

GERGEN, DAVID

July 13, 1995

MEMORANDUM FOR THE FILE

FROM: Miriam Nemetz

542-DC-00037735

RE: Gergen Deposition

Yesterday I received a debriefing regarding David Gergen's deposition from Andy Krulwich. Gergen's deposition lasted for three and one-half hours. Giuffra and Kravitz were the questioners.

Background. In response to a series of background questions, Gergen testified as follows. Gearan did not report to Gergen, but Gergen did oversee some of Gearan's activities. Gergen reported to McLarty and the President. Gergen had virtually no relationship with Foster. Foster came to the White House in June and Foster died in July. Gergen had contact with Foster in connection with the Wall Street Journal's request for photographs and the Supreme Court vacancy. He also occasionally passed him on the stairwell. Gergen never discussed Whitewater with Foster, the President, or Maggie Williams.

Night of July 20th. Gergen learned of Foster's death at a dinner party at the Bradleys' house. Jody Greenstone (who Krulwich thinks was Gergen's assistant) had received a call from Gearan and then contacted Gergen. Gergen called Gearan from the party and was told that Foster's body had been found by the Park Police and that the President had already been told. Gergen asked whether a note had been found, and Gearan said no, but that it was an apparent suicide. Gearan asked Gergen's recommendation on press response, and Gergen recommended notifying the press that night. Gergen himself told the news to a Washington Post reporter who was at the party. Gergen spoke to Mickey Kantor and James Carville, who were also there, about the emotional effect the death would have on the President. He also spoke with Vernon Jordan about the public impact of the suicide.

Gergen and Jordan went to Foster's house at about 11 p.m. The President, Senator Pryor, Webb Hubbell, David Watkins, and McLarty were among the 15 people at the house. There was a lot of grieving and crying. There were no police officers there. Gergen was asked whether there was any discussion at the house about the need to seal or lock the office, and Gergen said no.

Gergen went back to the Residence in Vernon Jordan's car and met with others in the 2nd floor kitchen. The President, McLarty, Jordan, and Gergen were there. Mickey Kantor and his



wife were there for part of the time. Gergen was asked the subject matter of the discussion, and he said the President was grieving and reminiscing about growing up with Foster. The President went into the living room two or three times to call Hillary. Gergen said the subjects of their conversations were mutual grieving and what to do with the schedule the next few days.

Gergen was asked whether he had any conversations about sealing the office at the Residence. Gergen said he called Gearan to let him know where they were, and they had two or three conversations between about 12 and 1. McLarty and Gergen discussed sealing the office. Gergen then asked Gearan whether the office was sealed, and Gergen said he had to check. He either put Gergen on hold or said he would call back, and a few minutes later said the office was sealed. Gergen did not know the source of Gearan's information, but had the impression it was someone in the Deputy Chief of Staff's office (Burton or Roy Neel).

Gergen was asked about his conversations with McLarty, and he said that they mostly talked about why Foster would take his life and what the President should do. Sealing the office was secondary. Gergen said he was not aware of any request by law enforcement to seal the office.

Gergen was asked what he knew about the burn bag and the trash bag. He said that Gearan told him that Foster's trash had been secured, but that the burn bag had been taken out and was intermingled with other material and that the decision had been made not to pursue it. He asked who decided, and said he did not know. He told McLarty, who "took it aboard." Gergen did not think he was being consulted about the matters; he thought it was already done.

Gergen was asked if he ever discussed with Nussbaum that Nussbaum entered Foster's office that night, and he said possibly, later. He gave the same answer with respect to Williams. He was sure he never had such a conversation with Thomasson.

Gergen said he spoke with the First Lady briefly that night. She asked how the President was doing.

July 21st. Gergen said he attended the senior staff meeting Wednesday morning. He did not recall any discussion there about the investigation of Foster's death.

Gergen did not see anyone carrying a box. He does not recall going to the Counsel's Office suite or talking to Nussbaum that day. He does not specifically recall talking to Maggie Williams, although a call from her is reflected on his phone log.



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Although he does not remember the conversation, he has the impression she was concerned about the Clintons' grief. He did not do anything to follow up on the sealing of the office.

Review of Foster Office. Gergen said he knew nothing about the review of Foster's office before it occurred.

The Note. Giuffra jumped around when asking questions about the note, but I will describe Gergen's testimony chronologically. Gergen went to Chicago on July 26th. He was making calls in his hotel room when McLarty came in to tell him that he had been called and that a note had been found in the bottom of Foster's briefcase. McLarty either read the note or described its highlights to Gergen. Gergen said he thought the note should be turned over as soon as possible, but McLarty said Burton had raised some issues. McLarty put Gergen on the phone with Burton. Gergen said the note should be turned over. Burton raised executive privilege and privacy concerns.

Giuffra then asked whether Gergen spoke to anyone other than Burton or McLarty that evening about the note, and Gergen said no. (Because of the way he framed the question, Giuffra did not elicit testimony regarding a second conversation Gergen had with McLarty. According to Burt Rein, in the later conversation, McLarty said he had decided to wait until the next day to decide whether to turn over the note. McLarty said that the First Lady was very upset and believed the matter required further thought and that the President should not yet be told. She said they should have a coherent position and should have decided what to do before they told the President. She also was concerned about the privacy of the family.)

Gergen said that the next morning, back in Washington, there were a series of conversations about the note. Nussbaum said he was not opposed to turning over the note, but put a number of issues on the table -- executive privilege, privacy, was it a suicide note, letting Foster family know.

Jim Hamilton came over to the White House in the morning. He said the family should be told before the note was released. Gergen agreed it was only decent to wait until Mrs. Foster could be told. However, she was on her way back from Arkansas, so this caused some delay. Hamilton told them in the mid-afternoon that Mrs. Foster agreed the note could be turned over.

Gergen said he was present when McLarty told the President about the note in a 6 p.m. meeting on Tuesday, July 27th. Nussbaum may also have been present. It was Gergen's impression that the President did not know about the note before this meeting. The contents of the note were reviewed with the President, and he said it should be turned over right away. They



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did not discuss legal issues with the President, only privacy and decency.

Gergen was also present at the meeting with Reno and Heymann. Gergen said Reno immediately asked why the note had not been turned over and told them to call the Park Police. She seemed to accept the reasons for the delay when they were explained to her.

Gergen was asked if there were any discussions that the note would reflect badly on the White House. He said she speculated that the note, particularly the statement that the FBI lied, might cause the Attorney General to feel she had to investigate.

Complaints. Gergen was asked whether, prior to the 27th, he had any knowledge of DOJ concerns about the investigation. Gergen said he had some conversations with Heymann, with whom he had a longstanding relationship. Gergen asked Heymann about what the process would be. Heymann said that the Park Police, not DOJ, would investigate. Gergen also recalled a conversation with Heymann in which the White House asked permission to do a preemptive release of the note; Heymann said no.

Gergen was asked about his conversation with Tom Collier. Gergen said Collier called him because he was not on good terms with Neel and Burton. Collier said he had spoken with Neel and Burton. He was concerned about the pace of the investigation. There also were complaints from the Park Police that during the office review Nussbaum would not let them see papers that he did not deem to be relevant. Collier did not say whether Nussbaum was right or wrong, but he said he could not guarantee that the Park Police would not go to the press. Collier asked Gergen to speak to McLarty and speed up the White House's response to the Park Police's request for Foster's telephone logs. Gergen said he did this, and understood that the telephone logs were delivered the next day.

Gergen was asked McLarty's views of Nussbaum. He said that McLarty respected Nussbaum's legal judgment but was frustrated because he (McLarty) had a broader perspective that also took into account perception and political issues. Gergen said he did not recall talking directly to Nussbaum about the pace of the Park Police investigation.

Gergen said that, despite his philosophical differences with Nussbaum, he understood that Foster was working on official White House and personal Clinton legal matters that were totally unrelated to the Park Police investigation. Giuffra then asked when he learned that Foster was working on Clinton personal matters. Gergen said he was not sure, but he assumed it was so



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because, based on his experience with prior administrations, the White House Counsel's Office always does personal work for the President.

Gergen said he had no conversations with the First Lady or the President about Foster's papers. He did not recall having such a conversation with Maggie Williams.

Kravitz Questions

Kravitz showed Gergen an FBI 302 that summarized an interview on July 30, 1993. As reflected in the memo, Gergen said that by 10:30 a.m. on July 27 everyone agreed that the note should be turned over. Gergen said his memory was fresher at that time and he had no reason to doubt the accuracy of the memo.

Kravitz asked whether Nussbaum used the concerns he identified as a basis not to turn over the note at all. Gergen said no, he was just raising questions that should be answered before doing so. He observed that they turned the note over quickly after Mrs. Foster and the President were told.

Kravitz asked whether, on July 26, Gergen told anyone that they were taking too long to tell the President about the note. He said he thought it should be more quick, but that McLarty said he wanted to wait until the next day, and Gergen thought that was reasonable.

Kravitz asked whether Reno was comfortable after being walked through the reasons for delay in turning over the note, and Gergen said yes.

Kravitz asked whether he was sure he had used the word "sealed" when talking to McLarty and Gearan and he said yes. Kravitz asked whether, when he talked about sealing the office, he had a distinction in mind between Foster's office and the Counsel Office suite, and Gergen said he was thinking of Foster's office.

Kravitz asked about the atmosphere at the White House after Foster's death. Gergen said people were distraught. It was the first suicide of a high-ranking official since Forrestal, fifty years ago.

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There were three witnesses present when Mrs. Clinton saw the note and would have given her "views" or "instructions" regarding the handling of the note: Nussbaum, Neuwirth, and Burton. Their testimony is consistent in that they say that Mrs. Clinton had an emotional reaction (she started crying) and that she said Nussbaum should take care of the situation. Nussbaum recently confirmed that testimony and denied adamantly that Mrs. Clinton had expressed any view to him on the handling of the note.

McLarty confirms that he talked to Nussbaum and Burton on Monday the 26th. But he has never said that Nussbaum or Burton related Mrs. Clinton's views on the subject, and his attorney recently confirmed, according to reports, that McLarty never talked to Mrs. Clinton about the handling of the note. (McLarty's attorney further stated that McLarty did not relate Mrs. Clinton's views as to when to communicate the information to the President.)

Note that Gergen's recollection of McLarty's statement would be admissible only in a case against McLarty (unless McLarty's statement was during and in the furtherance of a conspiracy).

Because there is no evidence that McLarty talked to Mrs. Clinton; because Nussbaum, Neuwirth, and Burton support McLarty's testimony; and because the note was in fact disclosed to law enforcement in a timely manner, I do not recommend any further follow-up.