to the residence, Nussbaum initially testified that Williams returned a file about the

White House residence's renovation that was removed by Nussbaum and Williams on July 22. In subsequent testimony, Nussbaum said although Foster did work on the issue, he was not sure if the file even originated from Foster's office. Williams testified that she remembered having a discussion with Nussbaum about whether the renovation file was the Clintons' personal file, but did not remember returning the file to him.

The FBI Laboratory conducted fingerprint analysis on all documents that were identified by Williams & Connolly as those obtained from the White House on July 27. None of the prints matched those of President Clinton, Mrs. Clinton, or Williams.

E. The Clintons' Personal Documents Removed from Foster's Office and the Testimony of Mrs. Clinton, Maggie Williams, and Robert Barnett.

Gary Williams, the White House Plumbing Foreman, testified that on August 25, 1993, he saw a box with "VINCENT FOSTER" written on it in black magic marker in the closet in White House residence Room 323. This was the same closet where Maggie Williams stored the Clintons' personal documents from Foster's office. Gary Williams also testified that when he reentered the closet on November 2, 1993, he believed the same boxes were in the closet and remembered seeing Foster's name on a lid. This eyewitness testimony of the box's presence raises questions about the testimony of Mrs. Clinton, Maggie Williams, and Bob Barnett that the personal documents removed from Foster's office and stored in the White House residence were removed by the law firm of Williams & Connolly on July 27, 1993.

On May 28, 1996, this Office served a grand jury subpoena on the White House for any box and/or lid located in the residence bearing the name "Foster." The White House Counsel's

office told this Office that a search of the residence and Carolyn Huber's East Wing office located no responsive materials. The Independent Counsel concluded the eyewitness testimony was insufficient to prove beyond a reasonable doubt that the testimony, standing alone, was false or that documents were secreted in the White House residence with the intent to obstruct justice.

F. Craig Livingstone's Testimony about His Activities on the Morning of July 21, 1993.

Craig Livingstone testified that on the morning of July 21, 1993, he was at the Foster residence to control the press. Livingstone also testified that he did not remove or carry documents out of Foster's office that morning. Other evidence, including an eyewitness account, contradicts Livingstone's testimony about his whereabouts and activities on July 21. The Independent Counsel concluded that such evidence was inconclusive and thus there was insufficient evidence to prove beyond a reasonable doubt that Livingstone provided false testimony to this Office.

Officer Bruce Abbott of the Uniformed Division of the Secret Service, testified that on the morning of July 21, 1993, while assigned to work the 6:30 a.m. to 3:00 p.m. shift at Post E-1, located on the ground floor entrance to the West Wing, he saw Craig Livingstone and another man get off the elevator near his post. Abbott was unable to identify the time that he saw these two men; initially he said it was between 6:45-7:00 a.m., then subsequently said it might have been as late as 8:30 a.m. Abbott also testified that Livingstone was carrying a briefcase and the other man was carrying a cardboard box with the top open, containing several dark-colored loose-leaf binders. The men walked past him and out the door of the West Wing.

Abbott reported his observations later that morning to Secret Service Inspector Dennis

Martin and Park Police Detective Peter Markland. Detective Markland questioned Livingstone later on July 21. Livingstone denied being in Foster 's office that morning or carrying documents from Foster's office. Markland testified that Livingstone did not appear surprised or concerned by the questioning.

On July 21, Livingstone had prepared a typewritten report of his activities on July 20-21 to answer press inquiries. This report is consistent with his testimony that he was at the Foster residence that morning until 8:00 a.m. Gate records show that Livingstone entered the White House at 8:06 a.m. on July 21. Livingstone denied that he was in the White House before 8:06 a.m. Although Livingstone has said he went to the Counsel's suite shortly after he arrived at the White House, he maintained that he could not remember carrying a briefcase or moving any documents from the Counsel's suite or Foster's office on the morning of July 21.

Abbott's testimony does not establish conclusively where Livingstone was in the West Wing before Abbott allegedly saw him, or where he went after Abbott allegedly saw him. Further, Abbott was unable to identify the other individual he saw on the elevator with Livingstone. It cannot be determined whether this individual and Livingstone were engaged in a joint task or just happened to be on the elevator with Livingstone. Finally, Abbot cannot establish the documents' contents in Livingstone's briefcase or the box carried by the unidentified man, or whether any such documents were in Foster's office when he died.

The Independent Counsel also evaluated the testimony of Charles Easley, the security officer for the Executive Office of the President, which also contradicted Livingstone's testimony. Easley testified that several months after Foster's death, Livingstone asked Easley if

he told him that he took documents from Foster's office. Easley responded in the negative. Easley said Livingstone then questioned whether the Secret Service or the Park Police had turned him in for removing a box from Foster's office. Easley questioned whether any of this ever happened, as Livingstone was prone to brag to others in an effort to enhance his own importance.

V. SUMMARY CONCLUSIONS

The events following Vince Foster's death could be determined with only limited certainty. Although there were numerous logs and telephone records that showed times of calls and the entry and exit from the White House, many people involved said they were unable to remember what was said or done, or the reasons for calls or meetings. Broadly speaking, the Independent Counsel's investigation as it related to the documents in Foster's Office involved two separate questions. First, whether anyone obstructed the investigation of the U.S. Park Police and the FBI by removing or concealing relevant documents from Foster's office. Second, whether, in the subsequent investigations, anyone committed perjury, made false statements, or obstructed justice. The Independent Counsel found there was insufficient evidence to show beyond a reasonable doubt that anyone had committed a federal crime.

The Independent Counsel extensively investigated whether anyone obstructed the FBI and Park Police investigations by tampering with documents in Foster's office. During the Independent Counsel's investigation, numerous people were interviewed or appeared before the grand jury, which also issued numerous subpoenas to obtain relevant evidence. Both circumstantial evidence (principally phone records and entry and exit logs) and testimonial evidence exist to create the inference that some people might have endeavored to tamper with

documents in Foster's office, or counseled others to do so. All people involved in those conversations denied such actions.

Additionally, without any direct evidence -- in particular, without testimony from anyone who claimed to have participated in any endeavor to obstruct the federal investigations -- there was simply insufficient evidence or proof of any kind showing anyone committed perjury, made false statements or obstructed the due administration of justice by refusing to provide relevant records.

Accordingly, no criminal prosecutions about this aspect of the Independent Counsel's investigation will be brought. This matter is now closed.