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Nussbaum Statements
re: Foster

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Hearing on
IMPROPER HANDLING OF DOCUMENTS
IN DEPUTY WHITE HOUSE COUNSEL
VINCENT FOSTER'S OFFICE
AFTER HIS DEATH
WEDNESDAY, AUGUST 9, 1995
United States Senate
Special Committee to
Investigate the Whitewater
Development Corporation and
Related Matters
Washington, D. C.

The committee met at 10:00 a.m. in Room 216 of the Hart Senate Office Building, the Honorable Alfonse M. D'Amato, chairman of the committee, presiding.

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PROCEEDINGS

The Chairman. I'd just like to make an announcement.

We are scheduled to start at 9:30. We have some delay that, why don't we say, until 10:00. The reason for the delay is that a vote is starting within the next five minutes.

Mr. Nussbaum, good to see you. As I was saying, while we were scheduled to start at 9:30, the other reason the other Senators are not here is because a vote will start within the next five minutes. That vote will take at least 15 minutes to complete, plus they have another five minutes, so I'm going to suggest that we be prepared to start at 10:00, and so we'll start the proceedings at 10:00. Okay.

(Recess.)

The Chairman. The committee will come to order.

Mr. Nussbaum, would you stand for the purposes of the oath.

SWORN TESTIMONY OF BERNARD NUSSBAUM, FORMER COUNSEL TO THE PRESIDENT OF THE UNITED STATES

The Chairman. Mr. Nussbaum, I understand that you have a prepared statement that you'd like to give to the committee for the record, and we'd be prepared to receive your testimony on it at this point.

Mr. Nussbaum. Thank you, Mr. Chairman. Mr. Chairman,

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Senator Sarbanes, and members of the committee –

The Chairman. May I interrupt at this moment? Would you have a copy so we'll have copies made for the committee?

Mr. Nussbaum. Yes, we have copies, and we'll –

The Chairman. If you could just suspend for a moment.

we'll have some copies made. Look, I'm not going to hold you up, but if your counsel could get a copy, we'll run some off.

Mr. Fitzpatrick. We have copies.

The Chairman. Pardon me?

Mr. Fitzpatrick. We have copies. They're coming.

Mr. Nussbaum. Copies are coming, Mr. Chairman.

The Chairman. Why don't you proceed as long as we have them.

Mr. Nussbaum. Thank you.

Mr. Chairman, let me say I appreciate the opportunity to deliver this opening statement. I should tell you at the outset, and I know this will not surprise you, since we have all met before, that I intend to respond in detail to each of the issues and to all of the innuendoes raised in this hearing room during the past several weeks. I

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intend
to do so with facts, not fantasies, and with a discussion
of how a lawyer is obliged to act with respect to a client's confidences. So let me begin.

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As you know, I was counsel to the President of the United States from January 20, 1993 until April 5, 1994.
Vincent Foster was my deputy. He was a superb lawyer, an
individual of great integrity and a magnificent human being. Vince was the co-senior partner of the little law firm we created in the White House, the White House counsel's office. It is hard to imagine having a finer colleague. I miss him. I miss him a great deal. So do so
many others who knew him well.
This committee is looking into the following question: Did improper conduct occur regarding the way in
which White House officials handled documents in Mr. Foster's office following his death? I have an answer
to that question, Mr. Chairman. It is a categorical no. There was nothing improper in the way White House officials
handled documents in Vince Foster's office following his
death.
As this committee has heard, there were differences of
opinion with the Justice Department as to how a search of
Vince's office for a suicide note or similar such documents
should be conducted. That office contained numerous
confidential files, as well as sensitive documents, such as
briefing reports on Supreme Court nominees and other high
Administration officials.
Before any review by me of the documents in that

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office, Justice Department officials wanted to read a part
of each document. They wanted to decide if a document was
privileged or relevant to their search. That is perhaps
understandable from their institutional point of view,
which Philip Heymann defined here as "maintaining the
credibility of federal law enforcement."
As White House counsel, I was also concerned with
maintaining the credibility of federal law enforcement, but
I was bound to act in accordance with my obligations as a
lawyer, and I did not believe that doing so, that acting
in accordance with my obligations as a lawyer would undermine
the credibility of federal law enforcement. It was my
ethical duty as a lawyer and as White House counsel to
protect a client's information and confidences and not to
disclose them without a prior review by me.
It was my duty to preserve the right of the White
House of this President and future Presidents to assert
executive privilege, attorney-client privilege and work
product privilege. It was my duty to do nothing that could
result in an inadvertent waiver of these privileges. It
was my duty to protect the confidentiality of other matters
as well, including sensitive government documents in that
office. These were solemn professional obligations that I
was sworn as a lawyer to uphold.
The fact that law enforcement agents wanted to see if

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there was a suicide note in Vince's office before I could
review the documents in that office did not give me the
right to ignore these obligations and throw open the door
to that office. It did not give me the right to permit
others, including Justice Department officials, to read the
documents in Foster's office or even a part of them without
a prior review by me.
I believe that each of you – and each of you, like
the President, is a major public figure – would want your
counsel to respond in the same way to a request by the
Justice Department or anyone to examine your confidential
documents in your counsel's office. You would not want the
door to your counsel's office thrown open to even a
first-page examination of your confidential files without a
prior review by you or your counsel. You might waive –
and I'm sure you would waive – whatever confidences and
privileges you had, and you might cooperate – and I'm sure
each of you would cooperate fully with investigators, but
you and each of you would want your documents in your
counsel's office reviewed first before you would let anyone

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take a look at them. And you would want – and I know you would want – any decision to waive confidentiality and privilege respecting your documents to be reached carefully and deliberately. The President of the United States was entitled to at least the same protection, to at least the

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same right regarding documents in his deputy counsel's office after that lawyer, Vince Foster, died in July 1993.

And as I said, I did not believe in July 1993 that my acting in accordance with my obligations as a lawyer would undermine the credibility of federal law enforcement. I still do not believe it after hearing Mr. Heymann's testimony before this committee.

Mr. Heymann apparently believes that all lawyers, other than Justice Department lawyers, are "players" with a "significant stake in the matter." He believes they cannot – and indeed they must not – be trusted to "act as a referee," his words, when it comes to reviewing and producing documents. That notion is foreign to our system of civil and criminal justice. It is contrary to how our system functions.

All lawyers, whether they are White House lawyers, private lawyers or Justice Department lawyers, are bound by the same ethical obligations. No one of us stands on a higher pedestal than the other. No one of us is more or less of a player with a stake than the other. No one of us is more or less deserving of trust than the other. In our system of justice, tens of thousands of lawyers each day act as referees under strict ethical rules when it comes to reviewing and producing documents. This is how our system functions. These lawyers are subject, of course, to that

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ultimate referee, our judges.

Phil Heymann's view that when it comes to the President's documents, the public will only trust and accept the word of a Justice Department lawyer and not a White House counsel or a private lawyer is not only disappointing, it is destructive, for it feeds the very cynicism, it creates the very distrust that he claims to be combatting. I've known Phil Heymann a long time. Phil is a good and decent and honest person. Here, in my judgment, he just happens to be profoundly wrong. And so, as I will describe later, while I sought to accommodate the legitimate needs of law enforcement, I fulfilled my professional obligations, and, as you will hear, I was also concerned, as Mr. Heymann appears to be, about appearances.

Before I turn to specific events regarding the handling of documents following Mr. Foster's death, I want to tell you about certain things that did not happen. I did not, nor to my knowledge, did anyone else in the White House destroy, mishandle or misappropriate any document in Vincent Foster's office.

The documents in Vince Foster's office were preserved. The documents in Vince Foster's office were preserved. Every document sought by law enforcement authorities, some right after Vince's death and others

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months later when the Whitewater matter erupted in the press, were turned over by the White House and by the President. It has been suggested over and over again that the reason I transferred personal files to the First Family after Vince's death was because I or others had some deep concern with the Whitewater matter. This is false.

The Whitewater matter, which subsequently became the focus of so much attention, was not on our minds or even in our consciousness in July 1993. Whitewater had absolutely nothing to do with how documents were handled in the White House following Vince Foster's death, and yet it is that matter, Whitewater, that has resulted in these hearings. I will return to this later.

Let me now describe in some detail those fateful days in July 1993.

Tuesday, July 20. I was at a Washington restaurant on the evening of July 20, 1993 with my wife and friends. That was the day that the President announced the

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appointment of Louis Freeh as the new director of the FBI.
It was also the day that Judge Ruth Bader Ginsburg began her successful Senate confirmation hearings for the
Supreme Court. Vince and I had been involved with both
those appointments. We were very proud of them. So I was
in a happy frame of mind that evening when the White House
called me at the restaurant. When I was told that Vince

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had committed suicide. I was stunned and deeply depressed.
I immediately went to the White House, where I saw the
President and a number of White House officials. As you
have heard, we were all understandably sick with grief.
The President left with Mack McLarty, the chief of
staff, to comfort the Foster family. Because I was
concerned that my staff not learn of Vince's death through
media reports, I went to my office to phone them. As I
walked to my office, it occurred to me that perhaps Vince
left a note telling us why he had taken his life. I
decided to go to his office, which was next to mine, to see
if there was a suicide note.
When I reached the White House counsel's suite at
around 10:45 p.m., I found the door open. Patsy Thomasson
and Maggie Williams, two White House staff members, were in
Vince's office. Maggie was sitting on Vince's sofa
crying. Patsy, who was sitting behind Vince's desk, said
they had just arrived. She told me – Patsy told me she
was looking for a suicide note. Patsy and I checked the
surfaces in Vince's office. We opened a drawer or two
looking for a note.
No one – no one looked through Vince's files. Patsy
did not examine any individual file. She did not rummage
through or examine any individual file, nor did I. We did
not find a note. We spoke about Vince and what a tragedy

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this was. Each of us, all of us were quite emotional that
night. The three of us then left the office. Nothing was
removed by any of us. We were there no more than
10
minutes. It has been suggested that our brief look – our
brief human look, understandable look for a note that night
of July 20 was some secret, mysterious act to be hidden
from others.
The fact is that the next morning on July 21 I told
law enforcement officials that Patsy, Maggie and I were in
Vince Foster's office the night before. I told him that
Patsy and I briefly looked for a suicide note and found
nothing. After leaving Vince's office on July 20, I
remained in the counsel's suite. I went next door to my
own office. I made the phone calls, very difficult phone
calls, to my staff to tell them of Vince's death. I was
there for about an hour. When I left my office that night,
I believe I locked the door of the suite, as was my habit
when I was the last one leaving.
Wednesday, July 21. July 21 was a difficult and busy
day. Many members of the White House staff visited the
counsel's office to express their sympathies, to talk about
Vince. There was much for me to do that day. When I
arrived at the White House that morning, my staff was in
shock. All were grieving. I learned that one of my
secretaries had gone into Vince's office that morning to

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straighten it up. That secretary, who was distraught, felt
Vince's office should look nice when people came to see
it. I asked her not to go back into the office. Vince's
office itself did not have a lock on the door, but the
counsel's suite did.
Initially I did not think about securing the office in
any special manner. It was not a crime scene. Vince did
not die there. One does not typically seal the workplace
of a person who commits suicide. No one the night before
suggested to me that Vince's office should be sealed, but
on the morning of July 21, after talking about the issue
with two of my staff members, we called the Secret
Service. We asked to have an agent stand outside of and
secure Vince's office. The Secret Service
promptly complied with that request. That evening, a

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lock
was installed on the office door.
That morning of July 21, I also attended a meeting in
the White House with the Park Police. They told us about
the discovery of Vince Foster's body and the scene of his
death. They said they believed that Vince had committed
suicide. The President – the President came to the
counsel's suite on July 21. He came to console the people
who worked there.
While the President was with us, I briefly entered
Vince's office. I removed and showed to the President an

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early 1950s photograph of Ms. Mary's kindergarten class in
Hope, Arkansas. That photograph, which Vince cherished,
showed a 5-year-old Vince Foster and a 5-year-old Bill
Clinton. Nothing else was removed from Vince's office that
day. Later that afternoon, the President, Mack McLarty and
I addressed the entire White House staff to try to comfort
them. It was not easy.
Midday, members of the Park Police contacted me. They
asked me to review – they asked to review – they asked to
review the contents of Mr. Foster's office to see if there
was a suicide note, an extortion note or some other similar
document. They also asked to interview me and members of
my staff.
I thought there might be multiple requests for
information, so I called Mr. Heymann, Philip Heymann, the
Deputy Attorney General, and asked if the Justice
Department would agree to coordinate the investigations of
Foster's death. He said the department would do so. In
the late afternoon, I met with representatives of the Park
Police, the Department of Justice and others. We agreed
that interviews of my staff members, many of whom were
still shaken, would be held the next morning. We also
agreed after some discussion that a search of Vince's
office would take place the next day to search more
thoroughly for a suicide note or similar such document. I

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will return shortly to this meeting with the Justice
Department on July 21.
Thursday, July 22. The next day, on July 22, the Park
Police interviews of staff members took place as
scheduled. The search of Vince's office began in the early
afternoon. How the search of Vince Foster's office was
conducted: Prior to the search of Mr. Foster's office, I
gave a good deal of thought about how it should be done.
Vince's office was the office of a senior executive branch
lawyer. It contained numerous, numerous confidential and
privileged files. It had extremely sensitive documents,
such as briefing books on Supreme Court nominees and
sensitive reports, background reports on other high
administration officials. I believed there also might be
national security information in the office.
As a lawyer and as a former Justice Department
prosecutor, I was an assistant United States Attorney in
the 1960s under Robert Kennedy, the Attorney General, and
Bob Morgenthau, the U.S. Attorney. As a federal former
prosecutor myself, I understood and respected the desire of
law enforcement officials to examine the office promptly.
I understood their need to see if there was a suicide note
or some other such document that might help explain Vince
Foster's death.
It is important to understand what we were being asked

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to do on July 22, to understand what the search was for and
what it was not for. The search was for a suicide note, an
extortion note or some similar document which reflected
depression or acute mental anguish. That is the request
law enforcement officials made of me. They did not ask to
read every piece of paper in Foster's office, every
official White House record there, every personal file
there to see if there was any indication of concern about
any matter Vince had been working on.
I was not faced with a request for some general
examination through documents to determine Vince's state of

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mind about matters he was working on. But even as to the limited request made of me on July 22, it was my duty as a lawyer and as White House counsel to protect client confidences, including highly sensitive government documents in that office. It was my duty to preserve the ability of the White House to assert executive, attorney-client and work product privileges and to be concerned about institutional precedent. This was a duty that I could not ignore. This was my professional obligation under the code of professional responsibility and the model rules of professional conduct, which, in one form or another, govern the conduct of all lawyers and protect the confidences and secrets of all clients. Before deciding on how to balance the competing

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interests I was facing, I spoke with other attorneys in the White House on the morning of July 22. I talked to a number of people about this issue as to how to search for a suicide note should be conducted. But I did not speak to the President or the First Lady about this matter, nor did Susan Thomases or anyone else convey a message to me from either of them. Susan Thomases did not discuss the First Lady's views with me, but I should say I assume from the outset of this tragedy that the First Lady, who's a very good lawyer, like every other good lawyer in or out of the White House, would believe 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. I was urged by one senior White House official, Jack Quinn, who you've seen, the Vice President's chief of staff who is an able and experienced Washington lawyer, not to permit law enforcement agents to enter Vince Foster's office at all. Jack was not concerned about particular documents or files. We never had a discussion about any sensitive matter. Jack was concerned and properly concerned about setting an unfortunate precedent for the future and the institutional need of the White House to preserve confidentiality, concerns I shared. He suggested – Jack suggested that I should inventory

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the office and create a log of privileged documents. I also talked to Bill Burton, who's an able Arkansas and Texas lawyer, he was Mack McLarty's principal assistant. Burton leaned in the same direction as Quinn. However, if I had agreed with their otherwise sensible and conservative counsel, it would have meant that law enforcement agents could not have entered Vincent Foster's office for many, many days. It would have taken a long time to do an inventory and a log of privileged documents. Such a delay, I knew, would have greatly displeased law enforcement agents. It would have angered and it would have frustrated them. I believed it was not fair to those officials to keep them out when all they were asking was to conduct a prompt search for a suicide note. I also did not think it politically wise to keep them out. Barring the door to Vince's office did not make sense to me from a public perception point of view. You see, I was concerned about appearances. If I had not been concerned, I would have followed the advice of my fellow attorneys and denied everyone access to Vince's office. That is the way we likely would have acted in private practice with respect to a search of a lawyer's office. But I understood well that we were representing a public figure, the President of the United States. I decided I was not going to keep law enforcement

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officials out of Vince's office. I chose a middle ground. I chose a procedure that balanced and accommodated the interest of confidentiality and law enforcement interest. I chose a procedure that provided the agents with immediate access to Vince's office avoiding, I hope, by doing so, unnecessary conflict with the agents and unfortunate appearances. This is the procedure I followed. This is what we did on July 22. I entered Mr. Foster's office together with the law enforcement officials. No one sat in a hallway.

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[11] The agents were with me at all times during the search in
[12] Vince's office. As the agents watched, I personally pulled
[13] out each of the files in that office. I briefly reviewed
[14] the files. As I was doing so, I gave the agents a general
[15] description of the documents, and I checked to see if there
[16] was a suicide note or an extortion note or other similar
[17] document in those files, which is what this search, after
[18] all, was all about. But the agents did not sit as cigar
[19] store dummies as I conducted the search.
[20] I also accepted requests from the agents to read for
[21] themselves any document I was describing. As I went
[22] through the files in Vince Foster's office, the agents did
[23] respond. They did ask to see and read certain documents.
[24] I set those documents aside. Subsequently, after we
[25] reviewed them, every document the agents asked for was,

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[1] within a matter of days, given to the law enforcement
[2] officials. The procedure I used provided law enforcement
[3] officials with prompt access to Vince's office. At the
[4] same time – at the same time, it protected confidentiality
[5] and preserved the right to claim privilege. But we never
[6] claimed privilege. I repeat, we never claimed privilege.
[7] Every document the investigative authorities asked for was
[8] given to them.
[9] Now, let me turn back to my meeting with Justice
[10] Department officials on July 21. I am aware that some of
[11] those officials have said that on July 21 we reached an
[12] agreement, that we agreed that they would be able to read
[13] at least a portion of each document in Vince's office to
[14] determine what was privileged and relevant. Phil Heymann
[15] also believes I owed him a call back on July 22 to discuss
[16] the position I was taking. I had, and as I said earlier,
[17] and continue to have a high regard for the Justice
[18] Department officials involved in this matter, Phil Heymann,
[19] David Margolis and Roger Adams. They are good people. We
[20] were all trying in good faith to accommodate our respective
[21] institutional interests.
[22] We had legitimate differences of opinion, differences
[23] that clearly remain to this day, and difficult judgment
[24] calls to make. We discussed various options. I never
[25] tried to cut off discussion, nor did I consciously duck

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[1] Phil's desire to talk further to me. One option we
[2] discussed on July 21 was the possibility of allowing
[3] Justice Department lawyers to look at a portion of each
[4] document to see if it was privileged. I said – I did say
[5] I would consider that option. I did not say I would agree
[6] to it. I did consider it very carefully.
[7] By the next day, I had determined that this would
[8] create an unacceptable risk of disclosure of confidences
[9] and an equal unacceptable risk of waiver of the privileges
[10] I was obligated to protect. As for privileged matters, the
[11] law regarding waiver is both strict and uncertain. A party
[12] cannot selectively disclose portions of attorney-client
[13] privileged documents without running a serious risk of
[14] forfeiting the right to keep other documents and
[15] communications on that subject matter privileged. I could
[16] not take such a risk of waiver consistent with my
[17] obligations to preserve the right to assert privilege.
[18] If the Justice Department officials believe that we
[19] reached an agreement after our July 21 meeting, then a
[20] misunderstanding and a miscommunication occurred, and I may
[21] be responsible for that. But I do not believe, nor, as you
[22] have heard, do my colleagues in the White House counsel's
[23] office believe, who were also present at those meetings,
[24] that we reached any agreement on July 21 or that we in any
[25] way misused the Department of Justice.

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[1] If anyone at the Justice Department felt at the end of
[2] the day on July 21 that there was an inadequate review of
[3] the documents in Mr. Foster's office or that agreements
[4] were broken or that more should have been done, they could
[5] have at any time after July 22, asked for a further
[6] review. They could have asked for specific files or all
[7] the files, and we would have responded as we thought
[8] appropriate, but no one ever did so. To me at least,
[9] inaction then – that inaction then, lack of action then

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speaks louder than words now.
Let me now turn to the search – return to the search
on July 22. During the search, I came across a substantial
number of Mr. Foster's own personal files. They were
placed in a separate pile on Mr. Foster's desk. I believed
Vince's personal files no longer belonged in the White
House counsel's office. They were not government records.
They were his personal records. If there were to be any
requests to examine those documents, they should be
directed to the family's personal lawyers. I said that. I
said that in so many words to the law enforcement
officials. I said if you want to look at Foster's files,
personal files, talk to his personal lawyers.
They agreed to my transfer of the personal files to
the Foster family lawyer, who, as you all know, was there
during the search. I made the transfer right on the spot.

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right in front of the law enforcement agents. Later, those
officials contacted the Foster family lawyer. They asked
to see and read all the Foster personal documents. As you
have heard at this hearing, after the documents were first
reviewed by the Foster family lawyer consistent with his
professional obligations, his ethical obligations, the
officials, the law enforcement officials were shown every
one of the Foster personal documents.
The vast majority of the files I reviewed during the
office search on July 22 were Mr. Foster's working files,
matters that he was working on in his role as deputy White
House counsel. When the agents left, the search was over.
I wanted to get on with the work of the office, to reassign
Foster's matters to other attorneys. As this committee has
heard, the Justice Department attorneys were aware that
Foster working files would be immediately distributed to
other attorneys in the office. I began this process
immediately.
Now, let me turn to the Clinton personal files.
During the office search on July 22, I saw a number of
files that concerned personal matters of the Clintons.
I
identified them to the agents present. I said these were
Clinton personal files. I said these involve investments,
taxes, other financial matters and the like. Included was
a file on the Clintons' Whitewater real estate investment.

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I knew that Vince had been assisting the First Family in
completing financial disclosure statements, filing tax
returns and creating a blind trust. A President and his
family are officially required to perform such acts.
As such, it is proper – it is proper and indeed
traditional for the White House counsel's office to assist
in that official function. Mr. Foster needed access to the
Clinton personal files for these official purposes. They
were, therefore, properly in the White House counsel's
office. But that did not make them any less personal
files.
Even though the First Family has to file financial
disclosure forms and other similar documents, blind trust
and the like, and even though it must use its personal
financial files as the basis for that disclosure, it does
not follow that every such file becomes a presidential
record. That would be a ludicrous result. Those files had
nothing to do with the transaction of government business,
although they were needed to file official forms. They
remained personal files. They remained the Clintons'
personal files. I knew that the work on the projects for
which the personal files were needed had recently been
completed.
With Vince's death and the work done, the reason for
our office possessing these personal files was at an end.

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Just as I believed the Foster personal files should go to
the Foster family lawyers, I believed the Clinton personal
files belonged in the hands of the First Family or their
personal lawyers. Shortly after the search of Vince s
office was completed, I asked Maggie Williams the First
Lady's chief of staff, to help me transfer these files to
the Clintons and to their personal lawyers.
I told Maggie that I thought the Clintons would
probably want to send the files to Williams & Connolly, a

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Washington law firm that had been working with Vince and was representing them personally. I said she should confirm that with the First Family. The Clinton personal files were sent to the White House residence on the evening of July 22. They were sent to the residence because it was late in the day and we were leaving for the funeral in Arkansas early the next morning. While it would have been perfectly proper for them to do so, if they so desired, it was my understanding that neither the President nor the First Lady examined those files while they were in the residence. On Thursday, July 27 after we returned from the Foster funeral, the personal files, the Clinton personal files were delivered to Williams & Connolly. As this committee has heard, the Justice Department attorneys understood – the Justice Department attorneys

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understood that these Clinton personal files would be going to the President's outside attorneys. It has been suggested that I transferred the Clinton personal files because of some deep concern that I or others had with Whitewater. As I said earlier, that is false. My decision to transfer the Clinton personal files, including the Whitewater file, had absolutely nothing to do with what has come to be called the Whitewater matter. If you had asked me on July 22, 1993, the day I transferred that file among others, what Whitewater was, I do not believe I could have told you. Questions about the Whitewater real estate investment had surfaced briefly in March 1992 during the Presidential campaign. But in July 1993, Whitewater was not on my screen, nor, as far as I know, was it the subject of discussion in the White House. And if it was, it was something I would have known. It was not until months later that I learned there was an investigation involving the Whitewater matter. Whitewater was also not mentioned – Whitewater was also not mentioned in Vince's now-famous torn-up writing found in the bottom of his briefcase. Vince did in that writing list a number of things that were bothering him.

Whitewater was not one of them. On Friday, July 23rd, we flew to Arkansas with the President to attend Vince's funeral. I returned to the White House on July 26. During

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that period of time, Mr. Foster's office was locked. Before we left for the funeral, I had asked Steve Neuwirth to pack up the remaining personal items in Vince's office such as photographs and wall hangings and send them to the Foster family. On Monday, July 26th, Steve turned to his task. He started to fill a box with Foster personal items. He picked up Vince's briefcase and turned it over to place it in the box. Yellow scraps of paper fell out of the briefcase. As Steve collected the scraps, he noticed there was handwriting on them – handwriting on them. During the July 22 search, I had removed files from this briefcase. I had not noticed scraps at the bottom of the case, nor do I recall any conversation on that date referring to scraps in the bottom of the case with Cliff Sloan or anyone else. On July 26th, as soon as the scraps were found, they were pieced together by Steve in my office with my help. We discovered a list in Vince's handwriting. It reflected issues that had been troubling Vince. As I said, Whitewater was not one of them. This list was given to the Park Police the next day, on July 27, after Mrs. Foster and the President were given a chance to review it. I waited a day to turn the list over because I believed then and I believe now that it was common decency to allow Lisa Foster to see the writing

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before it was turned over, to see it before it could be leaked or before it could be on national TV in some fashion. Lisa saw it on the afternoon of July 27. I thought it also appropriate that the President, who was out of town that day, have a chance to see it, if he wished, before it was turned over. This one-day delay had no impact whatsoever on any investigation. In essence, this is how the documents in Vince Foster's office were

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handled after his death. Nothing was destroyed. Everything was preserved. Everything that law enforcement officials asked for was turned over to them. Whitewater was not on my mind at the time of that death, nor I believe on anyone else's. And in attempting to accommodate my professional obligation to preserve a client's confidences, to accommodate my professional obligation with legitimate law enforcement needs, I was asking as a lawyer must act. I was acting as a lawyer should act. I was acting as a lawyer is obligated to act. Looking back, therefore, despite hue and cry, despite the media frenzy, despite this hearing, if I had to do it all over again, facing the same circumstances, I would do it essentially the same way. Does this mean I would repeat every single step? Does this mean I would do everything exactly the same as I did it then? Does this mean that I acted perfectly in every respect? Of course not.

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Certainly on July 22 I wish I had looked more carefully into the bottom of the briefcase. I wish I had found the scraps of paper on that day, but that omission resulted in no harm. The note in the briefcase, fortunately, was discovered four days later, gave us a clue to what was bothering our friend Vince and turned over to law enforcement authorities – excuse me, and turned over to law enforcement authorities. I believe the fundamental decisions I made were correct, how to conduct a prompt search for a suicide note in a lawyer's office, how to handle files in that office. I was required to make difficult judgments in a unique situation. I was required to balance differing interests in a sensible manner. I believe I did so. I do look back on those days in July 1993 with a profound sense of sadness and regret. That is because we lost Vince Foster. But I do not look back with regret at the way we in the White House counsel's office conducted ourselves in those tragic days following his death and the way we handled the documents in Vince's office.

Let me now say that in my view, the reason we are having this hearing on the handling of documents has really little to do with how we handled the documents in July 1993, I believe, with all due respect to the distinguished Senators on this committee, that it would have made no

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difference if during the search on July 22 I had shown the Justice Department attorneys a portion of each document. It would have made no difference if we had even found a note on July 22 instead of July 26th. It would have made no difference if I had served law enforcement officials 30 cups of coffee and spoke gently to them in other than a New York accent, which, unfortunately, is the only accent I have. We would still be having these hearings. We would still be sitting here today. What prompted these hearings is something different. It is the linkage – the unfair linkage of two separate, disparate events. The first event involved my transfer in July 1993 of personal files, including a Whitewater file to the Clintons' personal attorneys following Vince's death, a transfer which was totally proper and indeed known to Justice Department officials. The second separate, disparate event involves the emergence in the fall of 1993 of Whitewater investigations and the resulting media frenzy. Linking these two events is illogical, unwarranted and unfair. They are totally unrelated. What we did – what I did in July 1993, particularly the transferring of personal files, had absolutely nothing to do with what has become the now-famous Whitewater matter. Yet our actions in that earlier period, in July 1993, are being judged on the basis

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of that later event. This linkage creates for some a so-called appearance of improper conduct, but unless in July 1993 you could see into the future, unless you could foresee the unforeseeable, there was absolutely no way to avoid that

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appearance. I have many talents. One of them is not seeing the future. In any event, it is this false linkage which has resulted in these hearings – it is this false linkage that has resulted in these hearings, not the way we handled the documents in July 1993.

This exercise in political hindsight and chronological inaccuracy is unfair, but the fact that life may turn out to be unfair does not justify shrinking from your responsibilities, either in July 1993 or today. You know from the last time I appeared before this committee that I strongly believe public officials do not have the option of avoiding their responsibilities because they are difficult or inconvenient or may result in criticism. I have learned – believe me, I have learned this is a controversial notion. I have learned that for many, the concern is not so much for duty or propriety, but for how things appear, or, perhaps more accurately, how they can be made to appear.

This appearance of impropriety standard, which is so much in vogue, today places the ultimate emphasis on how

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things look, or again more precisely, how they can be made to look, not whether they are right or wrong. Fear of appearing to do wrong prevents too many, in my view, from doing what is right. That is a prescription for weakness and paralysis. That is not the way I choose to live.

I believe that no lawyer, no counsel, let alone a counsel to the President, should shrink from his duty, from his professional obligations in order to protect his own image or standing. A lawyer should not – indeed ethically he cannot turn his back on his client because the political or media heat will be turned up because someone with an axe to grind or newspapers to sell may attempt to make totally proper conduct appear – appear improper.

But what about political judgment? Isn't the President a political figure? Shouldn't the President's counsel be worried about the political impact, the public relations impact, the appearances of his advice and conduct? Of course he must. Of course he must exercise political judgment. Of course he must be concerned about appearances and public perceptions. And, as I said earlier, I too was concerned about appearances in July of 1993 when I disagreed with some of my senior fellow White House aides.

But let me say something more fundamental. Let me say what I believed before I went to Washington and what I

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still believe after leaving Washington: When you are privileged, as I was, to hold high public office, ultimately – for me at least – the best public relations, the best political judgment requires adhering to the following principles. Do the right thing. Do the right thing. Realize that at times, your actions will be misunderstood, that you will be involved in conflict, that you will get bad press, very bad press – acknowledge your mistakes when they occur. Acknowledge your mistakes when they occur. No one is perfect, and mistakes do happen.

But if you acted correctly, defend yourself, defend yourself publicly and defend those around you in an open, honest and forthright manner. Be principled, be consistent and strong. And most important, when you get to the White House, as White House counsel, worry less about tomorrow's headlines and more about the judgment of history.

These tenets, these principles which we in the legal profession whether we're from New York, California or Florida or Washington or Arkansas or Illinois or Maryland or Massachusetts or Connecticut or Alabama or North Carolina or Utah or Alaska or Illinois or Washington – I said Illinois – and California, I said California –

The Chairman. You didn't miss anybody, Bernie.

Mr. Chertoff. You left out New Jersey.

Mr. Nussbaum. These principles, which we in the legal

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profession strive to obtain when we're at our best, are too often missing in public life. They need to be retrieved and revived, and I believe – I fundamentally believe that in the long term, even the intermediate term, maybe not the short term – but even the intermediate term, they not only make for good government, they make for good

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politics.
[7] What it comes down to is that the President of the
[8] United States – the President of the United States, above
[9] all, is entitled to have a lawyer in the White House who
[10] will be and act unafraid. Such a counsel will serve his
[11] client and his country far better than one who is
[12] overwhelmed by a concern for appearances or protecting his
[13] own image. That is the counsel I tried to be. And that is
[14] why I look back without regrets.
[15] Thank you, Mr. Chairman. Thank you members of the
[16] committee.
[17] The Chairman. Thank you, Mr. Nussbaum. We are now
[18] going to turn to Senator Hatch.
[19] Senator Hatch.
[20] Senator Hatch. Thank you, Mr. Chairman.
[21] Mr. Nussbaum, welcome to the committee. We're happy
[22] you took time to come today.
[23] Mr. Nussbaum. Good to see you again, Senator.
[24] Senator Hatch. It's nice to see you. I have to ask
[25] some of these questions. Let me go through them as quickly

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[1] as I can and just establish some of the facts and see where
[2] we go from there. Now, as I understand it, Mr. Foster, who
[3] was the Deputy White House Counsel, was installed in that
[4] position actually before you took over as White House
[5] counsel?
[6] Mr. Nussbaum. That's correct.
[7] Senator Hatch. Were you acquainted with Mr. Foster
[8] before he became Deputy White House Counsel?
[9] Mr. Nussbaum. I met Mr. Foster in Arkansas at the end
[10] of 1992, and I became acquainted with him at that time.
[11] After the President was elected, while he was
[12] President-elect, I went to Arkansas to be – to discuss the
[13] position with the President of becoming White House
[14] counsel.
[15] Senator Hatch. So it was just slightly – you just
[16] knew him slightly?
[17] Mr. Nussbaum. That's correct.
[18] Senator Hatch. Let me direct your attention to July
[19] 21, 1993. Other members of the committee may dwell on July
[20] 20th and the events occurring shortly after you learned of
[21] Mr. Foster's death, but I would like to focus primarily on
[22] events occurring on July [illegible], 1993. [illegible]
[23] as White House counsel, you believed, as I understand it, that
[24] you were going to be the principal contact in dealing with
[25] the various law enforcement agencies; right? It would be

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[1] naturally your job?
[2] Mr. Nussbaum. Yes.
[3] Senator Hatch. Isn't it true that in your capacity as
[4] counsel to the President, you took it upon yourself to call
[5] your old friend Phil Heymann, the Deputy Attorney General
[6] and ask whether the department would coordinate the
[7] investigation into Mr. Foster's death?
[8] Mr. Nussbaum. Yes. You see, Senator, I realized in
[9] the west wing on July 21 that – after meeting with the
[10] Park Police and they asked me to interview members of my
[11] staff, look at Foster's office. I realized – the FBI was
[12] around. The Secret Service was around. I realized there
[13] was a potentiality for numerous investigations, and I
[14] understood that. The Secret Service is concerned with
[15] Presidential security. They may want to look into it. The
[16] FBI is our premier law enforcement agency –
[17] Senator Hatch. But you called Heymann in this case?
[18] Mr. Nussbaum. – they were the one looking – I
[19] called Heymann because what I wanted to do is to get one
[20] agency to coordinate the investigation, so people could be
[21] interviewed once, documents could be reviewed once. It's a
[22] normal and natural thing to do and that's why I called Phil
[23] Heymann, to ask him to do it.
[24] Senator Hatch. Then it was your idea to have Justice
[25] coordinate the investigation?

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[1] Mr. Nussbaum. That's correct.
[2] Senator Hatch. And you called Heymann. Do you recall
[3] the substance of your discussion with Mr. Heymann, other
[4] than –
[5] Mr. Nussbaum. Phil – there's going to be – he knew
[6] about Vince's death. Obviously it will be, you know,
[7] investigations and there may be a number of investigations,
[8] would you consider coordinating these things under the
[9] Department of Justice general supervision. But I didn't
[10] say to him who should conduct the investigation. I

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didn't
[11] say the FBI should do it or the Secret Service should do it
[12] or the Park Police should do it. That was up to law
[13] enforcement to decide how to do it. I just said I would
[14] just like my people and other people interviewed once,
[15] hopefully, by one agency rather than different agencies
[16] walking in, and I said also that I would like documents to
[17] be examined once –
[18] Senator Hatch. So that was basically the substance of
[19] your conversation with Mr. Heymann at that time?
[20] Mr. Nussbaum. That's correct.
[21] Senator Hatch. Now, you also recall meeting with
[22] Justice attorneys David Margolis and Roger Adams after that
[23] day?
[24] Mr. Nussbaum. Yes.
[25] Senator Hatch. And you remember, do you not, that the

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[1] Park Police officers and FBI agents were also present at
[2] that meeting?
[3] Mr. Nussbaum. Yes.
[4] Senator Hatch. During that meeting, the Department of
[5] Justice attorneys made it clear that they wished to review
[6] the documents in Mr. Foster's office that might bear upon
his frame of mind before he committed suicide; right?
Mr. Nussbaum. No, that's not correct.
[9] Senator Hatch. They did not?
[10] Mr. Nussbaum. No. Let me tell you what happened,
[11] Senator. The Department of Justice attorneys, David
[12] Margolis and Roger Adams, as I said on my statement, are
[13] good, decent, intelligent people. I expressed to them when
[14] we started discussing the possibility of searching Foster's
[15] office – I said to them, you know, I have some concerns.
[16] This is a lawyer's office. There are issues of
[17] confidentiality. There are issues of privilege. There are
[18] issues of executive privilege. I said there are sensitive
[19] documents, and they, being the kind of people they are,
[20] were sensitive to those concerns.
[21] Senator Hatch. I understand, but they were concerned
[22] about whether there was a suicide note or an extortion
[23] note?
[24] Mr. Nussbaum. They were concerned whether there was a
[25] suicide note, that's correct. So we had a dialogue – good

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[1] lawyers – at least I hope – they were good lawyers at
[2] least – good lawyers were talking to each other to try to
[3] resolve what is a tricky and difficult issue. Good lawyers
[4] with sort of different institutional interests and
[5] different institutional concerns and that's what was going
[6] on, Senator Hatch, in that office. They were trying to see
[7] my point of view, and I was trying to see their point of
[8] view and in doing so, we were discussing various options.
[9] Senator Hatch. And one of the things that you were
[10] discussing concerning some of the documents was that; in
[11] Mr. Foster's office, that they might be privileged –
[12] Mr. Nussbaum. Yes, that's one –
[13] Senator Hatch. – as you've stated in your
[14] statement. Nevertheless, as I understand it, you agreed
[15] with the Justice Department attorneys that you would review
[16] the documents together; right?
[17] Mr. Nussbaum. No. What we did – what we did was we
[18] talked about the way it should be done. One way is look –
[19] one way we can do this, fellows, is I open the door you
[20] walk in and read every document, read anything you want to
[21] read. That doesn't make sense, I said to them, and they
[22] sort of readily agreed to that. That doesn't make sense.
[23] This is a lawyer's office. This is privileged stuff here.
[24] Another option is you go away, I will go in myself,
[25] review the files and tell you if there's a suicide note.

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[1] You just can't walk in. I will do it on my own and tell
[2] you if there's a suicide note because it's a sensitive
[3] office. That's an option.
[4] Third option is we read – you show us the first page
[5] of the file with respect to – so we can make a
[6] determination if it's privileged or relevant to our
[7] search. That's an option. We discussed that.
[8] And there's a fourth option, which is the option that
[9] we used ultimately, which is we'll go in together. We'll
[10] break the seal together.
[11] Senator Hatch. And that's what you decided to do?
[12] Mr. Nussbaum. That's what I decided to do.
[13] Senator Hatch. Mr. Margolis and Mr. Adams, they
[14] stated here that they thought there was an agreement that

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[15] the Justice lawyers would review at least the title page
[16] and the first page of each document and then make a
[17] determination with respect to privilege –
[18] Mr. Nussbaum. That was one of the options that –
[19] Senator Hatch. – but you say that was never agreed
[20] to?
[21] Mr. Nussbaum. I said to them I would consider it. It
[22] was a serious option. I had to think about it. I said I
[23] would consider it and seriously consider it, but I never
[24] agreed to it.
[25] Senator Hatch. So there was no agreement as far as

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[1] you were concerned?
[2] Mr. Nussbaum. In my – to the best of my
[3] recollection, and I do have a recollection about this,
[4] there was no agreement. I think my recollection is
[5] supported by Mr. Neuwirth of my office who was there, by
[6] Mr. Sloan of my office who was there. I think it may even
[7] be supported by Agent Salter of the FBI who was there. On
[8] the other hand, I have no – I'm not disputing the
[9] sincerity of Mr. Adams's testimony or anybody else who
[10] testifies that they sincerely believed there was an
[11] agreement.
[12] Senator Hatch. Did you take any notes of those
[13] conversations at all?
[14] Mr. Nussbaum. No, I didn't take any notes, but as the
[15] Senator knows, people in good faith can leave a meeting
[16] with a misunderstanding or a miscommunication. I didn't
[17] leave it – I didn't think I left it with a
[18] misunderstanding or miscommunication, but perhaps they
[19] did. And as I said earlier in my statement, Senator, I may
[20] have been responsible for it.
[21] Senator Hatch. I understand. I have to go into this,
[22] but –
[23] Mr. Nussbaum. I understand you have to go into it.
[24] I'm trying to help you.
[25] Senator Hatch. Okay. You're doing just fine. I'd

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[1] like to refer you to the typed notes of Mr. Adams, who is a
[2] career prosecutor at Justice.
[3] Mr. Nussbaum. When were those notes made?
[4] Senator Hatch. Do you have a copy of them? I think
[5] we gave you a copy before the hearing. We've got them up
[6] on the Elmo here. These are the typed notes that were made
[7] shortly after the meeting, as I understand it, by
[8] Mr. Adams.
[9] Mr. Nussbaum. I understand these notes were made the
[10] following week after the note was discovered. They weren't
[11] made shortly after the meeting. They were made after the
[12] note was discovered and turned over to law enforcement
[13] officials, and there was some concern about how people
[14] would look now that the note was discovered five days after
[15] the search. They were not made after the meeting.
[16] Senator Hatch. Whatever. What the note says starting
[17] in the middle – it's highlighted. "At the Wednesday
[18] meeting there was agreement that the Justice Department
[19] attorneys would look at each document or at least each file
[20] to determine if it contained privileged material, in which
[21] case it would not be examined by the Park Police or FBI.
[22] We would not read the documents or make notes, but merely
[23] examine them long enough to determine if they were covered
[24] by the attorney-client privilege or possibly executive
[25] privilege.

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[1] "As an example of the clarity of this agreement,
[2] Mr. Neuwirth at one point, apparently trying to summarize
[3] it, said that 'Bernie would look at each document and
[4] determine privilege. If he determined no privilege, it
[5] could be shown to the law enforcement officers.' He was
[6] immediately corrected and Mr. Nussbaum agreed that the
[7] Justice Department representatives would see the documents
[8] to determine privilege."
[9] That's what Mr. Adams believed happened according to
[10] his notes?
[11] Mr. Nussbaum. That's what Mr. Adams, a week later,
[12] after the note was discovered and turned over to law
[13] enforcement authorities, dictated this memorandum in
[14] response to a request from somebody, perhaps Mr. Heymann,
[15] that he state what happened the week before. This was not
[16] written after the July – right after the July 22 meeting,
[17] and it was not written prior to the note being discovered.
[18] But that doesn't mean, Senator – I don't want to suggest
[19] by that that Mr. Adams does not believe exactly what he put

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in this memorandum.
Senator Hatch. So what you're saying is that
Mr. Adams undoubtedly wrote these down within a week or so
afterwards and that he believed these, but you're saying
this isn't so, and this is not your recollection?
Mr. Nussbaum. We – I have a different recollection

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than he does –
Senator Hatch. This did not refresh your recollection?
Mr. Nussbaum. – as does Mr. Neuwirth, as does Mr. Sloan as do other people present at that meeting, but
that happens all the time, Senator.
Senator Hatch. I understand.
Mr. Nussbaum. You know, people go to meetings and
walk out of meetings with different recollections. It happens every day.
Senator Hatch. It's been known to occur.
Mr. Nussbaum. Roger Adams's notes of the meeting states you
reached an agreement. Mr. Neuwirth objected to the agreement but you overruled him. Now, your testimony here
is that he's mistaken, that that just didn't happen?
Mr. Nussbaum. He has a different memory than I. I think he's mistaken, yes.
Senator Hatch. Let me turn now to Mr. Heymann's notes. If you look at Mr. Heymann's notes, if we can put
that up there for you –
Mr. Nussbaum. These notes were done in February of
1994; is that correct, Senator, nine months later?
Senator Hatch. If you look at these notes – if you look at his notes, you will see at the bottom that they
read this: "5:00, agents, Park Police. DM," I assume that

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means David Margolis, "RA," Roger Adams, "Steve Neuwirth
all in Bernie's office." I assume that's a reference to you, Mr. Nussbaum?
Mr. Nussbaum. It is Senator.
Senator Hatch. "Agree to come back the next morning.
We'll used the system agreed on. BN," again, I assume
that's you, "agrees. SN," Steve Neuwirth, in other words
says no. DM says it's a done deal and BN agrees." Again,
that word "agree" pops up and you're still certain there
was no formal agreement or no real meeting of the minds or
agreement in that sense; right?
Mr. Nussbaum. Right, Senator. Senator, you do know,
as I said, Senator, that these notes were written nine months later. These notes were written by Mr. Heymann, who
was not present at the meetings. Obviously he's reflecting
things people told him. These are not contemporaneous
notes either. These are notes by a person who was not at
the meeting, made nine months after the meetings.
I'm not saying, again, that Mr. Heymann disbelieves what he's saying here or Mr. Adams disbelieves what he's
saying. But the fact is, Senator, because somebody writes
down notes with respect to this thing doesn't make it so.
Senator Hatch. I would also note that Mr. Heymann's special assistant, Cynthia Monaco, recorded that you and
Mr. Heymann had agreed upon a search protocol. And let me

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read from her notes if we can put it up there. "Phil was
on the phone with Bernie Nussbaum and he said you're
messing this up very badly, I think you are making a terrible mistake. 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. I later heard from David that, in fact, what had happened was that
Bernie looked at the documents and told him that a privilege was asserted or was not asserted. This was in
contrast to what Phil and Bernie had decided the day before."
Once again, confirmation and agreement as to the search protocol existed, but this also is inconsistent with
your recollection?
Mr. Nussbaum. It is, Senator. Nor do I believe it's confirmation of an agreement. It's written by somebody who
wasn't there and wasn't present in any conversation, but I
do disagree with it.
Senator Hatch. I understand. I need to go over these. Mr. Nussbaum, even the FBI agents clearly understood that an agreement had been reached as to the
search protocol. Let me just call your attention to this FBI teletype. The teletype states "An initial meeting was
held with White House Counsel Bernard Nussbaum

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at which
time it was agreed that the victim's office, which is

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located adjacent to Mr. Nussbaum's, would continue to be
sealed by the U.S. Secret Service 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."
Now, it seems pretty clear that an agreement existed
at least as to the manner in which the review of documents
would take place and let me just get this straight, and I
think it is important. Mr. Margolis, a career prosecutor,
believed that the agreement existed. Mr. Adams, who had
even served a detail in the White House, believed that an
agreement had existed. Mr. Heymann, the Deputy Attorney
General, believed an agreement had existed. Mr. Heymann's
assistant, Ms. Monaco, believed an agreement existed and,
finally, the FBI agents understood that an agreement
existed as to the search protocol. Now –
Mr. Nussbaum. Can I respond, Senator?
Senator Hatch. Sure.
Mr. Nussbaum. At this hearing, you've had four or
five people who were present at that meeting testify. You
had me – you have me now. You had Steve Neuwirth. You
had Cliff Sloan. You had Roger Adams. You have Agent
Salter – five people who were present at that meeting.
Mrs. Monaco wasn't present and Mr. Heymann wasn't present.
Out of those five people, Senator, I testified that I don't

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believe there's an agreement. Mr. Neuwirth has testified
he doesn't believe there's an agreement. Mr. Sloan has
testified he doesn't believe there was an agreement.
Senator Hatch. He pretty much said he didn't know.
Mr. Nussbaum. I believe Agent Salter testified that
he doesn't recall an agreement. Mr. Adams has testified
that he does believe there was an agreement. I think each
of those people was testifying honestly.
Senator Hatch. All right. So basically the three at
the White House who served the President did not believe
there was an agreement. These others believe there was?
Mr. Nussbaum. Agent Salter – we all serve the
President. Agent Salter serves the President. Roger Adams
serves the President and the three of us –
Senator Hatch. I'm talking about as counsel to the
President, to use your terms. Let me move on. Susan
Thomases, a New York attorney, testified before the
committee yesterday. You've told this committee that
you're familiar with her and her role as a close friend and
outside adviser to the Clintons; right?
Mr. Nussbaum. Yes.
Senator Hatch. Did you talk to Ms. Thomases on July
22nd?
Mr. Nussbaum. Yes.
Senator Hatch. Do you remember how many times and –

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Mr. Nussbaum. I only remember –
Senator Hatch. – what times you did talk to her?
Mr. Nussbaum. I only remember one conversation.
Senator Hatch. Would it surprise you to know that you
were paged by Ms. Thomases at 8:00 a.m. that morning? And
if you remember that, did you return her call right away?
Mr. Nussbaum. Nothing surprises me anymore, Senator,
but I don't remember that.
Senator Hatch. When you spoke with her that day, that
one time that you do recall, you told this committee that
she said that she had "heard" that there were "discussions"
and "disagreements" concerning law enforcement's search of
the Foster office. She said that she was concerned that
"law enforcement people" would have "unfettered access to
the documents" in Foster's office. Is that correct?
Mr. Nussbaum. Can you repeat that, Senator?
Senator Hatch. Sure.
The Chairman. I think, Senator, you might want to
refer Mr. Nussbaum to his testimony. I think you have a
copy there.
Senator Hatch. Yes, I do.
The Chairman. What page is that?
Senator Hatch. Let's go to that page.
The Chairman. Is that starting on page –
Senator Hatch. Page 54 – 154. I'm sorry. Page 154.

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Basically what you had said was that she had heard
[illegible] agreements. She was

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concerned
[3] that law enforcement people would have unfettered access to
[4] the documents and I think that's consistent with your
[5] testimony; right?
[6] Mr. Nussbaum. You're going a little too fast for me,
[7] Senator.
[8] The Chairman. Why don't we read it?
[9] Mr. Nussbaum. I'm just trying to figure out the
[10] portion of my testimony here in my deposition testimony
[11] you're focusing on.
[12] Senator Sarbanes. Would the Senator tell us what page
[13] you're on?
[14] The Chairman. That's what I'm attempting to
[15] ascertain.
[16] Senator Hatch. I think it's on page 154 – 140. I'm
[17] sorry.
[18] Senator Kerry. Page 139 to 142.
[19] The Chairman. Of the deposition given by Mr. Nussbaum
[20] to the committee?
[21] Senator Kerry. Correct.
[22] The Chairman. Let's see if we can't all get on the
[23] same page and give Mr. Nussbaum the opportunity to get
[24] there, too.
[25] Mr. Nussbaum. Page 140?

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[1] The Chairman. 139 to 142, I believe it is.
[2] Senator Kerry. Page 139 it starts.
[3] Mr. Nussbaum. I have it.
[4] Senator Hatch. You have it? I think it says "what
[5] was the conversation on the 22nd with Susan Thomases?
[6] "Answer: The conversation on the 22nd is she asked me
[7] what was going on with respect to – what was going on with
[8] respect to the investigation or the examination – the
[9] examination of Mr. Foster's office. She had heard there
[10] were discussions in the White House with respect to this
[11] issue, which there were on the 22nd – which you'll get to,
[12] I presume – was everything okay and what was going on, and
[13] I said I am having discussions with people. See, I
[14] remember this conversation before the search, but it could
[15] have been after the search.
[16] "That's one of my problems. But I remember saying,
[17] Susan, I've been talking to people in the White House, how
[18] the search would be conducted. I will determine what the
[19] right procedure is [illegible] that's right
[20] procedure is and I followed it, depending on if that
[21] conversations took place before or after the search. We're
[22] going to follow the procedure that I think is right, and
[23] that's the way – that's what I'm going to do and that's
[24] the kind, I think, that I'm determining is a proper way to
[25] act with respect to this matter."

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[1] You were asked "how long was the conversation?"
[2] "Answer: A few minutes. Not very long.
[3] "Question: Did she tell you how she had heard there
[4] were discussions concerning the manner in which the review
[5] would occur?
[6] "Answer: The search would occur.
[7] "Question: The search would occur?
[8] "Answer: No, she didn't say how. She just said she
[9] had heard.
[10] "Question: What else did she say in the conversation?
[11] "Answer: That's all I remember, that she heard there
[12] were discussions or that there were – she might have even
[13] said disagreements, that she had heard that and what was
[14] going on.
[15] "Question: Did you ask her where she heard that?
[16] "Answer: No, I didn't ask her where she heard that.
[17] "Question: Did you feel uncomfortable talking about
[18] this issue with her?"
[19] Mr. Nussbaum. "Did you feel comfortable?"
[20] Senator Hatch. I'm sorry.
[21] "Did you feel comfortable talking about this issue
[22] with her?
[23] "Answer: Yes.
[24] "Question: Did you feel it was her business?"
[25] And you said "yes." But basically, she had said that

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[1] she had heard that there were discussions and disagreements
[2] and, as I understand it, also, the deposition said that she
[3] was concerned about "unfettered access" to the documents.
[4] Do you remember that?
[5] Mr. Nussbaum. No, I don't. What you've read does
[6] accurately – what you've read, not what you just said, but
[7] what you've read does accurately reflect my recollection of
[8] that conversation with Susan Thomases.
[9] Senator Hatch. Well, on page 142 – let me see if
[10] I've got this right – I guess that was a question. On
[11] page 142, did she say that the First Lady was concerned
[12] about giving the law enforcement people unfettered access
[13] to the documents?" Your answer was "no."
[14] "Question: Did she say that anybody was concerned
[15] about giving law enforcement people unfettered

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ac. to
[16] e documents?" Your answer was "she said people are
[17] concerned about whether I was using the correct procedure
[18] or whether the procedure was – people were concerned or
[19] disagreeing, something like, that whether a correct
[20] procedure was being followed, whether I was using the
[21] correct procedure, whether it was proper to give people
[22] access to the office at all, something like that" and you
[23] went on. "But I said, Susan, she wasn't in the White
[24] House, at least I didn't know she was in the White House.
[25] I said I'm having discussions with various people. As far

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[1] as the White House is concerned, I will make a decision as
[2] to how this is going to be conducted. It's going to be
[3] done the right way. It will balance out the various
[4] interests. It's going to be done the way I think it should
[5] be done." That's a fair –
[6] Mr. Nussbaum. That's correct, Senator. I agree with
[7] the testimony you just read.
[8] Senator Hatch. Are you aware of the fact,
[9] Mr. Nussbaum, that Ms. Thomases denies telling you that she
[10] was concerned about law enforcement having access to
[11] Mr. Foster's office?
[12] Mr. Nussbaum. I am aware that she has a – what I
[13] considered a slightly different recollection of the
[14] conversation, that she believes that I b. it up the
[15] subject, rather than she bringing up the subject and there
[16] is a difference in our recollection.
[17] Senator Hatch. When asked if she expressed any view
[18] to you on the phone – actually, in fact, she testified you
[19] brought it up to her – you brought it up – that she did
[20] not?
[21] Mr. Nussbaum. That s correct.
[22] Senator Hatch. When asked if she expressed any view
[23] on you on the phone on the 22nd in re. rds to the contents
[24] of Mr. Foster's office, Ms. Thomases said "Answer: I think
[25] that I – my recollection is that I just said that it

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[1] sounded like he had thought it through pretty carefully,
[2] and I wished him good luck."
[3] Mr. Nussbaum. I agree with that portion of the
[4] testimony.
[5] Senator Hatch. I think you have to admit that
[6] Ms. Thomases's recollection of the phone call is different
[7] from yours.
[8] Mr. Nussbaum. It is somewhat different from mine,
[9] yes, sir.
[10] Senator Hatch. Here we have two tough, experienced
[11] New York lawyers who have different viewpoints on what the
[12] critical conversation was. You say that Ms. Thomases
[13] called you and said that she had heard about the
[14] discussions with Justice. She said that you brought it up
[15] and that she did not really have an opinion about the
[16] search arrangements.
[17] Mr. Nussbaum. Senator, you're right. There is a
[18] difference in recollection, and you – and you I have had a
[19] number of conversations in the past involving the White
[20] House, I think sometimes we might have had a difference in
[21] recollection –
[22] Senator Hatch. That's probably true.
[23] Mr. Nussbaum. – about our conversations.
[24] Senator Hatch. That's possible.
[25] Mr. Nussbaum. But I always enjoy talking to you,

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[1] Senator.
[2] (Laughter.)
[3] Senator Hatch. I always enjoy talking to you. But
[4] one of the things that is bothering a lot of us is how in
[5] the world did Ms. Thomases, who was not a government
[6] official and who did not have a security clearance, find
[7] out about the discussions you had with the Justice
[8] Department within the course of just a few hours? How did
[9] she call up and know more about the whole problem than
[10] people in the press, the Park Police and, frankly, most
[11] White House staffers?
[12] Mr. Nussbaum. I don't agree with a lot of what's
[13] suggested in your question, but I think it's a fair
[14] question, Senator.
[15] Senator Hatch. It is a fair question.
[16] Mr. Nussbaum. Susan Thomases was a friend and advisor
[17] to the President and the First Lady and to other people in
[18] the White House. She was consulted on many issues, policy
[19] issues by them and by others. She's a very able,
[20] intelligent and good, good person and an old friend of
[21] mine, but really, what she is is what people are in

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dministration, what Ronald Reagan had, what
rge Bush
had and what Bill Clinton now has. She's part of the
so-called kitchen cabinet.
Senator Hatch. Sure.

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Mr. Nussbaum. And with Presidents, it's good. It's
desirable they have outside advisors, that they can look to
people on the outside, not just the people in the White
House. Susan was one of those people. I wasn't disclosing
to her confident – Senator, could I just finish, please,
Senator?
Senator Hatch. Yes, go ahead.
Mr. Nussbaum. I wasn't disclosing to her national
security information or confidential information or
privileged information. I was just telling her, you know,
that a discussion had arisen in the White House as to a
process, as to how something should be done. I didn't even
discuss with her, I don't believe, exactly how it should be
done. I just said to her –
The Chairman. Mr. Nussbaum?
Mr. Nussbaum. Senator, please –
The Chairman. If I might, I think one of the keys is
did she initiate the conversation as it related to the
methodology that was being considered for the search to be
undertaken? And that's what the Senator is getting at.
Mr. Nussbaum. No, the Senator was talking about the
conversation –
The Chairman. I'm interested in that and I think –
Senator Hatch. The point is did you tell her or did
she tell you about these concerns? You say that she told

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you. That's all I want to establish.
Mr. Nussbaum. Senator D'Amato, I'll answer your
question and Senator Hatch's question. My memory is that
she initiated the concern – she initiated discussion about
whether or not there was a concern about a procedure. But
to answer the Senator's question, I didn't think it was
improper to talk to her about this because she was an
outside advisor and I wasn't disclosing any confidential or
national security information.
Senator Hatch. That isn't my point – that's not my
point. I'm not criticizing you –
Mr. Nussbaum. I'll try not to be so combative.
Senator.
Senator Hatch. You're doing fine. When Ms. Thomases
told you that people were concerned about the search of
Mr. Foster's office, did Ms. Thomases indicate which
"people" were concerned?
Mr. Nussbaum. No.
Senator Hatch. Did she mention the President or the
First Lady, for instance?
Mr. Nussbaum. No, she did not.
Senator Hatch. Could Ms. Thomases have been in
communication with the President or the First Lady?
Mr. Nussbaum. Could she have? Absolutely she could
have.

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Senator Hatch. It would not have surprised you if she
had been?
Mr. Nussbaum. It would not have surprised me if she
had been.
Senator Hatch. Did the President call you about the
document review at any time?
Mr. Nussbaum. He did not, Senator.
Senator Hatch. Well, wouldn't it be odd for them to
call Ms. Thomases, if they did, and not call you, if that
happened?
Mr. Nussbaum. I don't know if it happened.
Senator Hatch. You don't know whether or not either
of them called her?
Mr. Nussbaum. No, I do not, Senator.
Senator Hatch. And did you tell anybody about your
contact with Ms. Thomases at all, in the White House or
otherwise?
Mr. Nussbaum. I may have. I just don't recall at
this point.
Senator Hatch. Did you tell Steve Neuwirth, for
instance, your associate counsel?
Mr. Nussbaum. I may have told Steve Neuwirth, yes.
He was a senior person on my staff. It's quite possible I
told him.
Senator Hatch. Mr. Neuwirth, your associate counsel

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with – whom you brought to Washington with you from your
firm of Wachtell, Lipton, has testified that you told him
that Ms. Thomases and the First Lady were concerned about
law enforcement having unfettered access to the documents.
Could we put up that page – it's page 112 of the
deposition – on the Elmo. Let me read lines 2 through 6.
"Question: What did Mr. Nussbaum tell you about the
conversation that he had with Ms. Thomases?
Answer by Mr. Neuwirth, "While I don't remember his

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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."

Did you say that to Mr. Nussbaum or you just can't recall?

The Chairman. Mr. Neuwirth.

Senator Hatch. Mr. Neuwirth, excuse me.

Mr. Nussbaum. No. I have no memory of saying that to Mr. Neuwirth, but as I said in my statement, Senator, I always assumed that the First Lady, like any good lawyer in the White House, would not believe unfettered access to a lawyer's office was proper, but I have no memory of saying that to Mr. Neuwirth.

Senator Hatch. You don't have any reason to disbelieve Mr. Neuwirth's assertion there?

Mr. Nussbaum. Absolutely not. That is correct, Senator Hatch.

Senator Hatch. Did you talk to the President or the First Lady on either July 21st or July 22nd?

Mr. Nussbaum. No, I didn't – did I talk to them on either of those days?

Senator Hatch. Well, about this?

Mr. Nussbaum. About this, no.

Senator Hatch. At this time, Linda Tripp was executive assistant to the counsel to the President. In other words, she was your principal assistant or office manager. Is that a fair characterization?

Mr. Nussbaum. She was one of my senior secretaries is the more accurate way of –

Senator Hatch. She's testified before the committee that she remembers you receiving a phone call from the First Lady during this time, and that's on page 23 of the transcript from her appearance before the committee. Maybe we could place that up on the Elmo and let me just read the following from that.

"Question: What about the First Lady, do you have a recollection of her having a telephone conversation with Mr. Nussbaum?

"Ms. Tripp: I don't have a clear recollection of the First Lady speaking to him during that time frame.

"Question: Do you have some kind of a recollection of it?

"Ms. Tripp: I know at one point there was a telephone conversation between Mr. Nussbaum and Mrs. Clinton. I don't recall when that was.

"Question: Do you recall that it occurred during this period of time in the day or two after Mr. Foster's death?

"Ms. Tripp: I thought so, yes."

Do you have any reason to question Ms. Tripp's recollection?

Mr. Nussbaum. All I can do, Senator, is give you my recollection.

Senator Hatch. But you don't recall?

Mr. Nussbaum. In my recollections, I don't recall such a conversation. I would note that even with respect to these questions, she first indicates that she doesn't have a clear recollection. Then two questions later or three questions later she says she thinks it was in that time frame. But whatever she said, all I can give you is my recollection and I don't have a recollection of such a conversation.

Senator Hatch. I think my time is up, but I thank you for your answers.

The Chairman. Senator Sarbanes.

Senator Sarbanes. Thank you very much, Mr. Chairman.

Senator Sarbanes. First of all, I just want to put on the record what I think are facts. There are tough, experienced, and even combative lawyers outside of places like New York, elsewhere in the country, who are also very capable.

I think it's important to just sort of add that dimension.

Mr. Nussbaum. I first want to complete the record on the questioning that Senator Hatch put to you from your deposition because the next question on, on page 143, if you have it there –

Mr. Nussbaum. Yes, Senator.

Senator Sarbanes. – the question put to you was: Did she say people were concerned about giving unfettered access to the law enforcement people to the documents.

And your attorney said those words, and Mr. Chertoff said, in substance, that they had that particular concern.

The Witness: No, no. What I remember, it was not a concern about giving people access to documents.

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a sense of this notion of people's privacy shouldn't be
invaded, that kind of sense, that people were concerned that
any procedure that's followed is done with appropriate
regard for people's privacy interests.
Now, I want to ask you a bit about this concern about

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people's privacy.
You and Vince Foster became close friends, I take it.
Is that correct?
Mr. Nussbaum. Yes, Senator.
Senator Sarbanes. Had you known one another before you
went to work in the White House Counsel's Office?
Mr. Nussbaum. No. As I said to Senator Hatch, we met
in December of 1992. We sort of interviewed each other for
the job, although he had the job before I had the job.
And while we are a different kind of people we, over the
months, became quite close, even suprisedly so. I don't
know, maybe he was an Arkansas litigator, a tough Arkansas
litigator. I was a New York litigator as now the whole
world knows.
And in the crucible of the White House, which we had to
make fast decisions, a lot of times every day, trying to do
our best, it sort of was like, I don't know, like combat
maybe, like being in a foxhole together. Sometimes that
tears people apart, but it didn't do that to us. We formed
a very close professional relationship which got stronger
and stronger as time went on.
Senator Sarbanes. Now, did you speak at a meeting of
all of the White House staff about Vince on the I guess it
was the day after his death?
Mr. Nussbaum. Yes, it was the day after his death. It

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was July 21st.
Senator Sarbanes. Do you recall what you said?
Mr. Nussbaum. It was a very emotional time.
I think I told a story which I've been telling now this
Committee about how the President of the United States was
wise enough to first retain a deputy counsel before he
retained a White House counsel because he'd retained a great
deputy counsel.
I talked about that. I talked about our first meeting
and maybe how we interviewed each other for the job, the
kind of thing I just said to you.
This wasn't a prepared speech. I didn't have a lot of
time. And the President and I, I know we were sitting
together, prior to going on to make this talk to the staff,
and we were just telling Vince stories to each other, and I
went out and I made this five- or ten-minute talk telling
these stories.
And then the President came out and he was incredible.
I mean, he spoke about his, you know, he didn't prepare
either, but he was just magnificent speaking about Vince,
about their growing up together in Arkansas and about
throwing sticks into the ground, and he was, it was a very
moving day, and a day that I'll remember for a long time,
although I can't remember my words.
Senator Sarbanes. Did you feel a sense of, well, even

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guilt, I guess, in the circumstances?
I mean, here's a person you were close to, you were
copartners in this law firm. And he had committed suicide,
and were you feeling a sense of, I should have seen it, I
should have done something to prevent it. Did I overload
him with work?
What?
Mr. Nussbaum. I never was asked that before in that
way. There's been so many hearings and so many
investigations, but no one's quite asked me that question.
I wish I, you know, yes, a little bit, a little bit.
I felt I wish I could – I knew he was sad, depressed,
now I would use that word the three or four weeks before.
He wasn't functioning as well as he'd functioned previously.
He was very angry about the Travel Office matter, the way
the Travel Office matter was portrayed it and how the White
House portrayed it in its management review report.
He was concerned about issues like that, and he wasn't
as effective the last ten days or so when we were in the
very difficult process of selecting a new Director of the
FBI and unfortunately having to fire, which is sort of
unprecedented, the prior Director of the FBI.

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[23] It was not an easy time for me in the White House
[24] Counsel's Office, and Vince wasn't as helpful on those kind
[25] of sensitive issues, although he participated in the FBI

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[1] thing to some extent, as he would have been, because he was
[2] sort of down.
[3] And after he died, after he committed suicide, I
[4] thought, you know, I wish – I kept telling him, Vince,
[5] we've got to finish the FBI thing. It's important that we
[6] get somebody into the FBI who will be universally respected
[7] by republicans and democrats who was the right kind of
[8] person for that job.
[9] It's a more important institution than virtually any
[10] other institution in government. It's probably more
[11] important than a Supreme Court appointment even, although
[12] that's usually important.
[13] And I was so engrossed in that process for the first
[14] three weeks of July of 1993, of trying to find the right
[15] person, trying to convince the right person to take the job,
[16] trying to convince the President who also would respect the
[17] various issues on this thing, trying to convince very
[18] important and significant United States Senators on both
[19] sides of the aisle that this is a good choice, I was so
[20] engrossed in that endeavor, so taken with it, that I kept
[21] sort of putting Vince off.
[22] I said, Vince, we'll get to that issue. The Travel
[23] Office is not that important, nothing wrong happened, so the
[24] White House management review which criticized people who
[25] shouldn't be criticized, but we can deal with that: we'll

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[1] deal with it. Just let me get through the FBI thing.
[2] Because that's important, that's important for the
[3] President, it's important for the country.
[4] The last conversation I had with Vince is when he walked
[5] into my office. The last time Vince and I saw each other
[6] was at the Louis Freeh announcement in the Rose Garden, and
[7] then he came into my office.
[8] I went back to my office and I was sitting there.
[9] turning on the TV set in my office, all puffed up, all proud
[10] of myself as if I had won two major trials in a row, and I
[11] turned on the TV, and there I'm flipping channels, and
[12] flipping between the Ruth Ginsberg hearings, which had just
[13] started, which I considered a major accomplishment because
[14] we now had de-demonized the Supreme Court selection process,
[15] we now will have a bipartisan examination and a friendly
[16] bipartisan examination of a Supreme Court Justice, unlike
[17] prior Supreme Court nominations, and we had done that by
[18] picking the right person.
[19] And also we had chosen someone to be head of the FBI
[20] who's being met with universal acclaim in the law
[21] enforcement community, in the defense community, on both
[22] sides of the aisle in the Senate, which would have to
[23] confirm his nomination.
[24] And I said to Vince, this is what had been driving that
[25] month that those last four weeks, the Supreme Court

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[1] nomination was made in June.
[2] When I turned on the TV set, and I flipped back to both
[3] channels, her hearing, and the announcement by the President
[4] in the Rose Garden with Louis Freeh and his family, and I
[5] said to him, which I did I think say in my speech maybe to
[6] the White House Staff later, I said, look, Vince, two home
[7] runs, we hit two home runs for the President and the
[8] country.
[9] And he looked down and he said, yes, yes, something like
[10] that, you know, and I was, you know, I was very proud and
[11] very full of myself so I got up, I said I'm going to have
[12] lunch, and I sort of walked out of the office and I said,
[13] I'll see you later, Vince.
[14] And I walked out, and obviously he must have been in
[15] great pain, and I didn't see the pain. And I think about
[16] that from time to time.
[17] Senator Sarbanes. You've mentioned the concerns that
[18] you had about the examination of his office, and you've
[19] talked about executive privilege and attorney client
[20] privilege, possibly some sensitive documents.
[21] How much of a concern was there for Vince Foster's
[22] family's privacy through all of this?
[23] Mr. Nussbaum. It was a large concern. There was a
[24] concern. Our mind set was he committed suicide.
[25] Obviously, he was deeply depressed and distressed.

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notion of people sort of rummaging through his private papers, his private papers I'm talking about, I'm not talking about Clinton personal files, just rummaging through his papers, his personal papers, his leases, that was a concern.

And I recognized he was a high Government official and people are going to want to investigate this. There's been no suicide like this perhaps since James Forrestal. I understood that. I understood how sensitive this was. At the same time, I thought we could balance the interest. We could protect his family's personal privacy. I'm not just going to throw the door open to that office and let people read his personal stuff without somebody reviewing it first: not me, his family's personal lawyer, and making a judgment.

Yes, there was a concern about privacy in that sense.

Senator Sarbanes. Now some have suggested, who've testified before us, that you were too intimately personally involved in this matter for you to have a completely objective judgment capability. We've had a couple, there's been testimony to that effect.

Mr. Nussbaum. I understand, I understand.

Senator, I don't believe that. We knew each other for seven months. I've testified that we'd grown close and we

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were close. And, you know, I still get choked up about his death, there's no question about that. And I may, if I can't prevent it, can get choked up at this hearing even when I talk about his death.

But while we were professionally close, he wasn't my brother, although sometimes, you know, we were close. I was a pallbearer at his funeral. He wasn't a life-long acquaintance of mine.

And I, yes, I was sick with grief the night of July 20th, but the morning of July 21 and thereafter, I was functioning. I wasn't paralyzed by emotion, I wasn't paralyzed by grief. I was functioning as a lawyer who had to deal with a crisis.

All my life, my 30 or so years at the bar, I have functioned with major crises on behalf of other people with respect to this thing.

My mind was focused [illegible] on the issues.

I wasn't walking around crying, I was not distraught with guilt. I was sad, I'm still sad, I'll always be said, you know, but I was functioning, I was dealing with what I had to deal with as my job as White House counsel.

So I was not disabled in any way from function at that time because of Foster's death.

Senator Sarbanes. Do you think if you were to indicate that you felt your judgment had been impacted by the emotion

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and the closeness that that would lessen you as a professional person?

Mr. Nussbaum. No.

Senator Sarbanes. As part of being a professional, this tough, experienced New York litigator, would be not to have your judgment affected.

And if you were to say now that your judgment had been affected, you would be lessened as a professional?

Mr. Nussbaum. Absolutely. I think part of being professional is emotion, you know. Part of being a professional, Senator, is feeling, feeling for your client, seeking to do right by your client as your obligated to do.

But my judgment wasn't affected by emotion or pity or sorrow or grief. I was functioning as a lawyer should function. I was seeing issues and I was trying to balance out difficult, competing considerations in a unique situation.

And, Senator, I have not had the luxury, I guess, or the pain at the same time of two years of re-examination of all those things that happened in July of 1993.

This is now August of 1995.

My conduct has been examined and examined and examined by special counsel, by the House, by the White House, by the Senate, and by myself: mostly by myself. And I've looked at everything I did during that period carefully and critically

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because I had to be prepared to defend it, and there's no point in kidding yourself about your own conduct and trying to make it look good, you know, make it better than it was.

[illegible] I made a mistake, you'd better say it because there's a lot of smart people out there who are going

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to say
it in any event, so you better get out front of them and say
it.
I've looked at my conduct now for a two-year period since that time, and as I said in my statement, it may sound
arrogant, and I'm fully prepared to admit mistakes when I
made mistakes. In fact, not finding the note, that was a
mistake.
But I tell you, on the big calls, and I had to make a lot of big calls, I was right. I made the right judgments.
I made the kind of judgments I think your lawyers up there
would make if they were faced with this situation.
Senator Sarbanes. Well, –
Mr. Nussbaum. At least that's what I think. They can speak for themselves.
Senator Sarbanes. Well, that's what you think.
We've had some very able people who've said that if you'd added an extra dimension in the course of handling
these matters, things might have been different.
Now, I know you deny that at the end of your statement
here today, and the point you make about this coupling of

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two events that are really separated time I think is an interesting point but nevertheless, we've had some strong
testimony here that things might have been done differently
and therefore the situation might have been very different.
And in fact that the consequences casting a cloud of suspicion over matters that would have a perfectly simple
explanation to them.
You're concerned about the cynicism and that's an important concern to have. But given its existence, the
insistence upon proceeding in a certain fashion, traditional
fashion, if that's how one wants to describe it, in a traditional fashion, may in fact have ended up contributing
to the cynicism.
Now, you didn't want to accommodate to it, this existence, but under the circumstances, it might have been
wise to make some accommodation, and the net result of that
might have been less cynicism, rather than more.
And that's one of the things I think we have to think through here very carefully.
Mr. Nussbaum. I understand and respect your point of
view with respect to that, Senator, but I, you know, I come
to a different judgment.
Senator Sarbanes. We understand that.
Mr. Chairman, I yield to Mr. Ben-Veniste.
The Chairman. Mr. Ben-Veniste.

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Mr. Ben-Veniste. Thank you, Mr. Chairman, Senator Sarbanes.
Good morning, Mr. Nussbaum.
Mr. Nussbaum. Good morning.
Mr. Ben-Veniste. Let me turn your attention to the night of the 20th when you learned that Vince Foster was
dead.
What were you told and by whom?
Mr. Nussbaum. I was told, I was at Galileo's. My beeper went off. I went to the phone and I thought I was
getting another congratulatory call on the Louis Freeh, and
I got to the phone, I picked up the phone.
They said that the White House is calling. I knew it was the White House that was calling, obviously. And Mark
Gearan, I believe, was the one who was on the phone with me.
And Mark said, Bernie, they just found Vince's body, he
committed suicide. I think I started crying.
Mr. Ben-Veniste. And did you go to the White House?
Mr. Nussbaum. Yes. I immediately, we were at the end
of the dinner, my wife and my guest, we all arose from the
table, we hurried out of the restaurant, we jumped into a
cab. We took the cab to the White House.
I didn't have my pass with me, my White House card pass
which allows you to go anyplace in the White House, and for
a moment I was concerned that I could not get into the White

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House.
But then when I got to the door, I forgot that people knew me at the White House, so they let me in. The reason
I always wore my hard pass was because I was in charge
partly of White House security. I was in charge to sort of
set an example to everybody to wear their hard pass.
There were certain White House aides that were so well-
known that they don't like to wear their hard pass.
Mr. Chairman, I
can get into the White House obviously, but I was

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always
[10] setting an example to them.
[11] This is the one time I didn't have my pass with me
[12] because I didn't think I was going to the White House, so I
[13] was now upset with myself that I didn't have my pass.
[14] Mr. Ben-Veniste. Let's get to the question of White
[15] House passes, because at some point that evening, when you
[16] went to White House Counsel's suite in which your own office
[17] was located, you observed that Patsy Thomasson was there in
[18] the office, correct?
[19] Mr. Nussbaum. That's correct.
[20] Mr. Ben-Veniste. Would you describe the scene as you
[21] arrived?
[22] Mr. Nussbaum. Yes.
[23] I walked back to the west wing after the President
[24] departed to go see the Foster family, and as I said, it
[25] occurred to me I must call my staff before they hear about

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[1] this on the news, so I started walking over. Then it
[2] occurred to me that maybe he left a suicide note, so that's
[3] when the thought came to me, I better, I'm going to go into
[4] Vince's office.
[5] I arrived at the Counsel's suite, and a light was on in
[6] Vince's office. The door of the suite was open and the
[7] light was on in Vince's office which surprised me a little
[8] bit. It was late at night.
[9] I had left early that day. I wasn't the last one who
[10] left. I left for the dinner.
[11] I turned to the right. I walked in to Vince's office,
[12] and I saw Maggie Williams sitting on the soft crying, and I
[13] saw Patsy behind the desk. And I was sort of surprised a
[14] little bit.
[15] I said, you know, what are you doing here. My first,
[16] you know, you know – and Patsy looked up at me and she
[17] looked fairly distraught and she says, we just got here and
[18] we're looking for a note, see if he left a suicide note.
[19] And let me tell you, when she said that to me, that was
[20] a human reaction. I was going to look for a suicide note, I
[21] had thought about the same thing. I was going to look for a
[22] suicide note.
[23] Now why, you know, I should have [illegible] was on
[24] his mind, you know, why, did he leave a note.
[25] Mr. Ben-Veniste. Did it immediately occur to you to

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[1] think, Mr. Nussbaum, does Patsy Thomasson have White House
[2] clearance, does she have a White House pass, is the paper
[3] work all done for her White House pass?
[4] Mr. Nussbaum. No, it didn't enter my mind. As Maggie
[5] Williams said here, and very effectively, that was not a
[6] night about passes or documents. It was a night of great
[7] grief.
[8] But in any case, Patsy Thomasson does have a White House
[9] pass. Patsy Thomasson can go into the Oval Office. Patsy
[10] Thomasson can go into any office in the White House. She
[11] has that kind of pass.
[12] In fact, Patsy Thomasson runs, on an administrative
[13] level, a lot of those offices.
[14] It didn't occur to me, once she said suicide note, you
[15] know, I'm looking for a suicide note. I understood that she
[16] was having the same human reaction that I was having.
[17] In any case, she said she had just arrived and she was
[18] like, I walked over to stand next to her, and we both just
[19] looked at surfaces; we didn't look at any files.
[20] Patsy Thomasson had said to me, Bernie, let's pull out
[21] every file in this office, Supreme Court files, Louis Freeh
[22] files, Janet Reno files, you know, National Security files,
[23] and let's read them all to see.
[24] I said, no, Patsy, that's not something you can do.
[25] That's something I can do, but that's not something you can

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[1] do.
[2] But that's not what was going on.
[3] Mr. Ben-Veniste. Did anyone, to your knowledge, on the
[4] night of the 20th, remove anything from Vincent Foster's
[5] office?
[6] Mr. Nussbaum. No one removed anything from Vincent
[7] Foster's office, to my knowledge, on the night of the 20th.
[8] Mr. Ben-Veniste. Let me go to the procedure that you
[9] have described that you arrived at as a compromise between
[10] [illegible] that you have indicated the White House

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had in the matter in terms of safeguarding the materials in
Mr. Foster's office, and obligations, as you've testified,
and the legitimate requests of law enforcement.
First of all, what did you understand, and from whom did
you understand it, were the police searching for in
connection with Mr. Foster's office?
Mr. Nussbaum. I understood, from the Park Police, I don't remember the names of the people, and I also understood from my discussions with the Justice Department,
that they wanted to search Vince Foster's office to see if
there was a suicide note or some other, an extortion note,
perhaps, or some other such document which reflects severe
mental anguish.
As somebody said, I think at these hearings, an appropriate phrase, a note which said "goodbye cruel world."

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You know, to my wife and children and to Bernie Nussbaum,
even or to somebody, you know, I'm leaving this world
because, I can't take it anymore because.
That's what the search was for. That's what I understood the search was for. That's what I was told by
the law enforcement authorities.
Mr. Ben-Veniste. Now as the search in fact proceeded
under your terms, as you defined the procedure that would be
employed, did the materials for which the Department of
Justice attorneys or the Park Police there present, or the
FBI, expressed an interest broaden in some respects?
Mr. Nussbaum. That's correct. That's correct.
Once I started describing documents during the course of
the search, I would say this is a log of his phone calls,
some recent phone calls, I described it like that.
The Park Police or the law enforcement people would say,
we might want to take a look at that. We want to see who he
talked to recently. I says, sure, okay, I'll put it aside.
I want to look, I want to examine that to see if there's
anything privileged or confidential or anything
inappropriate with respect to that, but I'll put it aside.
So you're correct, Mr. Ben-Veniste, the search broadened
to some extent during the course of the search as
requests
were made, and I was open to any request that people wanted
to make. I encouraged them.

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Mr. Ben-Veniste. So that would it be fair to say that
rather than taking a completely passive or, as we've heard,
cigar store Indian role, that there was some interactive
relationship going on during the search that resulted in the
identification of additional materials than those initially
requested, which were ultimately made available to the
police?
Mr. Nussbaum. That's correct.
Mr. Ben-Veniste. Was it your understanding, Mr. Nussbaum, that all of the materials identified by the
police, again having in mind, you were the person who
identified the materials, were all of those materials that
were requested made available to the police?
Mr. Nussbaum. They were.
Mr. Ben-Veniste. Now, we have heard a good deal of testimony about your capability and competence and focus and
Mr. Heymann's capability and competence and focus.
And in your statements and Mr. Heymann's statements, you
are mutually flattering. Indeed, Mr. Heymann testified in
substance, as I recall, that if he or one of the Senators on
this Committee wanted a competent, capable, tough lawyer to
represent them, then Bernie Nussbaum would be their man.
But by the same token, you have congratulated Mr. Heymann, being an experienced and honest individual, and
I've known you both for most of my professional life.

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How do you explain the difference in the approach
between what you regarded as the appropriate way to go about
handling the request for materials from police, and Mr.
Heymann's?
Mr. Nussbaum. It's a good question, Mr. Ben-Veniste,
it's a very good question.
Mr. Heymann sort of stems, he's had a very distinguished
career, Phil has. He's a leading professor at the Harvard
Law School, he was a colleague of mine on the Harvard Law

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[10] Review, he was a year ahead of me in law school. He was a
[11] case editor or note editor before I was note editor of the
[12] Harvard Law Review.
[13] He has had a brilliant career in academia. He's been an
[14] advisor to law enforcement all over the world, as he
[15] testified. He has been in the Government in the Justice
[16] Department in sensitive positions, assistant attorney
[17] general in charge of the criminal division. He worked on
[18] Watergate as you did, and as I did.
[19] The one thing he hasn't done has been a lawyer in
[20] private practice representing clients very much. I don't
[21] think Phil really has ever been in private practice for any
[22] length of time. His career has been spent differently.
[23] My career's been spent in government in part, but mostly
[24] in the private world. And I frankly don't think, and that's
[25] why I'm surprised at his testimony a little bit, that he

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[1] places the same kind of weight that you must place on these
[2] rules, on the code, which I have in my briefcase here, the
[3] Code of Professional Responsibility, which ethically
[4] mandates lawyers to act in a certain fashion, which
[5] ethically mandates them to preserve the confidences of their
[6] clients and to preserve their ability to claim privilege.
[7] Now remember here, we didn't ever claim privilege and
[8] ultimately we turned over everything I was asked for. But
[9] somehow that seems to him not all that significant.
[10] Now maybe the explanation is he hasn't lived in the
[11] world where that's all that important. He recognizes the
[12] existence of executive privilege, which the White House
[13] clearly has, because that's the world he sort of has lived
[14] in.
[15] And he claims things like you can overcome waiver, Phil
[16] testified to this effect. It's interesting because it's the
[17] kind of thing a professor might testify to, but a lawyer,
[18] who deals with the nitty gritty of this everyday, would
[19] never say you could overcome waiver by entering into an
[20] agreement.
[21] Well, any lawyer in private practice knows that
[22] agreements, that something you do will not waive something,
[23] will not stand up. There's this Westinghouse case in the
[24] Third Circuit recently.
[25] I mean, people make agreements all the time, or

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[1] sometimes with government agencies, like the SEC, a major
[2] corporation making an agreement with the SEC, will show you
[3] something but it doesn't waive anything. And the SEC says,
[4] sure, show it to us, it won't waive anything.
[5] And lo and behold, a year later in a class action or
[6] some other action, a Circuit Court of Appeals said, uh oh,
[7] once you show it, it's waived. The SEC could agree up and
[8] down, you've waived it.
[9] It's tricky. That law that there's a concept of limited
[10] waiver, or how much have you waived. It's a very tricky
[11] concept.
[12] Phil seems to think, oh, you just write an agreement and
[13] maybe it'll cure the waiver problem.
[14] It doesn't cure the waiver problem.
[15] My background, I see that from my background: he doesn't
[16] see it from his background, and that accounts, I think, for
[17] part of this clash of ideas that we now have, that he and I
[18] now have, although I have great respect for him.
[19] Mr. Ben-Veniste. Thank you, Mr. Nussbaum.
[20] Thank you, Mr. Chairman.
[21] The Chairman. I just want to make an observation.
[22] I have, for the first time, read your deposition. I
[23] made it a rule not to read depositions until the witness, or
[24] the morning that the witness comes in because inadvertently,
[25] if you have that knowledge, you can give it out, and I want

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[1] to try to protect witnesses. And to those who have been
[2] subjected to all kinds of questions, as it relates to that,
[3] I think it's unfair, I think it's unreasonable and wrong, so
[4] I just want to set the record straight.
[5] And I'm going to refer you to page 139, the top of the
[6] page of your deposition, and I'm going to say to you that
[7] after hearing your testimony today in relationship to the
[8] questions that the Senator from Utah, Orrin Hatch, raised,
[9] and your answers and reading your deposition, that I
[10] absolutely believe, because your answers are that specific.

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that what you testified to in the deposition was your best
and an accurate reflection of what took place.
It dovetails with the information that we have had, and
was a very legitimate attempt, because you even, you say,
well, I'm not sure whether this conversation I am now
referring, and I'm going to read it into the record, as it
relates to the question of whether this discussion that you
had with Mrs. Thomases took place before or after.
And in your testimony, I make the assumption that you
appear then to say, yes, it took place before because we
were discussing the methodology, and I said, basically,
don't worry, it will be done the right way.
But here's what concerns me, and it's not your
testimony, because I believe it, I absolutely believe that
you gave it correctly.

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The question about Susan Thomases, when did she call,
was that conversation on the 22nd, with Mrs. Thomases
answer.
The conversation on the 22nd was that she asked me what
was going on with respect to what was going on with respect
to the investigation or the examination, the examination of
Mr. Foster's office.
She had heard there were discussions in the White House
with respect to this issue, which there was on the 22nd,
which you'll get to, and you're saying this to counsel, I
presume.
Was everything okay, what was going on, and I said I am
having discussions with people.
When we asked Mrs. Thomases about this, it is as if this
never took place.
And you say, I remember saying, Susan, I've been talking
with people.
And the thing that's distressing is that there are a
number of phone calls and we asked her about the phone calls
that she made to people in the White House, has almost no
recollection whatsoever.
She'd have us believe that she was calling, and this is
during the time when there were discussions going on, which
has been verified by others, as the methodology to conduct
this review, or the investigation or access.

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But when Senators raise questions, she says, I wanted to
give comfort to people. I wanted to see how they were
feeling. This is where you have a half a dozen phone calls
or more in a period of two hours, phone calls to Maggie
Williams' office, phone calls to the Chief of Staff's
office, you know, and we're almost, at one point we're told,
well maybe interns answered and kept her on hold.
I mean there's a certain point – then we have your
absolute clear testimony of today and in the depositions.
and you say, I remember saying, Susan, I've been talking to
people.
She tells you people earlier, there were discussions in
the White House, in the White House.
Now look, I understand, you know, disagreements between
lawyers as it relates to whether or not, and I'm not saying
this for your benefit because I think it's perfectly
logical, where they may come to different understandings,
and I certainly understand when there's not total recall, I
do.
But I have to tell you, her testimony is very troubling,
particularly as it relates to those calls, and particularly
as it relates to the fact that she denies having discussed
this situation with you basically.
She says that you, that you, and I'm not questioning
that you're the person who raised it with her. Now let me

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tell you, you don't make a phone call and ask somebody
what's going on, and then forget who initiated this kind of
situation when you, with some certain degree of
particularity, recall her saying that there were discussions
in the White House.
Now, when we couple this with that she was a member of
the kitchen cabinet, I don't think it's unreasonable that
Senator Faircloth, in his own inimitable style, raised
[illegible] the question of, you know, you're the

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person with
[10] the juice and you're the person, what were you calling
[11] about?
[12] Now let me raise, and then you can respond, and I don't
[13] think it's really something I'm asking you to respond to,
[14] but we're going to get down to this. We're going to narrow
[15] this because I am going to ask that we issue subpoenas for
[16] the telephone records of Mrs. Thomases and on various nights
[17] in question as it relates to these calls, and for the Rodham
[18] residence in Little Rock and for Margaret Williams'
[19] residence, because I want to know about these phone calls.
[20] We've got a partial list of some.
[21] But here's what further troubles me.
[22] When she was asked about the people that she spoke to.
[23] she said basically at the White House she had spoken to only
[24] three people, and I'm referring to page 213, yesterday's
[25] testimony.

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[1] Mrs. Thomases says, I don't recollect saying that people
[2] were concerned to him, nor do I talking to people who
[3] expressed my concern, and then as it relates to the question
[4] who she talked to, she said, so when we talk about the
[5] universe of people, people whose opinion might be expected
[6] to counterweight with Mr. Nussbaum, is it fair to say that
[7] three people you have talked to before you talked to Mr.
[8] Nussbaum were the President, the First Lady, and Maggie
[9] Williams, right?
[10] And she says, yes.
[11] So who are the people then that she learned about this
[12] concern, as it relates to the review?
[13] In other words, if it's only these three people, and
[14] then when we say, did you discuss this, she says, no, how
[15] did she learn about this, how did she learn about this
[16] process.
[17] I don't know, I don't know if you can tell us. You said
[18] she didn't tell you who had informed you, is that correct?
[19] Mr. Nussbaum. That's correct.
[20] The Chairman. That's the troubling question. How is it
[21] that Mrs. Thomases calls you, raises this issue with you,
[22] and then says, well she has no recollection. As a matter of
[23] fact, you told her that you were conducting, and she's only
[24] spoken to three people, and they are who they are, very
[25] troubling to this Senator.

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[1] Mr. Nussbaum. Senator, obviously you will have to make
[2] your own judgments and other Senators will have to make
[3] their judgments. I've known Susan Thomases a long time,
[4] Senator. She's a good, honest, and decent person. I have
[5] absolutely no doubt that when she testified as to her memory
[6] of the conversation, which differs from mine, she sincerely
[7] believes that her version of the conversation is correct.
[8] Obviously, there is a difference between us Senator, but
[9] she is a truthful person, she's a good person, she
[10] contributes a lot to the Administration with her outside
[11] advice, Senator.
[12] Senator, I don't want you to take back the nice words
[13] you said about me, after I say this.
[14] The Chairman. No, I'm not, but you're getting me to the
[15] point where I might, now. Let's not –
[16] Mr. Nussbaum. But let me just say, because I think the
[17] Senator's entitled to know my view of Susan Thomases. I
[18] have the highest view for her character and her credibility.
[19] The Chairman. We understand that.
[20] Senator Shelby?
[21] Senator Shelby. Mr. Chairman, –
[22] The Chairman. Well, look, I yield to Senator Sarbanes.
[23] All right. I mean, the question is how much time is left.
[24] Fine, we run a strict clock.
[25] Senator Sarbanes?

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[1] Senator Sarbanes. Senator Kerry?
[2] Senator Kerry. Thank you, Mr. Chairman. Senator
[3] Sarbanes.
[4] I'd like to clarify one area, if I can, quickly, and
[5] then move on to an area that I find troubling.
[6] But do I understand that during the procedure of the
[7] review of the files, that every single file in the office
[8] was reviewed at that time?

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Did you pull out every file that was in the office?
Mr. Nussbaum. Yes, that's my recollection. I either pulled it out or looked at it. In the credenza, I may not have pulled out every file, but then I would sort of move them and look at the file.
Senator Kerry. Did you describe the face pages of each and every file in the credenza?
Mr. Nussbaum. It varied. It varied. I didn't necessarily describe the face pages. I gave more, with the credenza, I don't know. I don't remember at this time.
Senator Kerry. The credenza is a place, so it's possible that you did not review all the files within the credenza?
Mr. Nussbaum. Oh, no, no. I reviewed all the files that were in the credenza.
Senator Kerry. In their presence?
Mr. Nussbaum. In their presence, yes.

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Senator Kerry. And did you describe each file within the credenza?
Mr. Nussbaum. I said this is a tax file, or this is an investment file, like that. I didn't describe every piece of paper in the file. I would flip through the file to see if there's a suicide note or extortion note, but I would give a general description of the file and I would flip through the file.
That was the process I followed, Senator Kerry.
Senator Kerry. Fair enough.
And in the description of each file, did you describe the files that ultimately went into the box, the personal files? Did you say these are personal files of the Clinton's?
Mr. Nussbaum. Yes.
Senator Kerry. You described those.
Did they ask to see any of those files?
Mr. Nussbaum. No, sir.
Senator Kerry. At no time did they ask to see those?
Mr. Nussbaum. At no time did they ask to see any of those files.
Senator Kerry. Did they ask them to be set aside for further review at a later time?
Mr. Nussbaum. They did not, Senator.
Senator Kerry. Okay.

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Now, and it's your testimony that any files that were set aside, they subsequently did get? Is that?
Mr. Nussbaum. That's correct, Senator.
Senator Kerry. So no file that was sought was not at some point turned over?
Mr. Nussbaum. No file that was sought was not at some point turned over.
Senator Kerry. Okay.
Now I also would associate myself with the earlier comments of Senator Sarbanes on this question of cynicism and judgment.
I don't want to spend a lot of time on it now. We will obviously at the end of it agree to disagree probably, but it's something I'd like to maybe review later on.
I'd like to turn to an area that I find particularly perplexing at this point in time, at least for me. Maybe you can help me through it.
You set out very eloquently and in very strong terms, the degree to which you perceived a legal obligation with respect to the files in this office.
Mr. Nussbaum. Yes, sir.
Senator Kerry. And you obviously take that seriously, and I don't doubt that at all.
You were concerned at one point about making sure the office was locked, correct?

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Mr. Nussbaum. Yes, sir.
Senator Kerry. And you were concerned at one point about a Ms. Betsy Pond having gone in there and sort of neatened up?
Mr. Nussbaum. Yes.
Senator Kerry. And you were concerned about retrieving the waste materials from the night of the 20th, in order to make sure that nothing had been overlooked?
Mr. Nussbaum. Correct.
When it was brought to my attention that the trash had been removed, but could be recovered, I said of course recover it, bring it back.
Senator Kerry. So throughout the proceeding, all the way into the negotiations of the 22nd and 21st, you were proceeding with a strong sense of your obligations under the law to protect the documents and to make sure that there was an appropriate chain of custody and all of the legalities that were at stake.
Is that accurate?
Mr. Nussbaum. I was concerned with preserving the documents, and –
Senator Kerry. Well, you were concerned that the Foster files went to the Foster's, that the Clinton files went to the personal attorney?
Mr. Nussbaum. Correct, that's correct.

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Senator Kerry. That things were divided properly?
Mr. Nussbaum. That's correct, Senator.
Senator Kerry. Now what I find, and it truly just sort of leaves me asking questions, but I want to pursue it. Is

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you had how many secretaries working for you?
Mr. Nussbaum. I had two secretaries working for me.
Senator Kerry. And how many lawyers working for you?
Mr. Nussbaum. About a dozen.
Senator Kerry. So in a sense, I mean, yours was a full-
fledged legal office, counsel's office, correct?
Mr. Nussbaum. A little law firm, yes, Senator.
Senator Kerry. A little law firm.
Now, can you tell me why it is that given the fact that you have these people there, and given the fact that you're
concerned about the propriety of this, why do you – well,
let me read you what she says.
Maggie Williams says: She's in another building, she's
in Room 100 of the Executive Office Building, and you call
her over there and she says, according to her testimony, and
he called me, Bernie, and he said, I have their personal
files, or I have the Clinton personal files, get them to Bob
Barnett, or will you get them. That was the gist of it. I
said, okay, I'll be over in a little while.
So she comes over and she says, before I left my office,
I'm sure I called Barnett to tell him I was going to get the

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files.
And she says, I'm supposed to be sending you the
personal files of Clinton when you're ready. He says, when
you're ready. I'll send somebody over to get them.
So here we are with that testimony, and I'm left asking
myself, why Maggie Williams? Why would you call Maggie
Williams to send the files over? Why not have your
secretary call? Why not have one of the other lawyers make
the arrangements? Why not ask Mr. Barnett to come over and
take them directly from you?
Mr. Nussbaum. Senator, first, Maggie Williams, while
she may have been in the Executive Office Building, her
office that she normally uses is right down the hall from my
office. I didn't know where she was when I said, get Maggie
Williams. In fact, indeed, Maggie Williams is one of the
people in the White House physically, in physical proximity,
the closest to me, not the furthest.
She's from, her office is probably, from where my office
was to where you're sitting right now. So she's fairly close.
Now it's true that, at this point, she was in the EOB
apparently, but I didn't know that.
So, one, I was asking for somebody who's fairly close to
me physically.
But number two, even more important than that, that's

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not really the key thing, is that she is to me sort of the
chief of staff of the First Lady and the representative of
the First Family in effect. That's how I saw her. She's
one of their chief aides, Mrs. Clinton's chief aide
primarily.
So it was a natural – and I have some differences of
recollection because I thought I was fairly certain that the
Clinton's would want to send these files to Williams &
Connolly, Bob Barnett, as you talked, but I wasn't positive.
And my recollection is, and I know Maggie's testimony is
not the same as mine in this regard, which I think, by the
way, sometimes is proof of truth, not of falsity, but that's
a separate issue.
My recollection is that I was not certain it should go
to Barnett, that Mrs. Clinton or the President may decide,
no, I want to send these to somebody else in Arkansas or
elsewhere, and that she should check with Barnett – she
should check, excuse me, with the Clinton's.
So I recall, when she came over, I said, look, Maggie, I
have their personal files here. I just sent Foster's files
to his family lawyer. I'm sure the Clinton's would want, I
want these files, I'm sure the Clinton's would want these
files to go to their personal attorneys now.
You check with them. See, I remember saying, you check
with them. She's the natural person to check with them: not

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everybody can talk to the President and First Lady. I said
you check with them, whether they want them to go to Barnett
and you take them, and if they decide they want them to go
to Barnett, send them to Barnett.
That is why I called Maggie Williams and that's what I

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had in my mind.
Senator Kerry. Do you understand the legitimacy of the
questions raised by the differences here?
Mr. Nussbaum. Yes, of course I understand that.
Senator Kerry. I can understand what you're saying
about the proximity, but even given that, every step of what
she has said she did differs with your recollection in the
following sense:
She then says that she was going to get them over there
but she got tired, and it was only because she was tired
that she raised the issue with the First Lady and then said,
I'll send them over to the residence as an alternative to
sending them over.
Now is that totally different from your recollection?
Mr. Nussbaum. Yes, it's somewhat different from my
recollection.
Senator Kerry. Well, isn't it totally different?
You're saying that you said to her, check with them to
see where they should go?
Mr. Nussbaum. That's correct.

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Senator Kerry. She's saying that she never made any
call except to sort of ask where they go because she decided
not to put them somewhere else, send them over to Barnett.
She didn't say, in any regard, gee, I think I have to
call the First Lady, or we have to do this with
relationship. She almost sort of separated herself from
that.
Mr. Nussbaum. Well, I don't know exactly. I haven't
read her testimony and I didn't watch it all. I know some
of it, but I don't think we're that far apart, Senator. I
know you may feel that, but I think –
Senator Kerry. No, I'm not. I don't feel anything.
I'm trying to, I'm trying to understand it.
Mr. Nussbaum. We were both, my major objective –
Senator Kerry. Here's what she said.
I tell her I was sending the boxes to Bob Barnett, but
it's getting late and I'm tired, and I'm going to take them
to the residence, where should I put them.
There's no inquiry there about, you know, do you want
them, do you not want them, do you want to see them?
Mr. Nussbaum. Senator, all I can do is testify to my
recollection. My recollection is, Maggie, I have the
Clinton personal files here. I just sent the Foster
personal files to their personal lawyers. I think the
Clinton personal files should go to their personal lawyers.

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Check with the Clinton's as to whether they want them to go
to Bob Barnett, I think they do.
Senator Kerry. Do you know how the files ultimately got
there?
Mr. Nussbaum. No, I don't.
Senator Kerry. They got there by messenger on Tuesday.
Mr. Nussbaum. Oh, I do know they got there on Tuesday,
yes.
Senator Kerry. So why, if they could get there by
messenger on Tuesday, could they not get there by messenger
on Thursday or Friday?
Mr. Nussbaum. They could have gotten there by messenger
on Thursday or Friday, but it was late in the day and I
thought the reason Maggie was doing it was because she
wanted to check with the Clinton's.
Senator Kerry. Well, my time is up. I wanted to sort
of clarify this a little more.
Mr. Nussbaum. I'm not sure I have, Senator, but I've
tried my best.
Senator Kerry. I appreciate that.
The Chairman. Would the Senator like another minute or
two to clarify it?
And this does not confer on us any automatic right to
pursue the same thing, but I think that the if the Senator
wants –

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Senator Kerry. I'll come back after.
The Chairman. Okay. Senator Shelby?
Senator Shelby. Thank you.
Mr. Nussbaum.
Mr. Nussbaum. It's nice to see you again, Senator.
Senator Shelby. It's good to see you. It's always good
to see an able New York lawyer.
Mr. Nussbaum. What is this New York business with you
guys?
I expect you to defend me, Mr. Chairman.
The Chairman. I do. This picking on New York, they
make us all aggressive. I mean, I've been so unaggressive
and Bernie's been very laid back today..
(Laughter.)
Senator Sarbanes. If the Senator from Alabama would
yield, I tried to establish at the outset that there were

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lot of able lawyers elsewhere besides New York.
Senator Shelby. Absolutely, but there are also a lot of able ones in New York, and Mr. Nussbaum's one of them.
Mr. Nussbaum. Thank you, Senator.
Senator Shelby. Now, Mr. Nussbaum, how long were you in private practice prior to January 1993?
Mr. Nussbaum. I was in private practice, I was an Assistant United States Attorney in the Southern District of New York from 1962 through 1966, taking time out to serve in

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the United States Army.
I was in private practice then from 1966 to 1993, taking time out to join my friends, Mr. Ben-Veniste and other people, and Mr. Heymann in Washington in 1974, to work on the Watergate matter.
Senator Shelby. You were counsel, one of the counsel on the Watergate hearings, is that right?
Mr. Nussbaum. I was Senior Associate Special Counsel to the House Judiciary Committee Impeachment Inquiry.
Senator Shelby. So you had not only your private practice experience that you related, but you also had that unique experience on Watergate?
Mr. Nussbaum. I certainly did.
Senator Shelby. Okay.
Now, when you came to work, when was that, January 19?
For the Government, when did you come to work?
Mr. Nussbaum. Well I officially went on duty, although I started work a little earlier, January 20, 1994.
Senator Shelby. Is that the date of the Inauguration.
Mr. Nussbaum. Excuse me, January 20, 1993. That's the date of the Inauguration.
Senator Shelby. Okay. So when you went on duty, you went on the payroll of the United States Government, did you not?
Mr. Nussbaum. Yes, sir.

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Senator Shelby. Okay. And you ceased to be a private attorney then, did you not?
Mr. Nussbaum. That's correct.
Senator Shelby. Okay. So back in July of 1993, on July the 20th, 21st, subsequent dates, you were on the public payroll working [illegible] White House Counsel here in Washington, D.C. You were counsel to the President of the United States?
Mr. Nussbaum. I was counsel to the President of the United States.
Senator Shelby. Okay.
Mr. Nussbaum. Which I was highly honored to be.
Senator Shelby. Sure. It's a great job, a highly respectful job.
Mr. Nussbaum. Tough job.
Senator Shelby. Tough job is right.
Now, Mr. Nussbaum, during this time from January 20th, 1993, were you engaged, in any way, as a private attorney for anyone?
Mr. Nussbaum. No, Senator. I had my hands full with the job I had.
Senator Shelby. The answer is no.
Mr. Nussbaum. The answer is no.
Senator Shelby. So back on July 20th, 1993, you were totally a government lawyer working for the President of the

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United States as his counsel?
Mr. Nussbaum. With a specific function, yes.
Senator Shelby. That's right, but on the government payroll?
Mr. Nussbaum. I was on the government payroll.
Senator Shelby. Okay. That's what I'm asking you.
Now, let's go back to a couple of things you said.
You said that the day after Vince Foster's death, that you were functioning as a lawyer again?
In other words, you knew you had a job to do as White House counsel, and that your mind, quote, was focused, is that right, just a few minutes ago?
Mr. Nussbaum. Yes.
Senator Shelby. Your mind was focused.
Mr. Nussbaum. My mind was focused.
Senator Shelby. And, Mr. Nussbaum, you carry quite a memory with that mind, don't you?
Mr. Nussbaum. Yes.
Senator Shelby. Historically wouldn't you say you've got a good memory?
Mr. Nussbaum. Absolutely, I do.
Senator Shelby. Let's go back to when you first had a conversation, let's go in sequence, if you'll recall, with Mr. Heymann. When did you call, if you did, Mr. Heymann regarding the investigation of the Vince Foster's death?

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Mr. Nussbaum. I believe I called him mid-day, maybe even early in the day, 11:00 o'clock, 12:00 o'clock, maybe as early as that, on July 21, to ask him have the

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Department
[4] of Justice coordinate the various investigations which I
[5] believed would take place.
[6] Senator Shelby. How long did this conversation go on?
[7] Mr. Nussbaum. Very short, Senator.
[8] Senator Shelby. Very short.
[9] Was that the only conversation you had with Mr. Heymann
[10] that day?
[11] Mr. Nussbaum. I believe so. Obviously, he said he
[12] would think about it, so I did receive information, although
[13] he indicated that he was going to do it in all probability.
[14] It's possible he called me again to say okay, but I
[15] don't remember that. I remember that conversation and
[16] receiving, at some point, either in that conversation or
[17] thereafter, an affirmative answer to my request.
[18] Senator Shelby. Subsequent to the conversation or
[19] conversations, did Mr. Roger Adams and Mr. Margolis from the
[20] Justice Department come over to the White House?
[21] Mr. Nussbaum. Yes, sir.
[22] Senator Shelby. And was that that same day?
[23] Mr. Nussbaum. It was.
[24] Senator Shelby. And what time of the afternoon was
[25] that?

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[1] Mr. Nussbaum. It was late in the afternoon. It was
[2] 4:00 o'clockish, 5:00 o'clockish, it was after I spoke to
[3] the entire White House staff with the President, 4:00 or
[4] 5:00 o'clock, maybe even later.
[5] Senator Shelby. Who was present at this meeting?
[6] Mr. Nussbaum. Let me tell you the people I remember.I
[7] Senator Shelby. Okay.
[8] Mr. Nussbaum. And this may not be everybody.
[9] Myself, Steven Neuwirth, Cliff Sloan, two associate
[10] counsel who have appeared before you, the three of us, Roger
[11] Adams and David Margolis, an FBI agent, who I now believe to
[12] be Agent Salter, and a number of representatives of the Park
[13] Police whose names, at this point, I do not recall.
[14] Senator Shelby. Mr. Markland, maybe?
[15] Mr. Nussbaum. Maybe, if he says he was there, yes.
[16] And also probably a Secret Service agent, because they
[17] usually were conducting the other law enforcement officials
[18] around the White House and they remained at some of these
[19] meetings.
[20] Senator Shelby. And did this meeting take place in your
[21] office?
[22] Mr. Nussbaum. It took place in my office, the White
[23] House Counsel's office, yes.
[24] Senator Shelby. And was the purpose of the meeting to
[25] discuss the initial ways you would investigate the death of

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[1] Vincent Foster?
[2] Mr. Nussbaum. It was to discuss two things.
[3] Senator Shelby. What were they, and first?
[4] Mr. Nussbaum. One was their desire, need to interview
[5] members of my staff promptly, and I readily agreed to that.
[6] I was bending over backwards throughout this process to
[7] try and –
[8] Senator Shelby. Just go ahead, instead, go ahead and
[9] say what you did.
[10] Mr. Nussbaum. Sure.
[11] Senator Shelby. Okay, first you said they wanted to
[12] interview your staff and you said you agreed to that, right?
[13] Mr. Nussbaum. Yes.
[14] Senator Shelby. All right, what's the second thing?
[15] Mr. Nussbaum. And second to discuss their desire and
[16] their need to search Mr. Foster's office for a suicide note
[17] or some similar such document.
[18] Senator Shelby. Okay. And how long did this discussion
[19] go on regarding that, in your judgment?
[20] Mr. Nussbaum. Between 45 minutes and an hour, in the
[21] area of 45 minutes.
[22] Senator Shelby. What did you say to Mr. Margolis and
[23] Mr. Adams and others present regarding the search of the
[24] office on this occasion, this first occasion?
[25] Mr. Nussbaum. I think I mentioned some of this earlier.

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[1] but I will repeat it, Senator.
[2] Senator Shelby. Sure.
[3] Mr. Nussbaum. I understand.
[4] The atmosphere was friendly. I'll tell you what I said.
[5] Senator Shelby. Just tell us what you said.
[6] Mr. Nussbaum. I understand, but I have to do it in my
[7] own words in my own way, Senator.
[8] Senator Shelby. Sure.
[9] Mr. Nussbaum. The atmosphere was friendly and
[10] understanding on both sides. What I said was, look, I
[11] understand your desire to go into Vince's office to search

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[12] for a suicide note.
[13] I was there. I had total – I was there the night
[14] before. I didn't see a note, but my search was very
[15] cursory. I understand your need and desire to go in. But
[16] Roger, David, you know, I was talking primarily to them,
[17] this is a lawyer's office. There is sensitive materials in
[18] that office. There's confidential stuff, there is
[19] privileged stuff in that office.
[20] It's covered by all sorts of, you know, I had
[21] obligations. I have obligations as a lawyer as counsel to
[22] the President, as counsel to the President in his official
[23] capacity, not as a private lawyer, but as an official
[24] capacity, I have certain obligations that affect me as a
[25] government lawyer, as well as the same kind of obligations

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[1] when I was a private lawyer.
[2] I got to work out some way of dealing with these issues
[3] with you. I just cannot let you go in and open the door and
[4] look at every document in the office.
[5] And they were, not surprisingly because they're good
[6] people, they were understanding.
[7] They said we understand it, Bernie, we understand, you
[8] know, that you have these obligations as counsel tot he
[9] President, as a government lawyer, you have these
[10] obligations because these obligations apply also to a
[11] government lawyer, but they said, maybe we can work
[12] something out.
[13] Senator Shelby. They also had an obligation and
[14] responsibility, did they not?
[15] Mr. Nussbaum. They had an obligation too, and I
[16] understood that. They had an institutional obligation which
[17] all law enforcement people have, so we then had a discussion
[18] of how to discuss various options.
[19] And that's what I remember about the conversation. We
[20] discussed the kind of options I laid out before. Opening
[21] the office, letting them see everything, you know, without
[22] anybody in there with them.
[23] Shutting the office, letting them not go in. They
[24] didn't like that, I didn't like that. Showing him the first
[25] page of a document or something more so they can make

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[1] determinations of what was privileged or not confidential or
[2] relevant, they liked that.
[3] I said I would consider it, but I didn't like it that
[4] much, but I will consider it, or having me go in with them,
[5] breaking the seal together, walking into the office.
[6] Senator Shelby. Excuse me a minute. Breaking the seal
[7] together? But there's been testimony by you and others that
[8] the seal was already broken. People were there the night
[9] before looking through the office.
[10] Mr. Nussbaum. We sealed the office. Senator, we secured
[11] the office.
[12] Senator Shelby. Breaking it again. Okay, secured.
[13] Mr. Nussbaum. I shouldn't use the word "sealed." We
[14] secured the office on the morning of July 21st.
[15] So I discussed that option with them, the option of us
[16] going into the secure office, and I would look at each
[17] document and I would give them some general description, and
[18] of course if I found a suicide note or something similar, I
[19] would turn it over to them.
[20] They didn't like that too much.
[21] That's what we discussed, options. And we left, when we
[22] left, when we broke up the meeting –
[23] Senator Shelby. When you broke up the meeting, did you
[24] have an agreement?
[25] Mr. Nussbaum. No.

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[1] Senator Shelby. Did you have an understanding?
[2] Mr. Nussbaum. No.
[3] Senator Shelby. Well, what did you have? Why would
[4] they leave?
[5] Mr. Nussbaum. We had an issue which had remained
[6] unresolved and which we agreed to meet the next morning to
[7] have further discussions. That is my memory.
[8] Senator Shelby. That's your memory to agree to meet
[9] again the next morning, but not your memory that you reached
[10] an agreement and agreed to meet the next morning to begin
[11] the search together?
[12] Mr. Nussbaum. Oh, no. We knew there would be a search
[13] the next morning. We agreed there would be a search. But
[14] what we hadn't agreed on is would be how the search was
[15] conducted, the precise method that would be used.
[16] The Chairman. I will come back to you, Senator.
[17] Senator Sarbanes. I think wants to keep it a little more
[18] on the time and the clock, under the strictest of

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interpretations, we keep it to ten minutes and then let someone finish, but I will come back to you in the next round. You'll lead off.
Senator Sarbanes?
Senator Sarbanes. Well, Mr. Chairman, I yield to Senator Bryan. I do think that we ought to, our rules move it back and forth every ten minutes, and since we have a

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number of members who've been waiting, I think –
The Chairman. Well, I understand that. I understand that, and I think sometimes as it relates to being able to keep a continuity, I wish we had more flexibility, but I'm not going to detract from the hearings by arguing that point out at this time, so we yield.
Senator Sarbanes. I think it's a reasonable point, and we've tried to accommodate it, but since we've had so many here today and they've waited so long, I think we –
The Chairman. All right.
Senator Sarbanes. I yield to Senator Bryan.
Senator Bryan. Thank you very much, Senator Sarbanes.
Mr. Nussbaum, listening to your testimony this morning, you are impressive, eloquent, you're a forceful advocate, and I was reflecting that a year ago, we had occasion to engage in a colloquy and then, unlike this morning where the issue has been privilege, sensitivity, privacy and what might constitute a waiver, then the issue was one of recusal, and you had some very strong views in advising Mr. Altman as to his obligation, in your view. You were equally impressive that day. I must say that I disagreed with you last year in terms of your counsel on that, and I do find myself in some disagreement with the advice that you've given with respect to handling this issue.

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But I want to focus on a couple of things and then ask you a follow-up.
On the 21st, when you met with Mr. Adams and others to discuss the process by which the inventory or the search, whatever word you're comfortable with, who was present?
Mr. Nussbaum. Myself, Steven Norwitch, Jeff Golkin, David Margolis, Roger Adams, Agent Salter of the FBI, an FBI agent. I have learned in these hearings it's Agent Salter.
I would not have remembered it before although I knew an FBI agent was present.
Representatives of the Park Police, I believe Mr. Markland and another person, perhaps a Secret Service Agent, but I have no memory of that right now.
That's my memory as to who was present.
Senator Bryan. And you have indicated repeatedly that it is your understanding that based upon the conclusion of that meeting, there was no agreement as to now the search in Mr. Foster's office was going to be conducted?
Mr. Nussbaum. There was a discussion of options. I said I would consider seriously one of the options, this first page option I'll call it, but there was no agreement as to how we would proceed. That's correct.
We said we would meet the next day. We conducted the search, we agreed a search would be conducted the next day, and we would conclude the next day as to how the search

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would be conducted.
Senator Bryan. I must say that I was somewhat surprised to hear, in response to a question or series of questions from Senator Hatch, your response that with respect to the memorandum of Mr. Adams, which was displayed on the screen, and thereafter a memo from Mr. Heymann, that was displayed on the screen, that with respect to Mr. Adams, that memorandum which purports to state what his understanding was on the 21st, was written a week later.
Mr. Nussbaum. That's correct. It was written after the note was discovered on the 26th and turned over that handwritten list, and turned over to the law enforcement authorities on the 27th. It was written thereafter.
Senator Bryan. And that Mr. Heymann's memo came in February of the following year, 1994?
Mr. Nussbaum. That's correct. Mr. Heymann apparently sat down and tried to, which is legitimate to do, try to reconstruct what he remembered them, but it

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was not a
[19] contemporaneous memo made at the time.
[20] Senator Bryan. You have used the word contemporaneous
[21] and that is the word that comes to my mind. My experience
[22] as a private practitioner is less impressive than your own,
[23] but my understanding is generally when lawyers seek to make
[24] memoranda of events that they think may have some future
[25] significance, either in terms of their own attorney/client

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[1] relationship, or conversation with other counsel, or actions
[2] they've taken with respect to the matter, that they attempt
[3] to dictate that as reasonably contemporaneous as possible
[4] that same day or the following morning.
[5] Is that your understanding impression?
[6] Mr. Nussbaum. That is. If a lawyer wants to
[7] memorialize something that happened because he thinks it's
[8] important to memorialize it, he would go back and make a
[9] memorandum contemporaneously shortly after the event
[10] happened.
[11] Senator Bryan. My purpose is not to impugn anybody's
[12] integrity, but it is noteworthy that this is made a week
[13] after the event which is being memorialized occurred.
[14] Mr. Nussbaum. Yes, I think it is noteworthy.
[15] Senator Bryan. And with respect to Mr. Heymann, is it
[16] fair to say that in terms of his attempt to describe what
[17] his understanding was, that he not being present, that his
[18] understanding would have to have been made based upon
[19] hearsay, that is, what someone who was there told him their
[20] understanding was?
[21] Mr. Nussbaum. That's correct, Senator.
[22] Senator Bryan. So he can have no understanding in terms
[23] of the basis of the purported agreement or understanding
[24] firsthand?
[25] Mr. Nussbaum. That's correct, sir.

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[1] Senator Bryan. Okay. Now, I can understand, as you've
[2] indicated, that people can have different interpretations
[3] and you've indicated that several people that attended that
[4] meeting reached the same conclusion that you did, namely
[5] that there was in fact no agreement.
[6] What I find a little bit more troublesome is the
[7] following day, and let me take you through my understanding
[8] of the sequence, and ask you to clarify this and comment
[9] upon it.
[10] You had a phone conversation, as I understand, on the
[11] following day, the 22nd, at the time that Margolis and Adams
[12] were there and about ready to participate in this search or
[13] review or inventory.
[14] And during the course of that conversation, it has been
[15] related that Mr. Heymann said to you in effect, Bernie, I
[16] think you're making a mistake. I don't think this is the
[17] way you ought to handle it. My understanding of the
[18] conversation, as he relates it, is that you said to him in
[19] effect, well, let me think about this – we're talking about
[20] the 22nd.
[21] Mr. Nussbaum. I understand, Senator.
[22] Senator Bryan. Is that essentially correct?
[23] Mr. Nussbaum. It's essentially a correct version of Mr.
[24] Heymann's testimony. You stated it accurately, sir.
[25] My memory is not different, it's vaguer on this point.

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[1] And I'll just give it to –
[2] I do not remember that kind of conversation with Mr.
[3] Heymann, but I don't mean to suggest that it didn't take
[4] place.
[5] From my point of view now, thinking back, if Mr. Heymann
[6] says that was the conversation, I have no reason to dispute
[7] it. It's not the kind of conversation I will say clearly
[8] did not take place.
[9] For example, during the course of my deposition, Mr.
[10] Chertoff said to me, did Mr. Heymann ever say to you that
[11] you're misusing the Justice Department, talking about
[12] another conversation, and I said, no, Mr. Chertoff, he never
[13] said that to me, and if he did say that to me, I would
[14] remember it, and it wouldn t be true, but I would remember
[15] it.
[16] So that didn't happen.
[17] I cannot say that with respect to this conversation.
[18] You know, if Mr. Heymann says he said what he said to me.

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[19] I'm not saying categorically that it didn't occur.
[20] I just don't have any memory of it, and if I said to Mr.
[21] Heymann that I would get back to him at some point, it is my
[22] normal practice to get back to people. I don't duck phone
[23] calls. I answer my phone calls and I return my phone calls.
[24] If I said that, then I did m another mistake, it
[25] obviously slipped my mir n the course of that day, if I

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[1] promised to get back to him, I should have gotten back to
[2] him, and I apologize to him for not getting back to him when
[3] I changed my position, but I would have gotten back to him.
[4] But I just don't remember promising to get back to him.
[5] and if I did promise to get back to him, I don't remember
[6] continuing to think about that as the day went on.
[7] Senator Bryan. Even if there was not a promise, let me
[8] just say as an aside to you, Mr. Nussbaum. I have a high
[9] regard for Mr. Heymann. I thought he acquitted himself
[10] well, and clearly projects himself as a person of
[11] considerable experience and integrity, in my view.
[12] But, again, to drive the point, I don't know whether
[13] there was an express promise that you were quoted as having
[14] said, but clearly the implication, I can't recall the exact
[15] words, were that he proposed an alternative course of action
[16] or suggested that I think you're about ready to make a
[17] mistake, Bernie.
[18] The implication of his testimony was that you were going
[19] to consider the proposed course of action and maybe not an
[20] express promise by you to call back, but clearly the
[21] impression left, let me think about that, Phil, or however
[22] you refer to him.
[23] Mr. Nussbaum. That's correct.
[24] Senator Bryan. It would give you the impression, if
[25] you're thinking about it, he being you, he'll get back to

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[1] me.
[2] Mr. Nussbaum. Yes, and I think there was a
[3] miscommunication and maybe a misremembrance on my part to
[4] call him back.
[5] Let me say something. You know, I was thinking about
[6] it. I thought about it from the night before. I thought
[7] about it that morning. I thought about it in the course of
[8] my discussions with Jack Quinn and others.
[9] As I've testified to, and I reached a conclusion that
[10] that was not the right way to do it; namely, letting them
[11] see the first page of each document.
[12] Mr. Heymann also said something else at these hearings
[13] which was important, and here I agree with him. This idea
[14] of an agreement, Mr. Heymann is sort of mad at me, I think,
[15] that's too strong a term, that I didn't call him back, that
[16] I owed him a call back and I didn't call him back.
[17] And, as I said, I'm sorry about that. I just didn't
[18] remember I had to call him back.
[19] But he also said at these hearings something which I do
[20] find interesting. He said he didn't consider this agreement
[21] with some of these people as some sort of binding agreement,
[22] that it's signed in blood or something, and it couldn't be
[23] overridden in some fashion, or it couldn't be changed.
[24] So that's the way I felt too. I didn't believe we had
[25] an agreement, but even if we did have an agreement, or even

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[1] if they walked away believing we had an agreement basically,
[2] that agreement could not override what I sort of conceived
[3] to be my solemn professional obligations contained in books
[4] like this. This is the Model Rules of Professional Conduct.
[5] it couldn't override that.
[6] So if I had made an agreement the night before, which I
[7] didn't, but if I had made an agreement, I would have said to
[8] them the next day, fellas, look, I may have said we'll do it
[9] this way the night before, but I can't do it. I thought
[10] about it some more. This will violate my ethical obligation
[11] as a lawyer. That agreement no longer holds.
[12] Now we didn't have that conversation because we didn't
[13] have an agreement, but if we had an agreement, that's the
[14] kind of conversation we would have had.
[15] Senator Bryan. And I think, Mr. Nussbaum, that Mr.
[16] Heymann, in the idiom of the street, was cutting you

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a
[17] little slack there on that that hey, look, you had a right
[18] to change your mind even if there was an agreement.
[19] Just by way of a concluding observation, I can see why
[20] he would be upset if he felt that, in effect, his staff was
[21] being used when he expected a phone call back from you.
[22] I mean, that would bother me.
[23] Mr. Nussbaum. It would bother me too, and I understand
[24] –
[25] Senator Bryan. And I think, clearly, he had that sense.

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[1] Mr. Nussbaum. I understand his upset in that regard.
[2] Senator Bryan. I note my time has expired.
[3] Mr. Nussbaum. And I respect it.
[4] The Chairman. Senator Shelby?
[5] Senator Shelby. Thank you.
[6] Mr. Nussbaum, I just want to go right back to where I
[7] was, and I think I was getting into questioning you again,
[8] as Senator Bryan was, dealing with your conversation with
[9] the Deputy Attorney General of the United States at that
[10] time, Philip Heymann.
[11] Mr. Nussbaum. That's correct, sir.
[12] Senator Shelby. Was it important to you as White House
[13] Counsel, that the Department of Justice be involved in this
[14] investigation regarding the death of Vince Foster, important
[15] enough for you to call them to get them involved?
[16] Is that correct?
[17] Mr. Nussbaum. It was important to me that, if they
[18] agreed, they weren't ordered by anyone, to coordinate the
[19] investigations that would take place, if there was going to
[20] be more than one investigation.
[21] That is what was important to me.
[22] Senator Shelby. But your idea of coordinate was not Mr.
[23] Heymann's idea of coordinate, was it, obviously?
[24] Mr. Nussbaum. No. I think our idea of coordinate was
[25] the same: our idea of how to conduct the search in the

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[1] office is not the same, Senator Shelby.
[2] Senator Shelby. It was your idea for you to conduct the
[3] search and they to be window dressing?
[4] Mr. Nussbaum. No, that was not my idea.
[5] Senator Shelby. Isn't that what happened, though?
[6] Mr. Nussbaum. No, that's not what happened.
[7] Senator Shelby. That's not what happened?
[8] Mr. Nussbaum. That is not what happened, Senator.
[9] Senator Shelby. You'd be the only one that's testified
[10] that way.
[11] Mr. Nussbaum. Oh, no, no, no.
[12] Senator Shelby. You and your associate counsel.
[13] Mr. Nussbaum. No, Senator. I think anybody looking at
[14] it objectively, with all due respect, Senator –
[15] Senator Shelby. Well, we're looking at it objectively.
[16] Mr. Nussbaum. I'm sure you're trying to, Senator.
[17] Senator Shelby. We're trying.
[18] Mr. Nussbaum. I'm sure you are, Senator.
[19] The fact is, Senator, they weren't window dressing.
[20] They were participating, Senator.
[21] What is happening is I was describing documents, we were
[22] talking. And they would say, Mr. Nussbaum, even though
[23] we're looking for a suicide note, we'd like to see that
[24] document, or we'd like to see this document, or we'd like to
[25] see that document.

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[1] I'd say, fine. Here, I'll put it in a pile and I'll
[2] take a look at it later. Here, I'll put this in the pile.
[3] Here, I'll put that in the pile.
[4] That's what we were doing, Senator. That's
[5] participation. That's not sitting like a cigar store
[6] Indian. That's not being –
[7] Senator Shelby. But that's not what really happened,
[8] though, was it?
[9] Mr. Nussbaum. Oh, that's exactly what happened,
[10] Senator, and I was there and I know it.
[11] Senator Shelby. That's your selective memory.
[12] Mr. Nussbaum. No, sir, Senator. It's my accurate
[13] memory.
[14] Senator Shelby. We need to focus on your memory.
[15] You said your mind was focused.
[16] I want you to focus on it just for the next few minutes.
[17] Mr. Heymann's a man you said you had a lot of respect
[18] for. You've known him a long time.
[19] Mr. Nussbaum. I did, Senator.
[20] Senator Shelby. Would you put his integrity on the
[21] highest plane?
[22] Mr. Nussbaum. I would, Senator.
[23] Senator Shelby. If he says, and he has testified under
[24] oath, that he had an agreement with you, Mr. Nussbaum, and
[25] while your recollection of the existence of an agreement or

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[1] conversations with Mr. Heymann are unclear and vague, vague
[2] is probably a better term, Mr. Heymann notes in his
[3] testimony, was clear on both points.
[4] In addition, as Senator Hatch has brought out here,
in addition to Mr. Heymann's testimony, Mr. Adams'

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recollection
was that he had an agreement. He was sent over by the
Justice Department.
Would you classify Mr. Adams as a man of integrity
coming out of the Justice Department?
Mr. Nussbaum. Yes, sir. Yes, sir.
Senator Shelby. An experienced trial lawyer?
Mr. Nussbaum. Absolutely, Senator.
Senator Shelby. Okay, Mr. Margolis, is he out of the
Justice Department?
Mr. Nussbaum. Yes, sir.
Senator Shelby. Would you classify him as a man of
integrity?
Mr. Nussbaum. I would, sir.
Senator Shelby. Okay.
The Park Police and the FBI, why is it, it's
incomprehensible to me and I'm sure to some of my
colleagues, but more important to the American people, that
your memory seems to be vague, indefinite, and uncertain,
yet these people, bright, experienced, no one questions
their integrity or their motives, they have a clear

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understanding that they had an agreement as to how you would
search the office.
You, you, Mr. Nussbaum, were in charge and stayed in
charge. Why is your memory so vague and uncertain?
Mr. Nussbaum. My memory is not vague. It's quite
definite, and not at all uncertain, Senator. I just –
Senator Shelby. But you've continued to say, sir, I
don't recall, or it could have happened or –
Mr. Nussbaum. Oh, no. I don't Senator. I rarely say I
don't recall.
Senator Shelby. You said you don't have any
recollection.
Mr. Nussbaum. I rarely say that. If I don't have a
recollection, I say it. I think –
Senator Shelby. I think I'm going to have to get the
deposition and put it up in a few minutes, if I have time,
and on your sworn testimony, how many times that you had.
Let's get back to the phone calls.
How many phone calls did you have with Mr. Heymann at
the Justice Department? How many on this Thursday?
Mr. Nussbaum. On Thursday?
Senator Shelby. Yes, sir.
Mr. Nussbaum. On Thursday, as I said earlier to Senator
Bryan, Mr. Heymann has testified that he had a call with me,
and I don't dispute that testimony, although I have no

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memory of it, no specific memory at this point.
See, sometimes, Senator –
Senator Shelby. Just tell me how many you had, what you
recall having, not what Mr. Heymann said, what you recall.
Mr. Nussbaum. I do not recall the conversation that I
had with Mr. Heymann on the 22nd. Mr. Heymann does recall
that conversation: I don't dispute his recollection of that
conversation.
All I can do is give my best memory. Senator, you are
correct.
Senator Shelby. But you said your memory was good.
Mr. Nussbaum. Could I finish, Senator?
Senator Shelby. Yes, sir.
Mr. Nussbaum. I agree with you, Senator, with respect
to that call, that call on the 22nd, my memory is vague and
indefinite with respect to that call, that's correct.
Senator Shelby. Could it be selective too?
Mr. Nussbaum. No, Senator.
Senator Shelby. Not at all?
Mr. Nussbaum. Not at all.
Senator Shelby. Not at all.
Do you recall a conversation with Mr. Heymann speaking
with you twice on the 22nd, first Mr. Nussbaum, in the
morning, when he made it very clear that he was considering
pulling his men, meaning Mr. Adams and Mr. Margolis, back

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from the so-called proposed search in the office, if you
were going to have it your way.
He then called later that night from his home to again,
Mr. Nussbaum, tell you how upset he was that you had
conducted the search over his objections.
You don't recall either one of those conversations?
Sir?
Mr. Nussbaum. I have no memory of those conversations.
Senator Shelby. Do you remember the Deputy Attorney
General, Mr. Heymann, telling you, and his testimony was
that he was very, very angry, called you – let me finish.
Mr. Nussbaum. Senator, I don't remember.
Senator Shelby. Well, just let me finish my question.
Called you at home later that night and says to you,
you, meaning you Mr. Nussbaum, misused us, or

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something to
that effect, and quote, are you hiding something.
Do you recall him saying, are you hiding something?
And you don't recall that, something so central, so
indicting, and you don't recall this at all?
Mr. Nussbaum. Senator, Mr. Heymann never said to me on
the phone, in words or substance, and I do recall this,
never said to me on the phone in words or substance, you are
misusing us, you are misusing the Justice Department. He
never said that.
Senator Shelby. Did he say, are you hiding something,

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Mr. Nussbaum? Could he have said that?
Mr. Nussbaum. Yes, he could have said that, but I don't
remember that. I think it's something I would remember, but
I don't remember it.
Senator Shelby. Why didn't you, Mr. Nussbaum, you said
earlier that you try to make your phone calls, in other
words, to call back people who call you. Someone as
important in the United States as the Deputy Attorney
General, you're the White House Counsel, the White House is
in a crisis management stage obviously because of this, and
you tell Mr. Heymann you're going to call him back but you
don't remember to call him back?
Or if you do remember, you don't call him back anyway,
do you?
Mr. Nussbaum. If I had made a commitment to call him
back, which I remembered, I would have called him back.
Senator Shelby. Say that again, sir?
Mr. Nussbaum. I said if I had made a commitment to call
him back, which I remembered, I would have called him back.
Obviously, Mr. Heymann and I had a miscommunication at that
point.
Senator Shelby. Did you not call him back because you
didn't want to face him because you knew what you were going
to do to have a sham search, and you didn't want him
intervening?

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Mr. Nussbaum. Senator, last year at these hearings, you
called me a strong man.
Senator Shelby. Well, I think you are a strong man.
Mr. Nussbaum. Senator, as a strong man, I wasn't afraid
to face anybody including Phil Heymann. And if I would
have, I would have been more than happy to call him back to
tell my position if I believed I had an obligation to call
him back.
Senator Shelby. Did you say something to the effect
that I'm going to check with some people here at the White
House and then I'll get back to you, as Mr. Heymann
testified under oath right here?
Mr. Nussbaum. If Mr. Heymann – yes.
Senator Shelby. Did you say something about –
Mr. Nussbaum. I may well have said that to Mr. Heymann.
I don't dispute Mr. Heymann's testimony.
Senator Shelby. And were you really going to check with
the President of the United States or Mrs. Clinton? Is that
who you really meant you were going to check with regarding
the search of the office? And you checked with them, and
then you didn't call him back?
Mr. Nussbaum. No. The people I talked to –
The answer to your question specifically is I didn't
check, and I didn't mean to check with the President of the
United States or the First Lady.

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The people I did talk to that morning –
Senator Shelby. Who were they?
Mr. Nussbaum. Mac McLarty, Jack Quinn, Bill Burton.
Senator Shelby. What did they tell you about the
search? Do it your way, Bernie?
Mr. Nussbaum. No.
Senator Shelby. They didn't tell you that?
Mr. Nussbaum. Do you know what they told me?
Senator Shelby. Did you tell them you were going to do
it your way?
Mr. Nussbaum. Yes, I told them.
You know what they told me?
They told me don't, in effect, the bottom line, Bernie,
don't let anybody into the office, don't let anybody into
the office. Do it the way you would do it in private
practice with a big litigation. Make an inventory, make a
log, don't let anybody into Vince's office.
Let me finish, Senator.
Senator Shelby. I am.
Mr. Nussbaum. There's sensitive stuff there. There's
confidential material, there's privileged material. We
have

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an institutional interest. Don't let anybody into the office.
And you know what I said, Senator?
I said, I don't agree with that. I think we should let

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these law enforcement people into the office. We have to
balance the conflicting interests involved here. I think I
have a way to do it right, and I did say we're going to do
it my way.
Senator Shelby. You did it your way, and the American
people will never know really what was in there. You didn't
want people to know including, let me finish, including the
Justice Department of the United States of America?
Mr. Nussbaum. Senator, every document in that office
was preserved. No document was destroyed. Privilege was
ultimately never claimed. Every document that law
enforcement sought, some right after the search, and some
six months later, when Whitewater emerged, was turned over.
every single document, Senator.
Senator Shelby. Who made that decision?
Mr. Nussbaum. The American people –
Senator Shelby. Who made the decision –
Mr. Nussbaum. Senator, let me finish my answer.
Please, Senator. You're talking about the American people.
The American people should know, should know that. No
documents destroyed, they should know that. Every document
preserved. This President has waived every privilege, every
confidence with respect to this, and has turned over every
document to law enforcement authorities when they asked for
them.

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That's what the American people should know, and I think
the American people will be satisfied with that.
Senator Shelby. What about the missing index in the
office? Do you know about that?
Mr. Nussbaum. I know of no missing index in the office.
Senator Shelby. You heard testimony to that effect?
Mr. Nussbaum. I've heard a secretary testifies that she
remembers there was an index in the office which she didn't
see. I know of no index in that office which I didn't
see.
I know this, Senator. I know every document that was in
that office was preserved. All the Clinton personal files
were preserved, all the Foster personal files were
preserved, all the Foster working files were preserved.
That's what a good lawyer is supposed to do. He's supposed
to preserve the files but he's supposed to be sure that his
clients, if they wish, even his official clients, can
protect confidentiality and exercise privilege although that
was not done here.
Senator Shelby. Mr. Nussbaum, but again, I know my
time's out, you were a government worker, working as counsel
to the President of the United States, not as a personal
lawyer.
Mr. Nussbaum. I was a government lawyer.
Senator Shelby. That's right.
Mr. Nussbaum. Working for the President in his official

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capacity.
Senator Shelby. And not his personal capacity.
Mr. Nussbaum. And as a government lawyer – let me
finish, Senator – as a government lawyer, I am bound by the
same ethical rules, by the same ethical rules as a private
lawyer. I had the same obligations as if I was in private
practice.
Senator Shelby. The same obligations? Wait a minute.
Mr. Nussbaum. The same obligations to maintain
confidentiality and to preserve the right to claim
privilege. Government lawyers, government lawyers are
obligated, have the same obligations imposed upon them as
private lawyers. We stand on a par with respect to those.
Senator Shelby. Mr. Nussbaum, did you basically not
trust the Justice Department?
Mr. Nussbaum. No, I trusted the Justice Department
Senator Shelby. And Mr. Heymann?
Mr. Nussbaum. I trusted the Justice Department, Senator.
Senator Shelby. Well, why didn't you say, Mr. Heymann,
come on down and we'll look over this together?
Mr. Nussbaum. Senator, did you trust the Justice
Department?
Senator Shelby. On stuff like that, I certainly would.
Mr. Nussbaum. Would you let them into your office.

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your

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counsel's office, to look at your personal documents?
Senator Shelby. Absolutely. I have nothing to hide.
They can come tomorrow or today.
Mr. Nussbaum. Okay, Senator, good.
Senator Shelby. Or they can go right now while I'm down
here.
(Laughter.)
Mr. Nussbaum. Well, that's fine, Senator.
Senator Shelby. Thank you.
The Chairman. Senator Moseley-Braun?
Senator Moseley-Braun. Thank you very much, Mr. Chairman.
Mr. Nussbaum, I want to change subjects a little bit and
talk in a more general sense about some of the issues I
think that have been raised in this hearing and in your
statement.
In your statement, I was just looking for the line, and
I can't find it right now, but in your opening statement,
you made a comment that Vince Foster's suicide, his death,
was a unique occurrence and certainly the fact is it's not
something that anyone expects to happen.
None of us expect to die, none of us expect to have
someone close to us commit suicide. I mean, these things
are always unexpected things.
But at the same time, given the history of difficult

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circumstances with regard to White House involvement in
those kinds of unexpected things, my question has to do with
whether or not any thought had been given, either by White
House counsel or by Department of Justice, in development of
some guidelines, some procedures for handling these kinds of
situations.
And I should tell you, I asked the question of Mr.
Heymann whether or not the Justice Department had some
guidelines in place for handling the unexpected circumstance
of a death or some emergency affecting a high level
individual.
He said that they did not.
And I'm just wondering whether or not you had given any
thought to it then, whether you've given any thought to it
now, and would you have any recommendations for the
development of procedures and guidelines for the White House
in these kinds of circumstances?
Mr. Nussbaum. I think that's a very good question, Senator.
There were no guidelines in the White House, and it was
a unique situation. And I think, and I think one of the
positive things that's going to come out of these hearings,
just the fact that they were held and these issues were
discussed and the way we've discussed them, I think there
should be some consideration given to developing guidelines

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as to the relationship between the Department of Justice and
the White House and how they will mesh basically in any law
enforcement investigation involving or touching upon the
White House in some fashion.
We have general ethical rules, you know, which apply to
this situation, but nonetheless I think it would probably be
a useful endeavor for somebody to sit down and figure out
just, you know, how they believe things should be done and
setting forth some guidelines.
Although I don't think, Senator, to be totally frank
with you, I am totally frank with you in any event, but I
just don't think you can override these rules that bind all
lawyers as Code of Professional Responsibility.
I don't think you should want to override that. I guess
you can legally override it. I don't think it's
constitutionally based, the attorney client privilege or the
work product privilege, but I don't think you want to do
that because these are good rules.
These rules about attorney client privilege and work
product privilege are good rules. What they foster is
people talking to their lawyers. They foster people
communicating with their lawyers and that results in the
long run in law abiding conduct.
If you have a rule which says that when you talk to your
lawyer, whether you be White House counsel, or counsel to a

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Senator, or just a private counsel, that these things in a
law enforcement investigation will be automatically,

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you
know, throw open the door, like Senator Shelby says, and
just do that, people will stop talking, and there'll be less, I believe, law abiding conduct.
So these are good rules. They're not rules made for the
benefit of lawyers. They're made for the benefit of clients, for people who hire lawyers, and they're made for
the benefit of our society because they'll result in greater
obeyance of law and greater justice.
So while I think it is useful – this is a long-winded answer to your question, and I apologize for using so much
of your time – but while it would be a good idea because of
these sensitive, political, legal, constitutional even issues that have arisen, while it's useful to try to construct guidelines, nonetheless in constructing such
guidelines, we shouldn't throw out the baby with the bath
water.
Senator Moseley-Braun. Actually, you mentioned general
ethical rules, and that really is one of the issues that keeps getting raised, was raised with you last time when we
had the hearings last year, and it's being raised now, and
that really is the set of contradictions that arise when you
have White House counsel approaching representation of the
President in his personal capacity.

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And it's been suggested that in his or her, I would say,
because one of these days we will have a woman in the White
House as President, but anyway –
Mr. Nussbaum. I hope so, Senator.
Senator Moseley-Braun. It's been suggested that when
you become President of the United States, you don't have a
private life, you have no personal papers, that it is all public.
And the question I would put to you, because over and
over again in your statement and in your statements here
today, the suggestion is made that these were personal
papers, these were personal. You keep referring to the
attorney client privilege which would be a personal obligation, an obligation to an attorney and his or her client, in a personal capacity.
The question keeps being raised, and I think the question needs to be addressed, about whether or not White
House counsel can ever appropriately serve the President in
a personal capacity?
Mr. Nussbaum. That's an interesting point, Senator. It's one we discussed last year, and we're discussing again
this year. I didn't serve the President as White House counsel in a personal capacity, nor did Vince Foster serve
the President and the First Lady in their personal capacities.

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We were their lawyers in their official capacity, in their official capacity. That's what we were. They have private lawyers. They had Williams & Connolly and other
people. We represented them in their official capacity and
we were entitled to work on anything that affects them in
that official capacity.
Now it is true, Senator, as you perceptively pointed out, that when you get to be President, virtually most things will start affecting you in your official capacity, but not everything.
I didn't do the President's will, I didn't buy his house. If he had a matrimonial, which God forbid, he's not
going to have, if he had a matrimonial, I wouldn't handle
that.
You know, –
The Chairman. That's going to be the newspaper headlines.
(Laughter.)
Mr. Nussbaum. In any event, I'm trying to show you there are certain things that don't affect him in his official capacity. It may affect him as a person, as a human being, but that don't affect him in his official capacity.
What Vince and I were doing in the White House Counsel's
office were representing him in his official capacity, not

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his personal capacity. But there are some things, such as
filing disclosure forms, creating a blind trust, filing your
tax returns which become public.
Those are official things for a President but you need your personal files to do that, your bank account, your
insurance policy, what real estate you own, so in that area,
you need personal files to help him fill an official

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[8] function.
[9] They still remain personal files. They have nothing to
[10] do with the transaction of government business, so you use
[11] those files for this official function, and then when the
[12] function is over, as it was in July 1993, and unfortunately
[13] Vince was also dead in July 1993, you send them back. You
[14] send them back to the President and the First Lady, or to
[15] their private lawyers, and that's what we did.
[16] And that's the way I think a sensible lawyer should act.
[17] But at no time were we the President's personal lawyers, as
[18] Senator Shelby rightly pointed out. I was on the government
[19] payroll, I was a government lawyer, but my role was
[20] representing the President in his official capacity.
[21] Senator Moseley-Braun. Except that, Mr. Nussbaum, I
[22] think one of the problems here is the. I mean is obviously a
[23] contradiction. You were making decisions about papers and
[24] claiming the privilege which would attend to a personal
[25] connection between you and the President and the First Lady,

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[1] even though you were making those decisions in your, in your
[2] official capacity.
[3] And so the contradiction and I think the place where we
[4] run into the problem is perhaps the answer would have been
[5] to have his private, personal counsel there to say, well
[6] that piece of paper is my piece of paper and the other piece
[7] of paper is your piece of paper, and I claim the privilege
[8] for this piece of paper.
[9] Mr. Nussbaum. That's one possible solution, Senator.
[10] Senator Moseley-Braun. I mean, I'm not trying to make
[11] this overly bureaucratic, but I –
[12] Mr. Nussbaum. No, no, I understand, and I may not be
[13] clear, Senator, myself. I may be muddling certain things
[14] when I talk to you, but the President, in his official
[15] capacity, also has an attorney client privilege in his
[16] official capacity, also has a work product privilege, and
[17] certainly has executive privilege in his official capacity.
[18] Now his private papers, I wasn't exercising privilege
[19] with respect to those private papers. All I was doing was
[20] assuring that they go to him and his private lawyers so they
[21] can determine whether or not privilege was being exercised.
[22] I was acting as a lawyer should act after a colleague dies
[23] in the possession of a client's personal papers.
[24] When a client dies, and the rules talk about this,
[25] ethical consideration 4.6 of the New York State Code of

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[1] Professional Responsibility talks about this.
[2] It says, after a client dies, excuse me, after a lawyer
[3] dies, it's the obligation of other lawyers to see to it that
[4] a client's confidence is still protected and his personal
[5] papers should basically be sent to the client or to a new
[6] lawyer.
[7] All I was doing was acting in accordance with the rules
[8] that apply to all lawyers, whether they're personal lawyers
[9] or government lawyers.
[10] Now I know, Senator, as you've been saying, that
[11] sometimes these lines are hard to draw, especially when
[12] you're dealing with the President of the United States. But
[13] what good lawyers do all the time is try to draw those lines
[14] and try to do them the right way. And that's what I tried
[15] to do in July 1993.
[16] And, as I said, I know some of you may disagree, you
[17] disagreed with me last year, I said, looking back, I think I
[18] did the right thing. I have no regrets.
[19] Senator Moseley-Braun. Well, I would just in closing
[20] say that there's an old expression that we're called on
[21] sometimes to be the CDLS, and that's the Committee to Draw
[22] the Line Somewhere, and it seems to me that the lines in
[23] these kinds of situations would be better drawn
[24] prospectively, proactively, so that we don't wind up with
[25] another set of multimillion dollar hearings over whether or

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[1] not someone properly handled personal versus official versus
[2] extraneous material in any of the high offices in
[3] government, because there s so many important issues going

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the public trust and the like that are involved here. We ought to have the sense to, I think, act before these problems crop up again.

Mr. Nussbaum. I agree with that observation, Senator.

The Chairman. Mr. Chertoff?

Mr. Chertoff. Thank you, Mr. Chairman.

Mr. Nussbaum, I want to move away from the philosophy and back to the facts.

We had your testimony a little earlier in which you confirmed for us the fact that it was Ms. Thomases who raised with you, on the 22nd of July, that she understood people had a disagreement or a concern about the manner in which the document review would proceed, and I think once you confirmed that for us, it was very useful then to go back to the record and learn that the three people Ms. Thomases had talked to of consequence in the White House before you were the President, the First Lady, and Maggie Williams.

So you can draw an inference from that.

Mr. Nussbaum. I don't draw an inference from that. You can draw an inference if you wish. I don't draw an inference from that.

Mr. Chertoff. Let's go to another conversation.

You have testified here that in the afternoon of the 22nd, after the law enforcement people left Mr. Foster's office, you had Maggie Williams come in to help you conduct a search of the files for personal documents, correct?

Mr. Nussbaum. No. That's not correct.

Mr. Chertoff. You didn't ask her to come in?

Mr. Nussbaum. I asked her to come in, but not to conduct a search of a file.

Mr. Chertoff. To conduct a selection.

Mr. Nussbaum. No.

Mr. Chertoff. To conduct a review.

Mr. Nussbaum. I asked her, let me, let's tell it – could I just respond. I'll tell you what I did. You want to know what I did. I'll tell you what I did.

Mr. Chertoff. Well, Mr. Nussbaum, you've given a lengthy statement. On the other hand, as you know, you're more experienced in court than I am. There comes a point that you're asked to answer specific questions.

Mr. Nussbaum. I'm not sure that last thing is true, Mr. Chertoff.

Mr. Chertoff. I just want to make sure that we start at the same point. You asked Ms. Williams to come in, right?

Mr. Nussbaum. I asked Ms. Williams to come in, right.

Mr. Chertoff. She sat with you?

Mr. Nussbaum. I don't know if she sat down at all, no. I think she stood.

Mr. Chertoff. And you reviewed certain personal documents?

Mr. Nussbaum. We did not review certain personal documents.

Mr. Chertoff. Did you select certain personal documents?

Mr. Nussbaum. I pointed out to her a series of files which I believed were Clinton personal files. And I said to her, as I said, I'd like her to take these, check with the Clinton's. I think they should be sent to the private attorney.

I also asked her to look, to look, and I think all she did was look at certain labels of files, to look to see if there was anything that I missed in this area which was a personal file, and I recall her looking.

She didn't pull out files and read files, but looking, glancing basically at various labels of various files to see if there were any additional personal files.

I don't believe she found any; I'm not sure.

Mr. Chertoff. Did she pick up a file marked "taxes"?

Mr. Nussbaum. 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.

Mr. Chertoff. Now we've had testimony from Deborah Gorham that she came in and you and Ms. Williams were present and you had the drawer open, and you were asking Ms. Gorham to help guide you through the files.

Do you disagree with that testimony?

Mr. Nussbaum. No. I – well, it is quite possible – I'll just give you my best memory, which is all I can give you, it's quite possible that in seeking to make sure that we had identified all the personal files, we did call Ms. Gorham in and ask if she had any additional knowledge that she could convey to us.

Mr. Chertoff. Yes, this part's important.

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[18] You asked Maggie Williams to check with the President or
[19] the First Lady to determine where those files should go,
[20] correct?
[21] Mr. Nussbaum. That's correct.
[22] Mr. Chertoff. Did you know that she then called the
[23] First Lady?
[24] Mr. Nussbaum. I assume she was going to do it. Did I
[25] know it? No. But I assumed she was going to do it.

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[1] Mr. Chertoff. After that telephone call, those
[2] documents went up to the residence. You know that to be a
[3] true, correct?
[4] Mr. Nussbaum. Well, I know that, but my belief is they
[5] went to the residence because it was late in the evening.
[6] Let me tell you my belief.
[7] Mr. Chertoff, please –
[8] Mr. Chertoff. I'm just trying to get –
[9] The Chairman. Now wait a second, now wait.
[10] Mr. Nussbaum. Let me just tell you, I'll give you the
[11] answer.
[12] Mr. Chertoff. I didn't ask for your belief. I asked
[13] you a sequence of events.
[14] Mr. Nussbaum. Mr. Chertoff, you may not want my belief,
[15] but I would like to give you my belief.
[16] My belief that the files went to the residence because
[17] it was late in the evening or because it was late in the
[18] day, and we were leaving for the funeral the next day, and
[19] she had to have time to check with the President and the
[20] First Lady.
[21] Mr. Chertoff. Is this your belief from watching
[22] television and hearing the testimony, or from a conversation
[23] you had with her?
[24] Mr. Nussbaum. This is my belief from my recollection of
[25] events at the time.

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[1] Mr. Chertoff. She told you she was too tired and she
[2] was sending them to the residence at the time?
[3] Mr. Nussbaum. This is – I don't remember a
[4] conversation. I remember, I remember these events.
[5] Mr. Chertoff. Well, I'm asking you not the things you
[6] don't remember but what you do remember.
[7] You remember asking her to check, right?
[8] Mr. Nussbaum. Yes, I do.
[9] Mr. Chertoff. You don't know, you were not present when
[10] she made a call to the First Lady, right?
[11] Mr. Nussbaum. No, I was not.
[12] Mr. Chertoff. She didn't tell you about the call
[13] afterwards, right?
[14] Mr. Nussbaum. She may have, she may not have. I don't
[15] remember.
[16] Mr. Chertoff. You have no memory?
[17] Mr. Nussbaum. No memory of that.
[18] Mr. Chertoff. So you don't know what the content of the
[19] call was, right?
[20] Mr. Nussbaum. I do not now know what the content of the
[21] call was.
[22] Mr. Chertoff. And you have no reason to disagree with
[23] the fact that the documents later that day made their way up
[24] to the residence, correct?
[25] Mr. Nussbaum. Oh, no. I have no reason.

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[1] Mr. Chertoff. So those facts are established?
[2] Mr. Nussbaum. They certainly are, Mr. Chertoff.
[3] Mr. Chertoff. And you don't know what the conversation
[4] was between Maggie Williams and the First Lady in that call,
[5] right?
[6] Mr. Nussbaum. I do not, sir.
[7] Mr. Chertoff. Was there any particular reason that
[8] night, if people were tired and it was late, that you
[9] couldn't have simply left the documents in Mr. Foster's
[10] office, turned the key, and come back on Monday to finish
[11] up?
[12] Mr. Nussbaum. You want to know why I didn't?
[13] Mr. Chertoff. I'm asking you was there a reason, what's
[14] the reason?
[15] Mr. Nussbaum. The reason, thank you, Mr. Chertoff, I'll
[16] give you the reason.
[17] The reason was it was, the search was over. I had just
[18] transferred the Foster personal files to the Foster personal
[19] lawyers. I was anxious to get on with the work of my
[20] office. I had told the Department of Justice, and Mr. Adams
[21] has testified to this effect, that I was going to move the
[22] working files to other lawyers who would work on them.
[23] It seemed the most natural thing in the world for me, at
[24] that point, having just transferred the Foster personal
[25] files, to now transfer the Clinton personal files.

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[1] Maggie's ten feet away from me, she's in my mind, a
[2] representative of the First Family. It was very natural for
[3] me to call for Maggie, to ask her to take these files.
[4] I am, Mr. Chertoff, as you can tell and see, and we know

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each other a little bit, fairly action-oriented. I want to do something, I want it done. I wanted to get on with the work of my office. I didn't want to come back on Monday, July 26th, to have to deal with these issues.
Mr. Chertoff. You asked –
Mr. Nussbaum. I'm not finished, Mr. Chertoff. I wanted to do what I had to do. I wanted to complete what I had to complete. Part of that was getting the Clinton personal files to Maggie to the Clinton's and to the new personal lawyers. It was the most natural thing in the world for me to do that on the night of July 22nd.
Mr. Chertoff. Did you ask Ms. Gorham, or anybody else, to prepare a log or record of the documents that were being removed from the office on the 22nd, yes or no?
Mr. Nussbaum. There was no need to do that, and I did not do that.
Mr. Chertoff. And on the 26th, when Mr. Neuwirth did his review, he did prepare a log, right?
Mr. Nussbaum. He was preparing an inventory to assist me in determining who should receive certain documents.
Mr. Chertoff. Now, –

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Mr. Nussbaum. You're cutting me off, Mr. Chertoff. I know you don't mean to do it, but you're doing it.
Mr. Chertoff. We're wandering a little, Mr. Nussbaum.
Mr. Nussbaum. No, we're not wandering. I'm trying to answer. I'm trying to be helpful to you.
The reason I had Steve Neuwirth prepare a list, an inventory, was that I wanted to sit down with him and to talk with him about who should get what.
We had to sort of now split up Vince's work because of this unfortunate tragedy. That is why I had Mr. Neuwirth do an inventory then.
It wasn't necessary to log out the Clinton personal files or to inventory them, or the Foster personal files, because they were going to personal lawyers.
You know what those personal lawyers did? They made inventories of everything they received.
Mr. Chertoff. And this you know from the hearings, right?
Mr. Nussbaum. I know this from before the hearings.
Mr. Chertoff. Now I want to be quite clear with this. Is it your testimony that you and Ms. Williams did not work together to select and make sure you took out the Clinton personal files?
Mr. Nussbaum. No, that is my testimony.
Mr. Chertoff. You did. So the two of you in fact

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worked together.
Mr. Nussbaum. Yes, we worked together.
Mr. Chertoff. And you looked in the credenza together?
Mr. Nussbaum. Yes, we looked in the credenza together.
Mr. Chertoff. So it was a joint effort to look for the documents, correct?
Mr. Nussbaum. Yes. We jointly functioned together on that.
Mr. Chertoff. You jointly identified together files which appeared to be, and which were Clinton personal files, yes?
Mr. Nussbaum. I identified them in the first instance, but some, but she looked and she jointly participated in this process.
Mr. Chertoff. Well, let's make it clear because we're at page 238 of your deposition, line 3, question: And where did you look? Answer: Primarily in the credenza. I don't think we looked very many other places if we looked in other place 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.
Do you recall giving that answer to that question?

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Mr. Nussbaum. I do, sir.
Mr. Chertoff. Let me turn to something else briefly before my time runs.
I want to get you to 9:00 o'clock on the night of the 22nd. We have had testimony from Mr. Heymann that it is vivid in his mind, he recalls standing in the kitchen of his little apartment here in Washington on the telephone to you, telling you, asking you what are you hiding, complaining to you about the fact that you went ahead with the search in the presence of the Department of Justice people without getting back to him and bitterly angry about it.
I want to ask you, Mr. Nussbaum, did that conversation occur, or not?
Mr. Nussbaum. A conversation undoubtedly occurred between Mr. Heymann and I on the night of the 22nd

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because
[16] Mr. Heymann says it occurred, and I have no reason to deny
[17] it occurred.
[18] But, –
[19] Mr. Chertoff. Yes?
[20] Mr. Nussbaum. But Mr. Heymann was not bitterly angry at
[21] me on the night of the 22nd. He may have expressed some
[22] displeasure with respect to getting back to him. I'm sort,
[23] this is sort of coming from the hearings, rather than sort
[24] of my independent memory, but I do remember no bitter
[25] disappointment, no vicious conversation, no statements about

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[1] misuse of the Justice Department. I remember those things
[2] did not happen.
[3] Mr. Chertoff. Did he ask you, are you hiding anything?
[4] Mr. Nussbaum. That I don't remember. I don't remember
[5] one way or another asking. If he did ask it, I would have
[6] answered exactly the way he said I answered, I am not hiding
[7] anything. But I don't remember him asking that.
[8] Mr. Chertoff. That's not the kind of thing that would
[9] stick in your memory? The Deputy Attorney General of the
[10] United States, someone who you worked through Watergate with
[11] together, says to you, as White House counsel, are you
[12] hiding anything.
[13] Memorable or not memorable?
[14] Mr. Nussbaum. You know, it's not the kind of thing Phil
[15] would say.
[16] Mr. Chertoff. You don't think he said it?
[17] Mr. Nussbaum. I don't think, you know, my best memory
[18] is that he didn't say it.
[19] You know, but if he says he said it, he said it.
[20] Mr. Chertoff. He was under oath here, right.
[21] Mr. Nussbaum. I'm sure he's giving his best memory.
[22] Mr. Chertoff. Now I'd like to put up the note. In his
[23] own handwriting, he's got a note, I'm going to put it up
[24] here, of this conversation.
[25] I understand the note was written months later.

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[1] Mr. Nussbaum. That's right, it was.
[2] Mr. Chertoff. But do you have any reason to believe
[3] that he was lying to his notes?
[4] Mr. Nussbaum. No, of course not. I think he was
[5] putting down his best memory.
[6] Mr. Chertoff. And this was his own conversation, not
[7] secondhand, not third hand, his own recollection.
[8] Mr. Nussbaum. Yes.
[9] Mr. Chertoff. Nine o'clock PH to BN, "you misused us."
[10] Mr. Nussbaum. But he testified, didn't he, he didn't
[11] think he used the words with me, "you misused us." Did he
[12] say that here?
[13] Mr. Chertoff. Let's not confuse your testimony here
[14] with your recollection, which is all we're interested in,
[15] with your having followed the hearings.
[16] I don't want to pollute your memory with your trying to
[17] kind of match it up.
[18] Mr. Nussbaum. I appreciate that.
[19] Mr. Chertoff. It's for the finders of fact to match up.
[20] It's for you to give your testimony.
[21] So the question is this. Looking at this note, PH to
[22] BN, quote, you misused us, close quote, written in Phil
[23] Heymann's own handwriting.
[24] Did this, did he say this to you, either exactly or in
[25] substance?

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[1] Mr. Nussbaum. No.
[2] Mr. Chertoff. Thank you, Mr. Chairman.
[3] The Chairman. We have a vote.
[4] Senator Sarbanes. Mr. Chairman, before we break, I want
[5] to correct the record in one respect.
[6] Mr. Chertoff said that Mr. Nussbaum and Mr. Heymann
[7] worked together through Watergate.
[8] I was around at that time, and I think we ought to get
[9] it clear on the record, because there was an earlier
[10] suggestion that Mr. Nussbaum had worked with Mr. Ben-
[11] Veniste.
[12] Mr. Heymann and Mr. Ben-Veniste both worked for the
[13] Special Prosecutor for Archibald Cox and then it was Leon
[14] Jaworski. Mr. Nussbaum worked for the House Judiciary
[15] Committee in the course of the impeachment.
[16] So in a sense, they all worked on Watergate, but I don't
[17] think it's accurate to say they worked together.
[18] Mr. Nussbaum worked on the staff in a significant
[19] position on the staff of the House Judiciary Committee,
[20] which was headed up by John Doar and Al Jenner, and Mr. Ben-
[21] Veniste and Mr. Heymann worked in the Office of the Special
[22] Prosecutor.
[23] That's correct.
[24] Mr. Chertoff. For the record, I was in college, Mr.

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[25] Chairman, an watched it all on television.

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[1] (Laug. .r.)
[2] The Chairman. Let the record note all of those facts.
[3] We are concluding a vote. We will return. We will stand in
[4] recess for the next hour. We'll return at 2:30.
[5] (Whereupon, at 1:30 p.m., Wednesday, August 9, 1995, the
[6] hearing was recessed, to reconvene the same day at 2:30
[7] p.m., in the same place.)
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[1] AFTERNOON SESSION
[2] (2:40 p.m.)
[3] The Chairman. Senator Sarbanes?
[4] Senator Sarbanes. I yield to Mr. Ben-Veniste.
[5] Mr. Ben-Veniste. Thank you, Senator Sarbanes.
[6] Good afternoon, Mr. Nussbaum.
[7] Mr. Nussbaum. Good afternoon.
[8] Mr. Ben-Veniste. One of the things that Mr. Heymann and
[9] Mr. Adams testified to that concerned them was that
[10] following the search of the office on July 22, the next day
[11] a Washington Post story that appeared stated that the
[12] Department of Justice had supervised the search in
[13] Mr. Foster's office.
[14] Now, let me ask you first whether you or anyone at the
[15] White House to the best of your knowledge put out a
[16] statement that said that the Department of Justice had
[17] supervised the search.
[18] Mr. Nussbaum. I did not, nor to my knowledge, did
[19] anyone else at the White House.
[20] Mr. Ben-Veniste. Indeed, we have reviewed the briefing
[21] and the statement released by Dee Dee Myers on the evening
[22] of the 22nd, and that statement did not reflect that the
[23] Department of Justice had supervised the search.
[24] But I am curious to know whether you had heard from any
[25] other source as to whether this was simply a jump that the

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[1] reporter had made or whether there was anyone at the White
[2] House who had actually suggested that the department had
[3] supervised the search.
[4] Mr. Nussbaum. To my knowledge, no one at the White
[5] House suggested that the department had supervised the
[6] search.
[7] Mr. Ben-Veniste. So this could be another circumstance
[8] where, from the Department of Justice's standpoint or the
[9] individuals involved – Mr. Heymann, Mr. Adams, and
[10] Mr. Margolis – they could have been justifiably concerned
[11] that someone may have tried to spin or manipulate what had
[12] actually occurred, but in fact this was nothing attributable
[13] to you or people at the White House?
[14] Mr. Nussbaum. That's correct.
[15] Mr. Ben-Veniste. Before our luncheon break, there was a
[16] suggestion that in connection with the actual procedure that
[17] was employed during the afternoon of July 22, that no one
[18] had testified that the law enforcement or Department of
[19] Justice personnel involved had had any input into what
[20] should be segregated for later review and consideration by
[21] law enforcement.
[22] Do you recall that?
[23] Mr. Nussbaum. Yes, sir.
[24] Mr. Ben-Veniste. Over the break, we have, Mr. Chairman,
[25] reviewed the testimony that we have received so far either

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[1] by testimony here in the hearings or testimony in prehearing
[2] depositions.
[3] May I say that Mr. Adams, Mr. Spafford, Mr. Neuwirth,
[4] Mr. Sloan, Mr. Burton, Agent Salters, Captain Hume, Sergeant
[5] Markland, and Special Agent Flynn of the Secret Service have
[6] testified that, indeed, during the search they made
[7] various requests to review materials and that those

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materials were put aside in a segregated pile for later review.
If the chairman so wishes, we can make reference to the specific pages at which that testimony was given. So, hopefully, that does clarify the matter.
Mr. Nussbaum. That is consistent with my memory as well.
Mr. Ben-Veniste. Let me go to the 22nd. Direct your attention thereto.
May I ask that the diagram that was marked as Exhibit 1 of August 7 be placed on the Elmo machine?
Mr. Nussbaum, can you see that?
Mr. Nussbaum. I can.
Mr. Ben-Veniste. This is a somewhat more-to-scale rendition of Mr. Foster's office than we had been operating with previously.
Does that layout comport with your recollection of Mr. Foster's office on the 20th of July 1993?

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Mr. Nussbaum. It does.
Mr. Ben-Veniste. Do you see where the two X's are?
Mr. Nussbaum. Yes.
Mr. Ben-Veniste. Those have been identified as the places where Messrs. Margolis and Adams sat during the search.
Does that comport with your recollection, if you have one?
Mr. Nussbaum. I have this memory of Adams. According to this, Adams and Margolis were on the right side. I was behind the desk. So they were to the right. They were to my right.
I have this image of Margolis at least being toward the left, more toward the left. I don't think he and Adams were necessarily sitting together. They may have been. But, in any event –
Mr. Ben-Veniste. More or less in the same area in front of the desk?
Mr. Nussbaum. Clearly, in front of the desk. Clearly, right in front of the desk, just as those two X's show.
Mr. Ben-Veniste. And you were sitting behind the desk, sort of where the number 72 is?
Mr. Nussbaum. That's correct.
Mr. Ben-Veniste. And the briefcase, tell us your recollection, Mr. Nussbaum, of what occurred when you

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searched the briefcase on the afternoon of the 22nd?
Mr. Nussbaum. I recall, after we were looking at the files in Vince's office, looking at the files on his desk, looking in the drawers.
I recall at some point turning, just as I was sitting here, turning around and seeing the briefcase, which was against the wall, on your diagram where the X is, the other X, reaching back.
I may have been standing or sitting. I am not positive. Or half-sitting, reaching back, pulling the briefcase over to my side, which was right to my right side, putting it down in front of me.
I don't remember picking it up or anything like that, but putting it right down, reaching in, glancing at it, seeing there were files, and taking out the files as I am doing now, just removing files till I removed all the files.
It may have been one motion or two motions, I don't remember. I removed all the files until it was clear that I emptied the briefcase of the files, and then describing the files in a general way to the assembled group, and then at some point moving the briefcase back to the wall.
That's what I remember.
Mr. Ben-Veniste. At any time do you recall putting the briefcase on the desk?
Mr. Nussbaum. I do not recall putting the briefcase on

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the desk.
Mr. Ben-Veniste. Do you recall at any time opening the briefcase once the files were removed and looking into it?
Mr. Nussbaum. No, I don't recall. I did not do that.
Mr. Ben-Veniste. Having in mind that this is the drawing that places Mr. Margolis and Mr. Adams where Mr. Adams recalled and others have recalled having, including Mr. Neuwirth and Sloan, where they recall Adams and Margolis sitting.
Could we put up Markland Exhibit 1, please?
Now, according to Detective Markland's recollection, Mr. Margolis sat in the place where it says "DM," and Mr. Adams sat to his left where the initials "R.A." are indicated.
Do you recall whether that is an accurate description of where they sat or whether Exhibit 1 of August 7 is accurate?
Mr. Nussbaum. Exhibit 1 of August 7 is much more accurate.
That is clearly inaccurate. Margolis and Adams were not

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back over to that side of the room where this exhibit puts them. They were clearly in front of the desk, maybe a little more to the center than the two X's that you showed me before, but in the location of the two X's that you showed me before.

Mr. Ben-Veniste. Thank you, Mr. Nussbaum.

Now, according to your recollection and according to the

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contemporaneous notes taken by Mr. Spafford –

The Chairman. I will let you finish the line. Go ahead.

Mr. Ben-Veniste. During the course of the search, you referred to documents relating to the first family. Do you recall having done that?

Mr. Nussbaum. Oh, yes.

Mr. Ben-Veniste. With respect to the trust and other items?

Mr. Nussbaum. Yes.

Mr. Ben-Veniste. That you referred to the travel office management file?

Mr. Nussbaum. Yes.

Mr. Ben-Veniste. That you referred to – and I will get the exact language – the financial and other documents relating to Clinton personal files?

Mr. Nussbaum. Yes, I did do that.

Mr. Ben-Veniste. Did anyone at any time request any of that material to be segregated, put aside, or otherwise reviewed?

Mr. Nussbaum. No one made such a request.

Mr. Ben-Veniste. Thank you.

The Chairman. Senator Bond?

Senator Bond. Thank you very much, Mr. Chairman. Welcome, Mr. Nussbaum.

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Mr. Nussbaum. It's good to see you again, Senator.

Senator Bond. It's good to see you, sir.

Mr. Nussbaum, in your very strong statement this morning you state that, "It is unfair to make any linkage between Whitewater and the actions in July of 1993," and you claim of all the abilities you have, "The ability to foresee the future is not one of them."

I question, though, whether in fact on July 20 and 21 and 22, you did not already know that Whitewater was a problem.

We received evidence in the hearing last year from your files that you received a fax, one in the evening of March 23, one in the morning of March 24, from Roger Altman.

outlining or including the New York Times articles of March 9, outlining, one headline says, "Clinton Defends Real Estate Deal." Another one says, "Lawyers Agree to Pay Big Fine in S&L Case."

Now, we know from testimony last year that Mr. Roelle had, on the evening of the 23rd, told Roger Altman that there was a criminal referral in this case. It is on that basis that I believe any reasonable person could assume that a fax was sent of a New York Times copy of the newspaper article involving that matter to your office.

Are you telling us that you did not, in March of 1993, know that there were some questions being raised in the

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media about the Clintons' relationship to Whitewater?

Mr. Nussbaum. As you will recall, Senator, from the hearings last year, I testified that I had no memory of receiving that fax in March of 1993, and the first it came to my attention that I received a fax from Roger Altman in March of 1993 was after my discussion with Jean Hansen at the end of September 29, 1993.

I said that last year. I know you remember the testimony from last year.

So, in July of 1993, I had no knowledge and no memory of receiving a fax from Roger Altman, and Whitewater, as I said in my statement, was not on my mind nor, do I believe, on the anyone else's mind in the White House in July of 1993.

That is my answer to your question, Senator.

Senator Bond. You did not know of any criminal referrals?

Mr. Nussbaum. In July of 1993? That is correct. I did not know of any criminal referrals.

Senator Bond. I think at the time I may have stated to you that as an able and aggressive White House counsel, you are the kind of person that I would be very surprised if you did not have that information.

Mr. Nussbaum. Senator, I didn't have the information. That's a fact, Senator. As able and aggressive as I may be, I didn't have the

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information with respect to those criminal referrals.

Senator Bond. That's your testimony?

Mr. Nussbaum. It's more than my testimony, Senator.

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[5] Senator Bond. Now, Mr. Nussbaum, you practiced law in
[6] New York City, I believe, as everybody has indicated?
[7] Mr. Nussbaum. Yes, that's fairly well known.
[8] Senator Bond. You have been engaged in litigation?
[9] Mr. Nussbaum. Oh, yes, sir.
[10] Senator Bond. And you are familiar with the Rules of
[11] Federal Procedure?
[12] Mr. Nussbaum. Yes, sir.
[13] Senator Bond. When you were asked what to do with the
[14] documents that were in Mr. Foster's office, were you aware
[15] of Rule 26(b)(5) of the Federal Rules of Civil Procedure
[16] that outlines what you are supposed to do with privileged
[17] documents?
[18] You are supposed to make the claim expressly, describe
[19] the nature of documents, communications, or
[20] things produced or disclosed in a manner that without
[21] revealing information itself, privileged or protected, will
[22] enable other parties to assess the applicability of the
[23] privilege or protection.
[24] You are familiar with that, aren't you?
[25] Mr. Nussbaum. Senator, you may or may not be aware, but

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[1] the Federal Rules of Civil Procedure do not apply to
[2] investigations of the type that was being conducted on July
[3] 22. They apply, they set forth a procedure in the event any
[4] civil litigation where one party is suing another party in a
[5] civil litigation –
[6] Senator Bond. I am well aware of that. But you have a
[7] standard that every lawyer knows how to handle privileged
[8] material.
[9] Mr. Nussbaum. That is a standard that applies in a
[10] civil litigation. It is not a standard that necessarily
[11] applies when a law enforcement agency comes and wishes to
[12] see documents in an office.
[13] But I agree with you, Senator, the standard set forth in
[14] those rules are standards that lawyers should think about
[15] with respect to the production of documents.
[16] Senator Bond. And your people told you that you ought
[17] to make a log. That's what you testified today.
[18] Mr. Nussbaum. That's right.
[19] Senator Bond. Before you let any of those documents go
[20] out. Where is that log?
[21] Mr. Nussbaum. That is right.
[22] But if I would have done that, Senator, if I would have
[23] followed that procedure, my people were also telling me when
[24] they said that, they said, "Don't let anybody into the
[25] office. Don't let law enforcement people into the office.

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[1] You should go into the office. Your staff should go into
[2] the office. You should take as much time as you need to
[3] prepare an index of all the documents in the office," and to
[4] prepare the kind of log that you're talking about. "Then we
[5] can respond to law enforcement."
[6] If I had done that, Senator, I would have had a hornet's
[7] nest on my hands. I would have had – let me finish,
[8] Senator, please – I would have had very disappointed law
[9] enforcement agents, I would have had a very disappointed
[10] Department of Justice, I would have created a great deal of
[11] suspicion, much more suspicion than exists today. And I
[12] know a great deal of suspicion exists today.
[13] So, I acted in a moderate, balanced manner, which was to
[14] take them in with me and conduct the search in their
[15] presence. That was the right way to do it in the
[16] circumstances that I was facing; not following the Rules of
[17] Civil Procedure.
[18] Senator Bond. You did not make a log before you sent
[19] materials out of that office?
[20] Mr. Nussbaum. No, because it was not necessary. And no
[21] one asked me.
[22] Senator Bond. You were engaged, you knew at that time
[23] and you told us this morning, that not only were they
[24] looking for materials that might be a suicide note, you were
[25] looking, as you should have been, they were looking for

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[1] things that might reflect evidence of extortion of something
[2] that might have caused severe mental anguish.
[3] Mr. Nussbaum. That's correct, Senator.
[4] Senator Bond. You said that you knew that. Now, you
[5] released to Maggie Williams a bunch of personal files to
[6] take to the residence?
[7] Mr. Nussbaum. That's correct, Senator.
[8] Senator Bond. And you did not make a log of those?

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Mr. Nussbaum. No, Senator. It was not required to.
Nobody asked me to. The Justice Department –
Senator Bond. The Justice Department didn't care if you
just walked out with all the documents?
Mr. Nussbaum. Senator, I don't know whether you heard
Mr. Adams when he testified here, Senator, but he testified
that he understood that the Clinton personal files were
going to the Clintons' personal attorney.
He understood that the Foster personal files were going
to the Foster family lawyers. Indeed, I handed those files
to the Foster family lawyers right in front of the Justice
Department.
No one asked me to make a log. No one asked me to make
an index. They were right there, Senator. They knew what
was happening.
I was acting in the right way, Senator.
Senator Bond. You have heard the testimony that files

left the office, the testimony of the officer on duty?
Mr. Nussbaum. Officer O'Neal? Yes.
Senator Bond. Officer O'Neal, on the night of the 20th,
those 7-to-12-inch files went out. You have heard that
testimony?
Mr. Nussbaum. You heard the testimony of Maggie
Williams, Senator, that no files were taken out. You heard
the testimony that two lie detector tests were taken by
Maggie Williams.
And, Senator, let me say something to you, Senator. I
know Maggie Williams. I worked with her for a year and a
half while I was in the White House. She is a splendid
person. She is an honest person. She is a dedicated
person.
Senator Bond. Mr. Nussbaum, we will make those
judgments. I appreciate your testimony.
Mr. Nussbaum. Senator, all I am trying to do is to give
you sufficient facts to make those judgments.
Senator Bond. We don't need your character witness.
The Chairman. Please, if I might, as chairman, I am
going to try to set some kind of rule.
I think in the interest of being responsive.
Mr. Nussbaum. I would ask you not to continue in the future
to make characterizations of various people and witnesses,
you know.

Mr. Nussbaum. I understand.
Senator Simon. Mr. Chairman?
The Chairman. Senator, please let me finish, and then
you can make your statement.
But I would ask you, please, let's not characterize
witnesses. Give your testimony as it relates to what took
place and be responsive to the question. But if we do that,
then you can begin characterizing everybody, and you have,
and we have allowed you. So it is in the record what you
think about Ms. Williams, what you think about Mr. Heymann,
what you think about the others that you have dealt with.
I think that has been adequately covered. That is my
point.
Yes, Senator Simon?
Senator Simon. Mr. Chairman, it does seem to me it is
perfectly legitimate that he take an extra ten seconds to
characterize someone when there is, by implication,
wrongdoing, and that is part of his answer.
The Chairman. Senator Simon, if that were the case, I
would agree. But you have not been here for most of the
hearing.
Senator Simon. I have been here for most of the
hearing.
The Chairman. Then I refer you to the fact that there
has been much characterization, and I have permitted it

because I want people to be able to give their impressions.
He has: Mr. Nussbaum has.
But, now, again, the repeated assertions, what happens
is it eats into the time of the questioner. Now, we
will be here Friday, if that is the case.
We will let you continue, and you can continue to
characterize all of the witnesses as he pleases, but I have
to tell you then we will be in session Friday. I would like
to avoid that. That's my point.
Now, I think we should put back at least one minute for
the Senator and let him proceed.
Senator Bond. I would ask if we could put up on the
Elmo the files from the printout – I believe it's 1107 or
1114 – of the index that Ms. Gorham created.
You have heard about these indices, I believe.
Mr. Nussbaum. One index was in the format which
Ms. Gorham

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said she compiled. Another one was in also a package of redacted material. Both of them bore the date of July 22, 1993. It was clear from Ms. Gorham's testimony that one of them had been changed. Maybe we are going to see it, and maybe we are not. But let me ask you about the index. Mr. Nussbaum. Yes, Senator? Senator Bond. Did you see that index on July 20, 21, or

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22? Do you recall seeing that? Mr. Nussbaum. I have no memory now of seeing that index. Senator Bond. Did you see the changed index, the one which was the one Ms. Gorham said was changed? Mr. Nussbaum. I have no memory of seeing any changed index. Senator Bond. Do you know of anyone who changed the index? Mr. Nussbaum. No, I do not, Senator. Senator Bond. This is the changed index that has been put up. Mr. Nussbaum. I see, Senator. Senator Bond. Do you know who would have had access to the computer to print it out on July 22 either in the original form or the altered form? Mr. Nussbaum. I do not. Senator Bond. Well, Ms. Gorham would be. Wouldn't she be one? Mr. Nussbaum. She would have, Senator. Yes, she would have had access. Senator Bond. Who else in that office would have? Mr. Nussbaum. Well, we had other secretaries in the office. Linda Tripp was in the office. Betsy Palmer was in the office. Those were the three people, three of the

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people that worked in the outer office. Senator Bond. You did not know? Did you know of that index? Mr. Nussbaum. At this time I just have no memory of that index. It looks kind of familiar, but I don't remember. Senator Bond. You did not see a hard copy of that in Mr. Foster's files anywhere? Mr. Nussbaum. I don't remember now seeing a hard copy of that in Mr. Foster's files. Senator Bond. And you have no knowledge of anyone who might have altered that index or removed that index from the files? Mr. Nussbaum. I have no knowledge of anyone who might have removed that index from the files or who might have altered that index. Senator Bond. Thank you, Mr. Nussbaum. Mr. Nussbaum. Thank you, Senator. The Chairman. Senator Sarbanes? Senator Sarbanes. Well, Mr. Chairman, I am going to yield to Senator Simon, but I do feel prompted to make this observation. We didn't have any testimony from Ms. Gorham that this had been altered. She was shown two different indices, and she said with respect to one of them that that was

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consistent with the way she did her work, the other was not consistent with the way she did her work. But she did not testify as to the alteration of an index. Now, it has been characterized that way here in the questioning that was just put, but I think it is important to make that point as far as the record is concerned. Senator Simon? Senator Bond. Mr. Chairman, we are still trying to get the hard disk copies to find out where they came from. At this point, the only logical explanation we have is that somebody took the original file and put it in a different format. Now, until we can find out from the hard drives if there is another explanation based on Ms. Gorham's testimony, that is the only logical explanation we have. Senator Sarbanes. Well, I am not sure I agree with that. But we are trying to find out, and I have signed, cosigned a letter with the chairman just this morning, just a few hours ago, to continue this inquiry. So, you know, we are trying to get to the bottom of it, but I don't think it ought to be characterized the way it has been characterized here. Senator Simon? Senator Simon. Thank you, Senator Sarbanes.

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First of all, Mr. Nussbaum, I have to say I was impressed by your statement. My guess is it will stand the judgment of history pretty well.

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Mr. Nussbaum. Thank you, Senator.
Senator Simon. Let me just read a couple of things here
that I think we all ought to bear in mind.
Fear of appearing to do wrong prevents too many people
from doing what is right. This is a prescription for
weakness and paralysis.
Then you say, and these are words that Senators ought to
heed, Presidents, everyone, "Most important, worry less
about tomorrow's headlines than about the judgment of
history."
You also make a judgment call on what is going on here,
and we are in the next-to-the-last day of the hearings here,
and my instinct is at this point that your judgment call is
the right one.
You say, "What prompted these hearings is something
different. It is the linkage, the unfair linkage, of two
separate, disparate events.
"The first event involves my transfer in July 1993 of
personal files, including a Whitewater file, to the
Clintons' personal attorney following Vince's death, a
transfer which was totally proper and indeed known to
Justice Department officials.

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"The second separate event involves the emergence in the
fall of 1993 of Whitewater investigations and the resulting
media frenzy.
"Linking these two events is illogical, unwarranted, and
unfair. They are totally unrelated."
My guess is, when we get to the end of all the hearings,
if there is wrongdoing in terms of Whitewater, and there is
no question some serious mistakes were made, if there is
wrongdoing, they will be totally unrelated to the handling
of the documents during this period that we have had three
weeks of hearings.
Now, if I may be a little more specific on a generic
question you were asked, you were asked about documents
requested by groups. Did the Justice Department request any
documents that you did not give them?
Mr. Nussbaum. They did not.
Senator Simon. Did the FBI request any documents that
you did not give them?
Mr. Nussbaum. They did not.
Every document that law enforcement requested was given
to them.
Senator Simon. Let me just continue. Did the Park
Police ask for any documents that you did not give to them?
Mr. Nussbaum. They did not.
Senator Simon. Did the Secret Service ask for any

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documents you did not give to them?
Mr. Nussbaum. They did not.
Senator Simon. Then we have the question of Susan
Thomases and her conversation with you. I have to say, of
all the things as I read over that telephone log, it does
raise a few eyebrows to see that series of phone calls and
inability to remember it. But I think that is perfectly
possible.
But would ordinarily, if Hillary Clinton wanted to
communicate something to you, would she have talked to Susan
Thomases and asked her to communicate to you? What kind of
a relationship did you have with Mrs. Clinton in this
regard?
Mr. Nussbaum. That's a good question, Senator.
I know Hillary Clinton for over 20 years now, 21 years,
and in the White House we had quite a good relationship when
I became counsel to the President.
Hillary Clinton and I have talked on many occasions in
our lives. If Hillary Clinton wants to say something to me,
she says it to me. Hillary Clinton is not shy and as this
body has now seen, I am not very shy.
If she wants to deliver me a message, Hillary Clinton
delivers me a message herself. If I want to deliver her a
message, I deliver her a message myself. She doesn't need
any messengers to deliver messages between her and myself.

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Senator Simon. So that even if, in theory, that kind of
transaction were to occur, and there would be nothing wrong
with her contacting Susan Thomases and then Susan Thomases
contacting you, it is extremely unlikely that that kind of
an exchange would take place. Is that correct?
Mr. Nussbaum. That's correct, Senator.
Senator Simon. In the process of all of this, prior to

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this meeting on the 22nd, when you went through the documents, prior to that – and there would be nothing wrong with this, but I simply ask the question – prior to that meeting on the 22nd, did you consult with President Clinton about the disposition of the documents?

Mr. Nussbaum. I did not.

Senator Simon. Did you consult with Hillary Clinton on the disposition of the documents?

Mr. Nussbaum. I did not.

Senator Simon. Then, one of the theories, and there are many theories wandering around, and those who are conspiracy-oriented, one of the theories is that somehow you planted or someone planted this note of Vince Foster's in the briefcase prior to finding it on that Monday. The fact that two witnesses, including Bill Burton, with whom you have worked, two witnesses said they saw litter in the bottom of the briefcase, suggests that there was nothing – and I forget who it was said that they saw yellow in the

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bottom of the briefcase – suggests that whatever was there was there that first time on the 22nd, when you went through the briefcase. Is that correct?

Mr. Nussbaum. That's correct, Senator.

Let me just state, for all the conspiracy theorists around the country and the world, I did not plant that note in the briefcase.

Senator Simon. And there would be no reason you to plant it, anyway, would there?

Mr. Nussbaum. There would be no reason for me to plant that note in the briefcase or anywhere.

Senator Simon. I don't want to go over things repetitively, but you saw nothing on the 21st or the 22nd in that briefcase after you took the documents out?

Mr. Nussbaum. No, Senator. I saw nothing in that briefcase, and I am sorry about that today.

That, Senator, you have talked about mistakes being made from time to time in the past, and that was a mistake. I don't think any other mistakes were made, certainly not on the big issues, but that was a mistake. I am sorry I didn't discover the note in the briefcase on July 22. There is nobody in the world, Senator, who wanted to discover a note more than me on that day, giving some clue as to what was bothering Vince.

On the morning, Senator, on the morning of, when was it,

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July 21, right after Vince's death, I received a call from Lisa Foster that morning. Lisa called me about 7:00 in the morning, 7:30. I think she woke me up. This was the first night I slept. I didn't really sleep very much after Vince committed suicide.

Lisa said to me, in a calm voice but obviously she was terribly distressed, she asked, "Bernie," she said, "did you fire Vince yesterday?"

And I said, "Lisa," I said, "I didn't fire Vince yesterday," as if, you know, Lisa, one, I couldn't fire Vince, I never wanted to fire Vince. It's inconceivable that I would fire Vince, you know. I really, you know, had great affection and respect for Vince.

She said, "Okay. I just wanted to know. I didn't think you did, Bernie. I just wanted to know because I am just trying to figure out a reason that Vince killed himself."

I said, "I know, Lisa. I know. Hopefully, maybe, you know, one way or another we will figure out the reason."

It was, you know, a very emotional conversation. It wasn't very long, and, as I say, neither of us were crying.

It was we were talking to each other. It was my first conversation with her since she found out and I found out that her husband died.

So there was nobody in the world who would want to find a note or a list, a handwritten list, then me. If I would

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have been delighted – not delighted, that's the wrong word – I would have been pleased to discover those handwritten scraps on July 22 in that briefcase because that would have answered Lisa's question, it would have answered my question, as to what was really bothering him at that time to such an extent that he would take his life, that we could see a line that, you know, "Ruining people in Washington is

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considered sport, and I was not made for Washington."
You know, it helped me understand a little more why he
took his life, and perhaps it helped Lisa understand.
But my point is there was no reason for me not to want
to find a note. There was every reason for me to want to
find a note, to answer her questions and my questions. And
I am sorry I didn't find a note on July 22. I am sorry I
made that mistake, and I was pleased, in the final analysis,
when the note was discovered by Neuwirth on July 22, because
now at least we had some of the answers.
I was pleased. I knew it would cause a stir. I knew
law enforcement authorities would be upset as when they
realized that the note wasn't discovered on the 22nd. I
knew people would try to sort of, you know, cover themselves
in some fashion. I understood that. It's a natural human
reaction. I am not even blaming people for that.
But nonetheless, I was happy we found it. I was unhappy
we found it four days later, but I was happy we found it

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because now Lisa could have some of the answers and I could
have some of the answers that we were both looking for.
Senator Simon. I thank you.
Thank you, Mr. Chairman.
The Chairman. Senator Bond?
Senator Bond. Thank you, Mr. Chairman.
Just to follow up, Mr. Nussbaum, earlier today I recall
that you told Ms. Williams to check with the first family on
who was to receive the files.
Did you specify precisely with whom she should check?
Mr. Nussbaum. No. I think I just said, "Check with the
Clintons, who they want these files to go to. I presume it
will be Bob Barnett of Williams & Connolly, but you should
check with them."
That's how I remember it.
Senator Bond. And that afternoon, later that evening,
the files were transferred by Ms. Williams, with the
assistance of Mr. Castleton, to the residence?
Mr. Nussbaum. That's correct, Senator.
Senator Bond. And you had seen a Whitewater file in the
files? Did you see the Whitewater [illegible] files
you
transferred to the residence?
Mr. Nussbaum. There was a Whitewater file in those
files. I now know that. But since Whitewater did not, as
we discussed before, was not in my consciousness. It was

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just another investment file that I was sending over. It's
another personal financial file that I was sending over.
I have no memory actually, Senator, of seeing the word
Whitewater or not seeing the word Whitewater because it
would have made no impact on me at that point in time.
Today it would, Senator.
Senator Bond. And, in fact, after those files did go
over to the residence, they must have been reviewed because
one file was returned, was it not?
Mr. Nussbaum. What I remember about that, Senator, is
that at some point a file was returned, but not necessarily
from the residence. 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.
Senator Bond. But you think Ms. Williams returned it?
Mr. Nussbaum. I think Ms. Williams returned it or was
involved in the return in some fashion.
It was a file that had to do with the decorators or the
ushers or something, something to do with decorating the
White House, which was sort of an official thing. And that
file then came back. I am not positive if it was one of the
files that we sent out. I just don't know. I just don't
remember at this point.
Senator Bond. So the file just came to you out of thin

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air?
Mr. Nussbaum. Well, somebody – my best memory is Steve
Miller, who was working on these issues with
Foster – somebody at some point told me that a file had
been returned or a file had come back with respect to this
issue. That's what I remember about it.
Senator Bond. Was it your understanding that that file
had [illegible] Office, had left, and was

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coming
back?
Mr. Nussbaum. My memory today is vague on that, on that
subject. I just – I just don't remember.
I remember a file came back, and it could have been a
file from Mr. Foster's office. I don't say it couldn't have
been. It was a file with respect to the residence, with
respect to the decoration of the residence.
Senator Bond. But you do know that the files did go to
the Clinton residence?
Mr. Nussbaum. That's correct.
Senator Bond. if that file had been one of those
that had gone up there, obviously somebody had to take some
action to send it back.
Mr. Nussbaum. Well, somebody made a judgment, yes,
Senator.
Senator Bond. Somebody made a judgment to send it back.
Mr. Nussbaum. Absolutely. And somebody must have

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looked at it, made a judgment. If it was that – I don't
know if it was that – but if it was that, somebody looked
at it and made a judgment that this is not a personal file
and sent it back.
Now, you know, Senator, there has been a lot of talk
about this. You know, I understand that no one, at least
the President and the First Lady, did not review files at
the residence.
Let me say to you, Senator, as far as I am concerned, it
would have been totally proper for the President or the
First Lady, if they wished, to review their personal files.
I find nothing wrong or suspicious about that.
Senator Bond. But if they had, Mr. Nussbaum, wouldn't
you have found it surprising that Mrs. Clinton would have
said on April 22 to an ABC news reporter, "Then Mr. Nussbaum
distributed the files according to whom he thought should
have them," and did not mention that in fact they had had
those files in their residence? Wouldn't that be unusual?
Mr. Nussbaum. This was –
Senator Bond. Afterwards. You say there is nothing
wrong with Mrs. Clinton reviewing the files.
Mr. Nussbaum. There is nothing wrong.
When was this press conference?
Senator Bond. Afterwards.
Mr. Nussbaum. When?

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Senator Bond. April of '94, explaining why nobody had.
until just a few months previously, known that there been
personal files brought to the residence and prior to the
time anybody admitted that the files had gone to the
personal residence.
Would that not have been improper?
Mr. Nussbaum. No, Senator, it would not have been,
because I think your chronology is in error. By the end of
December 1993 and early January 1994, it had emerged; the
fact had been publicly stated that files had gone to the
residence prior to going over to Williams & Connolly. That
was a public fact at that time.
When Mrs. Clinton had a press conference, which was
after I left the White House. It had already become public
that the files had gone to the residence first.
Senator Bond. My institutional memory, Mr. Nussbaum, is
that it took us six months to find the files had gone to
Williams & Connolly. It took us six months beyond April of
'94 to find they had gone to the residence, and the
statement by Mrs. Clinton on April 22 of '94 is inconsistent
with their having gone to the residence.
Let me defer to Mr. Chertoff to ask a follow-up
question.
Mr. Chertoff. I just wanted to get this straight,
Mr. Nussbaum, because you are now indicating that the file

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that came back to you, you are not sure it came from
Mr. Foster's office?
Mr. Nussbaum. I am not positive at this point it came
from Mr. Foster's office.
Mr. Chertoff. I want to take you back about three
weeks, July 13, 1995.
Mr. Nussbaum. What page?
Mr. Chertoff. You're reading my mind. Page 406, line
17.
In the files, and we are talking here about Mr. Foster's
files, did you check to see whether commingled in particular
files were particular documents?
Mr. Nussbaum. What page?

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Mr. Chertoff. Page 406, line 17.
"In the files, did you check to see whether commingled
and particular files were official documents?
"Answer: 'We sent over, we did check to see whether we
were sending over personal records as opposed to White House
counsel records, and we made an effort to send over so: .y
personal records, and actually one record was sent over and
returned.'
"Answer: 'Which record was that?'
"Question: 'Who returned it?'"
I'm sorry; "Answer: 'A record with respect to the
residence. A residence file.'

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"Question: 'Who returned it?'
"Answer: 'I think Ms. Williams returned it.'
"Question: 'When did she return it?'
"Answer: 'Sometime thereafter.'
"Question: 'When thereafter?'
"Answer: 'Within a matter of days.'"
Does that ring a bell?
Mr. Nussbaum. Will you turn to page 412, Mr. Chertoff?
Mr. Chertoff, turn to page 412.
Mr. Chertoff. Before I turn, you mean after you left
the room and consulted with your attorney?
I am asking you, Mr. Nussbaum.
Mr. Nussbaum. Does it ring a bell that I testified like
that? Yes, it rings a bell.
Mr. Chertoff. All right. That's my point.
Mr. Nussbaum. Now can you turn to page 412?
Mr. Chertoff. Wait a second. We will put this entire
deposition in the record.
Mr. Nussbaum. Could I read from page 412? Could I,
please?
Mr. Chertoff. I would appreciate if you didn't do it on
my time, Mr. Nussbaum.
The Chairman. We will give you an opportunity to do
that. But let's let counsel proceed, and you will have an
opportunity to do that.

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Mr. Nussbaum. It is exactly pertinent, Mr. Chairman, to
the testimony he is talking to me about. This question was
asked on page 412, and I gave an answer on page 412 totally
consistent with what I just testified here.
Mr. Chertoff. That's six pages after the answer I read
you originally gave.
Mr. Nussbaum. I don't think it's inconsistent with the
prior answer.
But I think if you want to read to me from my
deposition, Mr. Chertoff, you should be complete and you
should be fair. So why don't you let me read from page 412?
Mr. Chertoff. Mr. Nussbaum, let me tell you something,
and we have both tried a lot of cases and I am well aware of
the rule of completeness.
Mr. Nussbaum. Thank you.
Mr. Chertoff. I am also well aware the rule does not
entitle the witness to have things from all over a document
read at the same time he is being asked questions. You know
that as well as I do.
Mr. Nussbaum. No, Mr. Chertoff.
Mr. Chertoff. And I am also aware that the clock is
running.
Senator Dodd. Give him a chance to answer. You may not
like the answer, but give him a chance to answer.
Mr. Nussbaum. I want to read from pages 411 and 412.

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The Chairman. Let me say, Senator Sarbanes, we will
give him the clock.
Senator Sarbanes, I am yielding to this side. I am
attempting to be as fair and scrupulous, but I have to tell
you that when there are nonresponsive or answers that go
beyond, there is the right for a Senator to ask, or counsel
to ask, to be more specific.
Now, Mr. Nussbaum wants to read from 412. That's fine.
We said we would put everything into the record. We will do
exactly that.
We yield. Our time is over. We yield to you, Senator
Sarbanes, and you can ask Mr. Nussbaum to read that into the
record, but it will be on your time.
Mr. Nussbaum. It will be very quick. I won't take up
too much time.
The Chairman. That's fine.
Senator Sarbanes. First of all, Mr. Chairman, I intend
for Mr. Nussbaum to have a full opportunity to give a full
answer.
The Chairman. We will do that. And we will be here
Thursday.
Senator Sarbanes. I would suggest that it would serve
everyone's purposes if that were allowed to happen, since we
are all trying to find out what happened, and I don't think
selectively quoting a deposition and then not allowing the

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deponent to complete his response contributes to finding out what happened.

Let me just give you a couple of examples of that.

The Chairman. Well, the fact is that is an unfair characterization because counsel, let me suggest that counsel had a right to have a response to his answer and thereafter Mr. Nussbaum would have been perfectly within his right to say, "But I would also like to refer counsel to the fact," if I might, "to the fact that on page 412 I gave a further explanation." I think that is the orderly way of doing it.

You cannot permit a witness, whether it's Mr. Nussbaum or another, to answer the question as he chooses when it refers to another page. He could have just as easily, and he understands this.

I don't fault him. I do say that Mr. Chertoff had a right to that explanation, and then, then Mr. Nussbaum had a right to say, "But, counselor, in fairness, I would like to point out that at such and such a page, this is what I said to more completely cover the issue."

Now, I think we have explored that. Let's start the clock over again. You have ten minutes, and I recognize Senator Sarbanes.

Senator Sarbanes. Let me just make this observation. I was listening very carefully, and that's exactly what

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Mr. Nussbaum was trying to do. Mr. Chertoff quoted his deposition to him. He acceded to the quotes that were made to him from his deposition and then said he wanted to add something from another page in a fuller explanation.

In fact, the quotes that Mr. Chertoff put to him stopped and the next question was: "When thereafter? "Within a matter of days." That was asked.

The next question was: "Before the documents went to Williams & Connolly?" And the answer was: "I don't know. I don't remember at this point," which for the purpose of this line of questioning I think was a relevant answer.

Now, we stopped short of that. No one picked up on that. Now, Mr. Nussbaum then said, in fuller explanation, he wanted to go to page 412, and I am going to give him a chance to do that in just a second.

Senator Simon. If I could ask if you would just yield for 20 seconds?

Senator Sarbanes. I yield to the Senator.

Senator Simon. I would point out one other thing. When Mr. Chertoff says, "Okay, we will put your full deposition in the record," that doesn't take care of people who are watching this on television. I think, in fairness to witnesses, they ought to have a chance to give a balanced presentation here.

The Chairman. I will, at the appropriate time, have all

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six pages read into the record, and they will be read into the record and put on the monitor.

And I am serving notice that we are going well beyond 4:00.

Senator Sarbanes. Well, I think we should go on beyond 4:00.

The Chairman. We will, and we are going to go tomorrow and we are going to go Friday.

Senator Sarbanes. Fine. We should do a proper and thorough inquiry.

The Chairman. That is correct.

Senator Sarbanes. I agree with that, Mr. Chairman.

The Chairman. And we are going to run the clock the way you want it.

Senator Sarbanes. All right.

Now, the other point I want to make before I yield is on the Adams depositions about earlier. This is the question.

This is to Mr. Adams on the disposal of the documents.

"I understand that" – this is Mr. Chertoff putting the question – "I understand that. I am not suggesting that he did otherwise. Now I am focusing at the end of the review of the materials in Mr. Foster's office by Mr. Nussbaum. He indicated that he intended to disperse the materials in the category of personal to Mr. Foster and his family to Mr. Foster's family representatives, and those pertaining to

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personal matters of the President and Mrs. Clinton?"

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"Answer: 'To their personal attorney.'
"Question: 'To their personal attorney. And the other materials to other individuals in the White House counsel's office who would then be reassigning the matter?'
"Answer: 'That's correct.'"
Now, in his testimony here, Mr. Adams was also asked:
"It was your understanding, was it not, that following the review of the files that the personal files relating to Mr. and Mrs. Clinton would be sent by Mr. Nussbaum to the personal attorneys for Mr. and Mrs. Clinton?"
Mr. Adams: "That's correct."
"Question: 'And neither Mr. Margolis nor you voiced any objection to that. Isn't that so?'"
Mr. Adams: "That's correct."
Now, in light of some of the questioning that has transpired here, I think it's important to get that on the record.
Now, Mr. Nussbaum, if you would now address the question of the additional material in your deposition which you wanted to present to the committee.
Mr. Nussbaum. Yes. This starts on page 411, and it runs onto 412.
...stion by Mr. Chertoff: "Who brought the file ...
This is about the returned file.

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"Answer: 'That I don't remember. Either Ms. W
or Mr. Neuwirth. Even though they're quite disti...
...ght the file back.'
...ion: 'Where did they bring it back from?'
...swer: 'I don't know, because I wasn't there when ...
file was brought back, and I am not sure it was brought back from the residence or from Ms. Williams's office where thi...
It was a residence file, and we made a ...ation that it was not a persona file that we should ...o the Clintons' personal lawyer...
...at's all that happened here. We ...cross a ...esidence file which was returned ...ster's office for Mr. Neuwirth to work on in the ...ure, just like Mr. Foster worked on residence matters with Ms. Williams and Mr. Neuwirth.'
"It was origina... a Foster file. Right?"
"No. It is a W... e House residence file on which Mr. Foster w... d on."
Question by ... Chertoff: "Which was in Mrs. Williams's office ...

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"Answer: '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.'
"Question: 'But it originated in Mr. Foster's office?'
"Answer: 'I'm not a hundred percent positive of that. It may have originated in Mr. Foster's office and gone out

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or was returned, or it may have been in Ms. Williams's office and was put into Mr. Foster's office. But it was a residence file.
"'There was a discussion as to whether this was a personal file that should go to the Clintons and their new personal attorneys and was determined that it was not a personal file, it was a file that should stay in the White House counsel's office so we should continue to work on that matter.'"
Senator Sarbanes. I yield the balance of my time to Senator Dodd.
Senator Dodd. Well, thank you, Mr. Chairman and ...enator Sarbanes.
Mr. Chairman, I would hope as well, and I don't want to belabor the point, but I think we all made a commitment, to begin with here, that these hearings, we wouldn't act or people wouldn't be acting in a prosecutorial fashion or in the role of defense counsel. That's not the role of a congressional hearing, but rather to try to elicit the full story here over the matter that we have been charged with by our colleagues as a result of the adoption of the resolution which created these hearings.
As we all can see, the depositions are very valuable to us, but it is obviously a combination of the deposition and the witness's personal appearance here. Not all of us,

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obviously, were p...vy to depositions, and the demeanor of an individual responding with further recollection can be of great value.
So I would hope that as we proceed along here, we will see to it that witnesses get a chance to give us their full ... we may disagree with it.

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we may
[7] argue with it in the context of an earlier deposition, but I
[8] think in fairness we have got to give you a chance to
[9] respond fully to it.
[10] Mr. Nussbaum, I have raised these same questions with
[11] other witnesses. Quickly, you have addressed them in your
[12] own opening s'a.ement and they have been addressed by others
[13] to some degree, but I just would like to tighten down on it.
[14] It comes down to the basic, underlying questions I think
[15] that we have been charged to answer here. So I will raise
[16] them to you as I have with every other person who was at the
[17] White House or involved in these two or three or four days
[18] and involved with the Foster papers.
[19] The questions are, very briefly, on or after July 20,
[20] did you ask anyone, instruct anyone, to destroy any
[21] documents from Vince Foster's office?
[22] Mr. Nussbaum. I did not.
[23] Senator Dodd. On or after July 20, did you personally
[24] yourself destroy any documents from Vince Foster's office?
[25] Mr. Nussbaum. No. Senator.

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[1] Senator Dodd. On or after July 20, did anyone ask you
[2] or instruct you to conceal from law enforcement officials
[3] any documents from Vince Foster's office?
[4] Mr. Nussbaum. No. Senator.
[5] Senator Dodd. And lastly, at any time, did anyone ask
[6] you or instruct you to take any action to impede, obstruct,
[7] or interfere with law enforcement's conduct during the
[8] investigation of Vince Foster's papers?
[9] Mr. Nussbaum. No. Senator.
[10] Senator Dodd. I appreciate your response then.
[11] Now, let me come back to a question. I gather you have
[12] already had some discussion with Senator Carol Moseley-Braun
[13] of Illinois about policy issues, a subject matter I don't
[14] suspect we are going to dwell on at great length here, but
[15] it might be worthwhile at some point because I think if
[16] anything comes out of these hearings in terms of beyond this
[17] particular fact situation is how we might deal with
[18] situations that will inevitably happen, regretfully, in the
[19] future. Hopefully not of a suicide nature, but with the
[20] death of White House personnel and handling of papers and
[21] documents.
[22] I would be interested just in looking back now, on the
[23] question of the issues involving the so-called sealing or
[24] locking or securing offices and so forth. Do you have any
[25] second thoughts or additional thoughts?

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[1] Given the confusion on the night of July 20, given the
[2] high state of emotion, we have had contradictory testimony
[3] about whether or not the Park Police actually asked for
[4] that. Obviously, the office was locked, we have
[5] information, whether someone asked for it or not.
[6] But I would just be curious, from your perspective, how
[7] you might respond to that.
[8] Mr. Nussbaum. On July 22 – excuse me, on July 21, at
[9] about 10:00, 11:00, after a discussion with my associates,
[10] we determined to secure the office by having a Secret
[11] Service agent stand outside.
[12] The night before, it did not occur to me. As I said, it
[13] wasn't a crime scene.
[14] You know, thinking back, there would have certainly been
[15] no harm, and probably a lot of good, in having a Secret
[16] Service agent stationed outside that office as soon as I got
[17] to that office at 10:45 p.m.
[18] I mean, I locked the door. The office is in the White
[19] House. It's not far from the Oval Office. It's not exactly
[20] available to the general public to wander into the White
[21] House counsel's suite.
[22] Having said that, thinking back, if it would have
[23] occurred to me, and it's natural that it didn't, in my mind,
[24] but if it occurred to me on the night of July 20, I would
[25] have called for a Secret Service at that point and have him

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[1] stand outside the door, instead of waiting until the next
[2] morning at 11:00, although by and large the office was
[3] locked between the night before and 11:00 the next day.
[4] Yes, I think, if I was doing it all over again, that I
[5] might do differently.
[6] Senator Dodd. Are there any other aspects of this?

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And
[7] obviously with the benefit now of some weeks and months
[8] looking back on this – and I realize the red light is
[9] on – but just to finish this thought, and I have read your
[10] opening statement carefully and listened to it carefully,
[11] and your last line of "no regrets," and I appreciate the
[12] emotions behind that statement, but I wonder if there are
[13] other aspects of this that you think may be worthwhile to
[14] share with this committee as to what – and again, no one is
[15] suggesting the 20/20 hindsight view, but in looking back on
[16] some of these matters and how they were handled, would you
[17] do anything else differently?
[18] Mr. Nussbaum. Well, yes. As I said in my statement and
[19] I said before to Senator Simon, I would have looked at the
[20] bottom of the briefcase and I would have, you know, scooped
[21] out the yellow pieces of paper.
[22] I am sorry that they weren't found on July 22. I am
[23] sorry for the reasons I gave to Senator Simon. I am sorry
[24] because it has created some sort of aura of suspicion. That
[25] was a mistake.

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[1] I mean, we looked at the trash. We looked at the burn
[2] bag. We looked at all the pieces of paper in the office.
[3] But I didn't see those little yellow scraps, and I didn't
[4] pull them out. I am sorry about that.
[5] Senator Dodd. Let me ask you lastly, and the heart of
[6] the question, I suppose, when it comes to this issue of the
[7] question of how the search was done. Now, you outlined
[8] options.
[9] Senator Sarbanes. Chris, we are trying to watch the
[10] clock.
[11] Senator Dodd. I apologize.
[12] Senator Sarbanes. I think we had better stick to the
[13] clock.
[14] Senator Dodd. I will come back to that.
[15] The Chairman. Mr. Chertoff?
[16] Mr. Chertoff. I just want, Mr. Nussbaum, since I began
[17] with page 406 and 407 and you then moved to page 411, I
[18] think we ought to maybe get the middle part in there, and I
[19] think also to capture a sense of [illegible]

[20] understand the dynamic going on in the deposition, as we
[21] look at this deposition, now, you volunteered the answer
[22] initially in response to the question about whether official
[23] documents were commingled in files.
[24] You volunteered the answer at line 22, "And we made an
[25] effort to send over solely personal records, and actually

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[1] one record was sent over and returned." Right?
[2] Now, then I think we have had a reading down to line 15
[3] at page 407, and then it continues. I would like to ask you
[4] to read from line 16, page 407, up to the point that you
[5] were reading from when you supplemented your answer, which I
[6] think was the very beginning of page 411.
[7] Why don't you read that in now, the entirety?
[8] Mr. Nussbaum. Starting where?
[9] Mr. Chertoff. Starting at page 407 at line 16, which is
[10] the point at which I think we stopped, and then concluding
[11] at the point where you began again, which was at the top of
[12] page 411, or actually I think it was in page 411 at line 9.
[13] So why don't you read that middle portion? And then
[14] there will be no question that we have the complete picture
[15] of what the first answer was, what the answers were then in
[16] the middle and where the answers ended up. Okay? We are
[17] putting it on the thing, and we will follow along. 407.
[18] line 16.
[19] Mr. Nussbaum. "Question: 'But you are quite sure
[20] Ms. Williams returned the document?'
[21] "Answer: 'No, I am not quite sure Ms. Williams returned
[22] the document. I believe Ms. Williams returned the document.
[23] A residence file was returned. There was a file that was
[24] returned because we were making an effort to send over
[25] solely personal documents which had been used, yes, which

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[1] were'" –
[2] Mr. Chertoff. Which were in the White House?
[3] Mr. Nussbaum. Yes. Excuse me.
[4] "... 'which were in the White House counsel's office
[5] because there was an official purpose. The purpose was now
[illegible] We weren't going to be

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using
those files now, so we sent over the personal records to the
Clintons and their personal attorneys.
"Question: 'Did Ms. Williams tell you who had made the
decision to return the document?'
"Answer: 'No.'
"'Did she say anything about how she came to return it?'
"'It was some statement merely that this concerns the
residence. It was not really a private file, although the
Clintons live in the residence.'"
And then my attorney asked, "Can we take a break?"

We took a break.
Mr. Chertoff. Wait now. Now, read it, please,
Mr. Nussbaum.
Mr. Nussbaum. You want me to read it?
Mr. Chertoff. Yes, please.
Mr. Nussbaum. Sure.
"Mr. Pedowitz: 'Can we take a break for a minute?'
"Mr. Chertoff: 'Can I hear an answer to the question?'

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"The witness: 'And, consequently, the documents should
remain in the White House counsel's office.'
"By Mr. Chertoff: 'Can you remember any discussion with
Ms. Williams concerning this document when she returned the
document?'
"Mr. Pedowitz: 'I would really like to talk to my
client for a moment, and he will answer the question.'
"Witness conferred with counsel.
"Mr. Chertoff: 'You had an opportunity to consult with
counsel?'
"Answer: 'Yes.'
"Mr. Chertoff: 'Can I get the last question read back?'
"The reporter read the record as requested.
"The witness: 'As I indicated in my testimony, look
back at the record. I am not even certain I had this
discussion with Ms. Williams. I am not positive. It's
either Ms. Williams or Mr. Neuwirth I had a discussion with.
I remember discussion with regard to 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 this discussion either with Ms. Williams or
Mr. Neuwirth. It was one of them. That's what I remember.'
"By Mr. Chertoff: 'My conversation [illegible] the
documents had been taken out on the 22nd. Correct?'

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"Answer: 'Yes.'
"Question: 'And it's very hard to confuse Mr. Neuwirth
and Ms. Williams physically, isn't it?'
"Answer: 'Of course. But they're both involved in the
subject matter. The reason Mr. Neuwirth is involved in the
subject matter is because Mr. Neuwirth was working on
matters concerning the residence. He has been working with
Mr. Foster concerning matters of the residence and was
working with Ms. Williams with matters involving the
residence. And one of them said that the file should remain
in the White House counsel's office.'
"Question: 'Who brought the file?'
"Answer: 'So why is that so strange that it's hard to
confuse Mr. Neuwirth and Ms. Williams and Mr. Neuwirth?'
"Question: 'Who brought the file back?'
"Answer: 'That I don't remember. Either Ms. Williams
or Mr. Neuwirth. Even though they're quite distinct, one of
them brought the file back.'
"Question: 'Where did they bring it back from?'
"Answer: 'I don't know, because I wasn't there when the
file was brought back, and I am not sure it was brought back
from the residence or from Ms. Williams's 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 Clintons' personal lawyers.

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"'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.'
"Question: 'It was originally a Foster file. Right?'
"Answer: 'No. It is a White House residence file on
which Mr. Foster worked on.'
"Question: 'Which was in his office?'
"Answer: '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.'
"Question: 'But it had originated in Mr. Foster's
office?'
"Answer: 'I'm not a hundred percent positive of that. It may
have originated in Mr. Foster's office and gone out

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and was
[17] returned, or it may have been in Ms. Williams's office and
[18] was put into Mr. Foster's office. But it was a residence
[19] file. There was a discussion as to whether this is a
[20] personal file that should go to the Clintons and their new
[21] personal attorneys, and it was determined that it was not a
[22] personal file. It was a file that should stay in the White
[23] House counsel's office so that we could continue to work on
[24] this matter.'"
[25] Mr. Chertoff. Thank you.

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[1] Thank you, Mr. Chairman. I yield the balance.
[2] The Chairman. We will start with Senator Grams, and I
[3] know you can't finish, and then we will come back to you in
[4] the next round.
[5] Senator Grams. Thank you very much, Mr. Chairman.
[6] Mr. Nussbaum, good afternoon.
[7] Mr. Nussbaum. Senator.
[8] Senator Grams. Let me take you back again to the night
[9] of July 20, 1993, after you heard of the death of Vince
[10] Foster.
[11] You went to the White House residence, where you saw the
[12] President. Is this correct?
[13] Mr. Nussbaum. That's correct, sir.
[14] Senator Grams. The President himself at a time, a short
[15] time later, went to the Foster home to pay his condolences.
[16] But instead of joining him, you went to the White House
[17] counsel's suite to make phone calls.
[18] Were you asked by the President to go there?
[19] Mr. Nussbaum. No, sir.
[20] Senator Grams. To the residence or to the suite?
[21] Nobody made a recommendation of what you should do next?
[22] Mr. Nussbaum. That's correct.
[23] Senator Grams. Were you asked by any... to go there,
[24] anyone else besides the President?
[25] Mr. Nussbaum. No. I made a decision... to there. I

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[1] made a decision to go first to the residence and see the
[2] President after I heard of his death, and then I made a
[3] decision instead of going with the President to the Foster
[4] home, which occurred to me to do, I said, "No, no," to
[5] myself, "this can get out. My staff could hear it on the
[6] telephone, on the new... [illegible]

[7] make phone calls."
[8] Senator Grams. So you arrived at the White House
[9] counsel's suite. Did you go there alone?
[10] Mr. Nussbaum. I did go there alone, yes, sir.
[11] Senator Grams. Now, Patsy Thomasson claimed that you
[12] and she entered the office together. And I know we are
[13] going to be stepping on some ground that's got a lot of
[14] footprints on it, but here we run into the first of a series
[15] of contradictions between your sworn deposition and the
[16] testimonies under oath by Patsy Thomasson, Maggie Williams,
[17] and the Secret Service officer, Henry O'Neal. And that is
[18] over the contradictions of who entered the office first.
[19] I will just read these quickly.
[20] Mr. Nussbaum. Sure.
[21] Senator Grams. Patsy Thomasson testified under oath
[22] that she ran into you on the way up, and the two of you
[23] entered the office together.
[24] Maggie Williams testified under oath that she entered
[25] the room to find Ms. Thomasson alone in the office and that

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[1] you entered a bit later.
[2] Officer O'Neal testified, again under oath, that after
[3] he unsecured the suite at 10:42 that evening, which the
[4] alarm records, by the way, show from the night, that he saw
[5] you enter the office with someone behind you who appeared to
[6] be a woman.
[7] Yet you claim that you entered only to find
[8] Ms. Thomasson and Ms. Williams in the office together.
[9] Now, these same contradictions arise over who left the
[10] office last.
[11] Ms. Thomasson has testified, again under oath, that you
[12] and she left together just as you had arrived.
[13] Ms. Williams testified under oath that you and she left
[14] Ms. Thomasson alone in the office that night.
[15] Officer O'Neal testified under oath that before he
[16] secured the office at 11:41 that evening, that Ms. Williams
[17] was the last person to leave the office.
[18] Yet you claim that Ms. Thomasson, Ms. Williams, and you
[19] all left at the same time.
[20] Now, there are four contradicting accounts over one

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[21] on the second floor of the West Wing of the White House.
[22] The question is how can that be? How do you reconcile
[23] these accounts?
[24] Mr. Nussbaum. That was a very tough night, Senator.
[25] That was a night, that was a night that people were sick

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[1] with grief. That was a night that people were walking
[2] around enormously sad. And when you have that kind of
[3] situation, Senator, when people just – when people are like
[4] that, and that was that, people were walking around crying,
[5] people were walking around hugging each other that night.
[6] When I saw the President, I didn't say a word to him,
[7] and he didn't say a word to me. I think we just reached out
[8] and hugged each other, and then we sort of parted as he went
[9] to the Foster home and I went to my office.
[10] It was that kind of night. That was a tough night. We
[11] had just – 10:45 is an hour or so after I learned that
[12] Vince had died. It's maybe less time after Maggie learned
[13] or Patsy learned.
[14] So I can fully understand when people think back to that
[15] evening, that they could have differing recollections about
[16] who went in with whom and what time.
[17] I have a clear memory of how I did it, and I have
[18] testified as to my clear memory. Obviously, that memory is
[19] not consistent with certain other testimony that you read.
[20] But to me, it's perfectly explicable, one, because the
[21] nature of the evening, as I just described.
[22] And also, Senator, I just say to you I have had a lot of
[23] experience in litigation over 30 years, and it doesn't
[24] surprise me that with respect to these kind of events, that
[25] people could have different memories with respect to these

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[1] events, Senator.
[2] Senator, I dare say, Senator, that if you asked 40
[3] people in this room who were here this morning to testify,
[4] to testify now as to what happened this morning, you would
[5] start getting different recollections.
[6] But that particular night, Senator, and those particular
[7] recollections, I think mostly arise from the grief-stricken
[8] nature of the evening, from the emotional nature of the
[9] evening.
[10] I hope I have helped you answer that, Senator.
[11] Senator Grams. I can sympathize with the grief, but
[12] these are four very distinct stories that they remembered
[13] very clearly.
[14] Mr. Nussbaum. Correct, Senator.
[15] Senator Grams. But Officer O'Neal wasn't in the
[16] grieving process. Should we believe him, then, as being
[17] somebody who had nothing to grieve about that night, so to
[18] speak? Maybe he felt bad about the news.
[19] Mr. Nussbaum. Yes.
[20] Senator Grams. But he has a very clear recollection of
[21] who came and who went and who was there and who wasn't.
[22] Mr. Nussbaum. Senator, you are in a better position to
[23] judge Officer O'Neal's credibility than I am. I wasn't
[24] here. You were here. You saw him testify, and I leave it
[25] to you and to your fellow Senators to make a judgment.

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[1] Senator Grams. I will end right there, Mr. Chairman,
[2] and I will be back.
[3] Senator Sarbanes. Well, Senator Grams, there is a vote,
[4] but we could continue. How much more time would you need?
[5] We could continue.
[6] Senator Grams. Probably ten minutes.
[7] Senator Sarbanes. Ten minutes.
[8] The Chairman. So why don't we break, and then when we
[9] vote, this side will have it, and then we will go back to
[10] Senator Grams so he can continue.
[11] We will take a recess for 15 minutes. In 15 minutes we
[12] are going to start.
[13] (Recess.)
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[1] The Chairman. I intended to continue with Senator
[2] Grams, but he is not at this time. So rather than

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because I want to try to keep the process moving, I'm going to recognize Senator Shelby at this time, and then later we'll return to Senator Grams.
Senator Shelby.
Senator Shelby. Thank you –
Senator Kerry. Mr. Chairman, point of procedural information. I believe Senator Grams finished his 10 minutes.
The Chairman. Well, he had 3-1/2 minutes, but I – after this – oh, you're right. I think you would start here first.
Senator Kerry. I think it starts here.
The Chairman. Fine.
Senator Sarbanes.
Senator Kerry. But before you complete that task, I've noticed that today – I don't think we've raised this issue – but there's been an extraordinary amount of yielding of time back to people, the same person. And the rule is that Senators have to be here to yield their time.
Now, I don't have a clue, I don't think the record shows who has yielded all of this time, and so in a sense, there's been sort of a deviation from the process, which we have not objected to, but I just want to –

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The Chairman. I ask the Senator, if the Senator finds or thinks that there would be anything outside of the scope of the agreement that would not permit the Chairman or the ranking member to recognize a member who is ready, if other members are not. And obviously, if they are not, other members, not the ranking member –
Senator Kerry. No, I agree completely. No, no, no.
Mr. Chairman. I completely agree with that. I thought, though, that after one round of questioning, for instance, with Senator Shelby immediately thereafter we went back to Senator Shelby.
The Chairman. There is no other Senator on our side here other than myself so I would then be yielding and I don't want to go through the process of having a formal announcement that I would be yielding to Senator Shelby.
Senator Kerry. I see. Fair enough. I just wanted to understand the procedure so it will help us on this side to schedule our own appearances.
Senator Shelby. Mr. Chairman, I wouldn't mind if you saw fit to yield about an hour to me. I would take it, okay?
The Chairman. If I had the ability I would. However, it is Senator Sarbanes and it is on the Democratic side, and they have the right to designate a person for up to 10 minutes.

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Senator Sarbanes.
Senator Sarbanes. Well, I yield to Senator Murray.
Senator Murray. Thank you. Mr. Chairman. Mr. Nussbaum, I'm not a lawyer, so I don't go through all the legal technicalities and I try and sit back and observe the whole story. And it keeps occurring to me that we're dealing with a very short time frame, two or three days, and we're going through it in minute detail, over and over, words and actions and thoughts and why people did what and who said what to whom, and trying to remember all of that.
And you were there at the time, you were at the White House, you were a friend of Vince Foster. He committed suicide. Can you tell us what your sense of the aura of that time was, and whether people were thinking I need to remember exactly who said what to whom and what happened in every single moment, or what was the general sense.
Mr. Nussbaum. Well, the night of July 20th was a terrible night. People were, as I said before, hugging each other, grabbing each other, crying. It was – everybody was very, very distraught that night, July 20th, the night when we had the quick search for a suicide note in Vince's office, the night in which the President went over to the Foster home. That was a very, very tough night. And therefore it's not surprising to me, as I said

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to Senator Grams, that memories are different about that night.
But starting the next morning we're in the White House. This is the White House. This is sort of the center of our government; to some extent, it's the center of the world. And you have a duty, you have a function to carry on. You have to do your job. Now, while people were terribly sad the next day, for example, the 21st, which

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was
[9] also an emotional day, that's the day that I made a speech
[10] to the entire White House staff along with the President
[11] who made, as I said before, a marvelous impromptu talk to
[12] the entire White House staff, 3- or 400 people, over at the
[13] Old Executive Office Building.
[14] So while that was also an emotional day, the day
[15] after, because that's the day the most people found out
[16] about it. The night before only a handful of people
[17] basically knew about it. But beginning that day and
[18] certainly on the 22nd when the search was conducted and
[19] thereafter while people were terribly sad and continued to
[20] be sad, and indeed continue to be sad to this day,
[21] nonetheless, Senator, the White House was functioning. The
[22] counsel's office was functioning. I was functioning. I
[23] was not a basket case or anything like that. The first
[24] night I was very upset, but after that I was fine.
[25] We had our job to do, and we were doing our job. So

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[1] that's what the White House was like at that time.
[2] Senator Murray. I think there is this kind of general
[3] perception from everybody that everybody was in this
[4] frenzied mood of trying to hide something. And is it
[5] possible that this frenzied mood was more how do I deal
[6] with this, how can I cope with this, what can I do to make
[7] the day better?
[8] Mr. Nussbaum. There was sadness. There was no
[9] frenzy, there was no hysteria, there was no paranoia, all
[10] of which words have been thrown around. There was a great
[11] sadness and people were looking to do, at all times, the
[12] right thing.
[13] Now, there was a concern – and I don't know if it's
[14] been alluded to today, maybe it has. It's been a long day
[15] already. There was a concern for – I think Senator
[16] Sarbanes alluded to it – there was a concern for privacy.
[17] You know, we didn't want to invade people's privacy. We
[18] didn't want to invade the privacy of the Foster family
[19] which had suffered such a blow.
[20] So the idea of having people rummage through his
[21] office, anybody including Justice Department people, when
[22] it wasn't necessary [illegible] people's lives
[23] people's minds. You know, that we don't want to –
[24] sure, he's a high government official; sure, it's important to be
[25] investigated, but this notion somehow that this sort of

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[1] creates carte blanche for people to do anything they want,
[2] there was a sense in the White House that I felt and
[3] certainly I had the sense that we didn't want invasions,
[4] inappropriate invasions of privacy.
[5] On the other hand, we had to cooperate with legitimate
[6] law enforcement investigations. And I felt that very
[7] strongly as did the other people in the White House. So
[8] what I was faced with, and I was totally rational when I
[9] was dealing with this issue and not grief-stricken, I was
[10] faced with trying to reach a sensible accommodation. And I
[11] did try to reach a sensible accommodation.
[12] Senator Murray. I appreciate that. And looking back,
[13] we're trying to make you remember when you looked in a
[14] briefcase or what you did, and if we were to – had not
[15] focused on this so intensely over the last few weeks, your
[16] memory of that day, do you have a specific memory that
[17] hangs out to you that you could describe to us
[18] specifically?
[19] Mr. Nussbaum. With respect to the briefcase?
[20] Senator Murray. No, with respect to the entire three
[21] days and what was happening. If we hadn't made you focus
[22] on a briefcase and focus on specific conversations, what
[23] would be the memory that sticks out for you?
[24] Mr. Nussbaum. Well, the overwhelming memory is
[25] learning that, you know, a dear friend and colleague took

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[1] his life, and this Senator Sarbanes did touch on. And why
[2] somehow we weren't alert enough to see it since we worked
[3] so closely together – our offices were cheek-to-jowl, so
[4] to speak – and why I put things off and not dealt with the
[5] things that appeared to be bothering him, the travel office
[6] situation, and things like that, you know, that's what I
[7] remember when I think back.
[8] You're right, I don't think about briefcases and
[9] documents. And is my recollection on this minute
[10] [illegible] somebody else's recollection? I think of

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the loss of Vince and I think of the sadness that somehow
we couldn't do more, the guilt that Senator Sarbanes mentioned, that we couldn't do more to stop it.
But you know, I'm a sensible person, and – at least I try to be – and I understand that, you know, these things
happen in life, that it's like a disease.
Senator Murray. I'm assuming that knowing I assume that, as you go through this, that there is a public who is
following all of this and you can't just deal with grief privately, that all of the world is watching how you do that.
Mr. Nussbaum. Right.
Senator Murray. And in your opening statement, you talk about the cynicism that often arises through misperceptions and the public's growing cynicism of

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government. And I think it's easy for all of us as public
servants, to understand that it's important to appear to do
the right thing.
If you had not conducted the search the way you did but according to the way Mr. Quinn had suggested, what do
you think the public's perception would have been of that?
Mr. Nussbaum. It would have been worse; the way Mr. Quinn suggested, it would have been worse. Think of
the headlines. Mr. Quinn was acting totally logically in making his suggestion. Indeed, as Mr. Quinn, in a vigorous
debate with me, pointed out, Bernie, isn't this the way you
would act in private practice. Would you let somebody just
go through a lawyer's office without going in, reading every document yourself, listing them, inventorying them
and making a privileged log and things like that.
And I said, no, you're right, Jack, that's the way I would handle it in private practice, but I'm not in private
practice. We're representing the President of the United
States. I am worried about appearances. And with respect
to this, I am worried about public perception.
And I think, I think the appearance would have been much worse. The headlines would have been White House
counsel or White House or President or whatever bars the
door to Foster's office, locks it up, keeps them out, claims to be making privilege – is making privilege list

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and list of documents. And it could be [illegible]

have
concluded unless we found a note, concludes that there's
nothing in the office that constitutes a suicide note, but
refused to let anybody see the office, enter the office.
You know, that to me was wrong, seemed wrong, so I tried to
reach a different kind of accommodation.
So I think actually, you know, I mean, you know, this is – I think, I was the one, contrary to my public image.
I was the one who had the greatest political savvy and the
greatest public relations sense when it came to this thing. But these were close calls, and other people's calls, you know, deserve as much respect as mine.
Senator Murray. I appreciate that. And you also discuss five principles that you believe are important to
maintaining good political judgment, including doing the
right thing and worrying less about tomorrow's headlines
than about the judgment of history. In your mind, was there anybody in the White House that was not interested in
doing the right thing ethically and legally at that time?
Mr. Nussbaum. No. Everybody in the White House was
interested in doing the right thing ethically and legally.
But sometimes not everybody in the White House is willing
to do some of the other things I said, which is defend yourself publicly, you know. And I think sometimes there's
a readiness by too many people, in the White House as well

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as outside the White House, to sort of admit mistakes when
there were no mistakes as if somehow that's going to stop
the press from writing about you, somehow that will stop
the Congress from investigating you.
And to me, all you do when you do that when you admit
mistakes where there are no mistakes, all you do is you
sort of feed the beast. All you do is you make it worse.
All you do is make it worse for yourself. If you are right, you should defend yourself. If you are wrong, you
should admit errors. That's some of the other principles,
and those principles not everybody follows, either in

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[12] White House or outside the White House.
[13] Senator Murray. Thank you, Mr. Chairman. I see my
[14] time is about up.
[15] The Chairman. Senator Grams.
[16] Senator Grams. Thank you very much, Mr. Chairman.
[17] Mr. Nussbaum, getting back now to the night of the
[18] 20th of July, 1993 and we know it was a night of sadness at
[19] the White House –
[20] Mr. Nussbaum. Yes, sir.
[21] Senator Grams. – and we sympathize. I don't think
[22] anybody in the America doesn't sympathize with the pain,
[23] especially that the family and the friends of Vince Foster
[24] felt.
[25] But you claim that as a result of the grieving that we

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[1] have before us four very different recollections of what
[2] happened that night. But if you look at the depositions,
[3] you'll see that we have four very different stories of what
[4] happened, each one in conflict with the other about
[5] everything to do with who came in, what did they do that
[6] night, when did they leave, did they take anything or not.
[7] Now, I know and I think everybody in this room has had
[8] or suffered the tragic or unexpected loss of someone, but
[9] that doesn't mean – it might mean that you might make bad
[10] judgments at the moment, but I don't think it clouds your
[11] memory of what happened. In fact, I can recall very
[12] vividly things that happened, conversations I had 10, 12
[13] years ago, experiencing those losses. So I don't buy the
[14] argument that somehow because of the sadness all –
[15] everybody involved, their memory somehow got clouded.
[16] But Mr. Nussbaum, let's follow your story of that
[17] night of what happened. When you walked into Mr. Foster's
[18] office, were you at that time surprised to see Patsy
[19] Thomasson and Mrs. Williams there? Were you surprised at
[20] all?
[21] Mr. Nussbaum. I was surprised to see Patsy Thomasson
[22] there. I had a momentary sense of surprise, yes, sir.
[23] Senator Grams. Did you ask them why they were there?
[24] Mr. Nussbaum. Yes, I said what are you doing here.
[25] Senator Grams. And they told you looking for a

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[1] note –
[2] Mr. Nussbaum. Yes.
[3] Senator Grams. – that was enough to satisfy you?
[4] Mr. Nussbaum. Patsy said we just got here, we're
[5] looking for a note. Maggie didn't say anything; she was
[6] sitting on the sofa crying.
[7] Senator Grams. Did you ask them how they managed to
[8] unsecure the White House counsel office, how did they even
[9] get into the office?
[10] Mr. Nussbaum. No, I did not ask them that. I assumed
[11] that either Patsy, who was involved in administration, had
[12] a key or the cleaning people had opened the office and they
[13] just walked into the office.
[14] Senator Grams. Did you ask them to leave? After all,
[15] you said correctly that a number of sensitive documents
[16] were in the White House counsel's suite so was it
[17] appropriate to have either one of the ladies there?
[18] Mr. Nussbaum. It would not have been appropriate for
[19] Patsy Thomasson certainly to examine the files in Vince
[20] Foster's office. She did not do so. She didn't do
[21] anything inappropriate. It was appropriate or it was –
[22] well, let me put it differently. It was to me a natural
[23] human reaction –
[24] Senator Grams. You are sure there was – go ahead.
[25] Mr. Nussbaum. It was a natural human reaction for her

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[1] to be searching for a suicide note because that's the –
[2] what we were all feeling at that time. Instinctively I
[3] understood that when she said it. If she had said to me,
[4] I'm here to examine Vince Foster's files to see if there is
[5] anything wrong that he was working on, I would have said
[6] get out of here, that's not your job, that's not your
[7] business or anything like that. She said to me I'm looking
[8] for a suicide note. I understood that. I said yes, I'm
[9] thinking about that too. And then for a brief three or
[10] four minutes, we looked at surfaces, not in files, but at
[11] surfaces for a suicide note.
[12] Senator Grams. You weren't concerned that maybe some
[13] files were laying out in the open that she could have
[14] happened to see?
[15] Mr. Nussbaum. No, I wasn't concerned because she
[16] wasn't – we were just looking, we were looking at the top

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of the desk and looking in the drawer. We were looking for an envelope basically which said, you know, to whom it may concern, something like that. That's what we were looking for. We weren't looking into the books or anything like that. So she wasn't looking at anything inappropriate.

Senator Grams. Ms. Thomasson has testified that you didn't know each other very well. And she claims – and this was her words – she was very low on the food chain. If that's true, did you know who Ms. Thomasson was?

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Mr. Nussbaum. Oh, yes, I knew who Ms. Thomasson was.

And while she's correct, I didn't know her that well. I didn't consider her very low on the food chain. I don't consider anybody very low on the food chain. In the White House, we were all colleagues and she was a colleague of mine.

Senator Grams. Now you said and you've testified that you were very concerned about people seeing maybe national secrets or top priority or sensitive materials, when we're talking about Department of Justice officials, FBI, who have very high clearances and you knew that –

Mr. Nussbaum. Absolutely.

Senator Grams. – but yet you had no qualms about having somebody that described herself as low on the food chain in having access before you got there.

Mr. Nussbaum. Senator, she said she just arrived. She wasn't looking into files or reading documents. She was looking on the surface in a natural human reaction shortly after a suicide. That was not a night about national security or clearances or anything like that, as I said earlier.

This is a natural human thing for somebody to want to go into an office and see if there's a note. I understood it. I was there with her all the time she was in the office except for the first instance I got in. There was

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nothing wrong with that. And there's still nothing wrong with that.

Senator Grams. The Park Police, the FBI, the Department of Justice said that they wanted to also look through the files just for a note and yet you were afraid their eyes would scan something that they shouldn't see.

Mr. Nussbaum. I'm sorry to interrupt you, Senator. I have a tendency to interrupt Senators and I apologize to all of you collectively and individually, for doing that.

Senator Sarbanes. I think that's a good point. I think let the Senators put the questions and then hopefully the Senators will let you put the answers, and we'll be able to move along, I think.

Mr. Nussbaum. I understand that, Senator.

Senator Grams. I was just saying that it seems contradictory that you were so concerned that someone who had high clearance might happen to – when all they wanted to do was also just look for a note. They didn't want to scan papers or dig into files that might have been top secret or Supreme Court nominee background, but yet you denied them the ability to look at this, but yet somebody was sitting there with unfettered access, so to speak, and that didn't bother you that night?

Mr. Nussbaum. One group wanted to read the files –

Senator Grams. They didn't say they wanted to read

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them.

Mr. Nussbaum. They wanted to look through the files which mean read at least a portion of each of the files to determine whether – well, they said to determine whether it was a suicide note, but also whether documents were privileged and relevant. They wanted to engage in a substantive search, a substantive examination. I understood that.

Patsy Thomasson was not looking to engage in a substantive search or a substantive examination. All she was doing was looking on surfaces, not reading any documents. The others wanted to read documents and there certain obligations weighed on me, which I talked about earlier, the obligations of a lawyer to preserve the confidences of his client.

Senator Grams. Security officials have testified just the opposite. They said White House officials were afraid that they might see something, you're saying you are

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afraid
[19] that they wanted to look deeper, and that isn't what they
[20] were there for. They said they were there just to look for
[21] a note or any other material.
[22] Mr. Nussbaum. If security officials so testified,
[23] they testified incorrectly.
[24] Senator Grams. Mr. Nussbaum, did you lock up the
[25] White House counsel's suite that night?

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[1] Mr. Nussbaum. My memory is I did. I know there is
[2] other testimony perhaps inconsistent with that. But my
[3] memory is that, in accordance with my normal habit if I'm
[4] the last one leaving, I turn on the alarm and I lock the
[5] door.
[6] Senator Grams. Now again, we're going to go back and
[7] I know this was a night of sadness, but like I still
[8] believe that it doesn't cloud memories, it might cloud
[9] decisions. But Ms. Williams testified under oath that you
[10] and she left Ms. Thomasson alone in the office. Is that
[11] true? When you left?
[12] Mr. Nussbaum. No, that's not my memory.
[13] Senator Grams. Officer O'Neill says that he is the
[14] one who secured the office that night, which the alarm
[15] records show from the White House.
[16] Mr. Nussbaum. It's not, that's not – I gave you my
[17] best memory.
[18] Senator Grams. So either Ms. Williams lied to the
[19] Committee or Mr. O'Neill has lied to the Committee?
[20] Mr. Nussbaum. No.
[21] Senator Grams. Now, in your opening statement –
[22] Mr. Nussbaum. No. The answer is no. I want to
[23] finish that answer. The answer is I don't say –
[24] Ms. Williams certainly didn't lie to the Committee.
[25] Ms. Williams I know extremely well. Ms. Williams is a

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[1] truthful person.
[2] Senator Grams. Maybe Mr. O'Neill.
[3] Mr. Nussbaum. Officer O'Neill, I do not know, but I
[4] don't believe he necessarily lied to the Committee. He's
[5] telling what he best remembers. And I am not lying to the
[6] Committee.
[7] Senator Grams. Now, in your opening statement this
[8] morning, you said that Ms. Williams and Ms. Thomasson and
[9] you were in Mr. Foster's office, you said for about 10
[10] minutes.
[11] Mr. Nussbaum. That's correct.
[12] Senator Grams. But the alarm records show the night
[13] that the office was open for an hour. Mr. O'Neill
[14] testified that he came back several times to check on the
[15] office to see whether he should lock it up, and each time
[16] in that hour somebody was in Vince Foster's office. So for
[17] one hour, there were people in that office with the ability
[18] to go through files and look at things that you said they
[19] shouldn't be looking at.
[20] Mr. Nussbaum. I'm glad you asked that question,
[21] Senator, because you now enabled me to clear up a
[22] misapprehension and misunderstanding. Vince Foster's
[23] office is in the counsel's suite.
[24] Senator Grams. That's right.
[25] Mr. Nussbaum. The alarm – when you shut Vince

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[1] Foster's office alone, it has nothing to do with shutting
[2] the counsel's suite. The counsel's suite was open for an
[3] hour. Vince Foster's office was not open for an hour.
[4] Vince Foster's office was only populated that evening for
[5] 10 minutes. But the counsel's suite, that's what triggers
[6] the records and the alarm.
[7] The counsel's suite was open for an hour. And there
[8] was somebody in the counsel's suite, the counsel was
[9] there. I was there. And what I was doing there is making
[10] phone calls for an hour.
[11] What the White House records reflect with respect to
[12] the office being open for an hour is the entire suite is
[13] open for an hour. Foster's office is only part of that
[14] suite. So it's incorrect to say that people were in
[15] Foster's office for an hour. People were in Foster's
[16] office for only 10 minutes. The only person in the suite
[17] for an hour was yours truly.
[18] Senator Dodd. Could I add, was there a lock on
[19] Mr. Foster's separate office, no lock on that door?
[20] Mr. Nussbaum. There is no lock on that door that
[21] night. We put a lock on the door the following night.
[22] Senator Grams. Mr. Nussbaum, let me tell you that
[23] Officer O'Neill said that when he checked, there were
[24] people still in Mr. Foster's office. And he said as he
[25] closed the door to lock it up, Ms. Lieberman was in the

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[1] doorway, then Ms. Williams came out of Mr. Foster's office,
[2] came out. And then he went in, set the alarm and locked
[3] the door and he even rode down the elevator with
[4] Ms. Williams and Ms. Lieberman. He is saying for that hour
[5] there was somebody opening Vince Foster's office.

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Senator Kerry. If I could say to the Senator, just to clarify, he couldn't have gone into Mr. Foster's office to set the alarm, because there was no alarm in the office.

Senator Grams. I thought that's where the switch was. He went into the suite to do it.

Mr. Nussbaum. The switch, Senator, is in Mr. Foster's office. It's the switch that you turn on the alarm, the switch for the entire suite –

Senator Kerry. For the entire suite.

Mr. Nussbaum. – for the entire suite is in Mr. Foster's office. So the normal practice when you close the suite, the suite consists of three rooms. It consists of the entry room where the secretaries sit, it consists of the counsel's office which is the largest room, and it consists of Mr. Foster's office. There's only one door to the suite. That one door gives you entrance to those three rooms.

When you close the office at night, what you do is you walk into Foster's office. You turn on the alarm, you go to the telephone, you call the Secret Service. You say

this is Mr. Nussbaum. I'm leaving the counsel's office, I just turned on the alarm. You leave then the suite. You lock the door and you turn your key in the door. That's the normal way of doing it. What I remember doing that night is doing everything that I just described except probably calling the Secret Service.

But, in any event, if Officer O'Neill testified as you say you do, that people were in Mr. Foster's office as distinguished from the suite for an hour, he is dead wrong because I was there for that hour and no one was in Foster's office other than the 10 minutes that I described.

Senator Grams. Did you see Ms. Thomasson or Ms. Williams or Ms. Lieberman in the outer secretary office of the suite while you were in your office?

Mr. Nussbaum. No.

Senator Grams. Why would they be there rather than –

you are saying they moved out of there, stayed in the suite but in the secretarial –

Mr. Nussbaum. They didn't stay in the suite. They left. My memory is we all left together, Ms. Williams, Maggie Williams, Patsy Thomasson and I, and they then left. I don't remember seeing Evelyn Lieberman, although she may have been on the second floor of the west wing where the White House counsel suite is.

Senator Grams. I just have a couple questions and

I've lost a little time in the conversation. When you came in, Mr. Nussbaum, were there any cleaning people in the office as you entered? You said you only saw Ms. Williams and Ms. Thomasson –

Mr. Nussbaum. Correct.

Senator Grams. – were there cleaning people there?

Mr. Nussbaum. I don't remember seeing any cleaning people.

Senator Grams. Security Officer O'Neill was not standing there?

Mr. Nussbaum. I don't remember seeing Security Officer O'Neill. He's a new figure to me.

Senator Grams. One final question, Mr. Nussbaum. You testified under oath that no one asked you that night to seal Mr. Foster's office on the night of the 20th, and I want to put up, if I could, a file number or item number Z139. If you could. I know you've done a lot of reading today, but would you please read the second paragraph? And this is from Sylvia Williams, or Sylvia Mathews I mean, who typed these notes up that night to recollect what she was doing. This wasn't a week later, this wasn't nine months later. This was that night.

Would you just read the second paragraph for me.

Senator Sarbanes. Is this a document we have in –

Senator Grams. Yes, this has been here before.

Senator Sarbanes. What's the number of the document?

Senator Grams. Z139.

Senator Kerry. Who wrote it?

Senator Grams. Sylvia Mathews. She was answering the phones down in the chief of staff's office the night Vince Foster died. She took a lot of the calls and did some of the communication: in fact, delivered a note to the residence earlier that night as well, but this deals specifically with the earlier testimony about whether Mr. Nussbaum had been asked to seal or to lock Mr.

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Foster's
[11] office.
[12] Mr. Nussbaum. No, no, that's – now we're talking
[13] about two different things. I said that I believe I locked
[14] the office that night, and this says I locked the office
[15] that night. In a sense.
[16] Senator Grams. But no one asked – I mean, I'm saying
[17] that no one asked you.
[18] Mr. Nussbaum. But you asked me did anyone ask me to
[19] seal the office that night. And this has nothing to do
[20] with sealing the office.
[21] Senator Grams. We don't want to get into semantics.
[22] I shouldn't use the word "seal." I should use the word
[23] "lock" or "secure." Did anybody ask you to lock, secure
[24] or seal the office that night? That is the question.
[25] Mr. Nussbaum. Well, if that is the question the

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[1] answer is, to my memory, no one asked me to lock, seal, or
[2] secure the office that night. I remember, as a matter of
[3] course, my best memory, as a matter of course, when I left
[4] the office after the phone calls, I locked the office as I
[5] earlier described. No one had asked me to do it.
[6] I remember then walking downstairs to the chief of
[7] staff's office, where I think she was at this point, Sylvia
[8] Mathews. I remember walking downstairs after I had locked
[9] the office, walking into the chief of staff's office,
[10] walking into the deputy chief of staff's office which is
[11] part of the suite, it was Roy Neel at the time, chatting
[12] with him about what a tragedy which this was. Then I
[13] remember Sylvia Mathews coming to us at that point and
[14] saying look, I've recovered the trash. This is something.
[15] I've recovered the trash from Foster's office. I said
[16] good, great. I said just leave it here in Roy's office.
[17] It was in a plastic bag at that time. Leave it in Roy's
[18] office, and we'll put it into Foster's office tomorrow.
[19] And the reason I remember that was I knew the office
[20] had been locked. I'd already locked it and gone down. I
[21] was exhausted. I wanted to go home. I didn't want to go
[22] back up to the office and put the trash in. So that's my
[23] memory.
[24] It's inconsistent with the memory apparently of
[25] Ms. Mathews, but all I can do is, as the Senators here

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[1] know, is give you my best memory.
[2] Senator Grams. I know this isn't a good book but
[3] would you read that paragraph for me into the record,
[4] second paragraph on that memo.
[5] Senator Kerry. Well, Mr. Chairman.
[6] The Chairman. Yes.
[7] Senator Kerry. Number one, we're way over in the red,
[8] but not to stop it, but just to point out, I think it's one
[9] thing for the witness to read at great length his own
[10] deposition. But if he's got the document in front of him,
[11] Senator has the document in front of him, it's on this big
[12] screen, I'm not sure why we serve so theatrical a purpose
[13] of having him read someone else's words.
[14] The Chairman. Senator Kerry, please, I don't think we
[15] need to characterize our colleague's request that way,
[16] really. I'm asking you, please, let's not do that. It
[17] brings a different dimension. We're all senators. You
[18] have a right to raise your questions. I'm going to give
[19] great latitude to you. I don't think that that is fair and
[20] I don't think that it does a great disservice.
[21] And if, and if we want to stop at this point I'll give
[22] the 10 minutes here and then I'll just go back to Senator
[23] Grams. I'll ask the other senators to yield so he – for
[24] the purposes of having this read. So we can do it either
[25] way. As a matter of fact, Senator Sarbanes, the clock has

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[1] run. We'll go to Senator Sarbanes and I will then ask if
[2] all of my colleagues here will yield to Senator Grams for
[3] the purposes of his conclusion.
[4] Senator Grams. Thank you, Mr. Chairman.
[5] Senator Sarbanes. Well, I'm going to yield to Senator
[6] Dodd. I take it, Senator Grams, you want Mr. Nussbaum to
[7] read the notes of Sylvia Mathews; is that right?
[8] Senator Grams. I just wanted him to read it. If he
[9] doesn't want to, I'll read it but I thought it was fine if
[10] he would. We'll wait.
[11] Senator Sarbanes. If this is your last question I'll
[12] be happy to yield in order for him to read it in order to
[13] respond to your question.
[14] Mr. Nussbaum. Should I read it, Senator? I'll read
[15] it, Senator, the second paragraph. "I then asked the three
[16] of them if anyone had made sure that the trash had not been
[17] dumped in Vince's office. At that point Bill said we
[18] should get Bernie and lock the office. I am uncertain what
[19] time that was, but probably after 10:00 p.m. I don't
[20] remember who told Bernie, but he went up and locked the
[21] office."

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[22] Senator Sarbanes. And the "I" in that paragraph is
[23] Sylvia Mathews, it's not you?
[24] Mr. Nussbaum. No, it's not me.
[25] Senator Sarbanes. Right. I think we ought to be very

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[1] clear about that because there might be some confusion.
[2] Senator Grams. But her recollection is you don't know
[3] who told you but somebody told you to lock the office. She
[4] then went on to say you did go up to lock the office or she
[5] assumed you did so the recollection is that, by Sylvia
[6] Mathews, that someone had called or asked you to lock the
[7] office that night and you don't remember that. That's all
[8] I was asking.
[9] Mr. Nussbaum. That's correct.
[10] Senator Grams. Did you see Bill Burton in the office,
[11] by the way?
[12] Mr. Nussbaum. Yeah. I think I saw Bill Burton that
[13] night. I have a vague recollection of seeing Bill Burton
[14] that night, too.
[15] Senator Grams. Thank you very much, Mr. Nussbaum.
[16] The Chairman. Thank you, Senator Sarbanes.
[17] Senator Sarbanes. Senator Dodd.
[18] Senator Dodd. Mr. Chairman, thank you, Senator
[19] Sarbanes. I may not take the entire time necessary, but I
[20] went back and I think it's important to highlight the fact
[21] that as we try to get people to recall events, and I think
[22] it's been stated by most of us here over the last three or
[23] four weeks. I think all of us appreciate the difficult
[24] circumstances normally one has recalling what one did 24,
[25] 48, 72 – a week, a month ago, let alone going back two

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[1] years. And exactly, then, when you add the emotional
[2] element of that evening and the days immediately following
[3] the suicide of Vince Foster, one could certainly appreciate
[4] even further confusion.
[5] I thought it noteworthy. I went back and looked at
[6] Officer O'Neill's testimony about what he saw that
[7] evening. Now, he's not so necessarily emotionally involved
[8] in the evening unless he knew Mr. Foster. I'm assuming he
[9] didn't. But if you go through the deposition and hearing
[10] testimony of Officer O'Neill when he was first interviewed
[11] by the FBI, and this is about the events as to who went in
[12] and out of the office first. I raise it just for the
[13] purpose of my colleagues appreciating even someone who has
[14] no emotional investment in that evening.
[15] When he's first interviewed by the FBI about the
[16] events of July 20th he believes that he said that women
[17] accompanied Bernard Nussbaum into the White House counsel
[18] suite shortly after he, O'Neill, opened the suite. At his
[19] deposition he said he saw a woman and heard women's
[20] voices. At the hearing Officer O'Neill said he saw figures
[21] follow Nussbaum but he was unable to remember more than
[22] that.
[23] Moreover, he said he saw the figures follow Nussbaum
[24] into Nussbaum's office, not Vince Foster's office. Now,
[25] not to be unfair to Mr. O'Neill, I think this is how

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[1] difficult it can be for someone to go back and exactly
[2] recall. And I just make that notification here so the
[3] people can appreciate, we start talking about what Maggie
[4] Williams and Patsy Thomasson saw that evening who were
[5] involved emotionally and what had occurred. I don't, I
[6] wouldn't ever read the slight discrepancies in who went in
[7] first, who was in the room and who came out and so forth
[8] during a brief period of time.
[9] Mr. Nussbaum, I'd like to turn to something else. I
[10] happened to have read a speech that you gave or an article
[11] you wrote. It was an article that you wrote for the New
[12] Jersey law journal in December of last year. And it goes
[13] to a question that I raised here the last time we talked
[14] and that was in the hearings we had a year ago about the
[15] distinction that I think there exists. And I realize it's
[16] a difficult distinction to make, having read your article,
[17] between being counsel to the President and counsel to the
[18] Presidency.
[19] And as I looked at your opening statement on page 35,
[20] and there may be other references to it, but just going
[21] through various comments and particularly towards

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conclusion in those remarks, page 35, I believe that no lawyer, no counsel, let alone counsel to the President. Next paragraph, a lawyer shouldn't – indeed ethically cannot turn his back on his client because the political

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media heat will be turned up. Next page, first paragraph, "shouldn't the President's counsel be concerned about the political impact." Going further on page 38, last page, first paragraph, "what it comes down to is that the President of the United States is entitled to have a lawyer in the White House who will be unafraid." I wonder if you might, we talked about this before, but my view of this is where a lot of the difficulty generally comes in, I think, in the minds of a lot of people is being counsel to the presidency. This isn't a law firm that's moved in to the White House. I gather you go back a number of years ago. One of my colleagues, colleague Senator Bennett and I were chatting a while ago about how things have changed in White House operations over the years and how it was the periods past the President might have one lawyer in the counsel to the presidency. Now it's an expanded operation. I think there is a lot of confusion. I think I share some of it myself as to where do you draw the lines here. Are you representing the First Family in the traditional sense that most people in this country, when they hear about their counsel, they think of it in that context? Or is it institutional representation? And how do you make that distinction when you start dealing with matters like this?

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Mr. Nussbaum. Those are the issues I started talking about in a speech I gave at the –

Senator Dodd. You made a speech. I thought it was a good speech and it does get into some detail on this and it's an interesting thought.

Mr. Nussbaum. I discussed some of these issues, as you kindly pointed out, in that speech. No, I had a very clear understanding of my role, and I still have a clear understanding of my role was. I was not the President's personal lawyer. I was counsel to the President and these are the key words and I think I use them in the speech. I don't have it in front of me right now. I wish I did. I was counsel to the President in his official capacity, in his official capacity in his role as President. And that means I dealt with things that affect him in his official capacity, and that's what I did. There are, the things I worked on in the White House all related, all related to events which had an impact on the President in his official capacity. I said earlier to another Senator today there are some things I clearly wouldn't do. I wouldn't handle a will for him. I wouldn't handle a house closing for him. I wouldn't handle, I said earlier, a matrimonial matter for him. I wouldn't handle any of those kind of matters for him. But matters which affect him in the manner we talked about last year or this

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year did affect him in his personal capacity. I was his lawyer with respect to those matters. And with respect to those kind of matters in his official capacity there are privileges that apply, executive privilege being a very prominent one. There is attorney-client privilege, there is work product privilege and there's general rules with respect to confidences. Now, mainly preserving the client's services. This is not a new thing, Senator, there are a lot of government lawyers who have clients in the government. In fact, the Code, the Washington, D.C. Code, the D.C. Rules of Professional Conduct actually deal with these issues about what a government lawyer's obligations are. It talks about, for example, that a government lawyer has the agency as his client, the agency he's working for. My case, the White House and the President. And with respect to that agency, with respect to that agency as you represent the agency as it performs its official functions, you have to act like a lawyer acts.

Senator Dodd. Let me ask you here, was there any discussion you had with Mr. Heymann that evening that you – he claims an agreement was struck, you say

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this was
[23] merely a discussion about how to deal with it. I mean,
[24] here is someone who has worked – Mr. Heymann has worked
[25] for the federal government on several occasions, I believe,

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[1] during his professional career. Was there any point in
[2] that discussion where you or he had made the point here
[3] that it wasn't your job to be necessarily protecting the
[4] individual of the President, but rather you were concerned
[5] about how the documents were part of the White House were
[6] to be handled?
[7] Mr. Nussbaum. That is correct. I didn't so much have
[8] the discussion with Mr. Heymann, we really didn't have a
[9] lengthy discussion on these issues. But I did have a
[10] discussion with Mr. Margolis and Mr. Adams, I talked
[11] about – not only did I talk about attorney-client
[12] privileges and things like that, but I talked about –
[13] The Chairman. Senator Dodd, if I might, and Senator
[14] Dodd suggested a conversation, now there's one – you are
[15] referring to any possible conversation that you had with
[16] Mr. Heymann, you are talking about that you had during the
[17] day, not the one that he recalls making to you, and you
[18] have no recollection of that. I just want to get a time.
[19] Mr. Nussbaum. Yes.
[20] The Chairman. Okay.
[21] Mr. Nussbaum. The conversation – the conversation
[22] I'm referring to, I think, is the conversation I had on
[23] July 21 with Adams and Margolis and others.
[24] The Chairman. Fine.
[25] Mr. Nussbaum. That's the conversation which was the

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[1] most extensive discussion between the Department of Justice
[2] and us as to what my role is and what my obligations are.
[3] that I had an obligation as the President's counsel to
[4] protect confidential matters, privileged matters, sensitive
[5] documents. I also had an institutional role. as
[6] concerned about setting precedents with respect to people.
[7] even under executive branch people, just willy-nilly
[8] walking into a lawyer's office which where all these
[9] privileges and confidences and sensitive things do apply.
[10] So I was concerned about setting an important precedent for
[11] that.
[12] As I said in my statement, I was concerned not only
[13] about this President but future presidents with respect to
[14] this issue. And Jack Quinn and I also had a discussion
[15] along these lines and that's what he was concerned about.
[16] Senator Dodd. I see the red light is on, I want to
[17] bring this to a close. Was there any, any sense of
[18] agreement on the part of Mr. Margolis and Mr. Adams about
[19] the point you were making?
[20] Mr. Nussbaum. No, they understood my position, but
[21] they had their own institutional law enforcement
[22] responsibilities. And they felt those can be best served
[23] if they were at least shown part of the documents in the
[24] office as we conducted the search for a suicide note, and I
[25] said I would consider that. I did consider it, and by the

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[1] next day I rejected it.
[2] Senator Dodd. Thank you. I have gone beyond my time.
[3] Mr. Chairman. I thank you.
[4] The Chairman. Thank you, Senator. Senator Bennett.
[5] Senator Bennett. Thank you –
[6] The Chairman. It's my intention to wrap this up after
[7] Senator Bennett. I would hope we'll start 9:30. We lost
[8] at least a half hour this morning and obviously there will
[9] be votes that will interrupt, and there were succeeding
[10] votes, but I would hope that we would be able to conclude
[11] this at a reasonable hour tomorrow. That's my intention of
[12] being able to push through. So Senator Bennett.
[13] Senator Bennett. Thank you, Senator. Mr. Chairman.
[14] Mr. Nussbaum. I come from a business background. When
[15] a business has a bad quarter the managers of the business
[16] usually look around for anything else that might be soft
[17] somewhere in the balance sheet and dump it all into the
[18] same quarter so that all of the [illegible]s get accumulated.
[19] Mr. Nussbaum. I'm familiar with that, Senator.
[20] Senator Bennett. You seem to be the bad quarter
[21] here. Everybody seems to want to dump everything into your
[22] lap and all of the rest of them walk away saying, well. you
[23] have to talk to Bernie about that. I handled it right. Just

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talk to Bernie. So I appreciate you've had a long day and you've handled yourself well, and I congratulate you for

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that.
Mr. Nussbaum. Thank you, sir.
Senator Bennett. I do have to go over some things, however, that some people left loose ends that somehow got dumped into your quarter.
If we could, I'd like Z514 to show up on the Elmo and these are notes where you are named. These are Bill Burton's notes in his handwriting, presumably taken at a meeting of Jim Hamilton, Bernie Nussbaum, Bill Burton, David Gergen and Mack McLarty. And there are two points down there. You see in the bottom of the notes. "Far happier if disc," d-i-s-c, we had a long conversation as to whether that meant "discussion" or "discovery" or "disclosure." And Mr. Burton said, well, I use it to mean all three of those depending on the context and we weren't quite sure of the context. "If someone other than Bernie." And "other" is underlined twice as if whoever was making this decision was being very emphatic that the far happier if the whatever is someone other than Bernie. And then "if worried about the usher's office discuss with me."
And even though these are Mr. Burton's notes, he can't remember who it was that would be happier if it was someone other than you. And he can't remember who "me" is that should be discussed – should be – yeah, discussed in the

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usher's office. Your name is on the note as one of those present at the meeting. Can you help us as to who would be happier if someone other than you discussed or disclosed?
Mr. Nussbaum. I'm sorry, Senator, I cannot. I have no idea what these notes refer to.
Senator Bennett. When you see a mention of the usher's office, do you have any idea what that would be?
Mr. Nussbaum. Yes, the usher's office was mentioned in Vince's handwritten note after it was discovered I believe. Yes, the usher's office plotted to have excessive costs incurred taking advantage of Kaki, who is the decorator and HRC who is Hillary Clinton. So this would appear to be a discussion that took place after we discovered the note. But other than that, I don't really know what it refers to.
Senator Bennett. Well, Mr. Burton placed it in a discussion of after the note was found and prior to a press conversation about it. And I have assumed, admittedly it's nothing more than an assumption, but I have assumed that in the meeting where the five of you were present there was a discussion as to who would talk to the press about this, and it may have been a casual kind of discussion, but it made enough of an impact on Mr. Burton that he underlined "other" twice. That whoever was talking, be it McLarty or Gergen or whatever, and they said they had absolutely no

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memory of this at all.
Someone made a very strong point to Mr. Burton that he wrote it down, presumably in your presence, that you ought not to be the one to be talking about this. Do you remember any discussion at all as to who would brief the press on the note?
Mr. Nussbaum. Well, briefing the press, I remember discussions in the White House after the note was found, and as we were turning it over to law enforcement about the need to publicly disclose the fact that a note was found, that it was important that we get it out. On the other hand, what I do remember is the Justice Department telling us that they did not want that to happen. And since we all in the White House, especially the White House counsel, wanted to cooperate with the Justice Department in this matter, we did not for a period of time disclose the finding of the note on July 26th which was turned over on July 27th.
And I remember there was a sense of frustration in the White House that we could not disclose the note because

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everything leaks and this is going to get out one way or another and it would be better to get it out sooner than later, however sad it was. But nevertheless, we just went along with the Justice Department. I do not remember any discussion with respect to who would talk about the note.

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the discovery of the note once it was disclosed. Now, it was not normally, I must say, Senator, my role in the White House to meet with the press.

Senator Bennett. I understand that. That's why –

Mr. Nussbaum. Or to make public statements with respect to it. I'm a little sorry, Senator, I'm sorry I didn't do it more when I was there. That's one of the things I regret when I was back. I should have been out front more, talking about my conduct and defending myself.

But be that as it may, it did not happen at the time. So it would not be unusual for somebody to say they wanted someone other than Bernie to talk about the note publicly.

Senator Bennett. Well, I am intrigued by the double underline of the word "other" and I'm interested that no one can remember this. It apparently was very important at the time because Mr. Burton, a former journalist taking notes in his journalistic style, felt that he could write the word "precedent" and then nothing else. But on this one he's specific enough to write two points, "far happier if" discussion, discovery, disclosure, "if someone other than Bernie," and then "if worried about usher's office discuss with me."

It would seem to me that something that that's emphatic that he decides to make note on and now no one can remember what it was about. You said just in your last

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statement talking about client, attorney-client relations and privilege that you, for example, wouldn't handle a will or do a house closing or something like that for the President.

Mr. Nussbaum. That's correct.

Senator Bennett. Was that [illegible]

Foster was doing?

Mr. Nussbaum. No. What Vince Foster was doing, he was working on assisting the President and the First Family in performing certain official functions, namely financial disclosure forms, tax returns which are publicly disclosed for a President at least, blind trust. In order to do that, this gets a little tricky and complicated, I understand. In order to do that you need to work with the President's personal files, his financial files or his investment files.

Senator Bennett. I understand.

Mr. Nussbaum. So you have to be able to do that. But when he was in the White House he was using those personal files for these official functions. It's true, Senator, that prior to becoming deputy White House counsel he did, to some extent, act as the President's personal lawyer. I believe, and Mrs. Clinton's personal lawyer earlier. But when he was in the White House it was my understanding, sir, that he was performing solely official functions

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although he was working with personal files in connection with those functions.

Senator Bennett. My read of that is that he was going beyond that. He was designing options for the Clintons to make choices on, and it was interesting that Ms. Tripp, when she testified, testified that she had questioned this activity because she had not seen it before in her prior service in the Bush White House.

Mr. Nussbaum. I do not – I do – I'm sorry to interrupt, Senator, please. I just have to say Ms. Tripp, she may have testified like that. I do not ever recall her saying something like that to me. It would be highly unusual for her to w[illegible] to me after – she was only in the office for a few months at that time – to tell me that she thought Vince Foster was spending too much time –

Senator Bennett. She didn't testify she had mentioned it to you. But she did say she had questioned that. And, of course, on his writing he uses words like "can of

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worms"
[19] and "don't get into that box" that would indicate to me
[20] that he was doing something other than preparing disclosure
[21] documents.
[22] I simply will make a summary of this whole thing as I
[23] see it and ask for your comment on it. As we listen to
[24] your associates in the White House counsel's office and we
[25] listen to your testimony here today that is very carefully

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[1] crafted, as you would expect a good lawyer to do, the
[2] impression is very clear that within the bounds of
[3] understandable grief and confusion at the time, everything
[4] was done in a proper and almost meticulous kind of fashion,
[5] that everybody was trying to do the very best they could
[6] under difficult circumstances and everything proceeded in a
[7] normal, proper kind of way with the only loose edges being
[8] understandable grief and concern and pressure.
[9] And that is the picture that comes not only from you
[10] but from all of your associates in the White House
[11] counsel's office and from Ms. Thomases and others that
[12] worked with you, Maggie Williams and so on.
[13] Over here as I have sat through these hearings from
[14] the Park Police, both those that were present at the house,
[15] those who were involved in the notification, those that
[16] showed up at the office, from the Justice Department, those
[17] that were present and those that were monitoring it in the
[18] Justice Department, the Secret Service people, and the
[19] White House support staff, is a very different picture.
[20] It's a picture, again, to draw on the imagery of the
[21] support staff of slamming of doors and demanding of
[22] typewriters and your grilling, in a firm interrogation.
[23] Ms. Gorham of what did you see. It is a picture of a group
[24] that is out of control and frantically going in a number of
[25] different directions simultaneously. And summarized in

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[1] that E-mail that I'm sure both of them wish now had, in
[2] fact, been erased where one support staff describes it as a
[3] slapstick comedy and the other responds, yeah, the Three
[4] Stooges. And that's a very different picture that we're
[5] getting from people around the circumstance.
[6] And I hope you can understand why I find it troubling
[7] that it's difficult to mesh the two, and indeed the one
[8] seems to be so polished as to be almost too polished.
[9] Almost too pat compared to the chaos that we seem to get
[10] from the others.
[11] Mr. Nussbaum. Senator, since you asked for my
[12] comment. That's a pretty good summation of both sides,
[13] Senator. Let me just say this. You've raised a number of
[14] different issues in that last statement, Senator. With
[15] respect to this notion that there was chaos and hysteria
[16] and paranoia in the White House counsel's office which
[17] arises according to your little summation from the
[18] testimony of two of the secretaries in my office, let me
[19] just say that these are very good and decent people, Linda
[20] Tripp and Deborah Gorham. This was a difficult time.
[21] Especially July 26th. And that was the day I started to
[22] talk about where they started doing these E-mails.
[23] We had discovered on that day, as I've testified, and
[24] you've heard this note, this handwritten note. We made a
[25] determination that for the time being, Mr. McLarty actually

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[1] made this determination that for the time being we would
[2] keep this closely held until we could inform the President,
[3] until we could inform Mrs. Foster until it could be done in
[4] a proper fashion.
[5] So we were in a tiny little office, fairly small, was
[6] not tiny little, but small office and Neuwirth finds it and
[7] he and I are in my office putting together. And then we're
[8] calling Bill Burton into the office who is the
[9] representative of the chief of staff because McLarty was in
[10] Chicago with the President. And Hillary Clinton comes into
[11] the office for a short time and walks out of the office and
[12] we're sort of huddled in this office, in effect putting the
[13] pieces together and discussing this particular issue.
[14] And we're keeping it in effect from two people sitting
[15] right outside the door of the office. From my secretary,
[16] one of my secretaries, Linda Tripp, and keeping it even
[17] from Deb Gorham, who was Vince Foster's secretary.

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Now,
[18] they see these comings and goings. We've just been through
[19] a traumatic time. Vince is dead. He killed himself.
[20] We're all there in grief. And they continue to be in grief
[21] and they were particularly distraught, particularly
[22] Ms. Gorham.
[23] And all of a sudden the impression they get is they're
[24] being excluded. Something is going on, people are going in
[25] and out. Obviously something is on our mind. We have

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[1] found this writing and we're going to turn it over to law
[2] enforcement, but we're engaged in discussions about it.
[3] And they don't know what's going on. And no one is telling
[4] what's going on. I didn't call them into a separate office
[5] and say Linda, Deborah, look, we just found this note and
[6] we're going to turn over. I didn't tell them that because
[7] Mack wanted to keep the thing closely held until we made
[8] the proper decisions.
[9] So here you have two people who have suffered through
[10] this crisis with the rest of us and all of a sudden they
[11] feel they've been left out. They feel they've been
[12] ignored, even though they're part of the family. And when
[13] I thought about their testimony I realized that I was
[14] insensitive. I don't know what more I could have done if I
[15] followed Mack's orders with respect to this thing, but they
[16] felt. I felt in a sense looking back I was insensitive.
[17] We'd suffered through this crisis together. Somebody
[18] had died and yet we're not telling them. They hear a door,
[19] they hear a slam. Somebody closes a door. They hear it
[20] slammed. Somebody comes out and asked for a typewriter.
[21] And although I don't remember that and they find that some
[22] sort of crazy request. Obviously a typewriter was asked
[23] for, it was because the note wants to be typed.
[24] Senator Bennett. There is a detailed conversation
[25] about it.

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[1] Mr. Nussbaum. So they're sort of feeling left out.
[2] They're feeling bad about this thing and they react and
[3] they react with speculations about burn bags and things
[4] like that. They ask what's going on. They don't know
[5] what's going on and they sit there typing these E-mails to
[6] each other. Looking back, it's sort of understandable what
[7] they did and what they did in part was caused by what we
[8] did by sort of keeping them out and leaving them out.
[9] It's something I had to do. It's something I'm sorry
[10] about, but it doesn't support the conclusion, it doesn't
[11] support the picture that you paint from that testimony of
[12] paranoia of, of terrible things going on in our office. I
[13] didn't grill Deborah Gorham. I like Deborah Gorham, she's
[14] a gentle, sensitive lady. She was in a state of shock
[15] during this period, understandably so. Her boss had just
[16] killed himself, in effect.
[17] I tried to be as gentle as I could with her, but I
[18] think she, remembering back to that terrible period, if I
[19] asked her a question two or three times sort of to shake
[20] her out of her, she was like, you know, she was in shock
[21] during that period for a lot of that period, to sort of
[22] shake her out of that shock a little bit. She finds that
[23] conduct of me talking to her grilling. I didn't grill her.
[24] I tried to treat her very gently. But looking back, I can
[25] understand her testimony here today. But it doesn't

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[1] support the picture that you're painting.
[2] Nor, sir, when you refer to the Park Police and the
[3] Secret Service and all these law enforcement agencies, nor
[4] is that a valid summation, Senator Bennett. The fact is
[5] our relationship with the Park Police, our relationship
[6] with the Secret Service, our relationship with the
[7] Department of Justice, our relationship with the FBI was
[8] perfectly fine during this period. It changed a little –
[9] we had a dispute over how the office search would be
[10] conducted, but it was perfectly fine.
[11] What happened, sir, and I alluded to this before, is
[12] once the note was found on July 26th and turned over on
[13] July 27th, people were embarrassed in effect. Law
[14] enforcement became embarrassed because they were present at
[15] a search which I conducted, not they conducted. They were
[16] present at a search at which a note wasn't found.
[17] Because

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of that, Senator, then certain of them at least started feeling aggrieved about prior conduct. So I don't think even their testimony paints a picture of any improper conduct on the part of the White House. Forgive me, Senator, for that very, very long answer. Senator Bennett. My time is gone. I would like at some point to follow up on some of these issues. The Chairman. Well, Senator, we'll be back tomorrow morning, and I will recognize you first so that we can

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again follow up on these issues. Senator Boxer. May I ask a question? The Chairman. Yes. Senator Boxer. I think that I am not going to get a chance to question today, mostly for my fault. I could only stay for three hours. Why are we going back to Senator Bennett – on your time? The Chairman. When it comes to our side, of course. Senator Boxer. Great. The Chairman. Of course, we have rotated continually. We will continue to do that. But I'm delighted that you are watching so carefully. Senator Boxer. I am. The Chairman. Well, I understand that. Senator Boxer. Every move. The Chairman. And we will obviously start with this side, appropriately. I want to thank Mr. Nussbaum and it is my hope that we can finish tomorrow, but if I see that we can't, why then unfortunately we'll hold over to Friday. But I'd like to be able to do that and I think if we all work together we will be able to do that. All right. Stand in recess. Mr. Nussbaum. I want to assure you I have no opening statement tomorrow.

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The Chairman. I thought you did an excellent job and that I want you to know that this Senator has no, no problem with your opening statement whatsoever. I think you owe it to yourself and you owe it to all of us to put down in a thorough, comprehensive manner what you did into the record, and I think there were some points that were made that were very important, factually, to get them out. So I want to commend you for that. And I certainly don't mean in the slightest to say that you shouldn't say it the way you see it and tell the Committee those things that you think are important, but I think if we work together we can possibly conclude this aspect of our review tomorrow. So we stand in recess until tomorrow at 9:30. (Whereupon, at 5:30 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Thursday, August 10th, 1995.)

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UNIQUE WORDS: **3,072**
TOTAL OCCURRENCES: **19,658**
NOISE WORDS: **391**
TOTAL WORDS IN FILE: **56,267**

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S): **NOISE.NOI**

INCLUDES ALL TEXT OCCURRENCES

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In Re: Whitewater August 10, 1995 cr: 62191.0

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Hearing on
IMPROPER HANDLING OF DOCUMENTS
IN DEPUTY WHITE HOUSE COUNSEL
VINCENT FOSTER'S OFFICE
AFTER HIS DEATH
THURSDAY, AUGUST 10, 1995
United States Senate
Special Committee to
Investigate the Whitewater
Development Corporation and
Related Matters
Washington, D. C.
The committee met at 10:30 a.m. in Room 216 of the Hart Senate Office Building, the Honorable Alfonse M.
D'Amato, chairman of the committee, presiding.

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The Chairman. The committee will come to order.
Mr. Nussbaum, again, we ran into the situation of Senate votes. I think we had four votes and then final passage and that's why we are here at about five to 11:00 as opposed to 9:30. The first vote started at about 9:15.
When we were last here, we had just concluded an examination, I think, by Senator Grams – Senator Bennett,
and the next examination comes from this side.
So, Senator Sarbanes.
Senator Sarbanes. Mr. Chairman, we agreed last night
we'd go to Senator Boxer, but she's been detained a few
moments, as I understand it, so I'll yield to Senator Dodd
for our 10-minute round here and if Senator Boxer comes in
while he's proceeding, we'll be able to yield to her. If not, after we come to your side for your 10-minute round,
we'll pick her up on the next round.
The Chairman. If I might, would you stop the clock
because I don't want this to count against the other side.
Yesterday at 2:48, the Justice Department sent to
Mr. Chertoff and Ben-Veniste a letter from Paul J. Fishman,
counsel to the Attorney General, in which it is
indicated – we'll make a copy available – that
Mr. Margolis's physician had indicated that he could and
would be able to testify.
Counsel has contacted Mr. Fishman, who was counsel to

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the Deputy Attorney General, Mrs. Gorelick, and
Mr. Margolis would like to testify and will be testifying
this afternoon. Now, that is unusual. To the extent that
he had open heart surgery and there was a question of
whether or not he would even be able to testify, and we
were advised of that initially in a letter July 12th, and
they said possibly in a second week in August, and now.
provided that he has sufficient time to take breaks, if
necessary, and so it's our intention to give him an
opportunity to testify. We're hoping to conclude this
portion of our review by today, or certainly by tomorrow.
Senator Sarbanes. Mr. Chairman.
The Chairman. Yes, Senator.
Senator Sarbanes. First of all, let me say that I
welcome this letter. Mr. Margolis had been on the list as
a relevant witness, but then had this serious heart
problem, as I understand it –
The Chairman. It was a quadruple bypass surgery.
Senator Sarbanes. I'm pleased for him that his
recovery is proceeding at apace and pleased that

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we're able
to get a full record. I thought we were going to have a
discussion over the break about whether we would depose him
ahead of his testimony, as we've done with all the other
witnesses, and I'd like to reserve that for discussion
amongst ourselves.

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The Chairman. Certainly, we'll discuss that.
Senator Sarbanes. It may not be necessary and I
understand and, in fact, subscribe to the Chairman's desire
to bring this stage of the hearings – or this phase of the
hearings to a conclusion before the break, so hopefully
amongst ourselves, we can work that out for the process we
want to follow with respect to Mr. Margolis. If we did
take him directly this afternoon, I think he would be the
only witness who had not been deposed ahead of time.
The Chairman. He would be the only witness, yes.
Senator Sarbanes. Senator Dodd.
Senator Dodd. Thank you, Senator Sarbanes. I'll
yield my time at this moment to Mr. Ben-Veniste.
Mr. Ben-Veniste. Thank you, Senator Dodd.
Good morning, Mr. Nussbaum.
Mr. Nussbaum. Good morning, Mr. Ben-Veniste.
Mr. Ben-Veniste. Let me direct your attention to July
21st, the day after Mr. Foster's death and ask you whether
on that day you had occasion to talk with Detective
Markland of the Park Police and whether on that day, as
reflected in Mr. Markland's report, you advised
Mr. Markland that you, together with Maggie Williams and
Patsy Thomasson had conducted a brief search for a note in
Mr. Foster's office the previous evening?
Mr. Nussbaum. That's correct. I spoke to a member of

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the Park Police, presumably Detective Markland, on the
21st, and I told Detective Markland, as you described it,
that Patsy Thomasson, Maggie Williams and I had been in
Vince's office the night before, not too many hours before,
to conduct a brief and cursory search of that office
looking at surfaces basically for a suicide note.
Mr. Ben-Veniste. Let me direct your attention to Park
Police Exhibit 29, which is Mr. Markland's report of his
interview of you of July 21st, 1993 and direct your
attention to the third paragraph. Would you read that?
Can you? I see you don't have a hard copy. Let me read
it. This is not an eye test, Mr. Nussbaum.
Mr. Nussbaum. Yes.
Mr. Ben-Veniste. "On July 20, 1993, after Vincent
Foster's death became known to him, Mr. Nussbaum responded
back to the White House where he went through Mr. Foster's
office with Patsy Thomasson and Maggie Williams."
I take it you did not use the words "I responded back
to the White House." That's kind of police lingo.
Mr. Nussbaum. No, I didn't use that language.
Mr. Ben-Veniste. But you went to the White House?
Mr. Nussbaum. I went to the White House.
Mr. Ben-Veniste. And again, here it appears that
Detective Markland has simply made an error in confusing
your name with that of Mr. Foster, but what I'm sure he

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meant was "Mr. Nussbaum stated –
Mr. Nussbaum. That's correct.
Mr. Ben-Veniste. – that they conducted a brief,
quick search to see if Mr. Foster may have left a suicide
note on his desk"; correct?
Mr. Nussbaum. That's correct.
Mr. Ben-Veniste. So it is clear that you did not
attempt to keep the fact that you, Ms. Williams and
Ms. Thomasson had been in the office the night before to
conduct the search from the police?
Mr. Nussbaum. That is correct.
Mr. Ben-Veniste. You told them at the first
opportunity you had?
Mr. Nussbaum. That is correct.
Mr. Ben-Veniste. Then it goes on to say "this search
lasted from 2200 to 2400 hours." I take it you would not
under any circumstances have been using military time, but
this indicates that the search lasted two hours, between
10:00 and 12:00 at night. Is that the case, or is that
simply an error?
Mr. Nussbaum. That is an error.
Mr. Ben-Veniste. And I believe Mr. Markland,
Mr. Chairman, has cleared that up in his deposition and has
recognized that that was an error. "Mr. Nussbaum stated no
documents were removed from the office." I take it that is

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something which you did, in fact, tell Detective

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Markland?
Mr. Nussbaum. That is true.
Mr. Ben-Veniste. And that was true at the time and, I take it from your testimony, is true now?
Mr. Nussbaum. It was true at the time, and it is true now.
Mr. Ben-Veniste. Now, yesterday, a question came up with respect to Mr. Burton's notes, which were identified in documents produced by the White House to this committee as Z514. Could we put that up, please. Z514 was described by Mr. Burton as a note which he thinks he wrote on or about the 28th or 29th of July. This would have been in the days after the torn-up note was discovered by Mr. Neuwirth and yourself. And yesterday, you were asked some questions about this. Mr. Burton testified that this note is properly interpreted as saying "far happier if discussed" or "disclosed if someone other than Bernie."
And Mr. Gergen testified before this committee in open hearings that there were discussions with the Justice Department once the note had been discovered and turned over about who and under what circumstances the contents of the note would be disclosed – who would disclose it and under what circumstances. Do you recall that that had occurred?
Mr. Nussbaum. Yes.

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Mr. Ben-Veniste. And Mr. Gergen's testimony was that he believed this reference – since he was one of the participants in this meeting – that this reference related to the fact that the Justice Department was concerned that no one other than the Park Police should be the ones who would be in charge of disclosing the contents. Does that comport with your recollection?
Mr. Nussbaum. Yes, that makes sense to me.
Mr. Ben-Veniste. Let me ask you, Mr. Nussbaum, whether in connection with the departure of Justice Department attorneys on the 22nd following the search where it was disclosed to them, indeed in some cases participated in the discussion about Mr. Foster's personal files and effects being returned or being transmitted to Mr. Foster's family attorney, then Mr. Spafford and Mr. Hamilton. Do you recall that sequence of events?
Mr. Nussbaum. Yes, I do.
Mr. Ben-Veniste. And in that regard, according to Mr. Adams's testimony, he anticipated that the personal files of the Clintons, the real estate and financial records which you described in his presence, and in somewhat summary fashion, according to the testimony, was to be transmitted to the Clintons' personal attorney; is that correct, sir?
Mr. Nussbaum. Yes.

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Mr. Ben-Veniste. When you were describing the financial records and the personal real estate investment records of Mr. and Mrs. Clinton, did anyone from the Justice Department or the police request that you provide further detail with respect to those records?
Mr. Nussbaum. No.
Mr. Ben-Veniste. Did they ask you in any way to break down what investments, what year tax records, what was included in that material that you described in summary form?
Mr. Nussbaum. No.
Mr. Ben-Veniste. Was there any indication whatsoever that they were interested in reviewing any of that material?
Mr. Nussbaum. There was no such indication.
Mr. Ben-Veniste. I would like to – I see that my time is about up.
The Chairman. Do you have another question?
Mr. Ben-Veniste. No. I think we would –
The Chairman. If you have another line, then, Mr. Chertoff.
Mr. Chertoff. Thank you, Mr. Chairman. Good morning, Mr. Nussbaum.
Mr. Nussbaum. Good morning, Mr. Chertoff.
Mr. Chertoff. Let me direct your attention to Monday,

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July 26th, which you've indicated in your opening statement was the day during which Mr. Neuwirth called your attention to pieces of paper that he told you he had found in the briefcase in Mr. Foster's office.
After that period of time, there came a point either later on Monday or early on Tuesday where you

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called
Deborah Gorham into your office; correct?
Mr. Nussbaum. I – I have no firm recollection of that happening. I don't say it didn't happen. I'm not saying – undoubtedly, as I reconstruct it now, I called Deborah Gorham in and probably asked her what she knew about Vince's briefcase or scraps at the bottom of the briefcase, but as I sit here now, I have no firm recollection of that conversation.
Mr. Chertoff. You have some kind of a recollection: right?
Mr. Nussbaum. I have some kind of a recollection. yes.
Mr. Chertoff. Is it fair to say the two of you were by yourselves?
Mr. Nussbaum. No, I can't remember that.
Mr. Chertoff. Did you question her?
Mr. Nussbaum. My answer to that is probably yes.
Mr. Chertoff. Did you grill her?
Mr. Nussbaum. No. My answer to that is no. As I

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said yesterday, Mr. Chertoff, Deborah was in severe grief and shock. It lasted with her a lot longer, understandably – please, Mr. Chertoff, let me finish.
Mr. Chertoff. Go ahead.
Mr. Nussbaum. Let me finish. It lasted a lot longer with her than with other people and that's understandable. Her boss just died, and she was – I don't want to use – a little bit out of it from time to time. So I think at that time, it was perfectly understandable. And I think I was probably very gentle with her at that time, but, nonetheless, persistent. If I wanted to ask her a question, I might have asked it more than one time, that question. So I can understand her now looking back and thinking of that as grilling. I didn't perceive it as grilling, nor do I believe that I did grill her.
Mr. Chertoff. Before I pick up on the line of questioning, you made an observation about her state of mind. Is this something she's told you?
Mr. Nussbaum. No –
Mr. Chertoff. Has she told you she was overcome by grief and more overcome by grief than anybody else?
Mr. Nussbaum. No. This is something I observed at the time.
Mr. Chertoff. This is your speculation or your interpretation or your opinion about her state of mind:

right?
Mr. Nussbaum. The best word is my observation.
Mr. Chertoff. Your opinion; right?
Mr. Nussbaum. My observation, what I perceived at the time.
Mr. Chertoff. Now, in the questioning of Ms. Gorham, did you probe her to see what she had seen on the paper in the briefcase?
Mr. Nussbaum. I may have, but I have no present memory of that.
Mr. Chertoff. Did you ask her to describe what she had seen in the briefcase?
Mr. Nussbaum. I most likely did.
Mr. Chertoff. Did you ask her whether the paper in the briefcase was torn up when she saw it or whole when she saw it?
Mr. Nussbaum. I don't remember that.
Mr. Chertoff. But you don't doubt it?
Mr. Nussbaum. I don't doubt it.
Mr. Chertoff. Did you ask her how many sheets of paper she had seen in the briefcase?
Mr. Nussbaum. I don't recall asking her that.
Mr. Chertoff. Did you ask her what color the paper she saw in the briefcase was?
Mr. Nussbaum. I don't recall asking her that.

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Mr. Chertoff. Can you say you didn't ask her that?
Mr. Nussbaum. No, I can't say I didn't ask her that.
Mr. Chertoff. Were you trying to get a complete picture from her about everything that she had seen in the briefcase earlier in time?
Mr. Nussbaum. Yes, I think that's fair.
Mr. Chertoff. Now, when you questioned her about this, you already had the briefcase: right?
Mr. Nussbaum. I believe so, yes – yes. I certainly had the briefcase, yes.
Mr. Chertoff. Of course; right?
Mr. Nussbaum. Absolutely, yes.
Mr. Chertoff. This is after Mr. Neuwirth told you what he found in it?
Mr. Nussbaum. Yes.
Mr. Chertoff. So you had whatever paper Mr. Neuwirth showed you; right?
Mr. Nussbaum. That's correct.
Mr. Chertoff. You had the briefcase to go look at: right?
Mr. Nussbaum. Yes.
Mr. Chertoff. In fact, the briefcase had been in your possession and control the previous Thursday; right?
Mr. Nussbaum. It was, yes.
Mr. Chertoff. And yet you nevertheless asked

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Ms. Gorham to sit there while she told you what she had seen the previous week in the briefcase; is that

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correct?
Mr. Nussbaum. As I say, I don't have a firm recollection, but she remembers it, and I have no reason to dispute her recollection about that.
Mr. Chertoff. Did she tell you about a folder she had seen in the briefcase?
Mr. Nussbaum. I recall no such conversation about a folder in the briefcase.
Mr. Chertoff. And so when you say you don't recall it, because again sometimes when you've said you don't recall, it means you don't deny it. Sometimes you've said no, it didn't happen.
Mr. Nussbaum. Well, that's a fair comeback to me. My comeback to you will be I don't believe there was such a conversation about a folder. At least I don't remember any such conversation.
Mr. Chertoff. That would be pretty memorable; right, if she had told you there was a folder in there?
Mr. Nussbaum. No, not necessarily.
Mr. Chertoff. In other words, if Ms. Gorham had told you that on the previous Thursday, as she's testified, she did tell you – I should tell you to be fair – if she told you on the previous Thursday she saw a folder in the briefcase, it wouldn't concern you that no such folder had

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emerged on the 26th?
Mr. Nussbaum. No. I pulled out all the folders that were in the briefcase on the 22nd. I don't remember any discussion about a folder. I pulled the briefcase over to me, reached down and pulled out all the files and all the folders, to use that terminology, from the briefcase.
Mr. Chertoff. So you knew what was in the briefcase as much the 22nd?
Mr. Nussbaum. Obviously there were files and folders in the briefcase which I took out and put on top of Vince Foster's desk. I've testified to that.
Mr. Chertoff. Even though you were the one who handled the briefcase on the 22nd and even though you had the briefcase on the 26th and even though Mr. Neuwirth gave you the pieces of paper in the briefcase on the 26th, you nevertheless were asking her to tell you what she had seen in the briefcase.
Did you think she had seen something there you hadn't seen?
Mr. Nussbaum. No. To try to reconstruct it now –
Mr. Chertoff. Remember, don't reconstruct. Remember, if you can.
Mr. Nussbaum. We had found a handwritten list and I wanted to see if she had any idea when Vince wrote this piece of paper, when he put it in his briefcase, if she had

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any knowledge of those facts. That's what – she was the one who was closest to him in a working sense, support sense in the office and she may have had a knowledge as to when he wrote out this handwritten list, when he tore it up, when he threw it in the briefcase.
She had no such knowledge, at least she didn't convey any such knowledge to me, so that's what I was trying to do. I was trying to find out if she knew anything about the scraps of paper that Steve Neuwirth found in the briefcase on July 26th. I think, Mr. Chertoff, that's a perfectly natural thing to do.
Mr. Chertoff. I understand why you would want to ask her if she had ever seen him write a list, but I must say what puzzles me is why you would ask her what she had seen in the briefcase after his death.
Mr. Nussbaum. I frankly don't recall particularly asking her what she had seen in the briefcase after his death, although I may have said that in connection with the discussion as to how – if she knew anything about how these scraps of paper or this note, this list got into the briefcase.
Mr. Chertoff. Well, didn't we just establish a moment ago that you, in fact, did ask her questions about what she saw in the briefcase?
Mr. Nussbaum. My memory is vague. If she says it, I

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don't – I can't dispute it, and it may well have happened.
Mr. Chertoff. And, of course, that would have been at a period of time after Mr. Foster died; right?
Mr. Nussbaum. Yes, of course.
Mr. Chertoff. Now, and as to the folder, you have no recollection about that?
Mr. Nussbaum. No. I have no recollection about

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asking
[8] for a folder, because I was clear in my mind that I had
[9] pulled out all the folders from the briefcase on July 22nd.
[10] Mr. Chertoff. And did that – how did you react when
[11] she said to you well, I saw something yellow in the bottom
[12] of the briefcase and the top of the folder?
[13] Mr. Nussbaum. Frankly, Mr. Chertoff, I don't remember
[14] [illegible]ing that to me.
[15] Mr. Chertoff. All right. That's fair. Now, there
[16] came a point in time that evening when you wanted to have a
[17] typewriter brought in to your office?
[18] Mr. Nussbaum. I don't recall that.
[19] Mr. Chertoff. So you don't have a memory of that
[20] either?
[21] Mr. Nussbaum. I don't have a memory of that. I
[22] remember wanting to transcribe the note and I remember it
[23] may well be that I or Steve Neuwirth asked for a
[24] typewriter. I have no memory of it. I don't think it
[25] happened, but it's possible. I do remember wanting to

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[1] transcribe the note – that I remember clearly – and I
[2] remember thinking probably the best way to do it was to do
[3] what I did, which is namely to write out in my own
[4] handwriting the note just as Vince had written out the
[5] note – or a list, not really a note, the list as he did
[6] it. So I did that so that would enable me to show it to
[7] anybody I had to show it to, and that's what I did.
[8] Mr. Chertoff. Now, when did you call Susan Thomases
[9] to tell her – or when did you speak to Susan Thomases and
[10] tell her about the discovery of the writing?
[11] Mr. Nussbaum. Until Ms. Thomases testified here, I
[12] did not remember a discussion with Susan Thomases about the
[13] writing on July 26th, except it's quite – if Susan
[14] Thomases has testified to such a conversation, I have no
[15] doubt that that conversation took place as she describes
[16] it.
[17] Mr. Chertoff. Do you remember it?
[18] Mr. Nussbaum. I have no memory of that conversation.
[19] Mr. Chertoff. So you can't help us understand why you
[20] would have told Susan Thomases about the note before, let's
[21] say, Lisa Foster heard about it?
[22] Mr. Nussbaum. No. I can understand why – why I
[23] would discuss it with Ms. Thomases. She was
[24] again, as I said yesterday, she was a friend and a
[25] advisor of the President and the First Lady and of mine in close

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[1] the White House. This was – this was an event which was
[2] of some importance. I didn't see any harm in her knowing
[3] about it. It was clear from minute 1, as far as I was
[4] concerned, from the time we discovered this handwritten
[5] list, that it would be turned over – let me finish,
[6] Mr. Chertoff.
[7] Mr. Chertoff. I'm not stopping you, Mr. Nussbaum.
[8] Mr. Nussbaum. I saw your lips moving.
[9] Mr. Chertoff. Just a facial mannerism.
[10] Mr. Nussbaum. Okay. So from minute 1 I knew it was
[11] going to be turned over to the law enforcement authorities
[12] as soon as possible, which turned out to be the next day.
[13] So I saw no problem – although I have no memory of this
[14] conversation, I would see no problem in telling
[15] Ms. Thomases that we had found such a list, which was going
[16] to the law enforcement authorities.
[17] Mr. Chertoff. On that same day did you see a problem
[18] with telling Janet Reno or Phil Heymann that you found the
[19] list?
[20] Mr. Nussbaum. We were going to turn the note over to
[21] law enforcement. The problem – and maybe I should have
[22] told Janet Reno and Phil Heymann, in retrospect, on that
[23] day.
[24] Mr. Chertoff. Was that one of those big calls that
[25] maybe you say you didn't make?

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[1] Mr. Nussbaum. No, that was a little call because I
[2] talked to them the next day. Let me say, once this note
[3] was turned over, it was only a matter of time – and
[4] perhaps a short period of time – that the thing would
[5] become – there would be widespread publicity about.
[6] All I wanted was for Lisa Foster to have a chance to
[7] see it herself. I thought that was just common decency to
[8] have a chance to see it herself, and I thought the
[9] President, if he wished, which he didn't wish, ultimately,
[10] would have an opportunity to hold it in his own hand, in
[11] his own hand, look at it himself and then it would be turned

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over to Janet Reno or Phil Heymann or the Park Police
ultimately. I didn't think that was a strange act or
improper conduct. I thought that was acting in a human.
decent way and I have no regrets about doing it like that.
Mr. Chertoff. Let me say this, if I can just close up
with this. I understand why as a matter of respect for
Lisa Foster and the President you would want them to be the
first to know about the note. And I also understand that
there was some discussion about executive privilege or
something?
Mr. Nussbaum. Correct.
Mr. Chertoff. What I'm having difficult
understanding, maybe you can reflect on it and we'll get
back to it later, is why in light of that sensitivity that

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the President and Lisa Foster ought to be the first to know
about it, why is it that Susan Thomases actually learned
before both of them?
Mr. Nussbaum. Susan Thomases didn't learn before both
of them, before the President and Lisa Foster. I called
Jim Hamilton – I talked to Jim Hamilton –
Mr. Chertoff. When?
Mr. Nussbaum. I believe I talked to Jim – I'm almost
positive I talked to Jim Hamilton on Monday, July 26th,
after we found the note to tell him we had found the note
so he could break it to Lisa. I wasn't the first one who
broke it to Lisa that we had found a note. I called the
family lawyer on July 26th and said we had found this
note. We found this list. He was the one who told me Lisa
was coming in the next day, so that provided me then the
opportunity to sit down with Lisa myself and to hand it to
her, but Lisa Foster found out about the note on July 26th
from Jim Hamilton. That was another person I talked to on
that day.
Mr. Chertoff. You're confident that on the 26th Lisa
Foster knew about the note?
Mr. Nussbaum. Well, I'm not – I assumed – maybe I
was speaking too fast.
Mr. Chertoff. Let's be careful. Let's not assume.
Mr. Nussbaum. That's correct. That's correct. I

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told it to Hamilton on the 26th and my assumption is that
Hamilton would then call Lisa Foster. But when Lisa Foster
walked into my office on the 27th, I just didn't pop this
note on her and say look what we found and she was
shocked. She knew she was coming to my office to see a
note.
Mr. Chertoff. I guess I leave you with a final
question. Why is it that – bearing in mind the very
reasonable belief that you ought to respect the privacy of
the President and Lisa Foster in terms of having them know
about the note first, why is it that on the Monday in
question you chose to call Susan Thomases or to speak to
Susan Thomases and tell her about the note and yet you
didn't tell Phil Heymann or Janet Reno?
Mr. Nussbaum. I didn't choose – I don't believe I
chose to call Susan Thomases.
Mr. Chertoff. Speak to her.
Mr. Nussbaum. I did speak to her. I spoke to Susan.
Mr. Chertoff. She did not compel you to tell her?
Mr. Nussbaum. No, she didn't compel me to tell her,
but she's a close advisor, a close friend – a close friend
of mine, a close friend of the Clintons, a close friend of
Vince Foster's. She seemed a natural person to disclose
this information to when this information was going to be
disclosed shortly thereafter to law enforcement. I still

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see nothing wrong with it, Mr. Chertoff.
The Chairman. Senator Sarbanes. Thank you for the
patience and I think it is important that counsels on both
sides get an opportunity to complete a line if they're
pursuing it. I want to thank you for that.
Senator Sarbanes. I yield to Senator Boxer.
Mr. Chairman.
Senator Boxer. Thank you so much.
Mr. Nussbaum, the last time we saw each other was in
round 2 of the Whitewater hearings and we are now in round
3 and it's not clear how many more rounds we have to go and
you've been around and around these issues frankly. I
think, a very long time.
I don't know what else there is other than pound away
at points you've already made. But it's interesting to me

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because when I questioned you last time you and I had a disagreement over the matter of recusal.
Mr. Nussbaum. Yes.
Senator Boxer. It was but a very, I thought, important disagreement where it resolved around your point of view at that time that when there are no technical conflicts of interest, you think an individual should not recuse. And I said to me what was more important is how the person felt inside and if the person felt uncomfortable, that should be the guide. So it was an

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issue where we had a disagreement and I have to tell you as I approach this hearing I thought I was going to disagree with you again fairly vehemently. I honestly thought I was going to view your moves on that day in terms of the papers, which is supposed to be what we're talking about today, the handling of the papers.
Mr. Nussbaum. Yes.
Senator Boxer. I felt I was going to view you as being dictatorial and uncaring about the views of others, and I have to say as I listen to you and I listen to other people who have testified, I believe you took a compromise course to the issue, a moderate course between those who told you there should be no access and those who told you there should be unfettered access essentially. And I would – and we are going other ground, but as we get further and further to the end of these hearings, I think it's important for my own self to sum up what I've learned.
Now, if you listen to Mr. Heymann, he says, and I'm quoting from his deposition. "I thought that for the White House counsel's" – wait a second. I have to find the rest of this. "I thought that for the White House counsel's office to make these decisions largely by itself as it did was simply not an acceptable way of addressing them. A player with significant stakes in the matter cannot also be

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a referee." And he was very clear about this [illegible] on that point and you have stated you respect his point of view although you disagree with it; is that correct?
Mr. Nussbaum. That's correct, Senator.
Senator Boxer. I mean, you don't think that he's being, shall we say, unreasonable to have this point of view?
Mr. Nussbaum. Well, I understand his point of view. I do respect it and he is a very able and respected person, but I do have a vehement disagreement with his point of view, which I expressed yesterday. And I think, Senator, with all due respect to you and to the other members of this committee, I think in some ways it's even a dangerous and cynical point of view because what it says is basically, as I said in my statement yesterday, that only Justice Department lawyers can somehow be trusted and other lawyers who have the same ethical obligations, White House lawyers or private lawyers, are not deserving of trust. And while I know Phil doesn't intend to do this, what that does is feed into the very cynicism which sort of pervades a lot of what's going on today.
Senator Boxer. I appreciate that view. And then you had Mr. Quinn on the other side, who said, and I quote, "it was my view at the time and it remains my view today that prior to the search of Mr. Foster's office by the Park

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Police, it was incumbent upon Mr. Nussbaum or some other appropriate person from the counsel's office to undertake a preliminary review in order to determine whether there were sensitive, privileged or classified materials that required protection. As far as I was concerned," says Mr. Quinn, "these obligations simply were more important than to maintain good appearances."
Now, in other words, cutting through that, what Mr. Quinn said is you should have shut the door, gone through every piece of paper in that office, decided what [illegible] and then invite everyone in. Now, you rejected that. Can you explain to me why you

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rejected
[13] that?
[14] Mr. Nussbaum. Your description of Mr. Quinn's
[15] position is absolutely correct.
[16] Senator Boxer. I read it from his deposition.
[17] Mr. Nussbaum. Absolutely precise. That's exactly the
[18] position he took, and I respected that view. He's a very
[19] able lawyer, too, and a very experienced lawyer also. I
[20] understood that view. The reason I rejected it is because,
[21] frankly, I was counsel to the President. I was not
[22] representing a private – in his official capacity.
[23] I was not representing a private individual and,
[24] Senator, I was concerned about public perceptions. I was
[25] concerned about appearances, and I didn't think it was

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[1] necessary to bar the door to Mr. Foster's office in order
[2] to adequately protect our rights, the right to protect
[3] confidentiality and privilege and to preserve the right to
[4] protect privilege and law enforcement issues.
[5] Senator Boxer. So what you did was, you had the
[6] Justice Department and the Park Police there and you
[7] basically described each document and put it in the
[8] appropriate place. Now, I guess I want to get to this
[9] other question that keeps coming back and I guess we'll
[10] have another person after you come and say the same thing,
[11] that you had committed – you had promised Mr. Heymann, you
[12] had made a commitment, signed, sealed and delivered that
[13] you were going to do it a different way, that the police
[14] would be able to, in fact, look at every document rather
[15] than you describe it. Now, when you testified, you said "I
[16] told them I would consider it. I never promised it." And
[17] what I'm trying to see if I can have you remember is this:
[18] Sometimes I have people come into my office from both
[19] sides of an issue because I like to work out disagreements
[20] with everyone in the room, rather than meeting one person
[21] here, another person another day. Each side presents a
[22] view, and I try to [illegible] and sometimes they
[23] talk about it. Sometimes they have left my office and
[24] one party said she's going to be a cosponsor of the bill, and
[25] the other party said she opposes the bill and what I

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[1] basically said in the meeting was not much, except that's
[2] interesting. That's a good idea. That's a good point.
[3] I'm going to consider it.
[4] Thinking back to that moment because that's an
[5] important point because members on the other side are
[6] saying you reneged on a promise, and the hint is that
[7] someone whispered in your ear and said, Bernie, back out of
[8] that deal. Can you tell us, if you can, what you may have
[9] said to lead people to think you had already decided on
[10] something and it was done?
[11] Mr. Nussbaum. I said the kind of things that you just
[12] described that you say sometimes when people are in your
[13] office. I said yes, that is an interesting proposal. It's
[14] something that we can talk about and it's something that I
[15] can consider. I am worried about a waiver. I'm not sure
[16] it meets my needs, but it is something we can talk about.
[17] I wanted to accommodate them. I really was sort of trying
[18] to bend over backwards to get them into the office without
[19] violating my ethical obligations, so I may have expressed
[20] interest in what they perceive to be a compromised proposal
[21] and it may well be – it may well be they left feeling
[22] there was an agreement and it may well be, then, that I'm
[23] responsible for a misunderstanding or miscommunication, but
[24] in my mind, Senator, I did not agree nor did I say I agree
[25] nor in my colleagues' minds who were present with me from

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[1] the White House counsel's office – or did they believe
[2] there was an agreement.
[3] Senator Boxer. So I can sum up, you may have said
[4] some encouraging words in terms of the idea so as not to
[5] say to somebody that's a bad idea. Now, the undercurrent
[6] through all these hearings is that the First Lady is
[7] [illegible] what to do with the handling of the papers
[8] through all this. I have a couple of quick questions.

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They're yes or no. Did the First Lady personally tell you how to handle the papers in the office?
Mr. Nussbaum. No.
Senator Boxer. Did she tell you what to do through Susan Thomases?
Mr. Nussbaum. No.
Senator Boxer. Did she tell you what to do through any other intermediary?
Mr. Nussbaum. No.
Senator Boxer. Did she write you a note telling you what to do?
Mr. Nussbaum. No.
Senator Boxer. Did she end you an E-mail telling you what to do?
Mr. Nussbaum. No.
Senator Boxer. Did she ever call you up and tell you what to do?

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Mr. Nussbaum. No.
Senator Boxer. Do you ever take instructions from Susan Thomases?
Mr. Nussbaum. No.
Senator Boxer. If Mrs. Clinton wanted to tell you something, would she go through an intermediary?
Mr. Nussbaum. Not likely. Mrs. Clinton and I talk to each other directly. We don't always agree with each other, but we have a relationship which we're very candid and frank with each other. She's not afraid – believe me, she's not afraid to tell me what she thinks and I happen not to be afraid to tell her what I think.
Senator Boxer. Did you ever think it would be necessary to ask Mrs. Clinton or the President what you should do in the handling of the office papers?
Mr. Nussbaum. No. I felt this was my call to make, my decision to make as White House counsel.
Senator Boxer. Now, those personal files that were in – and I'm almost finished, Mr. Chairman – that were in Mr. Foster's office, they had to do with filing of official documents, did they not?
Mr. Nussbaum. Yes, they were being used –
Senator Boxer. Conflict of interest forms, blind trust?
Mr. Nussbaum. Correct.

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Senator Boxer. The things that we have to do as well here?
Mr. Nussbaum. That's correct.
Senator Boxer. And you believe they belonged to the Clintons and you sent them over to them, and I guess my final question is this: President and Mrs. Clinton are American citizens, are they not?
Mr. Nussbaum. Yes, they are.
Senator Boxer. Do they not have the rights of any other individual?
Mr. Nussbaum. I believe so.
Senator Boxer. Does every individual in this country have a right to have their personal papers that refer to their private business?
Mr. Nussbaum. Yes.
Senator Boxer. And wasn't that what you did, you sent them their private papers and you suggested it go to their private attorney?
Mr. Nussbaum. That's correct.
Senator Boxer. Thank you very much.
Mr. Nussbaum. Thank you, Senator.

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The Chairman. Thank you, Senator.
Senator Shelby?
Senator Shelby. Thank you, Mr. Chairman.
Good morning, late morning anyway, Mr. Nussbaum.
Mr. Nussbaum. Good morning, Senator.
Senator Shelby. Mr. Nussbaum, if someone controls anything, isn't that central to the outcome, is control central to the outcome of the transaction?
For example, if someone controls something, you can just about predict the outcome, can't you?
I'm asking you an abstract question, but this is basically a given, isn't it?
Mr. Nussbaum. Yes, to some extent.
Senator Shelby. That's what I'm asking you. Thank you.
So I want to follow up with this, Mr. Nussbaum. Who controlled the investigation of Mr. Foster's death, the Department of Justice, the FBI, the Park Police, or you?
Mr. Nussbaum. I did not control the investigation of Mr. Foster's death. I was responding to inquiries made by investigators, namely the Park Police and the Justice Department and the FBI. That is not control.
Senator Shelby. Who, Mr. Nussbaum, decided how the search would be conducted? The Department of Justice, the FBI, the Park Police, or you?

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Mr. Nussbaum. I decided in the first instance how the search would be conducted, but after the search was conducted, if there was any disagreement, or any feeling that it was inadequate in any way, there was a

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number of
[5] remedies available to the Justice Department and other law
[6] enforcement agencies.
[7] Namely, they could subpoena things, they could ask for
[8] search warrants, which of course there was no basis in this
[9] case to ask for. There's a number of things that could have
[10] been done by them if they felt that the search was
[11] inadequate in any way or correct processes were not being
[12] followed.
[13] I did not control the law enforcement process.
[14] Senator Shelby. But you controlled the basics of all of
[15] it.
[16] I want to go on.
[17] Mr. Nussbaum. I disagree with that, Senator, as you
[18] know.
[19] Senator Shelby. I think it's an important question.
[20] Did you decide, Mr. Nussbaum, as White House counsel, to
[21] have your associates in the White House Counsel's office sit
[22] in on the interviews conducted by the Park Police and the
[23] FBI, did you?
[24] Mr. Nussbaum. Yes.
[25] Senator Shelby. Who decided, then, Mr. Nussbaum, or let

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[1] me rephrase that.
[2] Strike that.
[3] Mr. Nussbaum. There was no objection, Senator.
[4] Senator Shelby. Who decided when the note that was
[5] found would be turned over to the investigators?
[6] Did you decide that?
[7] Mr. Nussbaum. Yes, I did.
[8] Senator Shelby. Who controlled basically the
[9] investigation of Mr. Foster's death?
[10] Mr. Nussbaum. The investigators, not me.
[11] Senator Shelby. Not you? You had nothing to do with
[12] it?
[13] Mr. Nussbaum. I didn't control the investigation. I
[14] was responding to inquiries, producing documents, providing
[15] interviews, and also turning over the note.
[16] We were cooperating with the investigators in an intense
[17] but sensible fashion.
[18] Senator Shelby. But going back to the abstract question
[19] I asked you, and you answered it in the affirmative when I
[20] said basically control of anything is tantamount to the outcome
[21] of that particular transaction.
[22] I think it would apply to you in this situation.
[23] Mr. Nussbaum. But I just told you, I didn't control.
[24] Senator Shelby. That was your opinion?
[25] Mr. Nussbaum. That's correct. It's also the truth.

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[1] Senator Shelby. Mr. Nussbaum, let me go on with some
[2] more questions.
[3] You were counsel to the House, the U.S. House of
[4] Representatives Judiciary Committee during the Watergate
[5] investigation in 1974, I believe it was.
[6] Mr. Nussbaum. Yes, I was the senior person on the
[7] staff, that's correct.
[8] Senator Shelby. Absolutely.
[9] Mr. Heymann, was he also working over there?
[10] Mr. Nussbaum. As Senator Sarbanes pointed out
[11] yesterday, he was working for the special prosecutor.
[12] Senator Shelby. Now Mr. Heymann said that you were not
[13] in a position, in his testimony, to be the referee
[14] concerning access to Mr. Foster's documents.
[15] Why were you the right person to be the referee?
[16] Mr. Nussbaum. Because, as I said in my statement
[17] yesterday, Senator, every single day of the year, tens of
[18] thousands of lawyers all over the country act as referees
[19] when it comes to producing, when it comes to reviewing and
[20] producing documents.
[21] The normal way people get documents, the normal way law
[22] enforcement gets documents, the normal way documents are
[23] produced in civil litigation, is for a subpoena to be sent
[24] or some other process to be sent.
[25] And then what happens is the lawyer on the other side

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[1] acts as a referee. He gathers the documents, he reviews the
[2] documents, he decides what's privileged, what's not
[3] privileged. He does all those things. He acts as a
[4] referee.
[5] All I was doing is what lawyers do every day all over
[6] the United States.
[7] And Mr. Heymann has just sort of a misconception.
[8] Senator Shelby. Lawyers every day don't have the power
[9] or the perception of power as counsel at the White House
[10] that you did.
[11] Mr. Nussbaum. If I can just finish.
[12] Senator Shelby. Go ahead.
[13] Mr. Nussbaum. Lawyers every day do what I was doing on

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[14] that day, and Mr. Heymann just sort of misperceives it when
[15] he says a lawyer has a stake in the matter and therefore
[16] cannot act as a referee.
[17] Senator Shelby. Mr. Nussbaum, during the Watergate
[18] situation, didn't the White House counsel at that time want
[19] to be the referee over which tapes, the Nixon tapes, would
[20] be turned over to the Watergate prosecutor? That was
[21] central to the situation.
[22] Is that right?
[23] Just refresh your memory?
[24] Mr. Nussbaum. I'm glad we can talk about that, Senator,
[25] because in Watergate –

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[1] Senator Shelby. I don't want to talk about it. I want
[2] you to answer my question.
[3] Mr. Nussbaum. I've got to talk about it to answer your
[4] question, Senator.
[5] In Watergate, the White House resisted, bitterly
[6] resisted until the Supreme Court ordered it to turn over the
[7] tapes and other documents.
[8] In this case, in the Clinton White House, what happened
[9] was, while I protected the right to assert privilege, no
[10] privilege was ever asserted. So contrary to the Nixon White
[11] House, the Clinton White House one, preserved every
[12] document, there's no 18 and a half minute gap. Number two,
[13] turned over every document that law enforcement requested.
[14] And number three, cooperated fully with law enforcement.
[15] That's the difference, Senator, between Watergate and
[16] what is now known as Whitewater.
[17] Senator Shelby. How could you assert what you just
[18] said, knowing that you helped orchestrate the dispersal of
[19] the documents everywhere, the papers everywhere, stonewalled
[20] a real investigation until there was no need for a real
[21] investigation because there's probably not much there?
[22] How could you do that?
[23] Mr. Nussbaum. You know something? I agree with you.
[24] There's no much there.
[25] Senator Shelby. After you got through with it.

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[1] Mr. Nussbaum. No, no, before it began. There was not
[2] much there before I started and there's not much there now.
[3] Nor will there be much there if you have hearings for
[4] another six weeks or eight weeks.
[5] Senator Shelby. Did you preserve the index to Mr.
[6] Foster's files that the secretary talked about here as
[7] missing?
[8] Mr. Nussbaum. I know, Senator Shelby, of no index. I
[9] know personally of no index, but apparently you do have an
[10] index contained on a computer disk with respect to the files
[11] in Mr. Foster's office.
[12] Senator Shelby. It's missing, though. You said nothing
[13] was missing, and that was obviously missing.
[14] Mr. Nussbaum. Nothing is missing as far as I know.
[15] Senator Shelby. Sure, that was missing. That's in
[16] dispute.
[17] We had sworn testimony before this Committee, saying
[18] that she made an index and it's missing, and it could be
[19] central to what people are looking for.
[20] Mr. Nussbaum. But she also testified that she used her
[21] computer and her index, that there is apparently an index on
[22] her computer.
[23] Senator Shelby. Well, we're not sure about that.
[24] I wanted to ask you some other things.
[25] I want to put some notes up.

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[1] Are you familiar with Mr. Gearan at the White House?
[2] Mr. Nussbaum. Yes.
[3] Senator Shelby. I'm sure you've seen these notes, that
[4] he testified under oath that he contemporaneously made, at
[5] 11:45 a.m., July 29th, 1993, dealing in a party call,
[6] conference call with Phil Heymann, Dave Gergen and himself.
[7] You're familiar with this, are you not?
[8] Mr. Nussbaum. No, I'm not. I mean, I know there are
[9] notes. I wasn't involved in that phone call.
[10] Senator Shelby. Would counsel give him a copy of these?
[11] It's just four pages, if they would. I just want to refer
[12] to parts of it, if I can.
[13] These are notes that Mr. Gearan testified under oath
[14] that he made, as I said, in a conversation with Mr. Heymann.
[15] I'll refer you to page three.
[16] And these are Phil Heymann's words that he took down,
[17] basically in all stages, if we can go to page three.
[18] Basically in all stages controlled in all ways. In other
[19] words, he was talking about you, the White House

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counsel.
They don't feel they can say, and that is the Park Police
and the FBI, they've conducted an inquiry. Much too much
control from the beginning of investigation, Mr. Nussbaum.
This is Phil Heymann again. It was a mistake to rely on
silence on low level investigators when dealing with a high
level case like this.

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Mr. Heymann, who you said was a man of principle,
integrity, and intellect.
Mr. Nussbaum. That's correct.
Senator Shelby. These are his words and his
observations of what you were doing at the White House,
controlling or thwarting the whole investigation.
Now I'll go on, on to page four, if I can. The Gearan
notes.
Dave Gergen, D.G. We need, if I can, we need, if and
when Park Police releases notification for response. Phil
Heymann, absolutely. I'll set it up.
And then at the end, Phil Heymann, documents have been
distributed over my objections.
This is the Deputy Attorney General of the United
States.
And you're saying now you didn't control this
investigation?
Mr. Nussbaum. Yes, Senator, I'm saying I didn't control
this investigation. And all that proves is that a person of
great principle and integrity can sometimes be wrong.
Senator Shelby. Even this morning, do you, searching
your memory, not recall Phil Heymann's conversation with you
when you said, I'll call you back? Will you let me know?
And you didn't recall that, a man of your intellect? You
don't recall that, seriously?

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Mr. Nussbaum. I want to thank you for the nice
compliment, Senator. No, I don't recall.
Senator Shelby. You don't recall that?
Mr. Nussbaum. I don't recall promising to call him
back. I may have, but I don't recall.
Senator Shelby. What troubles me, and I know my time's
about up, is why, Mr. Nussbaum, did you, a lawyer of
experience, Watergate experience, a former [illegible]
lawyer,
consciously, I believe, perhaps willfully, contaminate this
whole investigation?
The Justice Department I believe never had a chance to
do a thorough or complete investigation. Their papers have
disappeared. You know it, we know it.
Mr. Nussbaum. No papers have disappeared.
Senator Shelby. Yes, they disappeared. You've
dispersed them. You said they've been distributed.
Mr. Nussbaum. That's not disappearing, every paper was
preserved, no paper disappeared.
Senator Shelby. That's in dispute. You obviously had a
lot to hide, as Mr. Heymann asked you, did you have a lot to
hide.
Mr. Nussbaum. That is false. We had nothing to hide.
Senator Shelby. And you succeeded in doing it too well.
Mr. Nussbaum. I didn't hide anything, I didn't succeed
in hiding anything. I had nothing to hide. Every document

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was preserved, nothing was destroyed. Every document that
law enforcement requested was given to them, some right
after Mr. Foster's death and some later when the Whitewater
investigation –
Senator Shelby. You controlled the investigation and
you dispersed the documents.
Mr. Nussbaum. I acted in a proper fashion.
Senator Shelby. And you know you did.
Mr. Nussbaum. I acted in a proper fashion. I acted as
a good lawyer is supposed to act, and I'm proud of my
conduct.
Senator Shelby. You're proud of your conduct?
Mr. Nussbaum. Absolutely.
Senator Shelby. You'd probably be the only person in
America who'd be proud.
Mr. Nussbaum. I don't think so, Senator. I don't think
so.
Senator Shelby. My time is up.
The Chairman. Senator Sarbanes?
Senator Simon. Mr. Chairman, if you could yield just
for 30 seconds?
Senator Sarbanes. I yield to Senator Simon.
Senator Simon. I think it should be put in the record
that when Mr. Heymann was asked did Mr. Nussbaum act
[illegible] he said absolutely.

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The Chairman. It is in the record. Obviously, the testimony of all of our witnesses, and we will review all of it.

(Pause.)

Senator Sarbanes. I'm going to yield to Senator Kerry but just before I do that, I think for the sake of the record, in light of some of the questioning that was just put, in Mr. Heymann's testimony, here before the Committee, he was asked:

And I understand your testimony is that the Park Police in that interim did not complain to Mr. Margolis about the White House cooperation?

Mr. Heymann: That's correct.

Now, following the search on the 22nd, you understood, did you not, from Mr. Adams and Mr. Margolis, when they reported back to you that Mr. Nussbaum had designated documents and items to turn over to the Foster family attorney.

Mr. Heymann: Yes.

Question: And you weren't surprised by that, I take it?

Mr. Heymann: I wasn't surprised.

And then later they also discussed turning over the personal documents relating to the Clinton's. Now that dispersal of documents took place after the search, not before the search, isn't that correct?

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Mr. Nussbaum. That's correct, Senator.

Senator Sarbanes. So this movement of documents out of the office was subsequent to and after the session at which the law enforcement officials were present?

Mr. Nussbaum. That's correct.

Senator Sarbanes. The session at which you went through what the documents were and they indicated which ones they had an interest in?

Mr. Nussbaum. That's right.

Senator Sarbanes. Senator Kerry?

Senator Kerry. Mr. Chairman, does my clock begin now?

The Chairman. Your time is running.

Senator Kerry. Mr. Nussbaum, I'd like to follow up, if I can, on some of the questions Senator Shelby was asking you, so I can understand better the framework of some of the confrontation between you and he on that question of what happened.

When you piled the documents or separated the documents for dispersal to the personal attorneys, you took all the personal documents, is that correct, at that time?

Mr. Nussbaum. First, I took the Foster personal documents and started piling them up.

Senator Kerry. You gave those to Attorney Spafford, correct?

Mr. Nussbaum. That's correct.

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Senator Kerry. You then took the next group of documents, which were the personal documents of the Clinton's, correct?

Mr. Nussbaum. Yes, I did take those.

Senator Kerry. And you put those in a pile?

Mr. Nussbaum. At some point, I did that. I didn't do that during the search.

Senator Kerry. No, I realize that. You did that after the search?

Mr. Nussbaum. After the search, I put those in a pile, yes.

Senator Kerry. And those were then put in a box and given to Maggie Williams?

Mr. Nussbaum. That's correct, Senator.

Senator Kerry. Did you look at every single file that went into that box?

Mr. Nussbaum. I didn't read every single file. I believe I glanced–

Senator Kerry. Could you make a list afterwards of every file that was in the box?

Mr. Nussbaum. No, I did, did I personally make a list of every –

Senator Kerry. Could you have made a list? Could you, by memory, make a list of every file that went in the box?

Mr. Nussbaum. No, I could not, by memory, make a list.

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Senator Kerry. Did you make a list of all the files that went in the box?

Mr. Nussbaum. I did not make a list.

Senator Kerry. Did you, subsequent to those files leaving that office, revisit those files at any time in the future?

Mr. Nussbaum. No, I did not.

A list was made, by the way, Senator, by the lawyers who received the files, but I did not make a list.

Senator Kerry. I understand.

But the list that they made was a list that was made when they received the files?

Mr. Nussbaum. That's correct, Senator.

Senator Kerry. So from the time that the files left you

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until the time the lawyers received the files, you are actually incapable of saying whether or not the same group of files arrived. You just don't know the answer to that in fact?

Mr. Nussbaum. Yes.

Senator Kerry. So when you sit here and say, I can tell the American people that no file left or no file was removed, you don't know that?

Mr. Nussbaum. Senator, I know the people, I know the people I was handling –

Senator Kerry. That's not what I'm asking you.

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Mr. Nussbaum. Well, I do –

Senator Kerry. You don't know about the files?

Mr. Nussbaum. Well, I think I do know, Senator.

Senator Kerry. Well, you're making, you're making a total assumption.

Mr. Nussbaum. Yes, I'm making an assumption.

Senator Kerry. As a lawyer, in terms of chain of custody, in terms of understanding the security, can you not see the complaint here that is raised by the police? You don't see the complaint?

Mr. Nussbaum. They're not complaining that I didn't make up a list – they didn't –

Senator Kerry. They're complaining, Mr. Nussbaum, that they don't know what happened to files. You don't see that, do you?

Mr. Nussbaum. No, I don't see that, Senator, because I don't think they're making that complaint.

Senator Kerry. Well, if you don't have a list of files, and the files leave your possession as a counsel, and they subsequently turn up several days later and lawyers then make a list, who is to say? This is what the police are saying, but you don't see that?

Mr. Nussbaum. People normally send files to their client or to their client's personal lawyer. He's my client in an official capacity, but – let me –

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Senator Kerry. But when they do that, don't they know what files they're sending?

Mr. Nussbaum. I knew I was sending over personal files.

They don't necessarily make a list, an index at that point.

It was necessary for me to do so. I was handing the files to people I trusted, Maggie Williams and the Clinton's, if they wanted to see them, which they didn't.

Senator Kerry. I understand that.

Mr. Nussbaum. Those files were then delivered, shortly thereafter, Senator, to the personal attorneys who did make an index of the files as they came in.

Senator Kerry. But you see, counselor, the great issue here. Look, I didn't make up this issue. I didn't create this, nor did any of us here, but we're all trying to sort through to find out what happened.

Mr. Nussbaum. Nor did I, Senator.

Senator Kerry. I know that, but you're making a very, very sweeping, overall statement to the effect that something didn't happen.

Mr. Nussbaum. I'm making, I'll tell you what I'm making it on. I'm making it on the basis of, one, what I did, and two, my knowledge of the people to whom I handed the files, and three, on the basis of what they're saying, which I trust, and four, on the basis of the fact that the files.

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when they got to Williams & Connolly, were indexed at that point.

I think that is a sufficient basis, Senator – you may not think so, and obviously you're going to disagree –

Senator Kerry. It's not a question of what I think, it's a question of whether or not there is a legitimacy to the questions raised by others whose job it was to have accountability.

And they're asserting that because of that, they don't have that accountability.

And you don't see, or you seem to disavow the legitimacy of that notion of the question of accountability.

Let me ask one other question, because I'm going to run out of time. I think the answers probably stand on their face.

I don't want to dismiss your ability to say something more if you want to, but I think –

Mr. Nussbaum. No, no. The point I was sort of making before is, number one, I don't know if it responds totally to what you're saying, number one, the search was over.

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[21] Number two, Mr. Adams knew, as he's testified, that the
[22] Clinton personal files were going to be transferred to the
[23] Clinton's personal attorneys. Number three, there was no
[24] objection to this. Number four, no one asked me to make an
[25] index or a log to do this.

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[1] Now it's true, sitting back today, if you could foresee
[2] the future, if you can say, you know something? You're
[3] going to be at a Congressional hearing in the summer of
[4] 1995, and this is issue would be raised, would it be better
[5] to have made such an index or not? Yes.
[6] One can argue, sitting here now, that it would have been
[7] better, but it wasn't necessary at the time. No one could
[8] foresee the future in that way.
[9] Remember, Senator, as I said in my statement,
[10] Whitewater, this all arises out of Whitewater, the
[11] Whitewater file, Whitewater, Senator, was on no one's mind
[12] at the time.
[13] Senator Kerry. See the great gap between a lot of folks
[14] and you on this, Mr. Nussbaum, and we all have great respect
[15] for your legal capacity, but the great gap here is just a
[16] sense people have that here was Phil Heymann, here were
[17] other people saying, don't do it this way, do it that way,
[18] and then all of a sudden, you know, there seems to be the
[19] lack of that accountability.
[20] Now I, let me ask another question that was raised by
[21] your testimony yesterday.
[22] You said that none of the work that was done, and I
[23] agree with this, you were representing the presidency, not
[24] just the President as a person, but the presidency and the
[25] President in his official function.

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[1] Mr. Nussbaum. That's correct.
[2] Senator Kerry. And you've said that the documents that
[3] were there were there because they had an official
[4] relationship to official things in the public sector.
[5] Mr. Nussbaum. The personal files were needed for
[6] official purposes, yes.
[7] Senator Kerry. The personal files were part of the need
[8] to be able to answer questions that could arise by virtue of
[9] the President's need to have public disclosure that involved
[10] certain personal information?
[11] Mr. Nussbaum. They were needed for functions that were
[12] virtually completed or had been completed at the time of
[13] Foster's death.
[14] Senator Kerry. All functions, this is what I want to
[15] understand, you're saying all functions were completed at
[16] the time of Mr. Foster's death?
[17] Mr. Nussbaum. The only thing that remained, as I
[18] recall, is a signature was needed for the blind trust, but
[19] all other of those functions had been completed.
[20] Senator Kerry. So you're saying that even though the
[21] President was still President, you were still counsel, and
[22] all of these issues of disclosure and public concern were
[23] on-going, the fact that Vince Foster died merited all of
[24] those files being transferred to personal lawyers?
[25] Mr. Nussbaum. No. It was a combination of things.

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[1] It was the fact that Vince Foster died, and he had the
[2] most knowledge of these matters. He had been working with
[3] them. He'd been working, excuse me, with personal lawyers
[4] on these matters, and these matters, for the time being, at
[5] least, had come to a conclusion and I felt in the future
[6] that –
[7] Senator Kerry. Why wouldn't you reassign that to
[8] another counsel in the office?
[9] Mr. Nussbaum. Because, well, that was a possibility,
[10] but Foster was the one who had the knowledge. And the only
[11] other person who had significant knowledge with respect to
[12] this matter was Bob Barnett of Williams & Connolly. And I
[13] just felt it best at this point, with Foster dead and with
[14] these things completed now, the financial disclosure, the
[15] tax returns, blind trust completed that, in the future, let
[16] Bob Barnett just handle these things. We didn't have
[17] anybody like Vince who had this kind of knowledge, and I
[18] made that judgment.
[19] Now it's true, Senator, I could have made a decision,
[20] but Steve Neuwirth is up to speed on all these personal

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matters, let somebody else get up to speed, so they could assist in these official functions. I just didn't want, my feeling was sort of overwhelming that I just didn't want us to be working anymore not on these official matters which required the used of personal

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files. We were still going to assist in the future, but I wanted the bulk of the work now to be done by Barnett and people outside the office. Senator Kerry. The distinction was really the on-going relationship that Vince Foster had had with those issues? Mr. Nussbaum. Yes. Senator Kerry. And at this point, you saw a juncture of transition? Mr. Nussbaum. Correct. He had knowledge, you know, which he had before he became Deputy Counsel. His knowledge base was now gone with his unfortunate death. Senator Kerry. Fair enough. Okay. Mr. Nussbaum. And I made that judgment. That was the judgment I made and I acted on that judgment. Senator Kerry. I understand. Fair enough. Thank you very much. Thank you, Mr. Chairman. Mr. Nussbaum. Thank you, Senator. The Chairman. Let me make an observation, if I might, and ask the White House people. Yesterday, or the day before, a request was put forth by Senator Bond. He renewed it as it related to the mainframe and those materials that could be obtained from it. White House counsel indicated that they would like a

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letter from us and that they had informally agreed and assured us that they were going to do this, and it would mean whether the FBI could get this information, and it is relevant at this point because there's a question about whether or not there's a missing indices, and whether or not they can retrieve [illegible]. And that goes to the issue that Senator Kerry raised as it relates to the question of what documents were distributed and was there, as a result of the manner and the distribution and the people who handled and didn't handle them. Mr. Nussbaum, I have to say, and I'm not asking you for an answer, I don't see how you are in a position to know that all of the documents were thereafter turned over to various people because you are not the custodian and did not have the absolute ability to control. You have indicated that certainly you have trust and confidence in various people but that is at issue here, and it certainly was something that Mr. Heymann regarded, referred to or the notes referred that he was concerned about the distribution. So we're attempting to get the mainframe or to find out whether or not it can produce the indices that Mrs. Gorham seems to indicate were not there. And my request to the White House people is, please, let

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us know. Now we have gone on record, as you've indicated, by sending a letter from the Committee. We'd like to know if you're going to undertake this, and if you're going to have the Bureau do it. You know, we have every reason to believe you are, but I think we're entitled to an answer this afternoon, early in the afternoon. Otherwise, we have to do other things, but if we could get that from a representative of the White House, I'd be very appreciative. Senator Murkowski? Senator Murkowski. Thank you, Mr. Chairman. Might I inquire as to the time I have available? The Chairman. It's started, ten minutes. Senator Murkowski. Thank you. Mr. Murkowski. I welcome you to the Committee. You look rather comfortable in that chair, although I suspect you've had enough of it by now. [illegible] a number of issues in connection with your search of Mr. Foster's office on the 22nd of July.

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1993. And I would ask that Mr. Foster's briefcase be carried down to the witness stand and made available at this time.

Now, in your deposition, you indicated on page 221 and 222, and I quote:

"I believe I had emptied the briefcase of all the files.

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I don't remember seeing anything else in the briefcase. I didn't see scraps of paper, I didn't remember seeing scraps of paper in the bottom of the briefcase. By reaching in, I felt I had emptied the briefcase of all its files."

Mr. Nussbaum, would you identify the briefcase in question?

Mr. Nussbaum. Let me just get my briefcase out of the way, Senator.

Mr. Murkowski. That's fine.

Mr. Nussbaum. We don't want to confuse two briefcases.

Mr. Murkowski. Do we have the other briefcase there?

Mr. Nussbaum. This is it, Senator.

Mr. Murkowski. Do you recognize that briefcase?

Mr. Nussbaum. Yes. Yes, Senator, I recognize this briefcase.

Mr. Murkowski. And is that Mr. Foster's briefcase?

Mr. Nussbaum. Yes, this is Mr. Foster's briefcase.

Mr. Murkowski. Do you maintain the version of your search of the briefcase and basically what you saw? Having the briefcase doesn't bring back any reflection on finding a note or seeing anything, so everything stands as is, right?

Mr. Nussbaum. Everything stands as is, Senator.

Mr. Murkowski. Okay.

Do you recall whether you actually looked inside the

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briefcase, looked all the way to the bottom?

I wonder if you'd show us how you think you may have satisfied yourself that there was nothing in the briefcase?

Mr. Nussbaum. What I did is I to[illegible]he briefcase from behind me, pulled it to the side o[illegible] –

Mr. Murkowski. Were you sitting[illegible]vn or standin[illegible] up?

Mr. Nussbaum. I think I was sitting down or half-sitting.

Mr. Murkowski. Can you show us kind of how you, just pick the briefcase up. We're interested in knowing how you looked in it to ascertain that it was empty?

Mr. Nussbaum. Sure, Senator. We'll do this again.

Mr. Murkowski. That's fine, you're doing fine.

Mr. Nussbaum. The briefcase was against the wall – I'm not speaking into the microphone – was against the wall. I reached back, I brought it up to me, to my side, I then reached in, and I saw it was full of files, I then reached in, picked up the files, and put them on the desk.

Mr. Murkowski. How many files were there, do you recall?

Mr. Nussbaum. A number. I don't recall.

Mr. Murkowski. Did you make two trips or did you get it all in one?

Mr. Nussbaum. I may have made two trips. I may have.

I think I did make two trips. I, you know, it's vague, but

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I reached in, pulled the files up, put them on the desk, and then I glanced down and it was clear to me that I removed all the files.

And then I just turned to describing the files.

To answer your question, I don't remember looking back and looking into the bottom of the briefcase.

Mr. Murkowski. Did you ever remove the briefcase up off the floor?

Mr. Nussbaum. I don't remember doing that.

Mr. Murkowski. As far as you remember, you left it on the floor and you just pulled out the files on a couple of trips?

Mr. Nussbaum. That's correct.

Mr. Murkowski. And have you looked into the briefcase to see if there's anything that would obstruct notes that were found later as we –

Mr. Nussbaum. Have I looked into it when? Did I look into it just now?

Mr. Murkowski. Well, would you look into it now and satisfy the Committee that it's a pretty clean briefcase it ha[illegible] a divider that's sewed to the bottom?

Mr. Nussbaum. But what happens, as you know, Senator, it sort of slams shut.

Mr. Murkowski. Yes, but to get anything out, you have to open it up.

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Mr. Nussbaum. It doesn't stay open, it slams shut.

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So
that may well have happened when I pulled out the files.
Mr. Murkowski. Okay. So you're not sure then whether
or not you looked directly into the bottom of the briefcase?
Mr. Nussbaum. That's correct.
Senator, let me say this to you, Senator, please.
Mr. Murkowski. Sure.
Mr. Nussbaum. I know you've been very kind and gentle
in your questioning, Senator, but let me just say this.
Mr. Murkowski. But my time's running, go ahead.
Mr. Nussbaum. Senator, I don't know if you were here
yesterday when I said this because I recognize you're very
busy and everybody comes in and out, but Senator, there's no
one in the world who wanted to find those scraps of paper in
that no more than me.
Mr. Murkowski. Okay.
Mr. Nussbaum. I described a conversation with Lisa
Foster yesterday, how important it was for us to know. I
would have been delighted – delighted is a bad word again.
I used it yesterday – to find a note on that day, Senator.
So there was no effort to avoid looking into the bottom or
finding those scraps of paper. It would have pleased me no
end, and I think it would have made it easier for Mr. Foster
if, before the funeral, which took place the next day, we
would have found those scraps of paper, Senator.

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Mr. Murkowski. All right. Let me continue, Mr.
Nussbaum.
For the past three weeks, this Committee's heard
testimony from numerous witnesses concerning the handling of
that particular briefcase on the 22nd.
Bill Burton, Mac McLarty, former Chief of Staff, told
this Committee on Monday that while he was standing behind
you, when you were sitting at Mr. Foster's desk, and after
you had taken the files from the briefcase, he could see a
yellow post-it paper, that's that sticky stuff, yellow, and
paperclips in the briefcase. He could see it standing
behind you, even though, as you indicated, that briefcase
kind of does close.
So it's obvious you overlooked it.
Further, FBI agent Scott Slater told us that you had
pulled the briefcase apart somewhat and held it up to
everyone in the office to show that it was empty.
Do you remember that?
Mr. Nussbaum. No.
Mr. Murkowski. No recollection at all?
Mr. Nussbaum. I've no recollection of that at all.
Mr. Murkowski. So you can't, you can't recreate
something you don't remember.
How about Park Police Sergeant Peter Markland, who told
this Committee that you spread the briefcase apart after the

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files were removed, tilted the briefcase, and announced to
the people who were present that the briefcase was empty?
Do you remember that?
Mr. Nussbaum. No, I don't remember that.
Mr. Murkowski. So you can't recreate for us how that
happened?
Mr. Nussbaum. That did not happen.
Mr. Murkowski. Yet, the statement was made that it did
happen.
Mr. Nussbaum. He also made a statement with respect to
where people were located in the room, which was clearly
wrong.
Mr. Murkowski. You don't remember anybody being located
in the room?
Mr. Nussbaum. No, he – yesterday, a diagram was shown
to me by Detective Markland sort of positioning people in
the room and he was clearly wrong as to where people were
positioned in the room. He made an honest mistake about
that. He's making an honest mistake I presume about this.
Mr. Murkowski. A Commander of the Inspection Services
of the Park Police, Robert Hines, agreed with Captain Hume's
statement. He also remembers you looking into the
briefcase. He indicated that if he was searching the
briefcase, or if any other police official was searching the
briefcase, the scraps of paper would have been found.

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And Commander of Inspection Services of the Park Police.

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[2] Robert Hines, agreed with Hume's comment that, quote, "our
[3] oldest, blindest detective would have found that note." But
[4] you have no recollection of any of these witnesses who said
[5] that you opened the briefcase, you spread the briefcase, you
[6] made a reference to the fact that it nothing was in it, is
[7] that correct?
[8] Mr. Nussbaum. Yes.
[9] Mr. Murkowski. Now, the thing that's rather
[10] extraordinary, and you have to admit it's perhaps
[11] coincidental, but just about every law enforcement official
[12] appears to have seen you look at the briefcase, indicate
[13] that the briefcase was empty, yet your testimony states that
[14] you didn't see any scraps of paper in the briefcase on the
[15] 22nd.
[16] You don't recall the law officials making these general
[17] statements?
[18] Mr. Nussbaum. I just told you, Senator, I would have
[19] been delighted to have seen the scraps of paper. I wanted
[20] to find it more than anyone else on the earth at that time.
[21] We had a funeral the next day. People did not know why
[22] Vince died. There was absolutely no reason for me not to
[23] want to discover the scraps of paper, to put them together,
[24] to see that handwritten list.
[25] I wanted it, I wanted it for my sake, I wanted for the

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[1] White House's sake, I wanted it for Lisa Foster's sake.
[2] Mr. Murkowski. I understand.
[3] Mr. Nussbaum. So all the speculation and all this
[4] paranoia, if I can use it, is misconceived. It's wrong.
[5] Mr. Murkowski. Well, I appreciate your recollection of
[6] it as compared to the recollection of other witnesses before
[7] the Committee who claim obviously a different version and
[8] have given testimony to this Committee of such.
[9] Now we've had testimony from Mr. Foster's secretary that
[10] she saw something yellow in the briefcase. Bill Burton saw
[11] yellow paper in the briefcase. I can't understand how, you
[12] know, cavalierly, you could have [illegible] put
[13] your hands in the briefcase, took out the files, and at some
[14] other time didn't look back in the briefcase.
[15] You didn't allow anybody else to look in the briefcase.
[16] Nobody else asked and you didn't.
[17] Mr. Nussbaum. No, I didn't prevent anybody from looking
[18] at the briefcase.
[19] Mr. Murkowski. Nobody asked?
[20] Mr. Nussbaum. Nobody asked.
[21] If somebody said, open the briefcase, I want to look in
[22] the bottom, of course I would have done that, absolutely I
[23] would have done that. I had no reason not to do that,
[24] Senator.
[25] There was no conceivable reason why I would not want to

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[1] find those scraps of paper that day. That's why all these
[2] recollections are sort of almost beside the point. Some of
[3] them are inaccurate, I believe, but they are besides the
[4] point. I wanted to find a note that day. I wanted to find
[5] scraps of paper that day.
[6] And when I found them, or when Steve Neuwirth found them
[7] on the 26th, we were happy because now we had an insight
[8] into what was bothering Vince, and I would have liked that
[9] insight before I flew away to Arkansas the next morning, the
[10] 23rd, to go to Vince's funeral.
[11] Mr. Murkowski. My last question. Mr. Nussbaum, you
[12] remember Michael Spafford, the Foster family attorney, told
[13] this Committee that on the afternoon of the 22nd, after law
[14] enforcement officials had left Mr. Foster's office, that
[15] Cliff Sloan had picked up the briefcase, was looking into
[16] it, and told you that there were scraps of paper in the
[17] briefcase and he testified that you essentially said, quote,
[18] don't worry about it, unquote.
[19] Now I gather you don't remember that conversation
[20] either?
[21] Mr. Nussbaum. Nor does Cliff Sloan, and Cliff Sloan is
[22] a person with a photographic, a phonographic memory, I'll
[23] use the word phonographic memory, as well as photographic
[24] memory, and he I think would remember that

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conversation.
[25] Obviously memory is playing tricks on some of us.

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[1] Mr. Murkowski. And it is on Mr. Spafford as well?
[2] Mr. Nussbaum. I don't think it's playing tricks on Mr.
[3] Sloan and myself; I think in this instance, it's playing
[4] tricks on Mr. Spafford, who is a good and decent and honest
[5] person and I'm sure he's telling his best recollection as he
[6] sees it.
[7] Neither Sloan nor I remember that conversation.
[8] Mr. Murkowski. In your opinion, is the note that was
[9] found, Mr. Foster's note, is that a suicide note, or does
[10] that note really reflect on the circumstances that were
[11] bothering Mr. Foster with regard to the Travelgate issue, in
[12] your opinion, best opinion?
[13] Mr. Nussbaum. In my best opinion, it's a list of things
[14] that were clearly bothering Mr. Foster in this time frame.
[15] It reflected a lot of anguish, especially the last line and
[16] the reference to the Wall Street Journal editorials. It's
[17] probably not a suicide note, but it is a list of things
[18] reflecting despair and anguish.
[19] And it is the kind of thing, that if I had found on the
[20] 22nd, and believe me, I wish I had, I wish I had, if I had
[21] found on the 22nd, I would have turned over immediately to
[22] law enforcement authorities.
[23] Mr. Murkowski. There was a period of time when you
[24] found the note and kept the note.
[25] Mr. Nussbaum. That's correct.

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[1] Mr. Murkowski. So you really didn't mean to turn it
[2] over immediately because you kept them over night.
[3] Mr. Nussbaum. I would have turned it over immediately
[4] on the 22nd, because that was my agreement with law
[5] enforcement authorities if we found something like that to
[6] do it.
[7] But when it was found on the 26th, and I saw it, I
[8] believed that Lisa Foster and the President should have an
[9] opportunity to see it because, as I said, common decency,
[10] and I didn't see any harm in waiting 24 hours before turning
[11] it over and letting them see it before it gets into the
[12] press.
[13] Mr. Murkowski. Well, but it clearly wasn't immediate,
[14] because you found it about Monday early afternoon, didn't
[15] turn it over until late Tuesday?
[16] Mr. Nussbaum. Correct, Senator, for the reasons –
[17] Mr. Murkowski. And finally –
[18] Mr. Nussbaum. – for the good and sufficient reasons I
[19] gave.
[20] Mr. Murkowski. I understand.
[21] Finally, in your best opinion, knowing Mr. Foster, this
[22] in your opinion, the note in question was not a suicide
[23] note?
[24] Mr. Nussbaum. Yes, it was not a suicide note. It
[25] doesn't say, goodbye cruel world.

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[1] Mr. Murkowski. Thank you.
[2] Senator Boxer. Mr. Chairman, may I make a point of
[3] procedure?
[4] The Chairman. Yes.
[5] Senator Boxer. May I ask you?
[6] The Chairman. Certainly.
[7] Senator Boxer. At what point does Mrs. Foster get back
[8] that briefcase?
[9] We've come at – maybe I'm the only one who's a bit
[10] offended by this, but I have to tell you, Mr. Chairman, if
[11] that was a loved one of anyone of ours, and see this thing
[12] coming out that he held and he touched and he brought to
[13] work everyday, and it's brought out here pretty clearly to
[14] make the front page of the paper, I just, I'm offended by
[15] it, and I wonder at what point are we through with this for
[16] our work, and when it can go back to her, if Mr. Starr is
[17] finished with it, Mr. Chairman.
[18] Mr. Murkowski. May I respond? Let me make the comment
[19] that I think this is a critical piece of evidence.
[20] The Chairman. No, no. Senator, Senator, please.
[21] Let me make the observation that a writing which may
[22] have reflected on why Mr. Foster took his life, and
[23] certainly this writing demonstrates some distress on his
[24] part, was the object of an intensive concern by family, by
[25] loved ones, by people who worked with Mr. Foster, and they

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[1] were looking for some indication.
[2] It is obvious, given the fact that there has been
[3] testimony and that three people observed something yellow,
[4] paper, in the bottom of the briefcase, that there would be
[5] concern if we are conducting an intensive search.

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and one
[6] had been, in the review and concern for this writing, an
[7] indication it turns up in this briefcase.
[8] Now, what was the briefcase like? Were there
[9] compartments? Was there something where things could be
[10] under?
[11] You know, I didn't know until we saw it, and even after
[12] the first day, I had not made a careful review of what it
[13] looks like.
[14] Is it likely that there could be paper, yellow paper at
[15] the bottom?
[16] These are all things, and I am not attempting to make a
[17] conclusion, but I think it is absolutely perfectly
[18] reasonable, and it would be unreasonable not to expect that
[19] we would look at it, examine it, and that the very person,
[20] in this case it's Mr. Nussbaum, who was the person who
[21] removed documents from it. Others can testify as to what
[22] they saw from a distance, what they wouldn't, that he be
[23] asked to explain how it is he did not see the papers.
[24] Now, that's reasonable. I don't think that it
[25] approaches, it's not macabre like, and I think that we

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[1] should continue on. But that's my position on it, and I
[2] don't think that there's been anything extraordinary done
[3] here today, but an attempt to ascertain the facts.
[4] And let me add this.
[5] You know, I heard Mr. Spafford. And I'm trying to keep
[6] and be objective and have us, you know, and I think we're
[7] doing a good job on a bipartisan basis. And let me tell
[8] you, Senator Kerry did not send up their softballs.
[9] He was asking very probative, important questions, and I
[10] think a lot of the members on both sides, democrats and
[11] republicans, have been looking to do that.
[12] And this is important. How could these, we understand
[13] certain recollections can be lost.
[14] Well, Mr. Spafford, the Foster representative who took
[15] the documents, testifies that he clearly heard Mr. Sloan say
[16] that there's paper in the bottom of that bag. Bernie,
[17] there's paper in the bottom.
[18] And Mr. Nussbaum: Mr. Spafford says, we'll look at it
[19] later, and that's buttressed by the testimony of the
[20] secretaries who indicate that there was paper, and Mr.
[21] Burton who said he saw some paper.
[22] That's why it becomes important.
[23] So I'd hope we can continue.
[24] Senator Boxer. Mr. Chairman, I'm not going to debate
[25] any of that with you. You stated it well.

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[1] The Chairman. All right.
[2] Senator Boxer. All I'm saying is, as one member of the
[3] United States Senate who sits here, I hope at some
[4] reasonable point, that the Foster family gets back this
[5] personal effect of a loved one.
[6] The Chairman. And I'm certain that will be the case.
[7] I'm certain that will be the case. And the Senator's
[8] observations are certainly noted. And we don't need
[9] unreasonable displays of anything, whether it's the
[10] briefcase or any other thing, so we note that.
[11] Senator Sarbanes?
[12] Senator Sarbanes. Mr. Chairman, I'd just say to Senator
[13] Boxer, my assumption is that this phase of the hearings will
[14] conclude today. I think that's the intention, and I assume
[15] then the briefcase will be returned from whence it came to
[16] the Committee, which was from the independent counsel, as I
[17] understand it.
[18] Now whether they will prepare to return it to the
[19] family, I don't know, but I do think that I can understand
[20] the trauma this creates for the family.
[21] Although, I must say, I think probably, Mr. Nussbaum,
[22] you're the most relevant person we've had yet before the
[23] Committee to discuss the handling of the briefcase, although
[24] it has been waved around here quite a bit prior to today.
[25] Senator Bryan?

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[1] Senator Bryan. Thank you very much, Senator Sarbanes.
[2] Mr. Nussbaum, I don't intend to ask any questions about
[3] the briefcase.
[4] If I could get you to focus your attention during the
[5] time period of July 21st, July 22nd, when you were making
[6] the decision as to how the review of the documents that were
[7] in Mr. Foster's office was to be conducted.
[8] And it is my sense that you were getting some

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conflicting requests.
You had Mr. Quinn, who made a forceful presentation that
I'll characterize it as the most conservative view in terms
of what access should be permitted because of the policy
considerations of national security, attorney/client,
sensitive documents, all that issue.
You had Mr. Heymann's request, which I would put on the
far side of the other spectrum, that they ought to be able
to read the first page of each one of these documents.
And you are wrestling with this decision.
Have I characterized the state of events, and the issue
as you saw it at that time accurately? Is that essentially
where you were?
Mr. Nussbaum. That's exactly where I was.
Senator Bryan. Okay. And you began to tell us the
other day, and I want to just ask a couple of questions
before yielding my time back to Mr. Ben-Veniste, but you're

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talking about your legal responsibility and you're talking
about the doctrine of waiver.
Mr. Nussbaum. Yes, sir.
Senator Bryan. Now I grant you that doesn't have the
pizazz of briefcases and all that sort of thing, but it
strikes me as being very, very relevant.
The doctrine of waiver, which I gather you're suggesting
that if you show part of the document, you may very well
have waived your right to maintain the confidentiality or
the privilege of the balance of the document.
Would you discuss that a little bit, and let's talk
maybe lawyer-like, because I'm sure we're going to have
others who share a different perspective of the legal
position, namely that you could enter into some kind of an
agreement and protect yourself.
But would you embellish upon that a bit?
Mr. Nussbaum. Yes, Senator, I'd be glad to.
As I mentioned yesterday, the doctrine of waiver, which
is that if you show something to somebody, you lose whatever
privileges attaches to that document, and indeed even to the
subject matter of the document.
The law with respect to waiver is both very strict,
namely, you lose everything, and very uncertain. You're not
quite sure how much you can do and not do before waiver
triggers.

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Senator Bryan. Can I just interject here, in a very
crude analogy, I mean, the privilege against self-
incrimination, in other words, you cannot go partially –
Mr. Nussbaum. That's correct.
Senator Bryan. – into the area in answering questions
without having waived the privilege entirely, as I
understand it.
Mr. Nussbaum. That's exactly correct, or with attorney
client privilege. You cannot just partially disclose a
portion of a document or of a conversation without waiving
not only the entire conversation as to the entire document,
but indeed perhaps as to the entire subject matter covered
by this document.
In other words, there may be other documents covering
this subject matter, there may be other communications
covering this subject matter.
So when you waive is a tricky thing, and two, how much
you're waiving is even trickier at times.
That's what a lawyer thinks about when he's faced with a
request for somebody to look at a part of or the first page
of various documents.
And I was extremely concerned about that at the time.
Now, remember, what was being asked for was to look for
a suicide note or a similar such document.
I felt I could accomplish their aim, namely, looking for

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a suicide note or some similar such document, without
running the risk of triggering this law of waiver, which I
would have done if I'd shown them the front page or a
portion of each of the documents in the office.
Senator Bryan. And let's be clear. The implication of
waiving would be the entire document?
Mr. Nussbaum. That's correct. The entire document,
even more than the entire document, it could be other
documents concerning the same subject matter. It depends.

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[10] Now with respect to this issue of agreement, which has
[11] come up in Mr. Heymann's testimony, I was also aware of law,
[12] and I mentioned some cases yesterday, actually, the
[13] Westinghouse case in the Third Circuit, and there are other
[14] cases similar to that, in which people have attempted to
[15] enter into agreements with government agencies, such as the
[16] Department of Justice or, in most cases, the SEC, in which
[17] they say, we will show you a document or a report, or even a
[18] portion of a document, but we want your agreement that this
[19] is not a waiver, and the agency will say, yes, we'll enter
[20] such agreements, it is not a waiver, the kind of thing Mr.
[21] Heymann was talking about.
[22] But lo and behold, when you go to court, if there's
[23] litigation later on, the court says, no, no, no, no, no.
[24] Once you showed a portion, that agreement doesn't control as
[25] to whether you waived or not. Once you disclosed a

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[1] confidential conversation or a privileged conversation, then
[2] the attorney client privilege or the work product privilege
[3] does not apply, and therefore you've waived entirely.
[4] An agreement does not and cannot protect you against
[5] waiver. That is my understanding of the law then. It is my
[6] understanding of the law now.
[7] Now we never discussed agreements actually with respect
[8] to waiver, at least I don't remember anything like that at
[9] this point, but nonetheless, I had a concern that even if we
[10] did it in a consensual fashion with an agreement, it still
[11] would not protect me or protect the clients, not to protect
[12] me, it's to protect the client basically with respect to
[13] preserving his confidences and his privileges.
[14] And I have to say, Senator, having done that, all I did
[15] was preserve the ability of the President and the First
[16] Family basically to maintain privileges if they wished.
[17] In fact, later on, they never claimed privilege, they
[18] never claimed privilege. I preserved their right to do it.
[19] I didn't waive it for them by showing documents, but they
[20] determined ultimately not to claim privilege and every
[21] document that was requested by law enforcement was turned
[22] over both in the immediate aftermath of Vince's death, as
[23] well as later on when the Whitewater investigation arose.
[24] Senator Bryan. So the point that you're making,
[25] although Messrs. Heymann, Margolis, and others disagreed

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[1] with your analysis of how much could be shown, and they
[2] disagreed with the procedure that you chose to adopt, but
[3] ultimately the no-harm, no foul concept, they got
[4] everything, no privilege was asserted, no claim was
[5] exercised, and the documents were shown to the appropriate
[6] law enforcement authorities?
[7] Mr. Nussbaum. That's exactly correct, Senator.
[8] Senator Bryan. I'd yield the balance of my time to Mr.
[9] Ben-Veniste.
[10] Senator Sarbanes. Senator Bryan, if you would yield
[11] your time to Senator Kerry, because it was on his round we
[12] took a couple of minutes out of.
[13] Senator Bryan. I'd be very happy to do so.
[14] Senator Kerry. Thank you.
[15] I just have a couple of questions I want to finish up.
[16] Mr. Nussbaum, is the briefcase still down to your right
[17] there? Just identify whether it is or it isn't? Is the
[18] briefcase gone?
[19] Mr. Nussbaum. I don't have it, Senator.
[20] Senator Kerry. Where did the briefcase go? I just
[21] wanted – I thought it was still there. I'd like it just to
[22] go back and stand, sit beside him if it would. Just if
[23] you'll put it down there. Could you put it as nearly
[24] approximate to the place where it was when you reached for
[25] files on that day?

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[1] Mr. Nussbaum. Yes.
[2] Senator Kerry. Is it there now?
[3] Mr. Nussbaum. It's there now, yes.
[4] Senator Kerry. Okay. Could you just leave it as if it
[5] was standing by itself and you're about to reach down?
[6] Mr. Nussbaum. Yes.
[7] Senator Kerry. Now, let me ask you, without moving your
[8] hands or opening it or anything or doing anything to it,
[9] just would you look at the briefcase and tell me whether or
[10] not you can see that it's empty? Could you just look at it
[11] and tell me?
[12] Mr. Nussbaum. If I look at it now, I cannot see the

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bottom of the briefcase.
Senator Kerry. And why is it that you can't tell me whether it's empty or not right now?
Mr. Nussbaum. Because the briefcase, the flaps shut.
Senator Kerry. So as the briefcase is standing there now, it's empty?
Mr. Nussbaum. It is empty, I know that.
Senator Kerry. But it's shut.
Mr. Nussbaum. But it's shut.
Senator Kerry. I mean, you can't tell it's empty by looking at it?
Mr. Nussbaum. No, I couldn't tell you right now if there were 27 scraps of paper at the bottom of the

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briefcase.
Senator Kerry. So the briefcase is now, if you pulled the last file out, is that what happens to the briefcase, it basically shuts?
Mr. Nussbaum. That's correct, Senator.
Senator Kerry. Now I want you to look, I want you to again, would you reach down and show me exactly how you reached and brought the document up again?
Mr. Nussbaum. I would be looking at my audience when I was conducting the search.
Senator Kerry. Were you talking at the time?
Mr. Nussbaum. Yes, I was talking.
Senator Kerry. As you are now?
Mr. Nussbaum. I would say, look, I'm pulling over Vince's briefcase. I would sort of be describing what I was doing. And there are files in it, and I'm reaching in and pulling out these files. I would say something like that.
And here –
Senator Kerry. Like that. I want you to now – That's the way you did it. The way you just did it now?
Mr. Nussbaum. That's correct.
Senator Kerry. I want you to once again inspect the bottom, just to make certain that there's no paper in there.
Would you do that? Look in in the bottom. Right.
No, I don't want you to pick it up. Just leave it down

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there.
Can you see it from where you are? Do you have to open it, is that correct?
Mr. Nussbaum. Yes, I had to open it.
Senator Kerry. Physically reach in and open it in order to see?
Mr. Nussbaum. I had to physically reach in and open it and look down to see if there's paper there.
Senator Kerry. And it's your testimony that you have no recollection of actually doing that that day?
Mr. Nussbaum. That's correct.
Senator Kerry. You simply pulled the files out?
Mr. Nussbaum. I remember just simply pulling the files out, realizing, or feeling in effect, or looking, glancing, that the files were all out and then, as you can see, the briefcase apparently sort of shuts by itself.
Senator Kerry. Now I notice that last time you looked in it, you put on glasses in order to look?
Mr. Nussbaum. Well, I just use glasses for reading sometimes.
Senator Kerry. Okay, I was just curious.
Mr. Nussbaum. Yes, these are reading glasses. When I put on glasses, I was looking to see Vince's name, actually, which is in the briefcase.
Senator Kerry. Okay, in order to read the name.

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Mr. Nussbaum. To read the name, yes.
Senator Kerry. Fair enough, right.
Thank you very much. I don't have any further questions.
The Chairman. Senator Frist?
Senator Frist. Thank you, Mr. Chairman.
Mr. Nussbaum, I'd like to ask you a couple of things continuing with the discussions about what occurred during the document review in Mr. Foster's office on Thursday, July 22nd.
Many of the things that you said, and have said this morning, and also in your deposition, agree with what Mr. Spafford has told us.
However, there is that one key point that's been referred to about which you disagree.
First, Mr. Spafford testified that during the course of the document review, you emptied all of the documents from Mr. Foster's briefcase and you said something like, and I quote, "I have all the files and the documents for the briefcase."
Second, Mr. Spafford states that after the document review, everyone left the room except you, Mr. Spafford and Mr. Sloan.
And then Mr. Spafford very clearly states that Mr. Sloan told you that there were scraps of paper at the bottom of

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and that you replied something like, and

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again I quote, "don't worry about it, we're going to have to go through all of this later."

So my first point is that after you had taken the papers out of Mr. Foster's briefcase, did you notice anything at the bottom of the briefcase?

Mr. Nussbaum. No, Senator, I did not.

Senator Frist. Did you notice any scraps of paper at all in the briefcase?

Mr. Nussbaum. No, I did not.

Senator Frist. Was there a point after the document review was completed that only you, Mr. Spafford, and Mr. Sloan were in Mr. Foster's office?

Mr. Nussbaum. That's possible, yes. That's possible because when the law enforcement people left, I certainly stayed behind, Mr. Sloan stayed behind, and Mr. Spafford was sort of putting his papers together, the papers I handed him, namely, the personal Foster papers, so it's quite possible the three of us would have been there alone.

Senator Frist. So the three of you could have been in the room together afterwards?

Mr. Nussbaum. Yes.

Senator Frist. Now did Mr. Sloan say to you that he had seen scraps of paper in Mr. Foster's briefcase?

Mr. Nussbaum. No, Senator, he did not.

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Senator Frist. And did you say to Mr. Sloan, in substance, and I'm quoting him, quoting Mr. Spafford, "we'll deal with that later," or, and I quote again, "we'll look at it later."

Mr. Nussbaum. No, Senator, I did not.

Senator Frist. And so now you're saying you specifically did not say it, where before you were saying you don't remember saying it?

Mr. Nussbaum. Well, I think it's something I would remember. That's why I'm saying I did not say it. I think it's something I would remember, I think it's something Mr. Sloan would remember.

Senator Frist. So you're denying that it did happen?

Mr. Nussbaum. Yes, I'm denying that it did happen. Obviously, I'm giving you the best of my memory, but I'm denying it happened.

Senator Frist. I'm asking you all this obviously because Mr. Spafford testified that he is so certain, using the word, certain.

Mr. Nussbaum. Right. See, the tricky thing – I have great respect and affection for Mr. Spafford. I don't believe Mr. Spafford is knowingly coming before this Committee saying something he doesn't believe. I believe he believes what he's saying. This is one of those anomalies, to use a word that I've heard here, just that memory is playing tricks on somebody as a result of the discovery of this note on July 26th. It may be playing tricks on Mr. Sloan and myself. But I don't think so. I think here memory's playing a trick on Mr. Spafford. But I'm not suggesting he's not honest.

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Senator Frist. But you're saying it did not happen?

Mr. Nussbaum. But I'm saying it did not happen, yes.

Senator Frist. The conflict, again, goes back to the testimony from Mr. Spafford. And his specific testimony, and I did the questioning, was the following:

Senator Frist: At this point in time, did Mr. Sloan approach Mr. Nussbaum about the briefcase?

Mr. Spafford: At some point in time, I was talking to Mr. Nussbaum and at some point in time, Mr. Sloan had the briefcase in his hand, so I didn't see him pick it up, and he made the comment at that point in time that there appeared to be scraps in the bottom of the briefcase.

The Chairman asked: Was he standing?

Mr. Spafford: Yes, he was.

Senator Frist, I asked, so are you certain that Mr. Sloan, during this period, told Mr. Nussbaum that there were scraps of paper at the bottom of the briefcase?

And Mr. Spafford said, that's words, I don't recall the exact words, but words to that effect.

Then I asked, and did Mr. Sloan actually have the

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briefcase in his hands when he stated to Mr. Nussbaum that there were scraps of paper in the bottom of the briefcase?

And Mr. Spafford said, yes, sir.

And then I asked, could you, and again I know we're using your briefcase, which isn't the original briefcase, but could you use your briefcase, and to the best of your recollection show how Mr. Sloan showed Mr. Nussbaum the briefcase?

Mr. Spafford said, he was standing and he had it by the handles and he had it open like this, and he was looking into the briefcase.

And then I asked, so he had the handles, opening it

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up.
[13] and he himself was looking into the briefcase. Did he show
[14] the scraps of paper to Mr. Sloan?
[15] Mr. Spafford: I did not see the scraps of paper. He
[16] did not take them out of the briefcase or show them to
[17] anyone.
[18] Senator Frist: And what did Mr. Nussbaum say in
[19] response to Mr. Sloan's statement and his demonstration that
[20] there were scraps of paper in the bottom of the briefcase?
[21] Mr. Spafford: Mr. Nussbaum was sitting on the couch or
[22] the sofa at the time, and his comment was something to the
[23] effect that we will get to all of that later. We have to
[24] look through the materials and we will look through them
[25] later, look through that later.

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[1] And I said: And you were left with the impression of
[2] that statement that indeed these scraps would be looked at
[3] later?
[4] Mr. Spafford said, that's correct.
[5] And then I said, now, when Mr. Sloan stated that there
[6] were scraps of paper there, was Mr. Nussbaum surprised?
[7] What was his reaction?
[8] Mr. Spafford: Mr. Nussbaum, as near as I can recall,
[9] did not have a reaction. It was an off-the-cuff remark by
[10] Mr. Sloan to which I attached very little significance at
[11] the time, and it appeared that Mr. Nussbaum attached very
[12] little significance to it as well.
[13] We then proceeded to talk about the fact that he was
[14] going to go through the office, and if he found any personal
[15] effects, other personal effects of Mr. Foster, he would have
[16] those delivered to my office.
[17] And finally I said: And say once again what happened to
[18] the briefcase after the statement was made in the exchange
[19] between Mr. Sloan and Mr. Nussbaum.
[20] And Mr. Spafford said: I'm not certain what Mr. Sloan
[21] did with the briefcase because I turned my attention to Mr.
[22] Nussbaum and we continued our conversation, so I would be
[23] making an assumption I don't know.
[24] I go through all of that because he is so specific.
[25] It's not just an image, it's a sequence of events. It's an

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[1] interaction between you and two others in the room and it's
[2] vivid, it's in detail and he's certain about it, and it
[3] doesn't square with your denying it didn't happen.
[4] Senator Frist. And yet, Senator, as you know, he made
[5] detailed notes of that day as the search was going on, and
[6] this is not mentioned in his notes. Now he says he put his
[7] notes away at this point, and he also made a memorandum of
[8] what happened at the search.
[9] I learned that through the hearing. I didn't know it
[10] before the hearing. And lo and behold, it's not mentioned
[11] in his own memorandum.
[12] Senator Frist. He said he put his notes away by that
[13] point. He was very clear that he put his notes away and at
[14] that point was not taking notes.
[15] The problem is, he has this specific sequence of events,
[16] one after another.
[17] Mr. Nussbaum. But he doesn't, he doesn't convey it
[18] contemporaneously, either in his notes or in his memorandum.
[19] I'm not saying he doesn't believe it happened. I'm just
[20] saying his notes and his memorandum indicate to me, you know
[21] something, he may be remembering something honestly that
[22] didn't happen.
[23] Mike Spafford just may be making a mistake. There's no
[24] reason for him, that I know of, to testify.
[25] Senator Frist. That's the whole point, that's the whole

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[1] point. And if he has no axe to grind, he hasn't worked for
[2] the Clinton Administration, he's never worked for the
[3] Foster's except for a few days before that, and that is the
[4] whole point, a sequence of events very vivid, very specific,
[5] no axe to grind as you said.
[6] Mr. Nussbaum. Nor do I have an axe grind, nor does Mr.
[7] Sloan have an axe to grind. As I said to your colleague
[8] from Alaska, Senator, I wanted to find that note more than
[9] anybody.
[10] Will you let me finish?
[11] I wanted to find that note more than anybody else in the
[12] world. I wanted to answer Lisa Foster's question as

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to why
her husband died. I have no axe to grind either.
Senator Frist. Do you have any theory as to why Mr.
Spafford would have made up this very specific sequence of
events and describe with certainty?
Mr. Nussbaum. No. I don't believe he made it up. I
believe, you know, look, I believe that he's not making it
up. I believe his memory's playing tricks on him.
Senator, let me say this. If that conversation
happened, and I made a mistake in effect by not immediately
looking at the scraps that Sloan brought to my attention, I
would admit it. There's no reason for me not to admit it.
Senator Frist. I understand.
Mr. Nussbaum. Senator, that's my point. There's no

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reason for me, there's no reason for Sloan not to remember
that conversation if we remembered that conversation.
I understand somebody can say, well, Mr. Nussbaum –
Senator Frist. Let me ask you one more question.
Mr. Nussbaum. Let me, could I just finish.
Senator Frist. If you have another point to make.
Mr. Nussbaum. Please. I have another point.
I can understand somebody saying, you know, well, Mr.
Nussbaum, if you had that conversation, then since you
didn't examine the briefcase or Neuwirth didn't examine the
briefcase until four days later, it shows how you made a
mistake. And I'd say, yes, it shows I made a mistake. I
would gladly admit that mistake. I've admitted other
mistakes, such as not finding the note.
I have no reason not to recollect that conversation if
that conversation took place.
Senator Frist. I'd like to yield my final minute to Mr.
Chertoff.
Mr. Chertoff. Mr. Nussbaum, you just indicated, and I
understand that your testimony now incorporates your
observations from the hearings, but this is very important.
You just, in trying to compare your testimony with that
of Mr. Spafford, first of all, your testimony is you have no
axe to grind, you have no interest in the outcome of this.
Do you really believe you have no interest in the

outcome of this?
Mr. Nussbaum. Absolutely.
Mr. Chertoff. You don't care one way or the other? You
don't care how this comes out, how people perceive you and
your behavior on the 22nd is not a matter of interest to
you?
Mr. Nussbaum. Of course that's a matter of interest to
me. But my fundamental way of dealing with issues like
that, Mr. Chertoff, is to tell the truth. To tell it like I
did it, to defend myself when I acted correctly, to admit
mistakes when I acted incorrectly.
In that way, Mr. Chertoff, then whatever people think,
that's the way I want people to know me and think of me, as
a person who admits his mistakes and a person who defends
his conduct.
Mr. Chertoff. Mr. Nussbaum, you attached a lot of
significance, you raised the question, in response to
Senator Frist, you argued that somehow Mr. Spafford's
recollection was devalued because – let me finish.
Mr. Nussbaum. I'm sorry.
Mr. Chertoff. – because he didn't make a
contemporaneous note or he didn't put it in his memorandum.
I want to read you from a part of his testimony that you
didn't mention, Senator Frist.
It's page 22 of his testimony here July 27th, 1995,

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before this Committee, in response to Senator Frist's
question, line 12.
Senator Frist: When did you first attach significance
to that exchange?
Mr. Spafford: The following week, I became aware of the
existence of the note for the first time, and that it was in
the bottom of the briefcase and that it was in pieces. I
made the connection then. I don't recall the exact date,
but it was that following week.
Senator Frist: And do you recall when you first
described to someone else what you heard Mr. Sloan say to
Mr. Nussbaum?
Mr. Spafford: I had a privileged conversation at that
time.
Senator Frist: Do you know when that time was, or is
that some time the next week?
Mr. Spafford: It was some time the week of the 26th.
I've [illegible] had a pretty contemporaneous report.

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isn't it?
Mr. Nussbaum. If he had such a conversation, the answer
is yes.
Mr. Chertoff. Do you doubt that he had that
conversation?
Mr. Nussbaum. No, I don't doubt it. If he says he had
a conversation, he had a conversation.

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Mr. Chertoff. So you will agree then that the record
shows that Mr. Spafford, as soon as he learned that
there
was as writing in the bottom of the briefcase, he told
someone about it, right?
Mr. Nussbaum. Yes, he told someone about it after
he
learned there was as writing in the bottom of the
briefcase.
The Chairman. And I think it's fair to say that he told
one of the lawyers at Williams & Connolly.
Mr. Chertoff. Or his own firm, probably.
The Chairman. Or at his own firm. There was another
attorney, and it is privileged, and we're not going into
it,
but it is his recollection.
Senator Sarbanes?
Senator Sarbanes. Senator Moseley-Braun?
Senator Moseley-Braun. Thank you very much, Mr.
Chairman.
I understand that counsel has some questions, and
in the
interest of moving this process along, I'd just as soon
yield my time to Mr. Ben-Veniste.
Mr. Ben-Veniste. Mr. Nussbaum, I've been listening
to,
and puzzling over this issues of the scraps in the
briefcase
for what seems like months now. And I'd like to
review what
the testimony has been.
To my recollection, there are three people who say
that
as of the 22nd, there was some yellow paper in the
bottom of

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the briefcase that they noticed.
The first one is Mr. Burton who testified that standing
at your side, he saw some yellow post-it or some
yellow
papers in the bottom of the briefcase.
The second person who said they observed yellow
post-its
was Ms. Gorham, and the way that came about was
that Ms.
Tripp was very, very interested in trying to find out
whether there was any clue as to why Mr. Foster took
his
life.
Ms. Gorham, on the 22nd, after the police had left the
office, had a conversation with Ms. Tripp. In that
conversation, Ms. Tripp asked Ms. Gorham, did they
search
everywhere for the note.
Ms. Gorham said yes.
What about in the briefcase, asked Ms. Tripp.
Ms. Gorham said, the briefcase is empty except for
some
little yellow stickies.
Did Ms. Gorham, who was very interested in trying to
find out what had caused Mr. Foster to take his own
life,
ask you on the 22nd, Mr. Nussbaum, would you
please look in
the bottom of the briefcase and see whether those
yellow
stickies have anything to do with Mr Foster's death,
can
shed any light on Mr. Foster's death?
Mr. Nussbaum. No, she did not.
Mr. Ben-Veniste. Now, Mr. Burton did not.

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And now we turn to Mr. Spafford. Mr. Spafford
testified
that he overheard a conversation involving yellow
scraps of
paper in the bottom of the briefcase.
Let's put aside the fact that you do not recall that
conversation.
But Mr. Spafford was very interested, was he not, in
determining what caused Mr. Foster to take his life?
Mr. Nussbaum. Yes, he was.
Mr. Ben-Veniste. Did Mr. Spafford, on the afternoon
of
July 22nd, say to you, wait a second. There are
yellow
scraps of paper in the bottom of this briefcase.
Shouldn't
we look at these now to see whether they can shed
any light
on why Mr. Foster took his life?
Mr. Nussbaum. No, and the briefcase was also Mr.
Foster's personal property, so Mr. Spafford would
have had
even an interest in that.
Mr. Ben-Veniste. So the way I see this, Mr. Chairman,
is somewhat akin to the notion that something that
can be
hidden in plain sight. That the people who identified
the
yellow paper at the bottom of the briefcase, all of
whom
were intensely interested in trying to find clues to
why Mr.
Foster took his life, did not associate those yellow
scraps
of paper with anything that might be meaningful in
terms of
the investigation into why Mr. Foster took his life.

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[25] Is that correct?

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[1] Mr. Nussbaum. That's correct.
[2] If they saw the scraps, I wish they would have told me
[3] about them.
[4] Mr. Ben-Veniste. But having seen the scraps, no one
[5] associated those scraps with a note or other writing that
[6] you were looking for?
[7] Mr. Nussbaum. That is true, Mr. Ben-Veniste.
[8] Mr. Ben-Veniste. Now following the search, or during
[9] the search, did anyone from law enforcement, including the
[10] attorneys from the Department of Justice, request that you
[11] produce and maintain an inventory of the files?
[12] Mr. Nussbaum. No.
[13] Mr. Ben-Veniste. So no one made the request that has
[14] been talked about here in terms of identifying and
[15] maintaining the files from the law enforcement community?
[16] Mr. Nussbaum. That's correct. The search was over.
[17] The law enforcement authorities knew that the documents
[18] would be dispersed in various ways, and no one, no one, no
[19] one made a request to produce an index or a log or anything
[20] like that with respect to the documents that would be
[21] dispersed.
[22] Mr. Ben-Veniste. All right, now let's turn to the –
[23] Senator Dodd. Counsel, just one – of the law
[24] enforcement officials there, what sort of, how many years,
[25] are we talking about people who just started with the

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[1] Justice Department or are we talking about career people?
[2] Mr. Nussbaum. You're talking about experienced career
[3] and quite respected people.
[4] Senator Dodd. How many years are we talking about with
[5] the principal lawyers involved?
[6] Mr. Nussbaum. Mr. Margolis must be there 30 years.
[7] Senator Dodd. So these are seasoned, professional
[8] people with longstanding involvement with these matters?
[9] Mr. Nussbaum. Seasoned professional people right at the
[10] top of the career service in the Department.
[11] Senator Dodd. And neither of them asked for any kind of
[12] listing?
[13] Mr. Nussbaum. Neither of them asked for any kind of
[14] listing.
[15] Mr. Ben-Veniste. Thank you, Senator.
[16] Let me just return to the question of Mr. Spafford. He
[17] had handwritten notes and his testimony was that he put his
[18] notes away as he was packing up, and then overheard the
[19] conversation he testified about.
[20] But he also testified that that evening, when he came
[21] back to his office, he took those notes and he made those
[22] notes the basis of a typed memorandum recounting the
[23] important things that had occurred. And that memorandum has
[24] been made a part of the evidence in this record.
[25] And I think, out of fairness, to complete the area of

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[1] inquiry that Senator Frist had raised, it is correct that in
[2] completing his typed notes that evening, Mr. Chairman, that
[3] Mr. Spafford did not include any reference to having
[4] overheard this conversation.
[5] So trying to correlate the two different versions
[6] together, that on the one hand of Mr. Spafford, and that of
[7] you and Mr. Sloan, at any event, I think it is fair to say
[8] that neither – that Mr. Spafford did not indicate to you
[9] that he saw any significance to the scraps of paper, nor did
[10] he view the significance of the scraps of paper to rise to
[11] the level of including it in his typed memorandum.
[12] Mr. Nussbaum. That's correct, apparently.
[13] Mr. Ben-Veniste. Now, let me again bring your attention
[14] to that evening following the search.
[15] You had a conversation with Mr. Heymann and while you
[16] and Mr. Heymann differ about the specifics of the
[17] conversation, is it fair to say, Mr. Nussbaum, that you
[18] perceived that Mr. Heymann was not happy?
[19] Mr. Nussbaum. Yes.
[20] Mr. Ben-Veniste. And that he felt that the procedure
[21] that you had employed was not one which was in the best
[22] interests of the White House?
[23] Mr. Nussbaum. Yes, that was his feeling.
[24] Mr. Ben-Veniste. Did Mr. Heymann, that evening, in his
[25] conversation with you, at any time say to you, look, Bernie,

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[1] I disagree with what you've done, here's what I want you to
[2] do. I want you to get all those files that were in that
[3] office that day. I want you to get them brought back to the
[4] White House. I want you to get the personal files of the

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[5] Foster family, bring those back, I want you to get the
[6] personal records, the financial records of Mr. and Mrs.
[7] Clinton because he indicated he understood they were going
[8] to be dispersed, I want you to get them back, put them back
[9] in Mr. Foster's office.
[10] Did he have any conversation, in words or substance,
[11] along those lines with you?
[12] Mr. Nussbaum. No.
[13] Mr. Ben-Veniste. In the days following, even up to the
[14] point where the note was discovered, now we're on the 26th
[15] and 27th, when you advised Mr. Heymann, did Mr. Heymann say
[16] to you, Bernie, I want all of those files put back where
[17] they were?
[18] Mr. Nussbaum. No. Nor did anyone else in the Justice
[19] Department say that.
[20] Mr. Ben-Veniste. Finally, you understood, did you not,
[21] that in the context of this note, questions would be raised
[22] regarding, for example, the issue of, according to Mr.
[23] Foster, whether the FBI had lied in connection with the
[24] travel investigation?
[25] Mr. Nussbaum. Yes.

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[1] Mr. Ben-Veniste. Did you understand that in fact an
[2] investigation was opened into that very issue, which was
[3] conducted by the Office of Professional Responsibility?
[4] Mr. Nussbaum. Yes.
[5] Mr. Ben-Veniste. I have nothing further.
[6] The Chairman. Senator Bennett?
[7] Senator Bennett. Thank you, Mr. Chairman.
[8] Staff has prepared a summary of what they see as
[9] contradictions between Maggie Williams' testimony and the
[10] other witnesses.
[11] And I would ask unanimous consent that it be included in
[12] the record.
[13] (The document entitled "Margaret Williams
[14] Contradictions" follows:)
[15] .
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

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[1] Senator Bennett. As I look through it, I see that some
[2] of these fall in the category that we've been talking about,
[3] where recollections can differ. They are relatively minor.
[4] And I won't go through all of them.
[5] As I say, I think putting them in the record is
[6] sufficient to help people who want to go through, a
[7] compilation has been made.
[8] But I do want to raise some of them with you, Mr.
[9] Nussbaum, because the contradiction between her memory and
[10] yours on some issues I think we ought to deal with, as long
[11] as you're here.
[12] You testified with respect to July 22nd, reviewing
[13] documents in the office, you testified Maggie walks in,
[14] let's do this Maggie, is on your deposition, page 240. We
[15] start doing it. I may walk out to take a call. We complete
[16] doing it, but it was done relatively promptly.
[17] You say, then together Maggie and I started looking to
[18] try to select, making sure we took Clinton personal files,
[19] rather than any other files.
[20] She denies having any role at all in going through the
[21] files.
[22] Would you comment on that?
[23] Mr. Nussbaum. Yes. I think really our recollections
[24] are basically consistent. She didn't go through any files.
[25] What she did is sort of glance, at least my memory is – her

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[1] memory may be different than this – she glanced at
[2] particular file folders, the titles, just to make sure, and
[3] she glanced in the area in which the Clinton personal files
[4] were which was in the credenza or some of them may have been
[5] pulled out of the credenza, just to see if there was
[6] anything, any obvious personal file that I overlooked.
[7] She wasn't conducting a search or a review of any file,
[8] so her testimony probably reflects that.
[9] My testimony also reflects that.
[10] Now we used different words to express it, and so
[11] somebody may claim there's a contradiction. I really don't
[12] see a basic contradiction between the two of us there.
[13] Senator Bennett. Well, what she said and I
[14] respectfully, sir, disagree with you. I see a

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[15] contradiction. She describes coming in the room.
[16] She says, when I came in, it seemed pretty much settled.
[17] Like I said, I can't recall if he had the files boxed that
[18] he pointed to or designated as the files that he wanted me
[19] to get to Barnett, or whether or not they were just in a
[20] stack on the table, but it seemed like whatever he was
[21] doing, it was done.
[22] So Mr. Nussbaum had already made the selection of the
[23] files before you got there?
[24] That's my understanding, yes.
[25] That sounds different from what you have just described?

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[1] Mr. Nussbaum. No, it was done by – it was done; I did
[2] it, but I asked her to check to see, to take a quick look at
[3] labels to see if there's any personal file I might have
[4] missed. This took a very brief period of time.
[5] I remember that. She may not remember that. I mean,
[6] there may be a difference in our recollections, but I don't
[7] think it's that great.
[8] Senator Bennett. The reason I focus on this one, Mr.
[9] Nussbaum, you have made privilege the holy grail of this
[10] entire activity. You are most proud of your ability to
[11] protect the Clinton's right to assert privilege later on.
[12] You point out that they did not assert the privilege
[13] later on, but you protected their right to do so.
[14] Mr. Nussbaum. Yes, sir.
[15] Senator Bennett. Would Maggie Williams' access to the
[16] files constitute a waiver of the privilege that I've heard
[17] you discuss back and forth?
[18] She is not a lawyer, she is not a client. Would this
[19] constitute waiver of a privilege?
[20] Mr. Nussbaum. No, it would not.
[21] Senator Bennett. Why not?
[22] Mr. Nussbaum. Because, and let quote to you from
[23] Weinstein on Evidence, Section 503(a)(4)(01) which says
[24] disclosure to those reasonably necessary for transmitting
[25] the communication has readily been recognized as not

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[1] destroying the privilege. And that's an exact quote, and
[2] those reasonably necessary include people like secretaries,
[3] clerks, or other employees.
[4] People are, from time to time, using intermediaries to
[5] convey information. And Maggie was a significant employee
[6] of the Clinton's, so it would not destroy privilege, it
[7] would not waive.
[8] In any event, Maggie, at least in my presence, didn't
[9] even examine the documents. She didn't examine the files.
[10] She just picked up the files and had them taken to the
[11] residence.
[12] Senator Bennett. Your previous deposition implies that
[13] she did examine the files and we're back there.
[14] Mr. Nussbaum. No, I believe what I was trying to say is
[15] that she was looking at labels, but the point is, the
[16] essential legal point that you properly focused me on,
[17] Senator, is that you don't necessarily waive the privilege
[18] by delivering documents to an employee of the client, the
[19] one who possesses the privilege.
[20] Senator Bennett. Well, okay.
[21] So clearly the client here were the Clinton's?
[22] Mr. Nussbaum. With respect to their personal documents,
[23] yes, the clients were the Clinton's, yes.
[24] Senator Bennett. So the Justice Department represents
[25] something other than the client? The client is not the

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[1] United States Government?
[2] The Justice Department people represent the United
[3] States Government?
[4] Mr. Nussbaum. My client, my client is the President and
[5] the White House in their official capacity, but my job as a
[6] lawyer generally is to ensure that personal files, that
[7] personal files go back to the client, after a lawyer's death
[8] whose been working with those personal files for official
[9] purposes, go back to the client, go back to the person whose
[10] files they were, in this case, the Clinton's or their
[11] personal attorneys.
[12] Senator Bennett. I understand that.
[13] Mr. Nussbaum. And that's what I was doing.
[14] Senator Bennett. You don't need to repeat that.
[15] Mr. Nussbaum. There's a specific ethical consideration
[16] in the Code of Professional Responsibility, Senator, that
[17] deals with that which you may or may not be aware of.
[18] Senator Bennett. No, you've made that very clear, and I
[19] understand that.

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[20] I'll make an observation which may be sensationalized.
[21] and I hope it does not get sensationalized. But I cannot
[22] refrain.
[23] You protected the privilege very well. And you say the
[24] Clinton's got, the Clinton's allowed everything to come out.
[25] You did, however, follow a procedure in the name of

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[1] protecting privilege which made it possible, and here we're
[2] getting into the area and the conspiracy theorists are going
[3] to pick it up, and I regret giving them any grist for the
[4] mill, but I have to say it.
[5] You followed a procedure that if in fact there was a
[6] document somebody wanted removed before they made everything
[7] public, they could have done it, and it would have been
[8] cloaked under the procedure that you followed to protect
[9] privilege.
[10] I'm not accusing you that of that motive, but I am
[11] saying that what you did produced a circumstance where that
[12] was possible, and that's probably part of the reason you're
[13] in so much trouble.
[14] Mr. Nussbaum. I don't think I'm in any trouble,
[15] Senator, but that's a fair statement, what you just said.
[16] And my response to that statement is that this situation or
[17] that circumstance that you referred to has now been under
[18] intensive investigation for two years by Congressional
[19] Committees, by independent counsel, and yet not anybody has
[20] come up with a single shred of evidence that any document,
[21] any relevant document was destroyed by anyone.
[22] So, yes, that circumstance may have been created. I do
[23] not believe any document was destroyed, as I indicated, but
[24] you don't have to take my word for it. There's been two
[25] years of intensive investigation and not one single shred of

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[1] evidence has arisen that a single document of any importance
[2] at all, or any document was destroyed.
[3] So what I said in my statement is correct.
[4] I acted in a way, I acted in a way which every document
[5] was preserved and every document that law enforcement
[6] officials wanted was turned over to them.
[7] Senator Bennett. I'd like to get on to one other thing,
[8] if I could.
[9] You made the statement here today you were happy when
[10] the note was finally found. You'd been looking for it.
[11] Nobody wants to find the note more than you. You were happy
[12] when the note was found.
[13] That is clearly not the impression contemporaneously
[14] that the White House support staff have.
[15] Yesterday, when we were talking about this, you said,
[16] well, I may not have been properly sensitive to their
[17] feelings. They were left out and they felt left out.
[18] Mr. Nussbaum. That's correct, Senator.
[19] Senator Bennett. Clearly, they did not perceive you as
[20] being happy, and their reaction was not of people who had
[21] been left out.
[22] Deb Gorham did not feel left out when you grilled her,
[23] interrogated her, demanding to know what she had seen. You
[24] may not have been present at the exchange with Deb Gorham.
[25] Mr. Chertoff, who clearly has the capacity to be

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[1] somewhat abrasive, asked her –
[2] Mr. Nussbaum. I haven't noticed that, Senator. I
[3] haven't noticed that.
[4] (Laughter.)
[5] Senator Bennett. Asked her specifically, or it was
[6] asked of her, is the grilling the same kind that you've seen
[7] Mr. Chertoff give, and she said, yes, that's the kind of
[8] grilling I was getting from Bernie Nussbaum.
[9] That does not sound like someone who is happy to have
[10] found a note, sitting down with someone on the support
[11] staff, and grilling her in that specific fashion, as to what
[12] she may have seen, and asking the question repeatedly and
[13] going at it again and again.
[14] And you've shown me you have the capacity to go after an
[15] issue again and again. We've seen some of that while you've
[16] been here too.
[17] And I asked her the question, were people paranoid.
[18] answer to me was, I was not paranoid.

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[19] And then I said, how about the others. And she
[20] responded, yes, the others were acting in a manner in which
[21] was paranoid.
[22] How can you come across to people as being paranoid and
[23] grilling and highly interrogatory when you're so happy that
[24] you've finally found the note?
[25] Mr. Nussbaum. I explained yesterday, Senator, and I'll

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[1] not repeat the whole explanation because we engaged in this
[2] colloquy yesterday.
[3] I did not grill Ms. Gorham, certainly not in the manner
[4] that Mr. Chertoff grills people. I certainly did not do
[5] that. I did not grill Ms. Gorham like that.
[6] I asked the questions. I asked the questions in a gentle
[7] manner. She was in deep shock, and if I try to rouse her
[8] out of her shock, she may have now considers that grilling.
[9] With respect to these allegations or these statements of
[10] paranoia, I think that does come from the fact that Deb
[11] Gorham and Linda Tripp, both of whom are very good people.
[12] as I said yesterday, felt somehow they were being excluded
[13] from something important that was going on in the White
[14] House Counsel's office.
[15] That's my explanation, I think, Senator.
[16] I was there. You weren't there. I was there.
[17] Senator Bennett. No, I was not there.
[18] Mr. Nussbaum. I think my –
[19] That's, I apologize, Mr. Chairman.
[20] I was there. There was no paranoia, there was no
[21] hysteria, we were trying to get the facts, you know, with
[22] respect, surrounding the finding of the note. That's all we
[23] were trying to do and we were doing it in a professional
[24] manner.
[25] Senator Bennett. Well, if I can just make one quick,

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[1] final observation, Mr. Chairman?
[2] Mr. Nussbaum, you're very good, and you have an
[3] explanation for Deb Gorham's testimony, and an explanation
[4] for Ms. Tripp's testimony, and an explanation for the Park
[5] Police's testimony, and an explanation for Mr. Shelton's
[6] testimony, and every one of those explanations,
[7] taken by itself, is very good.
[8] I sit back and look at the totality of the thing and I
[9] come out exactly where I did yesterday. The White House
[10] Counsel's office has a very smooth, complete description of
[11] everything that happened and everything was done properly
[12] and everything was done in the name of privilege, and there
[13] are high legal standards that directed everything we did.
[14] And the picture that comes from everybody else that
[15] dealt with the White House counsel is entirely different.
[16] And even though you have an explanation for each particular,
[17] the overall pattern still leaves me convinced that there was
[18] a tremendous amount of disarray, a tremendous amount of
[19] scrambling around, a tremendous amount of improvising, and
[20] that things were not as smooth and polished and careful as
[21] you now tell the Committee they were.
[22] Mr. Nussbaum. They were not. I agree with part of what
[23] you say. They were not smooth and polished and careful. I
[24] mean, there were bumps and there were mistakes. I didn't
[25] run a perfect operation. I was not a perfect White House

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[1] counsel. And I did not act perfectly in this period.
[2] My basic point was, not that everything was done
[3] precisely correctly. My basic point was that I acted in
[4] accordance with my ethical obligations and with respect, as
[5] Mr. Chertoff alluded to this morning, with respect to every
[6] big decision I had to make, every big decision I had to
[7] make, I made the correct decision, I made the right
[8] decisions, I made decisions that I look back at two years
[9] later that I'm proud of. That's all I'm saying.
[10] And the picture that some people paint, apparently, of
[11] paranoia or hysteria or stumbling around, that's an
[12] incorrect picture.
[13] Senator Bennett. Thank you, Mr. Chairman.
[14] The Chairman. Thank you, Senator.
[15] Senator Sarbanes?
[16] Senator Sarbanes. I'm going to yield to Senator Simon.
[17] If the Senator would permit me, I just want to make

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one
observation.
I thought that Michael Chertoff's questioning of Deborah
Gorham was gentle, is how I would describe it. I really
mean that. And if she took that to be grilling, then her
threshold for grilling is a very low threshold, I must say
(Laughter.)
Senator Simon?
Senator Simon. Yes, thank you.

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Just a few observations, rather than questions, Mr.
Chairman. And I will not use my ten minutes.
Senator Shelby started his questioning by asking an
unusual question about control being essential to outcome.
When you control questioning, you can also control outcome.
And when in questions you make charges, then those
charges are likely to be printed in the newspapers the next
day and maybe on national television.
But to characterize Mr. Nussbaum as a barrier in any way
to finding what they were seeking, I believe is a totally
unfair characterization. And I think there is nothing in
the evidence to suggest that.
As you have mentioned, some mistakes were made. I wish,
you wish you had indexed everything. I wish, and maybe you
wish that you'd had had a half an hour meeting with the Park
Police and the Justice Department, and everyone said, here's
what I'm thinking about, how are you about it.
I think would have been a more diplomatic way of
handling things.
But to characterize things, and the testimony, and I
happen to have a great deal of respect for Senator Bennett,
I think he's one of the finest members on the other side of
the aisle in this body, but to characterize the testimony as
entirely different, I think is not accurate.
There are some discrepancies, yes. But I would also

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point out that one of Mr. Nussbaum's principal critics here
has been Phil Heymann, and I asked Phil Heymann, in terms of
Bernie Nussbaum, it is a fair characterization to say that
what he did, from your perspective, was not illegal, not
unethical, but unwise?
Mr. Heymann: I think that's basically a fair
characterization, Senator Simon.
I think we should keep that in mind.
We not only have conflicting recollections, which is
natural in this series of dramatic events, you have a mini-
turf war between various police agencies.
Turf wars go on here, they go on in the Executive
Branch, they go on everywhere. They go on in business.
That's part of what we're dealing with.
We have looked at these days in great detail, probably
too great a detail. No Congressional hearing in the 200
plus years of the history, 206 years of the history of this
Congress, has ever spent as much time on a few scraps of
paper as this Congressional hearing has.
And my conclusion, in terms of what we have found, is
there is no evidence of any attempt to cover up anything.
Now those who want to build some kind of a case and want to
ignore the facts, they can put something together.
Second, there is no evidence of any connection between
the handling of the documents and what is called Whitewater.

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I think that's what's happened so far in these three
weeks. To the extent that we may have dispelled some of
that, I think that is important.
I would add one, and this is not the focus of the
hearing, I know two other points. One, for those who have a
conspiracy theory, who believe that Vince Foster did not
commit suicide, there has not been one witness, one
scintilla of evidence that that has not been the case.
And second, there has not been one shred of suggestion
on the part of any credible witness or any witness that
Whitewater was in any way involved in his suicide.
These are just some general observations, as we have the
last day of this first phase of hearings. Mr. Chairman, I
thought I would make, and I yield back the balance of my
time.
Senator Dodd, I'll ask my colleague to yield whatever

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little time he has –
Senator Simon. I would be pleased to yield to my
colleague from Connecticut.
Senator Dodd. Is that appropriate?
I just want to, Mr. Chairman, because so much has been
spent on focusing on this note and I made, or tried to make
this point on several occasions, and maybe for those who are
catching snippets of this and hear about these 27 torn
pieces of paper. I would understand the length of time that

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we have dwelt on this if the 27 pieces of paper had been
thrown out, had been burned, were illegible, there was
blurred ink and we didn't know what it said, or if you had
pieced the pages together and there was some highly
incriminating evidence regarding the White House.
Under any one of those circumstances, I think dwelling
on why these papers hadn't been found earlier would at least
be justified.
For the life of me, what I don't understand is, and I'm
going to ask, Mr. Chairman, if I can, to put up the typed
copy of this note on the screens if we could here.
(Pause.)
Senator Dodd. Would you please put that up on the
screen, please?
(Pause.)
Senator Dodd. Now, Mr. Nussbaum, I realize this may not
be exactly a painless exercise, but you've been asked to do
other things.
But I've read this note dozens of times, trying to
discern if there was anything in this writing, note,
whatever else you may want to call it, that had it not been
the subject of some scraps of paper here, would have been,
that anyone associated with the White House would be
justified in keeping it private or somehow not making it
public.

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And I wonder if you might take a minute or so out and
just please read this note, and tell me whether or not
there's anything in here that you see that is incriminating
in any way to the White House?
Mr. Nussbaum. This is the note.
I made mistakes from ignorance in experience 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 A.G. 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 Usher's Office plotted to have excessive costs
incurred, taking advantage of Kaki and HRC.
The public will never believe the innocence of the
Clinton's 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. Here, ruining people is considered
sport.

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That's the note.
Senator Dodd. I apologize for having you go through
this, because it's painful. I should point out that this is
a transcription, not the note itself, for purposes of the
record.
But is there anything in that transcription which in any
way would be indicate some complicity on the part of the
White House that would warrant anyone wanting to keep that
note from the public view or from the investigation of legal
authorities?
Mr. Nussbaum. Absolutely not. Absolutely not. When we
turned it over, indeed, we were pressing at that point to
have it released to the press as promptly as possible.
Everybody was very sad about the death, but we were pressing
to have this released as promptly as possible.
But the Department of Justice didn't want to do that, so
we held back.
In any event, to answer your question, there was nothing
in this note that would induce us not to want to give it
to

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[20] the Department of Justice or to the public at large.
[21] Senator Dodd. As I say, and the time is up here, but
[22] I'd just make the point again, if we didn't have this note,
[23] if someone had burned it, destroyed it, the writing were not
[24] legible, you couldn't even put this together, I could
[25] understand I think the amount of time that's been spent on

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[1] it.
[2] But since we have the note, we know what it says, common
[3] sense would seem to indicate, once you've read it, that
[4] justification for whatever conspiracy someone may be
[5] conjuring up for not wanting to reveal this, seems to go out
[6] the window once you've read it.
[7] If you couldn't read it, I could understand maybe the
[8] attention. If you can read it, I'm perplexed as to why this
[9] is still the subject of so much attention.
[10] And I thank you, Mr. Chairman.
[11] The Chairman. Senator Faircloth, I'm going to ask you,
[12] would you yield to Senator Bennett, just for, I think he has
[13] a quick question?
[14] Senator Faircloth. I sure will.
[15] The Chairman. Senator Bennett?
[16] Senator Bennett. It's not that quick, but I'll do the
[17] best I can.
[18] Senator Faircloth. Senator, I hadn't expected it to be
[19] that quick.
[20] Senator Bennett. Okay.
[21] Just so, while Mr. Nussbaum is here, we have this
[22] straight between us, I would like, Mr. Chairman, to repeat
[23] the colloquy that took place between me and Ms. Gorham on
[24] this issue, so that you hear directly what was said.
[25] I said, Ms. Gorham, you described a conversation with

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[1] Mr. Nussbaum where the impression that I got, I'll put it in
[2] my words, was that it was an interrogation. He went at you
[3] very vigorously. He repeatedly asked you what you saw in
[4] the briefcase, almost as if he were a prosecutor trying to
[5] break down your story.
[6] That's my interpretation of what you said. Is that a
[7] fair interpretation?
[8] Ms. Gorham: That is a correct interpretation.
[9] Senator Bennett: Okay. I understand that the note had
[10] been found at the time that interrogation took place. We
[11] can check that but it's my understanding that as of the time
[12] he was ask you those questions, he already had the note.
[13] Why didn't he ask you about the folder you said you saw?
[14] This is the first time I've heard of any folder having been
[15] in the briefcase, or did he ask you?
[16] Ms. Gorham: I don't recall if he asked me about the
[17] folder or not.
[18] Senator Bennett: But his primary focus was on the
[19] yellow pieces of paper?
[20] Ms. Gorham: His focus was on my explanation of what I
[21] found, which was the color yellow, and asking me to indicate
[22] or identify what size or shape or form.
[23] Senator Bennett: Okay. When you say what you found,
[24] you're not leaving the impression that you found anything,
[25] it's what you had seen.

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[1] Ms. Gorham: I had seen, out of the corner of my eye, as
[2] I picked it up.
[3] Senator Bennett: Okay.
[4] Well, the pattern that I see here, I'd like you to
[5] comment on. Here's an intense interrogation by Mr.
[6] Nussbaum. What did you see? And you can't satisfy him. He
[7] keeps coming back to it. The pattern that the two of you
[8] have testified to of the slamming of doors and the coming
[9] and going and we've got to have a typewriter and we've got
[10] to have a typewriter in here for us to use, shows a high
[11] degree of concern over a fairly long period of time with the
[12] question of what did someone other than the tight group that
[13] came in with the Clinton's see and know about this.
[14] Is it fair to say that there was a bit of paranoia
[15] around here, or am I going farther than is proper?
[16] Ms. Gorham: Sir, I'm sorry, I cannot tell you how
[17] others felt, but I never felt paranoid.
[18] Senator Bennett: I'm not suggesting that you felt
[19] paranoia, I'm suggesting there's a pattern of behavior that
[20] suggests to me a higher concern about what the staff may
[21] have seen and been upon that I think we could explain just

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[22] in terms of grief.
[23] Ms. Gorham: It would seem so by the amount of
[24] questioning that took place between Bernie and myself.
[25] Bernie questioning me.

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[1] Now would you like to comment on that with that direct
[2] quote, not just my memory? That's the exchange that took
[3] place, word for word.
[4] Mr. Nussbaum. Well, she thought Mr. Chertoff was tough
[5] on her. He was easy on her. I guess she thought I was
[6] tough on her when I also was easy on her.
[7] It just – look, that's her memory. She was distraught
[8] then. I think in many ways, Deborah Gorham's probably even
[9] a little distraught now about the situation.
[10] I treated her at all times in a polite, decent and
[11] gentle fashion.
[12] There are many other people in the White House Counsel's
[13] Office who you can question about that. I don't think, and
[14] I think those people who saw my relationship with Deborah
[15] Gorham would support what I was saying right now.
[16] I think what she testified to was, as I said earlier, a
[17] product of her grief at the time, a product of her being in
[18] shock at the time, and indeed it's even a product of her
[19] grief at this late date.
[20] That's all I have to say, Senator.
[21] Senator Bennett. Thank you.
[22] The Chairman. Senator Faircloth?
[23] Senator Faircloth. Thank you, Mr. Chairman.
[24] Mr. Nussbaum?
[25] Mr. Nussbaum. Yes, Senator, we haven't met yet, but

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[1] it's nice to meet you.
[2] The Chairman. Well, you may regret saying that.
[3] (Laughter.)
[4] Senator Faircloth. As Patrick Henry's epitaph, on
[5] second thought, you may also.
[6] You testified yesterday that you escorted Maggie
[7] Williams and Patsy Thomasson out of the Counsel's office.
[8] and then went back into your office to make some phone
[9] calls.
[10] You went on to say that you locked up the office upon
[11] leaving the night of July the 20th.
[12] Leaving aside the fact that Ms. Williams and Ms.
[13] Thomasson don't remember leaving the office on the same way
[14] as you do, and that the veteran Secret Service Agent O'Neill
[15] testified before this Committee that he locked and alarmed
[16] the office that evening, and we have the alarm log which
[17] shows that Mr. O'Neill did in fact lock the office that
[18] night.
[19] Now, Mr. Nussbaum, how can you expect this Committee to
[20] believe that the alarm log is wrong? When Mr. Castleton
[21] locked the office earlier that evening, his name appears on
[22] the log.
[23] This record clearly shows that you did not lock the
[24] office, that Mr. O'Neill did.
[25] Mr. Nussbaum. No, no –

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[1] Senator Faircloth. Wait a minute. Would you wait a
[2] minute until I finish?
[3] Now I've been asking myself why you would insist that
[4] you were the one to lock up the office that night, and even
[5] go so far as to say that the Secret Service log is wrong.
[6] Well, the only thing that makes sense to me is that you
[7] didn't want to leave any doubt in the Committee's mind that
[8] Maggie Williams was in Vince Foster's office after you left
[9] and that in fact, as Officer O'Neill testifies, you were not
[10] the last one out of the office; Maggie Williams was.
[11] If in fact Maggie Williams was the last one out of the
[12] Counsel's suite that night, you cannot definitely tell this
[13] Committee that Maggie Williams did not remove any documents
[14] from the suite that night.
[15] It appears to me that we have the word of a career law
[16] enforcement officer and Secret Service Agent O'Neill,
[17] against Clinton crone Maggie Williams who, when here before
[18] this Committee, could not remember whether the sky was blue
[19] or not, totally entered a plea of insanity.
[20] Now, Mr. Nussbaum, –
[21] Senator Moseley-Braun. Now wait a minute, Senator
[22] Faircloth. That kind of character assassination is
[23] absolutely uncalled for, number one.
[24] The second thing, the question was never asked whether
[25] the sky was blue.

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[1] And in the third place, I think you are totally out of

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bounds.
Senator Faircloth. And I think you are too.
If you let me finish, then you can talk after I finish.
Senator Moseley-Braun. Senator Faircloth –
The Chairman. Now, I'm going to ask that we all just take a step back now, and –
Senator Faircloth. Mr. Nussbaum, I don't want to hear about the lie detector test that she took. We all know she took practice tests which totally discredits the real test given by the independent counsel.
Now, Mr. Nussbaum, you have to insist that you –
Senator Sarbanes. On what basis?
Senator Faircloth. You have to insist that you locked up the office that night because if this one detail fell apart, then so's the story of your accomplice, Maggie Williams.
Mr. Nussbaum, please explain to me how you expect this Committee to believe that you locked up the Counsel's suite, when this document, which is on the screen, clearly shows you did not?
Senator Sarbanes. Mr. Chairman, I have to lodge an objection to some of the characterizations contained in the question.
Now, the sky is blue, as Senator Moseley-Braun observed.

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that question was never put.
A plea of insanity?
Now, you know, there's a certain element of fairness and the Senator has an opportunity to ask a question. He can load an awful lot of unfairness into the premises of his question before a response is ever made.
The Chairman. I'm going to ask the witness to respond obviously to the question as it relates to the log, and we're going to say that sometimes there is a tendency, and I would note that it has not been very frequent here, and I think that the basic decorum has been one that we've been satisfied with.
People will add characterizations, so without addressing the characterizations, Mr. Nussbaum, if you can respond, I think the to the central point of the Senator's question, as it relates to the description that we see here that Officer O'Neill has locked the alarm and your testimony that you did.
Obviously his point is, he is concerned that if that is the case, that indeed you were not the last person out, and that maybe Maggie Williams was still there. That would lead to comporting with Officer Williams thereafter when everyone else is gone, seeing Ms. Williams carry the box.
Now that's what it comes down to.
Mr. Nussbaum. Well, I have to say, I'll respond to the

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question, but I'm also shocked and dismayed by the character assassination, but I'll respond to the question.
I remember being the last one to leave the office that night and locking it up. What I don't remember is whether or not I called the Secret Service when I did so.
If I, as I explained yesterday – you may not have been here, Senator Faircloth when I did this – the normal procedure is to go into Vince's office, turn on the alarm, then go over to the phone, call the Secret Service and say, this is Mr. Nussbaum, I'm locking the office. Leave the office and lock the door.
And then presumably the log would reflect the name of the person who called.
If I didn't – but you can lock the office and turn on the alarm without making that call. And if you do it without making that call, they may get, the Secret Service log may get the wrong name. In other words, it may get a name of a person who did it previously, the person who made the last call.
I'm not saying that happened here. I don't know what happened here.
What I'm doing is giving you a possible explanation as to why I could be the last one out, locking the office and turning on the alarm, and yet the Secret Service log not reflecting that because I neglected, which sometimes we did

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neglect to do from time to time, especially that night, when there was a great deal of distress, to call the Secret Service and say, look, you know, this is Mr. Nussbaum, I'm

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[4] the last one leaving.
[5] That's an explanation for making my memory consistent
[6] with what was on the log but I was in the office for an hour
[7] prior to the time of its being locked, and I categorically
[8] state to you, Senator Faircloth, and to the members of your
[9] Committee, that Maggie Williams, who was not my accomplice,
[10] but a wonderful, decent, honest woman, was not in the office
[11] that night, other than the ten minutes that I was with her
[12] when we were searching for a note.
[13] And I think, when this is all over, that's what the
[14] record will show, and anybody who makes charges to the
[15] contrary is going to be ashamed of those charges ultimately.
[16] Senator Faircloth. Mr. Nussbaum, would you tell me why
[17] a career Secret Service Agent, 18 years, would testify –
[18] Senator Sarbanes. He's not an agent. A Secret Service
[19] Uniformed Officer.
[20] Senator Faircloth. A uniformed Secret Service Officer
[21] would testify that he met Ms. Williams, she had this stack
[22] of papers three to five inches high, folders, that she took
[23] them into her office, and that he locked the office after
[24] she left?
[25] Why would this man testify to such a devastating piece

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[1] of evidence if it were not so?
[2] Mr. Nussbaum. Because, like so many people in life, you
[3] know, I've seen this in this proceeding, and I've seen it in
[4] litigation, people, and it happens to all of us. It happens
[5] to you, it happens to me, it happens to all of us. People
[6] get confused from time to time about events. People
[7] telescope events. Something happens on one day and you
[8] think it happens on another day.
[9] Maggie Williams walked through the West Wing everyday of
[10] her existence there, in the evening of her existence there.
[11] Her office was right near my office and near the First
[12] Lady's office.
[13] There are many days that Maggie Williams would be
[14] walking through the second floor of the West Wing where our
[15] offices were located with stacks of files in her arms.
[16] There are many days she would do that.
[17] What Officer O'Neill, to me, Senator, with all due
[18] respect to this Committee, what this agent – not agent,
[19] security guard basically, primarily did, in my view, is
[20] confuse, confuse one date with another date.
[21] Now he didn't mention it for many months later, and you
[22] know, there's all sorts of indications like that, but I'm
[23] not even focusing on that very much.
[24] But it's quite clear to me that at one time he obviously
[25] saw Maggie Williams with files carrying. She did that, as I

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[1] said, day after day after day. He just got it wrong when he
[2] says, it happened the night of July 20th, 1993, when Vince
[3] Foster committed suicide.
[4] That's my explanation. I'm not saying he's lying, I'm
[5] saying he's just wrong and it's even understandable when you
[6] look at all the circumstances.
[7] I hope I've answered your question, Senator.
[8] Senator Faircloth. Well, you've answered the question.
[9] I don't believe the answer but that's all right.
[10] I simply do not believe that this career officer met
[11] Maggie Williams, and he nor Ms. Williams are petite people,
[12] in a five-foot hallway and he didn't recognize her and what
[13] she had in her arms.
[14] Mr. Chairman, I –
[15] The Chairman. Thank you, Senator.
[16] Senator Sarbanes?
[17] Senator Sarbanes. Mr. Chairman. I'll be very quick.
[18] I just want to make, first, a couple of observations.
[19] We actually have, we understand that Officer O'Neill.
[20] the uniformed officer that we're talking about, had either
[21] four or five separate interviews with the FBI as part of the
[22] work of the independent counsel, in which he related his
[23] recollection of what occurred, and apparently he related it
[24] once, was brought back to relate it again, and brought back
[25] yet another time and another time, perhaps even a fifth

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[1] time.
[2] And of course we've been seeking those reports from the
[3] independent counsel and the Chairman and I have

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joined
[4] together in doing that. Obviously, that would be helpful in
[5] this context.
[6] Secondly, I'm trying to understand, even if one accepted
[7] Mr. Spafford's version of what occurred, I have difficulty
[8] understanding what difference that would make other than
[9] that you made an even bigger error than you've admitted to
[10] in terms of searching the briefcase.
[11] I mean, when Senator Frist went through this, and he
[12] said, and what did Mr. Nussbaum say in response to Mr.
[13] Sloan's statement and his demonstration that there were
[14] scraps of paper in the bottom of the briefcase?
[15] Mr. Spafford: Mr. Nussbaum was sitting on the couch or
[16] the sofa at the time. His comment was something to the
[17] effect that we will get to all of that later. We have to
[18] look through the materials and we will look through that
[19] later.
[20] Senator Frist: And were you left with the impression of
[21] that statement that indeed these scraps would be looked at
[22] later?
[23] Mr. Spafford: That's correct.
[24] Senator Frist: No, when Mr. Sloan stated that there
[25] were scraps of paper there, was Mr. Nussbaum surprised, what

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[1] was his reaction?
[2] Mr. Spafford: Mr. Nussbaum, as near as I can recall,
[3] did not have a reaction. It was an off-the-cuff remark by
[4] Mr. Sloan to which I attached, to which I attached, meaning
[5] Spafford, very little significance at the time, and it
[6] appeared that Mr. Nussbaum attached very little significance
[7] to it, as well.
[8] Now, your error may have been, assuming that your
[9] recollection is that that conversation did not take place,
[10] but let's make the other assumption because what's happening
[11] around here and I want to make this point generally, is we
[12] get conflicts in recollection.
[13] I said early in the course of these hearings that I took
[14] some comfort from the conflicts in recollection, because if
[15] everyone came walking in here, telling exactly the same
[16] story, as to what had happened two years ago to the very
[17] minute in excruciating detail, I would start wondering,
[18] well, what's going on here. That's not normal human
[19] conduct.
[20] Normal human conduct is to have difficulty remembering,
[21] to have conflicts in testimony. People see things in
[22] different ways. They may remember something as happening on
[23] this day, when it happened on some other day.
[24] They remember it happening before an event, instead of
[25] after the event.

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[1] So in a sense, I find these conflict in recollections
[2] normal.
[3] Then the question becomes well, there's a conflict in
[4] recollection, and then that becomes a large issue. But
[5] occasionally, you have to ask yourself, well, let's take it
[6] either way. Let's take it either way.
[7] What's the consequence of taking it one way or taking it
[8] the other way.
[9] And in this instance, it seems to me that even if Mr.
[10] Spafford's version was correct, that the worst out of this
[11] is that Mr. Nussbaum was deficient in not going back into
[12] that briefcase.
[13] Now in the end, what was in the briefcase came out.
[14] Isn't that correct, as best we can follow this line?
[15] Mr. Nussbaum. Yes, Senator, that's correct.
[16] Senator Sarbanes. It didn't happen on that day, which
[17] was the 22nd, and as you've said today would have been
[18] helpful, extremely helpful to have had it on that day,
[19] because it would have been prior to the funeral, it was at a
[20] time of extreme distress in the Foster family, but it did
[21] happen at the beginning of the following week.
[22] Did you go into your office over that weekend after the
[23] funeral?
[24] Mr. Nussbaum. No. No, I did not. I gave the entire
[25] staff off that weekend, and I went out of town. When I came

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[1] back from Arkansas, we went to Arkansas, we all flew on Air
[2] Force One to Arkansas, my entire staff, virtually my entire
[3] staff went to Arkansas on Air Force One to the
[4] came back very, very late Friday night. It was a

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one-day
[5] trip, it was a very intense day, and I told everybody to
[6] take off the weekend. I didn't want anybody working that
[7] weekend.
[8] And I myself went to Maine that weekend, Saturday and
[9] Sunday. I arrived back in Washington late Sunday night, and
[10] I went into the office Monday morning.
[11] So the answer to your question is, I wasn't in my office
[12] during that weekend.
[13] Senator Sarbanes. Senator Dodd?
[14] Senator Dodd. Well, just a point on this, on the Maggie
[15] Williams. I mean, I think it's worthwhile pointing out that
[16] Maggie Williams took two lie detector tests. The results of
[17] those lie detector tests were then upheld and corroborated
[18] by one of the top law enforcement officials who have no
[19] particular interest in this matter, as being good tests.
[20] which she passed with flying colors.
[21] I mean, now, as I gather, no request was made of Mr.
[22] O'Neill to take a lie detector test. I'm not suggesting one
[23] should be asked of him, nor am I suggesting that he is lying
[24] at all here.
[25] But it seems to me to impugn the character of someone

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[1] who has gone through that process and answered those, the
[2] results of those tests have been strongly supported by
[3] people who have no particular interest in this matter other
[4] than fulfilling their obligations and drawing those
[5] conclusions, ought not to be lost on people as we try and
[6] determine the veracity of statements being made by
[7] witnesses.
[8] And I thank my, and would gladly yield. I don't know
[9] what –
[10] Senator Sarbanes. I'm sorry. I failed to yield to
[11] Senator Moseley-Braun.
[12] Senator Moseley-Braun. It's all right, Mr. Chairman.
[13] I'll allow you to conclude this matter if that's in order.
[14] Are we done? Can we go home yet?
[15] The Chairman. What I think and let me just, when you
[16] conclude here, the witness needs a little break, so we're
[17] going to take a five-minute break because I think we are
[18] very close.
[19] I know Mr. Chertoff has some questions, and I think we
[20] are very close to wrapping up, because we're going to have
[21] another panel and so I'd like to move it, but why don't you?
[22] Senator Moseley-Braun. Thank you.
[23] Senator Kerry. Well, are you going to go or?
[24] Senator Moseley-Braun. No, I yield to Senator Kerry.
[25] Senator Kerry. Mr. Nussbaum, I wanted to complete the

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[1] questioning that I had earlier. The unfortunate part of
[2] getting going is that we get interrupted in the process and
[3] so we left one component of that out, when frankly there's
[4] another component that I think is equally important, if not
[5] perhaps more important.
[6] I was asking you about a series of your knowledge with
[7] respect to a period of time where I disagreed with a
[8] conclusion you'd drawn about speculative time period, that
[9] is, after it left.
[10] But what is really important is the non-speculative time
[11] period, what happened while the documents were in your
[12] custody and while the law enforcement officers were with
[13] you.
[14] And I want to just review that for a minute because I
[15] think that is perhaps one of the most relevant and critical
[16] components of any judgments we make specifically, and I see
[17] the light going on.
[18] You had members of the DOJ, the Department of J[illegible]
[19] [illegible]d the Park Police and Mr. Foster's attorney all
[20] [illegible]nt in your office, in his office, correct?
[21] Mr. Nussbaum. And the FBI and the Secret Service.
[22] Senator Kerry. And the FBI and the Secret Service.
[23] Mr. Nussbaum. Yes.
[24] Senator Kerry. And you read through each document in
[25] that office, including the personal files in their presence.

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[1] did you not?
[2] Mr. Nussbaum. Yes. I glanced at each. I cannot say I
[3] read each document in its entirety, but –
[4] Senator Kerry. I understand but you characterized it to
[5] them?
[6] [illegible]

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[7] Senator Kerry. You opened up the file and said to them,
[8] this is this kind of document?
[9] Mr. Nussbaum. Correct.
[10] Senator Kerry. And they had no right to subpoena any of
[11] those documents, did they?
[12] Mr. Nussbaum. They did not.
[13] Senator Kerry. And the only access they could have to
[14] those documents was in effect your making a judgment about
[15] how the privilege would be played out, the various
[16] privileges?
[17] Mr. Nussbaum. Correct, that's right. I wanted to sort
[18] of balance the – they wanted into the office to search for
[19] a suicide note, and I didn't want to keep them out, even
[20] though other people were advising that.
[21] Senator Kerry. But I think what's really important for
[22] everybody to understand at this point in time is that as of
[23] that day, which was then the 22nd of July, the only issue in
[24] front of law enforcement officers, the only discussion,
[25] other than the question of Phil Heymann and how it looks,

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[1] substantively, substantively the only question was, is there
[2] a suicide note or is there a note that shows potential of
[3] extortion or state of mind.
[4] Mr. Nussbaum. Or extreme mental anguish. Yes, that's
[5] right.
[6] Senator Kerry. And you, as you read them, any one of
[7] those parties, Mr. Foster's lawyer, the Secret Service, the
[8] Park Police, the Justice Department, could have said, that's
[9] a file that we'd like to look at, correct?
[10] Mr. Nussbaum. Correct.
[11] Senator Kerry. And they did in fact do that as to some
[12] of those files, did they not?
[13] Mr. Nussbaum. They did, yes.
[14] Senator Kerry. So any file that law enforcement wanted
[15] to see, including the personal files that later were moved,
[16] they had an opportunity to say, we want to see that
[17] document?
[18] Mr. Nussbaum. That's correct.
[19] Senator Kerry. If it raised any kind of suspicion or
[20] curiosity or question in their mind?
[21] Mr. Nussbaum. That is right.
[22] Senator Kerry. And those documents that they did in
[23] fact say, well, we'd like to look at that one, that kind of
[24] may be something that we want to know more about, they were
[25] put in a special pile, were they not?

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[1] Mr. Nussbaum. They were.
[2] Senator Kerry. And that special pile was in fact
[3] secured in a way that guaranteed that subsequently, when
[4] they did want to see them, they knew exactly what files were
[5] put away in that file and they got those files, correct?
[6] Mr. Nussbaum. That's correct.
[7] Senator Kerry. So when you say that they got everything
[8] that was available that they wanted, in effect, you are
[9] saying it in that context, that everything that they could
[10] have asked for, everything that I went through, everything
[11] that they could have then stopped me on, they ultimately got
[12] to see?
[13] Mr. Nussbaum. That's correct.
[14] Senator Kerry. And there's no question about that
[15] today, is that right?
[16] Mr. Nussbaum. There's no question about that in my
[17] mind.
[18] Senator Kerry. So the only issue is really as to this
[19] speculative conspiratorial area.
[20] Mr. Nussbaum. Correct.
[21] Senator Kerry. If you want to try to construct a
[22] conspiracy that says, well, wait a minute, they didn't make,
[23] the law enforcement officials, not Bernie Nussbaum, but the
[24] law enforcement officials didn't make the right judgment or
[25] ask for the right file to be put aside. Therefore, now they

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[1] can come back after the fact and begin to suggest, well, we
[2] didn't get to see what was in that file.
[3] Mr. Nussbaum. That's right.
[4] Senator Kerry. And isn't it true that after a couple of
[5] days in the newspapers, questions began to circulate and be
[6] asked publicly that might have raised somebody's CYA
[7] syndrome capacity to sort of say, well, wait a minute, we
[8] didn't get to see that and people wanted to start to jockey
[9] as to how they might have looked better in the context of
[10] that original?
[11] Mr. Nussbaum. After the note was discovered and turned

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over. that's what happened, yes.
Senator Kerry. After the note was discovered?
Mr. Nussbaum. Yes.
Senator Kerry. Now, would it not have been better, in retrospect. to have been able to produce a list of those
things that went off so that everybody would know that the
full number in fact turned up elsewhere?
Wouldn't you be happier with that today?
Mr. Nussbaum. Yes, that's correct, yes. In retrospect, I. you know. I didn't think it was necessary to index them
at the time. There was none of this hysteria that exists
today and paranoia, and also, Senator, no one asked me. And
it's true. I could have indexed myself without anybody
asking me, but no law enforcement official said to me. look.

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we know you're moving documents. because you're moving them.
but you should index everything you're moving so we have a
check later on if we want to come back.
No one said that to me.
Senator Kerry. So at the moment that that meeting
ended. when this review of the documents ended on that
particular day with everybody present. no agency, no law
enforcement officer said to you. at that moment, we're
really concerned about these documents. or you must treat
these this way. or don't let these out of your control.
None of those orders were issued?
Mr. Nussbaum. That's correct. none of those orders were
issued.
Senator Kerry. And no document was transferred, you are
saying to us. that they, in effect. wanted to review because
the ones they wanted to review had been set aside and
ultimately were reviewed?
Mr. Nussbaum. That's correct.
Senator Kerry. So we're left with an area for
speculation and conspiracy theory but no real evidence.
depending on how you come out in the struggle between Maggie
Williams and Mr. O'Neill?
Mr. Nussbaum. Yes. And we know. very frankly, Senator.
the people who had the documents. [illegible] gave them
to Maggie Williams. who basically took them over to the

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residence. They stayed there for three or four days in a
locked cabinet.
Carolyn Huber maybe had access to that cabinet. or maybe
she didn't. I don't know the exact testimony. Then they're
sent to Williams & Connolly on July 27th. so five days have
now passed. Williams & Connolly logs in each document.
Now I know one can speculate that between July 22nd,
there was no index because they were leaving, as we
discussed earlier, and July 27th when there was an index,
something could have happened.
So what you do is you then go to the people and question
them under oath in effect. or in the chain of custody. so to
speak. and you say. did you destroy a document. did you take
any document out? Did you review the file? What did you
do?
Each of those people has been questioned by this
Committee and also by the Special Counsel.

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Senator Kerry. I understand.
Mr. Nussbaum. There's not a scintilla of evidence. and
it's been two years in these investigations. There's not a
single document that's missing, or document that's been
destroyed.
Senator Kerry. I don't disagree that there aren't
issues of appearances. But apart from appearances. law
enforcement was looking for – I mean. the important
measurement, it seems to me we have to continually keep
focused on. is this was a suicide investigation.
Mr. Nussbaum. That's right.
Senator Kerry. At least it was an investigation of a
[illegible] suicide. But no evidence

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that I've
seen yet indicates to me that anybody was looking for
anything more than a suicide note, or evidence of some
extortion. And if that, to this day, remains all that
someone was looking for, and they themselves didn't set
aside any other document, including a personal document for
that purpose –
Mr. Nussbaum. That's right.
Senator Kerry. – it's a little hard to get overly
exacerbated about this ancillary, six-month-later
investigation that arose, which then tries to be connected.
Mr. Nussbaum. That's right, Senator. No one said to
me, "Mr. Nussbaum, we want to look through all the files.

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We want to read every document. We want to see every matter
Vince Foster was working on, personal – we want to see
every Clinton personal file, because we want to determine
the state of mind. We want to see if there's any potential
scandal. We want to see what might have driven him to this
thing."
No one – there was no basis for that – no one made
that suggestion. It was a search, as you said, for a
suicide note.
Senator Kerry. Thank you, Mr. Chairman.
The Chairman. Thank you, Senator.
Mr. Chertoff?
Mr. Chertoff. Mr. Nussbaum, your testimony, to be quite
certain – no one told you –
The Chairman. Let me make an inquiry right now.
I think – well, let's take a five-minute break. I know
the witness has been here at the table for quite awhile.
We'll take a five-minute break. I think we can conclude it
within 15 minutes after we come back.
Five minutes.
(Recess.)
The Chairman. Mr. Chertoff?
Mr. Chertoff. Mr. Nussbaum, I want to be very clear on
this.
Your testimony is that when the law enforcement people

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talked to you, they did not tell you that they were
interested in evidence of [illegible] caused this
violent death. Is that your testimony?
Mr. Nussbaum. They were interested in looking for a
suicide note, an extortion note, or some other similar such
document reflecting extreme mental anguish.
It is true, Mr. Chertoff, that in the course of the
search – and maybe I should have even said this to Senator
Kerry – they started making requests. As I was describing
documents, they started making requests to look at certain
documents, for example a phone log to show who he had talked
to recently.
So in that sense, at that time, to some extent, they
were broadening their request – let me finish, Mr.
Chertoff.
Mr. Chertoff. I haven't said a word, Mr. Nussbaum.
Mr. Nussbaum. They were broadening their request to ask
for additional documents. A phone log is not a suicide
note, but a phone log is something that will enable you to
talk to people who talked to Vince right before he died.
perhaps. So they did broaden their request, and I was
agreeable to dialoguing with them or to talking with them
about this, and providing them additional documents.
Mr. Chertoff. But in order to dialogue with them, they
had to know what the documents were. They were relying on

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you to tell them what they were, right?
Mr. Nussbaum. And I gave them descriptions, general
descriptions of each of the files I was looking at.
Mr. Chertoff. Did you tell them there was a
handwritten, loose-leaf spiral notebook written in Mr.
Foster's handwriting which talked about the travel office
issue and the First Lady?
Mr. Nussbaum. Yes. I told them there was a travel
office file.
Mr. Chertoff. A file or something with handwritten
notes of Mr. Foster?
Mr. Nussbaum. When I took that, when I got to that file
or that book or that handwritten note, I said, "These
documents involve the travel office situation which Mr.
Foster had been working on, and indeed, I say, which has
been [illegible] in the newspapers." I told them that.
Mr. Chertoff. Did you tell them that he had

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handwritten
[18] notes about it?
[19] Mr. Nussbaum. There's a lot of documents there that had
[20] handwritten notes in them, Mr. Chertoff. This is a lawyer's
[21] office. You know what lawyers do? They take a lot of
[22] handwritten notes, and a lot of his files did have
[23] handwritten notes.
[24] Mr. Chertoff. I understand your position, Mr. Nussbaum.
[25] Mr. Nussbaum. Mr. Chertoff, you're interrupting me.

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[1] You can plainly see handwritten notes. It was obvious
[2] to everyone there were handwritten notes, and indeed, Mr.
[3] Chertoff, with respect to the travel office file, after the
[4] note was discovered on July 26, which clearly mentions the
[5] travel office matter as something on his mind – I told him
[6] there was a travel office file. No one asked from the
[7] Department of Justice for a travel office file, whether it
[8] contained handwritten notes or not. They weren't interested
[9] in that at that time.
[10] Mr. Chertoff. I understand, Mr. Nussbaum, your
[11] eagerness to argue for your point of view.
[12] Mr. Nussbaum. No. I'm interested to give you the facts.
[13] Mr. Chertoff. I'd like to get kind of the answers you
[14] gave Senator Boxer before, when you gave her the "yes/no"
[15] answers.
[16] I just want to know: they were relying on you to
[17] describe the contents – yes or no.
[18] Mr. Nussbaum. They were relying on me to give them a
[19] general description of the files. And one of the files I
[20] generally described was the travel office file.
[21] Mr. Chertoff. Were you asked after this procedure was
[22] finished to keep the office locked or secured? Yes or no.
[23] Mr. Nussbaum. No.
[24] Mr. Chertoff. Now, after they left –
[25] Mr. Nussbaum. I recall no such request. If such a

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[1] request would have been made, I would have told them no.
[2] Mr. Chertoff. After they left, Maggie Williams came
[3] over, correct?
[4] Mr. Nussbaum. That's correct.
[5] Mr. Chertoff. And we agree that, during the process of
[6] assembling the personal documents, you didn't ask anybody to
[7] create any kind of record of what was being
[8] transmitted,
[8] right? Correct?
[9] Mr. Nussbaum. Yes, I agree. No one asked me. No
[10] Justice Department official asked. They knew, as you knew.
[11] Mr. Chertoff, that I was going to disperse files to various
[12] places outside the office, and no one asked me to create a
[13] log or index of what I was sending outside the office.
[14] Mr. Chertoff. The following Monday, when Mr. Neuwirth
[15] collected documents to be distributed to other lawyers, he
[16] created such a log, right?
[17] Mr. Nussbaum. He created a log at my request, because I
[18] wanted to sit down with them to look over each of the files
[19] listed on that log, so that he and I could make a
[20] determination who in the counsel's office should now get the
[21] file with respect to this particular matter.
[22] Mr. Chertoff. But you didn't make the request on the
[23] 22nd to have somebody sit down and compile everything? Yes
[24] or no.
[25] Mr. Nussbaum. The answer to that is no.

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[1] Mr. Chertoff. I understand there's been some discussion
[2] and back and forth about whether these are personal
[3] documents or official documents, and I understand that this
[4] whole issue of Presidential records is complicated. I just
[5] want to set this question up for you.
[6] My understanding is that you, even when the writing was
[7] discovered on the 26th, there was at least some question
[8] about doing research about privilege, what the legalities
[9] were to handling the document. Certainly, you've made it
[10] very clear that you've spent a lot of time thinking about
[11] the legalities of allowing access to the office for law
[12] enforcement.
[13] What did you do on the afternoon of the 22nd, when the
[14] documents were going to be taken up to the residence, and
[15] then ultimately disseminated outside the White House? What
[16] did you do – let me finish, Mr. Nussbaum.
[17] Mr. Nussbaum. I'm sorry.
[18] Mr. Chertoff. What did you do to have one of those
[19] able

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lawyers in the White House counsel's office do some research about the legalities of that? Did any of them do any research?

Mr. Nussbaum. It wasn't necessary to do any research.

It wasn't necessary to do any research. The Presidential Records Act, as you may now know, Mr. Chertoff, contemplates that a Presidential aide may create or receive personal

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documents. The Presidential Records Act doesn't turn every personal file, even though it's used for an official purpose, into a Presidential record.

But most significant of all, Mr. Chertoff – if you look at the cases, and you look at the Presidential Record Act, it gives the President, while he's in office, total control of his files, both Presidential files and personal files.

The President is allowed, Mr. Chertoff – look at the cases – the President is allowed to send even Presidential records out.

Please, Mr. Chertoff. You asked me a question. I'd like to finish my answer. The President's allowed, during his term of office, even to take a Presidential record, which these weren't – a Presidential record, and send it outside the White House as long as, at the end of his term of office, he then segregates personal records and Presidential records to make sure Presidential records are preserved. For example, a speech –

The Chairman. Now, wait. You have given a very comprehensive answer. We don't have to get into the question as it relates to speeches now.

Mr. Chertoff. Mr. Nussbaum, again, my question isn't what you've now ascertained. Let me put it this way. I raised this issue with you in your deposition, right?

Mr. Nussbaum. You raised –

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Mr. Chertoff. The Presidential Records Act issue.

Mr. Nussbaum. I think so, yes.

Mr. Chertoff. At the time of your deposition, you didn't give us this answer, right?

The Chairman. He's obviously researched it, and that's good.

Mr. Nussbaum. I answered the question you asked me in my deposition. If you had asked me a more extensive question to elucidate the Presidential Act, I would have been delighted to do it at that time.

Mr. Chertoff. I'm not interested, Mr. Nussbaum, in the research you now have under your hat. I'm interested in that afternoon, just as four days later, you had someone researching the privilege with respect to the torn-up pieces of paper.

I'm simply asking you this question, and it's really very easy to get a yes or no of. Did you have somebody do research that afternoon about evaluating the documents that were being removed to see whether there was any legal restriction? Yes or no.

Mr. Nussbaum. On July 22, 1993, I had been counsel to the President for over six months, or approximately six months – exactly six months. I was aware at that time, because issues had arisen with respect to the fundamental principles of the Presidential Records Act. It is true I

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probably couldn't cite you the cases I can cite you now, but I was aware of the fundamental principles. And those principles were –

The Chairman. No, no. You were there. You were established. You had handled matters of this kind. You had done previous research.

The answer is no?

Mr. Nussbaum. The answer is, did we do research on that day?

The Chairman. Right.

Mr. Nussbaum. We didn't have to do research on that day.

The Chairman. So the answer is, Bernie –

Mr. Nussbaum. The answer is no. We didn't do research on that day.

Please, that took us three minutes.

Mr. Nussbaum. That's true.

The Chairman. Okay.

Mr. Chertoff. We also had the question arise about whether there are any missing documents. I take it you do not recall an index in the file which contained the documents that were removed to the residence that was missing. Is that your testimony?

Mr. Nussbaum. Yes, that's my testimony.

Mr. Chertoff. You do agree, and you are clear, that

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personal files, were removed from Mr.

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Foster's office on that afternoon and taken up to the residence. That's also true?
Mr. Nussbaum. On July 22, yes.
Mr. Chertoff. Now, we do have, in Z 1123, what the White House has given us as the index of personal documents that was printed out or amended on Thursday, July 22. And frankly, that index doesn't have in it any mention of a Whitewater file. It doesn't have any mention of a 1992 tax return, and it doesn't have any mention of the files that were removed on that day.
The only files that are listed on the index that was prepared or amended on July 22, Thursday, are the files that Mr. Neuwirth later collected on the 26th. And just a matter of simple mathematics, simple subtraction, tells me that therefore, there's nothing on the index as it existed in the hard drive on July 22 that lists any of the documents that were removed.
So my question for you is this. Do you have any knowledge of who it is that might have accessed that hard drive and deleted any of the entries on the document?
Mr. Nussbaum. All you've shown is that not every file, not every personal file was on an index.
Mr. Chertoff. No. What I've shown, Mr. Nussbaum, that every file that left is not on the index, and the ones that

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remained are on the index.
Mr. Nussbaum. No, no, no, no. All I think you've shown is that every personal file was clearly not on an index in the White House counsel's office. That's not unusual. Files are created, files are brought in which may not be indexed. The fact is that those files, after passing through this chain of custody that I just described to Senator Kerry before, were indexed. There is an index on July 27, when those files arrived at Williams & Connolly.
Now, to answer your specific question, do I know if anyone – let me start again. Do I know of anyone who went into the computer, who had access to the hard drive, to try to change an index, or delete anything in the index? The answer to that question is no, because it never happened.
Mr. Chertoff. Now, let me turn to my final point. You made an observation about 45 minutes ago in responding to Senator Bennett's questions about your questioning of Deborah Gorham. It's one of those moments – you know what it's like in a trial, where something comes out unexpectedly and it kind of sheds light on something?
Mr. Nussbaum. Yes, I know that.
Mr. Chertoff. You were asked by Senator Bennett about why you were questioning Deborah Gorham either late on the 26th or early on the 27th concerning what she'd seen in the briefcase. And this is after Mr. Neuwirth was laying the

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pieces of paper out on the table, and after you had the briefcase. Correct?
Mr. Nussbaum. Yes. The answer is, it was obviously after. My problem is, I don't remember this particular conversation with Deborah Gorham, although I assume I did question her as she says I did.
Mr. Chertoff. Senator Bennett asked you, why were you pressing her? Why were you asking her again and again what had she seen in the briefcase? And you said to him you were trying to get the facts about the finding of the note. And this is in the record, Mr. Nussbaum. I wrote it down. You were trying to get the facts about the finding of the note.
And that leaves me with this question. Your testimony up to now has been that you always knew the facts of the finding of the note; that you – let me finish.
Mr. Nussbaum. I didn't say a word.
Mr. Chertoff. That you knew, or that you understood that Mr. Neuwirth had found the note; that you had the briefcase in your possession. Therefore, the question has to come up: why did you need to ask Deborah Gorham what she knew about the facts of the finding of the note?
Mr. Nussbaum. I think I explained that in my testimony also in colloquies on this subject.
I would just amend that particular answer to say, I

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was
[25] questioning her about the finding – if I was questioning

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[1] her, which I'll acknowledge I was, even though I don't have
[2] a memory, about the finding, and if she had any knowledge
[3] about the creation of the note. Yes, I knew about the
[4] finding of the note, but I didn't know about the creation of
[5] the note. I think I expressed that in my testimony also, in
[6] my testimony and my colloquies with Senator Bennett.
[7] What I wanted to find out, obviously, is what she knew
[8] about how this note was – not so much found; you're right
[9] about that. We found it. But how it was created, or what
[10] she knew about it generally. That's what I was doing.
[11] That's totally logical.
[12] Mr. Chertoff. That's exactly right, Mr. Nussbaum. It's
[13] totally logical. And what I'm trying to separate out here,
[14] and I think all the fact finders are going to have to
[15] separate out about all your testimony in the last two days
[16] is this. Which parts of the testimony are based on
[17] recollection, and which parts are based on what you think is
[18] logical after the fact; what you're – as you sometimes use
[19] the expression – reconstructing after the fact after you've
[20] sat here, or sat wherever you've sat, and had an
[21] understanding of what's gone before?
[22] So let me come back to this one particular point, a
[23] point which arises after we've heard about the conflicts
[24] with your testimony and Mr. Spafford's testimony, and your
[25] opinion of Ms. Gorham's testimony and her testimony. And it

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[1] comes down to this: your answer, your spontaneous answer to
[2] Senator Bennett – and you are a very practiced attorney,
[3] you are careful with words; you are not a Secret Service
[4] officer, you're not a Park Police officer. Your trade is
[5] words, Mr. Nussbaum.
[6] Mr. Nussbaum. Just like yours is.
[7] Mr. Chertoff. That's correct.
[8] And your answer to Senator Bennett was, "I was trying to
[9] get the facts about the finding of the note." So my
[10] question to you is this. Is your position now on that
[11] statement that you want to amend that answer?
[12] Mr. Nussbaum. No. My answer in the record, my full
[13] discussion with respect to this matter, doesn't require
[14] amending that particular answer, because my full discussion
[15] discussed not only the finding of the note, but the finding
[16] and the creation of the note. And you know, Mr. Chertoff,
[17] that it's not really – I don't want to use the word
[18] "unfair," but it's not totally cricket to pull out one
[19] little snippet as if this gives sort of an insight into my
[20] character.
[21] Read all my testimony, and you'll see what my character
[22] is like with respect to these issues. And when I testified
[23] before this hearing, I testified on the basis of my
[24] recollection, my best memory. And when I reconstructed in
[25] some fashion, or tautologically, as we get to do in a

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[1] dialogue, I normally would indicate that's what I'm doing.
[2] Mr. Chertoff. Well, Mr. Nussbaum, let me just say
[3] personally – you are a very challenging witness to
[4] question.
[5] Mr. Nussbaum. And you are a very challenging
[6] interrogator, Mr. Chertoff.
[7] The Chairman. Senator Sarbanes?
[8] Senator Kerry. Well, I just wanted to make an
[9] observation.
[10] In fairness, Mr. Chertoff, we've had a really excellent
[11] series of questioning and rounds through all the witnesses
[12] through these entire several weeks. Occasionally, however,
[13] there's a tendency, probably among everybody, to try to find
[14] the meaning one's looking for. In fact, one Senator at one
[15] point actually said, "That's the answer I'm looking for."
[16] And I think that, in fairness, I sort of understood the
[17] answer to be sort of New Yorkese. I guess, you know, about
[18] the finding of the note. Well, you know, there are all
[19] kinds of questions surrounding the finding of a note. How
[20] did it get there is number one, and who better to ask than
[21] his secretary? Do you know when he wrote it? I mean,
[22] there are all kinds of – so I just think that one shouldn't
[23] overreach in the final moments of what has been a good

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effort here.
And I think that the witness' answer, as he said, stands

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well on the record; that he covered a great deal more in the
context of what he was asking than just the finding.
The Chairman. Mr. Ben-Veniste?
Mr. Nussbaum. Thank you, Senator.
Mr. Ben-Veniste. Thank you, Mr. Chairman.
Mr. Nussbaum, questions were asked about the travel
office file, and I wonder whether we could put up on our
machine page 3 of Mr. Spafford's handwritten notes.
(Pause.)
Could we sort of zoom in on where the yellow underlining
is?
On page 3 of Mr. Spafford's notes, wherein he is
recording the various items which are specifically alluded
to by you during this procedure, is the notation White House
Travel Office Management – and then it looks like "rule."
I don't know if we can make that to "file," but is that
what you were alluding to before that you specifically
described?
Mr. Nussbaum. Yes. I actually have a distinct memory
of mentioning, this is the White House travel office file or
review or something like that, because I remember saying –
it's one of those things that sticks in your mind – you may
have read about this in the newspapers, because this issue
had been bandied about at that time. So that is what I was
referring to.

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Mr. Ben-Veniste. Now if we could turn to Z 346, and put
that up on the screen, Mr. Sloan took detailed notes as
well. At page 7 of 16 pages, which is denominated Z 346, if
you look right above the underlined standards of ethical
conduct, can you see what those WHTO-Management Review –
Mr. Nussbaum. Yes.
Mr. Ben-Veniste. And what does that refer to?
Mr. Nussbaum. White House Travel Office. And then next
to it, it says Management Review, because there was a
management review contained in the file, although it's not
the whole file, of how the travel office matter was handled
in the WWhite House.
Mr. Ben-Veniste. Thank you very much.
Is it your testimony, Mr. Nussbaum, that having
described the existence of the White House travel management
file on the 22nd, then the note is disclosed on the 27th to
the Park Police and the Department of Justice – that no one
from the Department of Justice or Park Police thereafter
made any request to review that material?
Mr. Nussbaum. That's correct.
Mr. Ben-Veniste. And we have all reviewed that material
now, because as you have seen, Mr. Chertoff has held it up
and displayed it, and it appears to have nothing to do with
anything that the investigators were interested in reviewing
on the 22nd of July 1993.

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You were asked a question with respect to the
Presidential Records Act, and asked whether you felt it was
necessary to do any research about whether the Presidential
Records Act in somehow or way or manner impeded, or would
have restricted you, from transferring the personal,
financial and investment records and real estate files and
tax return information that was in Mr. Foster's office to
the Clintons' personal attorneys.
Let me ask you. In July of 1993, did you feel that you
had sufficient knowledge and familiarity with the
Presidential Records Act so that no research was necessary
on that subject?
Mr. Nussbaum. Yes, I did. I felt that then.
Mr. Ben-Veniste. Why would the Presidential Records
Act, in your view, not obtain in this case?
Mr. Nussbaum. Two reasons, two basic reasons. This can
become a technical subject.
One, the Act contemplates, as I've indicated in my
testimony here before, that there will be personal records
in the possession of the President in the White House, and
he's finally entitled to those records at the termination of
his presidency. It was clear to me that these kind of
records, these personal financial records, would fall

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under
[24] the rubric of personal records, because they were not
[25] involved in the transaction of government business.

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[1] But there was another, more important point, which I
[2] made a little too quickly, maybe, to Mr. Chertoff. I also
[3] understood at the time the basic principle that because we
[4] had a lot of battles about some of these issues in
[5] litigation in my first six months, that during the
[6] President's term in office, he has total control over his
[7] records, and he can keep them almost any place he wants.
[8] He, in other words, can send a Presidential record out of
[9] the White House. He can send a draft of a speech, which is
[10] a Presidential record, to an outside advisor to read it and
[11] send it back to him.
[12] So you can move Presidential records out of the White
[13] House. It's at the end of this Presidential term that you
[14] have to make a decision to segregate Presidential records
[15] from personal records. So just because I move the record
[16] out, even if I prove to be wrong, in other words – even if
[17] this personal file was not a personal record, but a
[18] Presidential record, it still doesn't violate the
[19] Presidential Records Act. If we don't bring it back at the
[20] end of President Clinton's term, then it might violate the
[21] Presidential Records Act.
[22] I understood that concept. I understood as long as the
[23] President was President, during the term of office, we had
[24] control of where the records should go. But my basic thing
[25] was, I knew this was a personal record, that the Act

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[1] contemplates personal records, and personal records can be
[2] sent to the President.
[3] Thank you for letting me make my explanation.
[4] Mr. Ben-Veniste. And thank you. I think it's been a
[5] long day and a half of testimony. And I want to thank you
[6] for your testimony here, Mr. Nussbaum.
[7] Senator Sarbanes?
[8] Senator Sarbanes. Mr. Chairman, I think we're finished.
[9] The Chairman. I think Mr. Chertoff has one question.
[10] Mr. Chertoff. Something Mr. Ben-Veniste brought up just
[11] brings back one last – it's like the re-re-redirect, you
[12] get a re-re-recross.
[13] You're not telling us, are you, that on the 22nd of
[14] July, when the documents were moved, that you considered
[15] yourself to be the staff expert on the Presidential Records
[16] Act, are you?
[17] Mr. Nussbaum. I'm not telling you that. But I had a
[18] basic idea, because I had discussed this with Steve
[19] Neuwirth, who actually was more of a staff expert on the
[20] Presidential Records Act. I had a knowledge of the basic
[21] concepts of the Act, but every nuance I didn't know, no.
[22] And I still don't know.
[23] Mr. Chertoff. The expert was Neuwirth?
[24] Mr. Nussbaum. Well, he was more familiar with it than
[25] anybody else. Neuwirth had only been in the White House

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[1] counsel's office also for six months at that time.
[2] Mr. Chertoff. And did you call him in and ask him to
[3] kind of take a look at stuff on the 22nd?
[4] Mr. Nussbaum. I was in contact with Neuwirth all the
[5] time. But I don't remember discussing this issue with him.
[6] Mr. Chertoff. Well, in fact, your answer in your
[7] deposition, page 403, line 6 – actually, we'll begin with
[8] 402, line 20.
[9] "And would you agree with me that one of your functions
[10] as White House counsel is to advise on the legal
[11] requirements of the Presidential Records Act?"
[12] Answer, "That's correct. And one of my staff members
[13] was familiar with the Act."
[14] Question, "And who was that?"
[15] Answer, "Steve Neuwirth."
[16] Question, "Did you ask Mr. Neuwirth to come in and give
[17] advice concerning whether any of these documents could be
[18] moved under the Presidential Records Act?"
[19] Answer, "No."
[20] Mr. Nussbaum. That's just what I testified to.
[21] Mr. Ben-Veniste. Mr. Chairman, I think we've gone right
[22] for the capillary here.
[23] (Laughter.)
[24] The Chairman. Now that we've found the capillary, I'm
[25] going to [illegible] my intention to have subpoenas

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issued – I would hope that the ranking member could find his way clear to join with me in this, so that we don't have to seek a vote of the Committee – for the telephone logs at the telephone company, for the Rodham residence in Little Rock, Mrs. Williams' residence, and for Mrs. Thomases on the dates in question. I believe the dates are the 22nd and the 26th: the subpoena obviously will be more specific, and staff is speaking to this. It would be my hope that we would be able to do this together.

One of the reasons I take this step is that there has been contradictory testimony, and some of that I think hopefully we may be able to get more definitive time as it relates to certain calls that were made between the various parties – Mrs. Clinton, when she received phone calls, when did she get a phone call?

And let me tell you what I'm talking about. There have been a number of contradictory, different recollections on rather critical issues. For example, Mrs. Williams says that she took the Clintons' personal files to the White House residence. Mr. Nussbaum says that he asked her, he discussed that with her, and she denies this. She has no recollection of that. She said she was too tired to wait.

Last week, Mr. Castleton, the younger staffer who actually carried the files to the residence, testified that Mrs. Williams told him that the First Lady would review the

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files. Ms. Williams again, at page 144 in her testimony, denies that, and she says, you know, that she wouldn't tell an intern something like that.

Then I was amazed that just this past Monday, another significant contradiction – certainly an area that has to be resolved – by the First Lady's chief of staff and former chief of staff Mac McLarty. He testified that he notified Mrs. Clinton about Mr. Foster's death, calling her in Little Rock after 9 pm. Maggie Williams told this Committee that Mrs. Clinton called her from the airplane before she landed and told Ms. Williams to sit by and to wait for a call back when she landed.

The fact is that, after the plane landed at 8:40 Eastern Time, Mrs. Clinton told Mrs. Williams about the Foster death. She tells on that second call. Now, did indeed Mrs. Clinton make that first call from a land line in Little Rock? Did she call from an airplane as it came? Who did inform Mrs. Clinton, and when did she know? The times just do not and the accounts just do not mesh.

Some of these contradictions may be able to be explained away. But I think that we have an obligation to get to the bottom of that. And so in an effort to do that, and in an effort to hopefully get a little more clarity as to how many phone calls and where they went, from Mrs. Thomases to Mrs. Williams to the First Lady and vice versa, I believe it is

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necessary to get those records from the telephone company.

So we will proceed along that line.

Other members have suggested different things. But I would prefer not to have to bring back and revisit, and the ranking member and I have discussed this. And in order to expedite and move these hearings, I would think that we could do it on this basis. I just want to conclude this aspect –

Senator Sarbanes. I want to speak on this.

The Chairman. Certainly.

I wanted to conclude this aspect by thanking Mr. Nussbaum for his cooperation – oh. Let me also say this, because I think it's very important.

We have requested, and there is a very real question, as it relates to whether or not there was an indices that was more complete than the one that we have seen. Mr. Chertoff has raised that today, but it really goes to an issue that I believe that Senator Bond had spoken to. And he was interested in seeing whether they can, from the hard drive, the computer that Mr. Gorham used, whether or not

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they are
[21] able to recreate or get additional information.
[22] And I have been advised by Judge Mikva, the White House
[23] counsel, that he has asked the FBI to examine the hard drive
[24] of the computer of Mr. Foster's executive assistant. And
[25] they have agreed to provide the Committee with the results

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[1] of the FBI's examination of the hard drive. So I think we
[2] want to let that be known.
[3] Senator Sarbanes. Mr. Chairman, let me just make this
[4] observation.
[5] First of all, the effort that's going on with respect to
[6] the computer was in response to a joint letter that you and
[7] I sent.
[8] The Chairman. Oh, yes.
[9] Senator Sarbanes. On the telephone records, as I
[10] understand it, all the parties are voluntarily prepared to
[11] provide us this information. And it seems to me that, as we
[12] have done heretofore, we ought to proceed on that basis.
[13] If, in fact, there proves then to be a problem, I think we
[14] can examine the question of issuing subpoenas.
[15] But when you have people that are in effect saying,
[16] we're willing to work with you and cooperate with you and
[17] get these records, I think we should follow that path. And
[18] then, if for some reason – I have no reason to expect any
[19] problem. But if for some reason a problem arises, then we
[20] could address the question of issuing the subpoena.
[21] The Chairman. Here's the problem.
[22] In the past, Senator, we have asked exactly for that.
[23] We have not gotten the cooperation from those that we've
[24] made this request. We've been told records are unavailable,
[25] et cetera.

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[1] Now, I believe that in order to expedite this – and by
[2] the way, if the parties agree, and I think that it can be
[3] done relatively – it would have to be done before we leave
[4] today – to send a letter; we can draft a letter, both
[5] counsels, which would indicate that those records by the
[6] telephone companies are now available to the Committee –
[7] Senator Sarbanes. I thought they had sent us that as
[8] indicated.
[9] The Chairman. No, they have not. And I don't need or
[10] want a conditional response. And I have agreed, and I think
[11] both counsels – we have agreed that we're not looking to
[12] find out every phone call that was made, but we are
[13] interested in phone calls that were made to people in
[14] official positions, the White House, those people whom the
[15] Committee are examining, et cetera.
[16] But we're not interested if there's been a phone call
[17] made to people outside of the scope of this investigation.
[18] Now, if counsels can agree to the methodology to provide
[19] that production in a reasonable fashion – not that it's
[20] going to be made subject to someone's attorney reviewing it
[21] and then deciding, but rather the attorneys here – that's
[22] fine. But up until now, we have not been able to have that,
[23] or at least get the parties to agree. And therefore, before
[24] we leave for the next three weeks, I want to be in a
[25] position to say that if we can't do that, that we're going

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[1] to vote subpoenas out.
[2] Senator Sarbanes. Well, let's do this, because my
[3] perception of the letters that we got from people was that
[4] they were more forthcoming than you have just indicated.
[5] Why don't we have counsel work on that, along the path
[6] of getting a voluntary compliance, which I think is always
[7] preferable. And then we can address the issue you've raised
[8] in the aftermath of that.
[9] The Chairman. Senator, that's the way we've proceeded.
[10] But I'm going to ask Mr. Chertoff to give a history, so that
[11] maybe those individuals who are concerned will listen.
[12] Because I think most of them have an understanding, and if
[13] I say we're going to do something, we will do it either way.
[14] If we give a pledge, we keep that pledge, or we try to. But
[15] go ahead, Mr. Chertoff.
[16] Mr. Chertoff. I wanted just to put it, Mr. Chairman, in
[17] perspective a little bit.
[18] We have been proceeding basically on a voluntary

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basis.
[19] where we've requested things and we've received them. And
[20] when we've been told, for example, that the recipient of the
[21] request has exhausted their ability to provide documents,
[22] we've accepted that representation.
[23] And the reason we originally talked about a subpoena was
[24] because we were told that certain records, which we had
[25] clearly asked for and had not received, we believed were not

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[1] accessible to the individuals we had made the requests of,
[2] and therefore we took the customary next step, which is to
[3] go to the phone company. And for that, you need a subpoena.
[4] To hear now that, oh, well, you know, actually we could
[5] get that stuff for you, is to I guess call into question the
[6] earlier representations we had gotten, that everything that
[7] could be given to us was given to us. I assume that the
[8] letters that we send, that Mr. Ben-Veniste and I send, are
[9] meant to be taken seriously; and that if somebody says they
[10] have complied, they have in fact exercised all of their
[11] ability, all of their custody, control and possession in
[12] responding.
[13] The Chairman. And if I might interrupt you, I want the
[14] record to clearly understand, this has absolutely nothing to
[15] do with Mr. Nussbaum.
[16] Mr. Chertoff. Correct: nothing to do with Mr. Nussbaum.
[17] Mr. Ben-Veniste. Mr. Chairman, let me add something to
[18] that, because I have a slightly different take.
[19] The Chairman. Well, look, if I may – Mr. Ben-Veniste,
[20] I will let you do that. But let me tell you the bottom
[21] line, as far as I'm concerned.
[22] The bottom line is that, either we're going to be
[23] assured by the end of the day by the respective parties that
[24] there is a manner, a methodology of producing these
[25] documents, or as far as I'm concerned, I am then going to

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[1] ask the Committee to issue subpoenas.
[2] Senator Sarbanes. Well, I think we should try to work
[3] it out by the end of the day in a voluntary way.
[4] The Chairman. Sure.
[5] Senator Sarbanes. And I think that if people are being
[6] faulted because they did not take the step of asking the
[7] phone company, then I think that point should be made to
[8] them, and we may be able to work this thing out.
[9] Mr. Ben-Veniste. That was my point, Senator Sarbanes:
[10] that we had previously asked for all documents in the
[11] custody of the various witnesses. And where phone records
[12] from years ago are not in the possession of the individual
[13] witnesses, the next step is to try to get them from the
[14] phone company.
[15] So that I think where we are now is, they have agreed to
[16] request those records from the phone company themselves. So
[17] I think we can work it out.
[18] Mr. Chertoff. I just want to complete the record on
[19] this, and I think we should probably make part of the record
[20] our letters of June 30 and July 11.
[21] The Chairman. I think both letters should be submitted.
[22] (Documents follow.)
[23]
[24]
[25]

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[1] Mr. Chertoff. We have requested in each instance
[2] documents in the custody, control or possession of the
[3] recipient of the subpoena. And that typically means not
[4] only things which are in your physical possession, but
[5] things which may be in someone else's possession but which
[6] you have access to.
[7] On a going-forward basis, I hope the point that we can
[8] make is that we shouldn't have to find out that we did
[9] get a complete response after we're almost done with the
[10] hearings, but that we should get a complete response when
[11] the initial letter is sent.
[12] Mr. Ben-Veniste. Fine.
[13] The Chairman. We're going to adjourn for ten minutes –
[14] take a ten-minute recess so that Mr. Margolis can proceed.
[15] And we thank you for your cooperation, Mr. Nussbaum.
[16] Nussbaum. Thank you, Mr. Chairman.

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(Recess.)
The Chairman. Mr. Margolis, would you stand just for purposes of the oath?
TESTIMONY OF DAVID MARGOLIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE
The Chairman. First of all, Mr. Margolis, we are wishing you a continued recovery. We are deeply appreciative that you, number one, have come in, and we're anxious to hear your statement.

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Mr. Margolis. Thank you, Mr. Chairman. I have a brief opening statement.
My name is David Margolis. I am currently an associate deputy attorney general at the Justice Department, and I work for Jamie Gorelick, the Deputy Attorney General.
My opening statement will be brief, because I was not asked until last night to testify this afternoon. I have not had an opportunity to provide this opening statement to the Committee in advance, as is the normal practice. I believe the members have it now.
Because I have not been deposed in this matter, I would like to give the Committee a brief summary of my career.
In 1965, shortly after I graduated law school, then-United States Attorney John Newman hired me as an assistant United States Attorney in my home town of Hartford, Connecticut. I held that position until 1969, when I joined the Department of Justice's Organized Crime and Racketeering section, the Boston strike force.
In 1971, I was promoted and became the attorney in charge of the organized crime strike force in Cleveland, Ohio. I held that position until 1975, when I went to Brooklyn to head the organized crime section in Brooklyn.
In '76, I moved here to Washington, to become a deputy chief of the organized crime section. And in 1979, then-assistant attorney general Philip Heymann promoted me to the

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position of chief of the organized crime section.
In 1990, then-assistant attorney general Edward S.G. Dennis appointed me acting deputy assistant attorney general in the criminal division, a position I held in an acting capacity until May of 1993, when Mr. Heymann, who had been nominated by President Clinton to serve as deputy attorney general, asked me to join his staff as associate deputy attorney general. That's the position I still hold.
Before I take this Committee's questions, I would like to explain the timing of my appearance today, especially since I'm advised that there is at least one erroneous media report on it.
As the Chairman indicated this morning, on June 15 of this year, I had extensive coronary surgery, a quadruple bypass operation, on an emergency basis. A few weeks later, I told my surgeon that the Committee had requested my testimony. He indicated that he would not permit me to testify, at least until the week of August 7, when the extent of my recovery would be reevaluated. The Department of Justice so advised this Committee by letter of July 12.
On this past Tuesday afternoon, August 8, following a previously-scheduled physical examination by my internist, he advised me that I had recovered sufficiently to testify in these proceedings. Because the Department had an obligation to advise the Committee of my progress, the

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Department faxed a letter to the Committee yesterday, advising that I was now available. In response, Committee staff called last night and requested that I appear today.
I understand that the Committee has had a long-standing request for my testimony, and only on Tuesday was I told by my doctor that I am physically fit to do so. So that the record is clear, I have not requested to testify at these hearings, nor did I ask to testify today. As a matter of fact, I can think of few places I would less rather be than testifying this afternoon.
I am appearing in response to last night's request from

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the Committee staff. Because of my surgery, I have not had
an opportunity to thoroughly review the documents provided
by the Department to the Committee, although of course I
have seen some of them before, and I was the author of at
least one of them. Therefore, I ask the Committee to bear
with me if I need some time to refresh my recollection on
occasion.
Finally, I appreciate the Committee's willingness to
accommodate my medical condition. In the event that I need
to take a break, I will certainly let you know.
Thank you.
(The complete statement follows.)
(COMMITTEE INSERT.)

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The Chairman. Mr. Margolis, we thank you, particularly
for setting the parameters in which this has all come about.
I want to attempt to deal with this as expeditiously as
possible. You are an important part of the overall, and
your testimony and your knowledge in this matter, and so we
are deeply appreciative. And we're attempting to wind this
part of our review of the entire situation up.
That's why your participation today helps us, aids us
immeasurably, in doing that. So we thank you.
At this point, I'll turn to Mr. Chertoff.
Mr. Chertoff. Thank you, Mr. Chairman.
Mr. Margolis, we appreciate the fact that you haven't
had perhaps as much opportunity to review documents as other
witnesses because of your condition. I take it you have
before you a copy of some notes in Phil Heymann's
handwriting, and a copy of some notes in Cindy Monaco's
handwriting?
Mr. Margolis. No, I don't, Mr. Chertoff. I don't have
anything but my own statement.
Mr. Chertoff. Could I ask if the Department lawyers
have those notes? Otherwise, we will provide a copy of
those.
(Document handed to witness.)
Mr. Chertoff. These are deposition exhibits TH-1 and F-
154 through F-159. And if it helps you to refer to those in

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refreshing your recollection, we wouldn't have a problem
with that.
Am I also correct that you have seen these documents
before?
Mr. Margolis. Yes.
Mr. Chertoff. Before I get into these documents in
substance, I want to give you an opportunity to clarify
something I know troubled you when it appeared in the paper,
and just do it very briefly.
There was a leak about something entitled "Vince Foster
Moot Court Media Questions" which had been authored by you.
Just to give you the opportunity to finally kind of set it
straight, will you tell us what this document was?
Mr. Margolis. Yes.
Just about the same date that I authored that document,
the then-deputy attorney general Phil Heymann had said to
me, "David, I want you to sit down and make me a list of the
nastiest, most mean-spirited, vicious questions that the
media could ask me, Phil Heymann, at a press conference
about Vince Foster's death."
I remember saying to him, "You know, Phil, I think if
we're going to do this, let's just sit down and go over them
orally." And he said, "No, we're both busy. I'm going to
be running. I need something I can look at." So he said,
"Just sit down and write it out."

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While it indicates it's on E-mail, Mr. Heymann wasn't a
member of E-mail. So when I did these questions, I had to
send them to myself, then have them printed out and hand
them to Mr. Heymann, which I did. He read them. I said,
"Do you want to discuss these?" And he said, "Boy, they are
nasty, as I asked for."
But we decided eventually what to do is, he would
introduce – at the press conference, he would introduce the
Park Police commander and the FBI SAIC. Then he would let
them handle the questions. Fortunately, the questions were
not this nasty. But the important thing – these were
hypothetical questions.

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[13] Mr. Chertoff. We haven't deposed you, obviously, so I'm
[14] kind of flying blind.
[15] I want to direct your attention to July 21, 1993. There
[16] was a point in time that you and Roger Adams were asked to
[17] go to the White House by Phil Heymann. Correct?
[18] Mr. Margolis. Correct.
[19] Mr. Chertoff. Will you tell us when you got there
[20] whether at some point you got into a meeting with White
[21] House counsel Bernie Nussbaum?
[22] Mr. Margolis. Yes.
[23] Mr. Chertoff. Both you and Mr. Adams were there?
[24] Mr. Margolis. Yes.
[25] Mr. Chertoff. Were there other members of law

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[1] enforcement there?
[2] Mr. Margolis. I believe Captain Hume was there from the
[3] Park Police. I believe at least one FBI agent was there,
[4] and there were some members of Mr. Nussbaum's staff who were
[5] there.
[6] Mr. Chertoff. Would you tell us what occurred in that
[7] meeting?
[8] Mr. Margolis. Yes, and I should go back to my previous
[9] discussion with Mr. Heymann, when he told me to go over
[10] there.
[11] To give it the full background, he had called me up from
[12] a meeting, and he said, "I want you to go over to the White
[13] House with Roger Adams." He said, "Vince Foster is dead.
[14] There's an investigation of it." I had seen the headline of
[15] that in the newspaper that morning.
[16] He said that he had reached a tentative agreement with
[17] Mr. Nussbaum that Roger and I were to go through at least
[18] the first page or two of each document in order to determine
[19] whether they were relevant to our investigation. What we'd
[20] be looking for would be, obvioulv, either a suicide note or
[21] something that could be characterized as a suicide note, or
[22] some other bright-line item which would indicate a reason
[23] for Mr. Foster to take his life, such as an extortion letter
[24] or anything like that, or anything else that jumped out at
[25] us that would indicate a reason for taking his life – that

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[1] we would go through at least the first page or two of each
[2] item and make a call as to relevancy.
[3] And then, as to matters that were relevant that White
[4] House counsel thought might be privileged, you know, we put
[5] them aside and debate that later on. Phil told me that he
[6] believed he'd had an agreement in principle with Bernie
[7] Nussbaum to do it that way, so I should go finalize it and
[8] then begin the search process.
[9] So, that's why I was there. When we got there, I
[10] discussed it with Mr. Nussbaum. And I believed then, and I
[11] believe today that we finalized that agreement, and that we
[12] both agreed to it.
[13] When we finished, Mr. Neuwirth on his staff, as I
[14] recall, attempted to restate the agreement, and got it what
[15] I believe was exactly wrong, and said, "The way we're going
[16] to do it is that Bernie will go through the documents, and
[17] he'll give you what is both relevant and non-privileged to
[18] review." I said that that's exactly wrong. We just agreed
[19] to the other procedure. And it was my recollection then,
[20] and it's my recollection today, that Mr. Nussbaum agreed
[21] with me that Mr. Neuwirth was wrong, and that we had that
[22] other agreement.
[23] We then agreed that it was late in the afternoon, and
[24] that we would actually start the search at about 10 o'clock
[25] the next morning. So we adjourned at that time.

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[1] Mr. Chertoff. I want to just go back to one thing
[2] earlier in the day.
[3] At the time that you went over, I take it, you
[4] understood, or you had a general sense this was a suicide.
[5] Mr. Margolis. Yes.
[6] Mr. Chertoff. At the same time, was there a final
[7] determination about that, or was there still the possibility
[8] of some other reason for death?
[9] Mr. Margolis. Absolutely. It was just a feeling that
[10] Phil had, based on talking to the Park Police, that Captain
[11] Hume reinforced when I met with him that evening

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over at the
White House. But it was only tentative, and our purpose was
to find out whether, in fact, there was a suicide.
As a matter of fact, I remember telling Mr. Heymann
before I went over there that I would feel more comfortable
if we got the FBI involved, for two reasons. One, I was
used to working with them, and knew their capabilities. And
second, in the event that it was an assassination of a
Federal official, in the event that's what it turned out to
be, I obviously wanted the Bureau involved.
Phil called Captain Hume to try that out on him, and
Captain Hume advised that, following their usual procedure,
the Park Police had already gotten the FBI involved.
Mr. Chertoff. So the FBI was actually there on the 21st
when you met with Mr. Nussbaum?

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Mr. Margolis. Exactly.
Mr. Chertoff. Let me direct your attention to later,
after you left the White House.
On the 21st, did you go back and report to Mr. Heymann?
Mr. Margolis. I either did that night or first thing
the next morning. I don't recall which.
Mr. Chertoff. Can you tell us what you told Mr. Heymann
about what had been agreed upon on the 21st with Mr.
Nussbaum?
Mr. Margolis. Yes. I told him along the lines that he
had thought he had reached a tentative agreement with Bernie
Nussbaum: that Roger and I would review at least the first
couple, first page or two of each document, to determine
whether it might contain something along the lines of an
extortion note or a suicide note. So it was the agreement
that he had reached.
Now, we all knew at that time that it was theoretically
possible that a document that looked totally irrelevant on
its face, on page 68 would have a footnote that says, "I'm
killing myself because of such-and-such." That was a risk
we realized we were running.
Mr. Chertoff. Now let me direct your attention to
around 10 o'clock on the morning of the 22nd. Did you go
over to the White House with Mr. Adams?
Mr. Margolis. Yes.

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Mr. Chertoff. Did you go over with the FBI and the Park
Police, or did the two of you go by yourself?
Mr. Margolis. We went by ourselves. The agents were
already there interviewing people in the same general area
of, I guess you'd call it the West Wing. But they were
already at work interviewing people.
Mr. Chertoff. Did you get involved in the interviewing
process yourself?
Mr. Margolis. No. Occasionally, a Park Policeman would
come out and tell me something when I was waiting in the
lobby, but I wasn't involved in any of it.
Mr. Chertoff. Did there come a point after you arrived
at the White House that you and Mr. Adams met with Mr.
Nussbaum?
Mr. Margolis. Yes.
Mr. Chertoff. Do you remember who else was present with
Mr. Nussbaum?
Mr. Margolis. At least off and on, and perhaps
continually, it would have been Cliff Sloan and Steve
Neuwirth.
Mr. Chertoff. Would you tell us what the discussion was
on that first meeting with Mr. Nussbaum?
Mr. Margolis. He said that there's been a change of
plans, and that he would look at the materials because of
their sensitivity, executive privilege, attorney/client

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privilege issues, national security issues, sensitivity
issues – that he would look at the materials to determine
whether they were relevant, make the first cut, and
determine the privilege issues and the sensitivity issues.
And then anything that met all his standards along those
lines, if we still wanted to see, he would show to us.
Mr. Chertoff. What did you say in response?
Mr. Margolis. I said to him, "Have you discussed this
with Phil?" And he said, "No." So I said, "I think that's
the first thing that's got to happen." And so he was kind
enough to [illegible]ne use his office, and I called Mr.
Heymann and explained [illegible]s change to him. And we discussed
it. We were both dead-set against it. So he was going to
talk to Mr. Nussbaum, which he did, and then I was going to
talk to Mr. Nussbaum. And we were going to take it as far as
we

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could, pushing to go back to the agreement we thought we had before. We thought that was very, very important. But the bottom line was, if we couldn't change Mr. Nussbaum's mind, then we had to make a decision whether to walk away or go along with his procedure. And while it was a close call, I recommended – and I believe the deputy agreed – that we really had no choice. Walking away was not really an option, because we had no sense of when the search would be conducted by Mr. Nussbaum, and what the parameters would be, and just what would happen, although we

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agreed we had to push with all our might to try to change it around. And that's what we did.

Mr. Chertoff. You've recounted to us what was your conversation with Mr. Heymann?

Mr. Margolis. Yes.

Mr. Chertoff. Did you discuss at all? You said you were both dead-set against the procedure Mr. Nussbaum outlined. Can you explain to us either – well, was this actually something – were the reasons for this discussed with Mr. Heymann, or was it something you and Mr. Heymann had previously talked about?

Mr. Margolis. No. This caught me by surprise, and I know it caught him by surprise. Because I had told him either the night before or before I left that morning that we had a different deal.

We were very concerned as to how this would appear to the public in terms of law enforcement, and in terms of whether we were running a credible investigation. And –

God forbid, but appearances being one thing, if we weren't running a credible investigation regardless of appearances, if we missed something because of the way we were doing it, there could be all hell to pay.

So it was very important to us, both in terms of perceptions and fact.

Mr. Chertoff. Did you express this concept you've just

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told us about to Mr. Nussbaum?

Mr. Margolis. Subsequently, yes.

Mr. Chertoff. When did you do that?

Mr. Margolis. After Mr. Heymann talked to him. Mr. Heymann – then I gave the phone to Bernie, he came in and he talked to Phil. And when it was over –

The Chairman. About what time was this, Mr. Margolis?

Mr. Margolis. Those conversations probably ended around 10:30 or quarter to 11. That's a rough guess, Mr. Chairman.

Mr. Chertoff. Go ahead.

Mr. Margolis. I explained to Mr. Nussbaum that to do it his way would be a big mistake. I said, "It was your mistake if you do it this way, but it is a big mistake." I think it was at that point when I also said to him. "You know, if this were IBM that we were talking about, I would have a subpoena duces tecum returnable forthwith for these documents. But I recognize this is not IBM." And he made a facetious comment about, if this were IBM rather than the White House counsel's office, a smart lawyer would have removed the documents before the subpoena ever got there, ever arrived there. That I took as a facetious comment.

Anyway, he wasn't talking about what he would do. I also said – I talked about the public perceptions being very important, and that if we did it his way, as far as I was concerned, that Roger and I and the investigators would

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be excess baggage. There'd be no reason for us to be there, and that we had better things to do. And I recall telling him I might as well go back to my office, and he could mail the results of the search back to me.

He responded by saying that he recognized that a lot of having us there was for show and for appearances, but it was very important. And then he said that he would think about – he was obviously concerned about the arguments we would make, and he said he wanted to think about them before he reached a final decision. So Roger and I went downstairs to

the lobby and waited.

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He made it very apparent that he would be really appreciative if we didn't leave in the interim. I think I had said something about, "Maybe in any event I'll go back to the office while you're thinking about it, and I can always get back here in 15 minutes if I decide to and if I want to and if I have to." But he very much requested that we just wait.

Mr. Chertoff. Did he explain why he wanted you to wait?

Mr. Margolis. He did not. I suspect that the power of inertia would always be on his side if we were there. Whereas if we were back at the Department, he'd actually have to get us to come back there. And as he said, it was very important to him that we be there. And on the bottom line, that while it was a closer question for us, I thought,

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if we couldn't talk him out of this, that we should be there.

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Mr. Chertoff. I just want to go back a little bit because you have been relating your conversations with Mr. Nussbaum, but am I also correct that you were in the room while Mr. Nussbaum was talking to Mr. Heymann?

Mr. Margolis. No.

Mr. Chertoff. So that was a private conversation?

Mr. Margolis. Yes. Private for me and Roger.

Mr. Chertoff. Did Mr. Nussbaum, in the course of your subsequent conversation with him, tell you what Mr. Heymann had said?

Mr. Margolis. I don't think so. I mean, I don't think so, because I basically knew what Phil said.

Mr. Chertoff. Now, where did you go after you had had this discussion with Mr. Nussbaum and he indicated that he wanted you to stick around?

Mr. Margolis. Roger and I went down into the lobby of the building because it's a very small area up there outside Mr. Nussbaum's office and Mr. Foster's office, and we were basically in the way, I thought.

Mr. Chertoff. What happened next?

Mr. Margolis. At some point while we were waiting, I said to Roger I wanted to go outside and have a smoke, something that I would not say today.

Mr. Chertoff. I hope not.

(Laughter.)

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Mr. Margolis. So we did go outside, and Bernie and Cliff and Steve Neuwirth eventually came out to find us. Bernie had said he had thought, when he couldn't find us in the lobby, that we might have left and he was concerned about that. He said it wouldn't be much longer, please wait. So we did. Eventually, Cliff came down and said, "Why don't you have lunch, and we'll start at," he either said, "at 1:00 or 2:00," whatever 30 minutes from then was, and I can't remember which it was.

So we ate, we came back in, and that's when Bernie told us he had given due consideration to our arguments, he thought they were good arguments, but he was sticking with doing it his way, which was he would review the documents, tell us generically what they were, if there wasn't a problem with them and if they had any sense of being germane, let us look at them.

Mr. Chertoff. What did you say?

Mr. Margolis. I said, "That's a mistake." And I think that might be when I said, "But it's your mistake. So, okay."

Mr. Chertoff. By the way, you used the term earlier,

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[24] subpoena duces tecum forthwith. Could you just explain, for
[25] the non-lawyers on the panel, what that means?

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[1] Mr. Margolis. Yes. That would be a subpoena, it was a
[2] grand jury subpoena I was talking about, to bring certain
[3] records with him and produce them before the grand jury
[4] immediately.
[5] Mr. Chertoff. Now, after Mr. Nussbaum indicated you
[6] were going to go forward with this in the way he wanted to,
[7] did you and representatives of the FBI and the Park Police
[8] and the Secret Service in fact go with Mr. Nussbaum into
[9] Mr. Foster's office?
[10] Mr. Margolis. We did.
[11] Mr. Chertoff. Would you describe to us what occurred
[12] then?
[13] Mr. Margolis. Yes. It was not a big office, so it was
[14] rather crowded, and we all sat down in layers, and I sat in
[15] the first row. Mr. Nussbaum sat behind Vince Foster's desk
[16] and with Mr. Sloan and Mr. Neuwirth standing behind him, and
[17] he went through the items on and in and around Mr. Foster's
[18] desk and announced what they were, generically, like, "This
[19] file is a file that of nominations that Vince was working on
[20] for the President. It's not germane. This is a matter that
[21] Vince was working on for the first family in their
[22] nonofficial capacity. It's not germane." Things like that.
[23] Mr. Chertoff. Did he show you any documents?
[24] Mr. Margolis. I think he offered us a couple of
[25] documents, offered the Park Police a couple of documents

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[1] that they took.
[2] As a matter of fact, one, I believe, was a calendar and
[3] a couple of others that he gave directly to the Park Police.
[4] Mr. Chertoff. Did you have any idea what were in the
[5] documents that he was describing to you beyond the
[6] description he chose to give you?
[7] Mr. Margolis. No. I might have – I have a vague sense
[8] of at some point complaining that the problem here was to
[9] protect the interests he was trying to protect, the
[10] descriptions had to be so generic that they weren't really
[11] of much assistance.
[12] Mr. Chertoff. Was there any incident – we have gone
[13] over this, but I just want to make sure we are, you know,
[14] consistent on this – with an agent standing up at some
[15] point?
[16] Mr. Margolis. Yes.
[17] Mr. Chertoff. Tell us about that.
[18] Mr. Margolis. At some point I heard Cliff Sloan say,
[19] "Hey, you're not standing up so that you can read what
[20] Bernie's got in front of him, are you?"
[21] And I looked around to see what was going on, and I
[22] noticed he was – Scott Salter – was standing up
[23] stretching. He had taken his jacket off, and he was
[24] standing behind me, and he said, "Absolutely not." I think
[25] I muttered an expletive at that point, and Bernie told

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[1] Cliff, "No, no, no. That's not what's happening."
[2] But I was – I was bothered by that. So, a minute later
[3] when Cliff was looking over Bernie's shoulder at some
[4] document that Bernie was looking at, I said, "Hey, Cliff,
[5] you're not looking over Bernie's shoulder so you can read
[6] the documents that he is looking at, are you?"
[7] And he got startled for a minute, and then he said,
[8] "Hey, wait a minute. I'm authorized to do that. What are
[9] you talking about?"
[10] (Laughter.)
[11] Mr. Margolis. And he was right, obviously.
[12] Mr. Chertoff. Do you remember a point in time in this
[13] process when Mr. Nussbaum handled the briefcase?
[14] Mr. Margolis. Yes.
[15] Mr. Chertoff. Tell us about that.
[16] Mr. Margolis. I think it was over halfway, perhaps two-
[17] thirds of the way, through the search and there was this
[18] briefcase, and there came time for that to be searched. So
[19] Mr. Nussbaum took it, and I remember – I don't remember
[20] specifically at this point whether he put it on the desk and
[21] pulled things out of it or whether he had it on the floor
[22] and pulled things out of it.
[23] But he did take files out of it, a number of files out
[24] of it, and then told us, I don't remember the exact
[25] language, but told us that that was it, that there was

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[1] nothing more there.
[2] I have been asked on previous occasions by others
[3] whether, you know, whether there could be anything. There

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could have been a note ripped up or otherwise, in there. I mean, I don't know. I did not see into the briefcase, but I was satisfied that he had looked in the briefcase and had represented to us that there was nothing else in there.

Mr. Chertoff. Did you see him looking into the briefcase?

Mr. Margolis. I cannot absolutely swear that I remember him looking in the briefcase. But all the surrounding facts and circumstances led me to believe, including the fact that neither I nor the agents said, "Hey, Bernie, stick your head in the briefcase," because on occasion I had told him when he was looking at a document, "Hey, you missed something back there."

So, I am satisfied that he looked in the briefcase. I can say with certainty that he didn't conduct the search by putting his hand in the briefcase while looking up at the ceiling. That didn't happen at all.

Mr. Chertoff. So your impression from him was that he was satisfied and he was communicating to you that he was satisfied that he had done a search of the briefcase?

Mr. Margolis. Yes.

Mr. Chertoff. Was there something to do with the

computer also?

Mr. Margolis. Near the end, as a matter of fact, maybe right at the end, Roger noted that there was a computer in Vince Foster's office and asked Bernie if he could turn that on so that we could determine whether there was anything relevant there. And he said that he would – Mr. Nussbaum said that he would do that at a later time and if there was anything relevant, he would let us know, but that he doubted it because he didn't think Vince was a big computer person.

Mr. Chertoff. What else do you recall about the events within that room during this process?

Mr. Margolis. I do recall at the end – well, I do recall that the feelings – that it was tense. I do recall that, and that's one of the reasons, I think, why Cliff challenged Scott at one point and why I got overreacted to that challenge.

I also remember near the end that Bernie said – there were three piles of documents. One pile was files that Vince Foster had been working on for the President as President. I will call official documents. That was going to be distributed to other lawyers in the office to move the papers along.

A second pile was files that Vince Foster had been working on for the first family as in their private capacity, and that was going to be given by Bernie to a

private lawyer or private lawyers to follow through on.

And the third pile was materials that were personal to Vince, and he said that he would give them to Michael Spafford, who was there on behalf of Jim Hamilton and we could deal with that firm to see what we wanted or see what we needed from them.

I remember saying at that point as a bit of a knee-jerk reaction, "No. On that last pile, I want to maintain the chain of custody as part of government – on behalf of the government. So I want you, Bernie, to hold them, and Mr. Spafford and Jim Hamilton and we, you know, can negotiate through you, but you will hold them."

That was something I said knee-jerk, like I said. At that point, one of the agents, I am not sure which one of them at this point, tugged my sleeve and asked me to talk privately for a minute, and he said, "I didn't want to disagree with you in front of everybody else, but we feel strongly that we would rather have the files go to Mr. Spafford and Mr. Hamilton because we would rather deal with them in the future than with White House counsel's office."

So I thought about that for a second, and I said okay, and I withdrew my objection. Indeed, they did go to Mr. Spafford.

Mr. Chertoff. Now, you said that it was the category,

you wanted to have a chain of custody of the documents that were moving out of the government control to Mr. Spafford.

Mr. Margolis. Right.

Mr. Chertoff. And that is why you raised the issue at

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that point?
Mr. Margolis. Yes.
Mr. Chertoff. What about with respect to the other documents, the documents that were either official work or
private work for the first family?
Mr. Margolis. I did not make that point because I really, at that point, I was most concerned about Vince
Foster's own personal documents.
So, stuff that was going to go to other people in the White House counsel's office was staying with the government.
And the President's personal papers I was not concerned
with, although, just before I left, I suggested to Bernie that as to the two piles that remained, the President's personal papers or the first family's personal papers, and
the official presidential documents, that he ought to very
seriously consider keeping them segregated, at least temporarily, to answer questions, because I thought that
there was going to be a groundswell, and I told him this.
and I had been telling him all along, of public criticism of
the way this had been done, and if I was right about that.

he might – he might want to have the option of going back
and redoing this a different way, so that he ought to wait a
couple of days and keep them segregated.
He said, he thanked me and said he'd consider that, but
he really thought that it was necessary to move this process
along, but he'd think about it.
Mr. Chertoff. Did he tell you that later that afternoon
he planned, in fact, to move the pile of documents that were
personal up to the residence?
Mr. Margolis. No, but he did – what generated this is
that he told me he was going to move – he was going to give
those personal documents to a private lawyer and so that's
what caused me to say, "Maybe you better hold off a while."
We didn't get into details of, you know, how it was going to be accomplished.
Mr. Chertoff. But you had the impression from him that
he was not prepared to hold off for a while?
Mr. Margolis. Yes; although he was going to think about
it.
If he had told me that by the way, in the process of
giving these documents to a personal lawyer for the first
family, I am going to have them moved into the White House
residence temporarily, that wouldn't have troubled me at
all.
I mean, what I was cautioning him was, "Maybe you better

keep custody for a while."
Mr. Chertoff. And he indicated to you he would not keep
custody?
Mr. Margolis. That he probably wouldn't, he probably wouldn't, but he would think about it.
Mr. Chertoff. Now, did you go back to the Department of
Justice afterwards?
Mr. Margolis. Yes.
Mr. Chertoff. And just to finish up this narrative because we are moving along, did you have a conversation
with Mr. Heymann?
Mr. Margolis. Yes.
Mr. Chertoff. Tell us about that.
Mr. Margolis. I told him that it was very strange, you know, that we'd lost the battle, that we'd lost the war, rather, and that we did it Bernie's way and that we didn't
find anything of substance, and there was very – there was
a very tense situation, that we hadn't heard the end of it.
I mean, I was sure this was going to get out to the public in one form or another and that the search was going
to look bad and we, therefore, were going to look bad.
I also knew that if just by blind luck we had found something that solved this, that would have taken a great
deal of sting out, even though it didn't mean we did a better job or we did it more professionally. But we didn't

have that blind luck.
And he agreed, and I told him I just couldn't figure out
why Bernie was so insistent. I mean, Roger and I didn't
have the reputation of being partisans or leakers, we had
the highest security clearances, we were members of the
executive branch.
On the other hand, I conceded then and I concede

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now
[8] that I spent a millisecond in private practice representing
[9] people, so I am not that sensitive, as sensitive as I might
[10] be, to those issues. But I thought it was troubling, and I
[11] think I asked – I know I asked Phil to find out from – you
[12] know, to confront Bernie and ask him why this happened, you
[13] know, was he concealing anything.
[14] And Phil told me that he did call Bernie that night and
[15] yell at him about this and confront him with my concern
[16] about whether anything was being hidden or covered up, and
[17] Bernie had assured him that that was not the case.
[18] Mr. Chertoff. Now, after this, is there anything – at
[19] this point I guess my half-hour is up, and we will resume at
[20] the end of the 20 seconds when I get back.
[21] The Chairman. We will come back.
[22] Senator Sarbanes?
[23] Senator Sarbanes. I yield.
[24] The Chairman. Now, let me, Mr. Margolis, let me say to
[25] you at any time if you feel you want to take a stretch, take

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[1] a whatever, please tell us.
[2] Mr. Margolis. Thank you.
[3] The Chairman. All right. I mean, don't hesitate.
[4] Okay.
[5] Senator Sarbanes?
[6] Senator Sarbanes. I yield to Mr. Ben-Veniste.
[7] The Chairman. Mr. Ben-Veniste?
[8] Mr. Ben-Veniste. Thank you, Senator.
[9] Good afternoon, Mr. Margolis.
[10] Mr. Margolis. Good afternoon.
[11] Mr. Ben-Veniste. On the 21st you were contacted by Phil
[12] Heymann to go over to the White House with Roger Adams.
[13] Were you aware that Roger Adams had been selected some hours
[14] before to perform this function?
[15] Mr. Margolis. No. Not until I got to Mr. Heymann's
[16] office and he told me.
[17] Mr. Ben-Veniste. And at about what time do you remember
[18] being briefed by Mr. Heymann?
[19] Mr. Margolis. Probably 3:00 to 3:30, something like
[20] that.
[21] Mr. Ben-Veniste. And he indicated that he and Bernie
[22] Nussbaum had had a conversation where they discussed a
[23] possible procedure for accommodating the Park Police
[24] interest in reviewing the files?
[25] Mr. Margolis. Yes. I think he described it as both a

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[1] tentative agreement and an agreement in principle.
[2] Mr. Ben-Veniste. And under that proposal, you and
[3] Mr. Adams would look at the first page of each file and
[4] satisfy yourself as to whether or not the material was
[5] relevant in some way?
[6] Mr. Margolis. Yes. The first page or two.
[7] Mr. Ben-Veniste. And I believe you indicated that the
[8] Park Police were looking for something pretty specific, a
[9] suicide note or some such material, setting forth state of
[10] mind or possibly an extortion note?
[11] Mr. Margolis. Blackmail. Yes.
[12] Mr. Ben-Veniste. You weren't ruling out extortion of
[13] blackmail at that point, obviously.
[14] But your focus or the police focus was very narrow, and
[15] you thought that reasonable?
[16] Mr. Margolis. Yes.
[17] Mr. Ben-Veniste. Now, when you got the White House, do
[18] you remember at about what time it was?
[19] Mr. Margolis. Perhaps a little after 4:00.
[20] Mr. Ben-Veniste. And where did you meet?
[21] Mr. Margolis. I believe we met in Bernie Nussbaum's
[22] office.
[23] Mr. Ben-Veniste. In his private office?
[24] Mr. Margolis. Yes.
[25] Mr. Ben-Veniste. And did he show you Mr. Foster's

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[1] office, where it was?
[2] Mr. Margolis. Yes. Because it was attached to his
[3] office, as I recall.
[4] Mr. Ben-Veniste. And what do you recall having seen
[5] just by what he showed you that afternoon?
[6] Mr. Margolis. Just an office. I mean, we were standing
[7] in Bernie's office, and I think he said, "And this is
[8] Vince's office over here."
[9] Mr. Ben-Veniste. And did you look around?
[10] Mr. Margolis. No. I don't believe we went in. I think
[11] we were standing in Bernie's office.
[12] Mr. Ben-Veniste. And was the door locked, if you
[13] remember?
[14] Mr. Margolis. I could see the door – if it had been
[15] locked, he had it open for us so that we could actually see
[16] it from his office, from Bernie's office. I mean, I could
[17] look into it from Bernie's office.
[18] Mr. Ben-Veniste. You remember having seen it on the
[19] 21st?
[20] Mr. Margolis. Yes. That's my best recollection.
[21] Mr. Ben-Veniste. Now, in the conversation, who else was
[22] present besides you, Mr. Nussbaum, and Mr.

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Adams?
[23] Mr. Margolis. I believe at least off and on, Cliff
[24] Sloan, Steve Neuwirth, Captain Hume of the Park Police, and
[25] then at least one FBI agent, at least Denny Condon of the

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[1] FBI.
[2] Mr. Ben-Veniste. And were they there for the whole
[3] time, Hume and Condon?
[4] Mr. Margolis. I am not sure if people were in and out.
[5] I think Captain Hume was there for the whole time. But I am
[6] not 100 percent certain.
[7] Mr. Ben-Veniste. Now, is it your recollection that they
[8] were present at the end of the meeting when this
[9] conversation about what the bottom line was, what the
[10] agreement was?
[11] Mr. Margolis. I think some of them were. I think some
[12] people were standing outside in the hallway, attending the
[13] meeting by standing outside in the hallway because it was
[14] very crowded. Who was actually in the room, who was
[15] standing outside. I just remember it was Roger and I and
[16] Bernie and at least one or two –
[17] Mr. Ben-Veniste. Because, in fairness, neither Hume nor
[18] Condon, to my recollection, have testified that they had the
[19] understanding on the 21st that any agreement had been
[20] reached.
[21] Mr. Margolis. I just don't know.
[22] Mr. Ben-Veniste. So what else did you discuss besides
[23] this procedure?
[24] Mr. Margolis. I believe we discussed whether we should
[25] get started that night, break down, or wait until the next

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[1] morning. Everybody agreed to wait until the next morning.
[2] Mr. Ben-Veniste. How long did the meeting take?
[3] Mr. Margolis. Not very long. A half-hour, maybe.
[4] Mr. Ben-Veniste. Did Mr. Nussbaum explain to you what
[5] was on his mind in terms of protecting the various
[6] privileges that were involved?
[7] Mr. Margolis. Either he did that, or Mr. Heymann had
[8] told me what both Bernie's concerns were when we talked and
[9] that he had some of the same concerns, so this was the best
[10] way to resolve the concerns.
[11] Mr. Ben-Veniste. Do you recall Mr. Nussbaum explaining
[12] to you the concerns that were on his mind?
[13] Mr. Margolis. I recall that the next morning, when I
[14] believe he changed the agreement. I don't recall it that
[15] night.
[16] Mr. Ben-Veniste. Would you argue with Mr. Nussbaum's
[17] recollection that he went through in some detail the
[18] concerns on his mind with respect to the various privileges?
[19] Mr. Margolis. That night?
[20] Mr. Ben-Veniste. That night.
[21] Mr. Margolis. I would say his recollection and mind
[22] differ sharply on that.
[23] Mr. Ben-Veniste. Your recollection then was that there
[24] was a very perfunctory conversation where it was agreed that
[25] you would look the first or maybe first or second page of

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[1] each file?
[2] Mr. Margolis. Yes.
[3] Mr. Ben-Veniste. And despite the perfunctory nature of
[4] that, it is your recollection that when you summarized that
[5] Mr. Neuwirth took issue with it and said that Mr. Nussbaum
[6] would review the file?
[7] Mr. Margolis. That's correct.
[8] Mr. Ben-Veniste. Now let's go to the 22nd, if we can.
[9] The scope of what you were looking for did not change at
[10] all by the 22nd?
[11] Mr. Margolis. That's correct.
[12] Mr. Ben-Veniste. Still extremely narrow in scope?
[13] Mr. Margolis. That's correct.
[14] Mr. Ben-Veniste. You weren't conducting some kind of an
[15] investigation to see whether there was some impropriety
[16] going on with some matter in the White House?
[17] Mr. Margolis. That's absolutely correct.
[18] Mr. Ben-Veniste. You weren't looking for financial
[19] records of the President?
[20] Mr. Margolis. Absolutely not.
[21] Mr. Ben-Veniste. You weren't looking for real estate
[22] investments?
[23] Mr. Margolis. Absolutely not.
[24] Mr. Ben-Veniste. You weren't looking for the vetting
[25] files for the Attorney General or the various Supreme Court

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[1] nominees?
[2] Mr. Margolis. Absolutely not.
[3] Mr. Ben-Veniste. The reason why Mr. Heymann made

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the
[4] suggestion and the reason that you thought it was a good
[5] idea was to provide defense against criticism that the White
[6] House might be holding this too closely if it was only the
[7] White House that reviewed the records?
[8] Mr. Margolis. That was a large part of our thinking.
[9] The other part of our thinking was with all due modesty,
[10] I think that I would do a better job at that then Bernie
[11] Nussbaum.
[12] Mr. Ben-Veniste. Well, he would say it would be hard to
[13] argue on the basis of this, but I will get into that in a
[14] moment.
[15] Mr. Margolis. But those were the two reasons.
[16] Mr. Ben-Veniste. Now, at some point you think you
[17] remember on the evening of the 21st saying to Mr. Nussbaum,
[18] "If this were IBM, I would get a subpoena duces tecum
[19] returnable forthwith"?
[20] Mr. Margolis. No. I believe I said that the next day.
[21] Mr. Ben-Veniste. The next day.
[22] Mr. Ben-Veniste. And that was a joking remark on your
[23] part?
[24] Mr. Margolis. No. That was not so much joking. This
[25] was when we were debating the wisdom of changing, what I say

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[1] was changing, the ground rules and I was trying to make
[2] every argument I could.
[3] His remark back I believe was joking.
[4] Mr. Ben-Veniste. Okay.
[5] Well, let's look at your remark. You were interested in
[6] persuading Mr. Nussbaum that Mr. Heymann's suggestion had
[7] more merit than Mr. Nussbaum's?
[8] Mr. Margolis. That's true.
[9] Mr. Ben-Veniste. And when you suggested that if this
[10] were a corporate case – let's get off IBM because I think
[11] we have tarnished that name enough.
[12] Mr. Margolis. Well, except I used that name. I want to
[13] make plain, I used it because I wanted to pick a very
[14] respected and respectable company.
[15] Mr. Ben-Veniste. Okay.
[16] Now, if there were a suicide of an IBM executive who was
[17] found dead in a park on Federal land, you know, in Yosemite,
[18] let's say, and he was on vacation and his office was in
[19] Armonk, New York, are you suggesting that you would get a
[20] subpoena duces tecum returnable forthwith, to remove the
[21] files from that executive's office?
[22] Mr. Margolis. I am not suggesting that.
[23] Mr. Ben-Veniste. That was not really a viable
[24] suggestion, then?
[25] Mr. Margolis. But when I say I am not suggesting that,

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[1] part of the reason I am not suggesting it is those facts are
[2] very different than the facts in this case.
[3] If an executive, a high executive from IBM were found
[4] dead a couple of miles from his office on Federal land and
[5] if we were being stonewalled by IBM as to access to the
[6] documents in his office, I might very well consider a
[7] subpoena duces tecum. Whether I would actually do it or
[8] not, that's a different matter.
[9] Mr. Ben-Veniste. Now, if the executive was general
[10] counsel to IBM and his office was filled with IBM files,
[11] legal files?
[12] Mr. Margolis. Yes.
[13] Mr. Ben-Veniste. Do you feel that you would have had
[14] any basis for impaneling a grand jury and suggesting that
[15] there would be a subpoena duces tecum returnable forthwith
[16] to be issued to the company for the files in that office?
[17] Mr. Margolis. Well, first of all, I would hope that in
[18] a big city like Washington, D.C., that I wouldn't have to
[19] empanel a grand jury. As you know, there are many sitting.
[20] Second, being what I consider an honest and decent
[21] prosecutor, I would narrowly craft any such subpoena to call
[22] for narrow documents dealing with the suicide, recognizing
[23] that that would give whoever the subpoena recipient was a
[24] great deal of latitude in determining what they were
[25] producing.

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[1] Mr. Ben-Veniste. So the recipient of that subpoena,
[2] assuming – let's get over the hurdles – that you would
[3] actually issue such a subpoena and you had satisfied
[4] yourself that a Federal crime might have been committed.
[5] Mr. Margolis. Might have been, because, as you know,
[6] the purpose of a grand jury is to determine whether there

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[7] has been a Federal crime and, if so, who there is probable
[8] cause to believe to charge, rather than starting from the
[9] premise that there has been a Federal crime.
[10] Mr. Ben-Veniste. As I well know.
[11] Then the subpoena duces tecum, narrowly crafted, would
[12] have been for a suicide note or evidence reflecting mental
[13] condition of the individual or any extortion threat?
[14] Mr. Margolis. Correct.
[15] Mr. Ben-Veniste. Now, when you delivered that subpoena
[16] duces tecum by way of a Federal marshal or the FBI to the
[17] counsel for IBM or the company, who would it be who would
[18] have the responsibility to go through the files to look for
[19] the material that you had narrowly addressed in the
[20] subpoena?
[21] Mr. Margolis. It would be the person to whom the
[22] subpoena were addressed or I could address it to the
[23] custodian of the records.
[24] Mr. Ben-Veniste. In your experience, typically counsel
[25] for the company –

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[1] Mr. Margolis. Would be consulted by the recipient of
[2] the subpoena, certainly.
[3] Mr. Ben-Veniste. And would go through the records?
[4] Mr. Margolis. Yes.
[5] Mr. Ben-Veniste. So that at the end of the day, if you
[6] had gotten such a subpoena and it would have been for
[7] Mr. Foster's office, directed to the White House or to the
[8] custodian of the records, then it would be up to
[9] Mr. Nussbaum to go through the records and look for a
[10] suicide note or an extortion note or related type of
[11] information and then, in due course, provide that to the
[12] grand jury?
[13] Mr. Margolis. That's correct.
[14] Mr. Ben-Veniste. Or to you as a representative of the
[15] grand jury?
[16] Mr. Margolis. Or to go before the court and explain why
[17] he couldn't or didn't want to. If I had issued such a
[18] subpoena.
[19] Mr. Ben-Veniste. Now, in the case in point, sitting in
[20] Mr. Nussbaum's office, was, in your view, preferable to not
[21] sitting there while he went through the records?
[22] Mr. Margolis. That's correct. And sitting in his
[23] office was preferable to going through the records

were
[24] talking about.
[25] Mr. Ben-Veniste. And it is obvious that during the

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[1] procedure that Mr. Nussbaum employed, you were involved in
[2] an interactive process. At some point, you said, "Bernie,
[3] look over here. Bernie, look at this. Well, what is that?"
[4] And from time to time he would show a document or give you a
[5] further explanation. Correct?
[6] Mr. Margolis. Yes.
[7] Mr. Ben-Veniste. So that in a sense, rather than the
[8] pile that he segregated that you had identified as material
[9] that you were interested in, consisting of a suicide note
[10] which was not found, nonexistent, or related material
[11] showing mental condition, which may be the scraps of paper,
[12] if that had been found, or an extortion threat, which was
[13] nonexistent, you had basically been left with the scraps of
[14] paper.
[15] Mr. Margolis. The scraps of paper in the bottom of the
[16] briefcase.
[17] Mr. Ben-Veniste. Right. And that would be all you
[18] would get in response to the subpoena, presumably. Correct?
[19] But, indeed, with respect to the interactive process that
[20] was employed, you identified appointment calendars, message
[21] slips, other material as Mr. Nussbaum went through the
[22] office. Correct?
[23] Mr. Margolis. He identified them.
[24] Mr. Ben-Veniste. Yes, but you then expressed an
[25] interest or some Park policeman or FBI agent expressed an

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[1] interest, and while that might be interesting to us, let's
[2] put that aside. Correct?
[3] Mr. Margolis. On rare occasions, mostly what Bernie
[4] would say is, "This is something," like for instance, there
[5] was a newspaper article, "This is something that would
[6] indicate, if I showed it to you, while it's only a newspaper
[7] article, it would indicate how the President was thinking on
[8] a certain matter, and I can't show that to you."
[9] [illegible] make the judgment and tell us what the

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judgment
was.
Mr. Ben-Veniste. But in terms of the materials that were segregated –
The Chairman. Can I interrupt just for a moment, and it is an interruption and intrusion, and I will make sure that whatever time is taken is put back?
You are saying that as it related to – you have a recall that there was an incident where a newspaper clipping was taken and he said, "This only" – Mr. Nussbaum said, "Well, this indicates what the President was thinking about"?
Mr. Margolis. Yes; on a particular issue.
The Chairman. "But I won't show it to you"?
Mr. Margolis. Yes, because it would be an invasion of the President's deliberative process.
The Chairman. Thank you.

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Senator Sarbanes. Mr. Margolis, in the course of this process, is it not the case that the investigators identified on the basis of the – the investigators, upon the identification by Mr. Nussbaum of certain material, indicated an interest in that material and it was placed into the pile?
Mr. Margolis. When – that's true, Senator. When, on certain items that Mr. Nussbaum said, "This is not a problem in terms of privilege or executive privilege or privileged communications," that they would say on some of those, "Yes, we would like to see that."
For instance, I believe there was a calendar.
Senator Sarbanes. All right. And those items went beyond a suicide note, a writing about the state of mental condition, or an extortion threat.
Mr. Margolis. But we didn't know until we looked at them. For instance, on –
Senator Sarbanes. I understand that. But your subpoena, if you had issued a subpoena, would have been for those items, as I understand your testimony now.
So, by having this interactive process, as much as you objected to it, you and the investigators got additional material beyond what would have been covered in a narrow subpoena. Is that not the case?
Mr. Margolis. I suppose you could say they got

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additional material that was non – well, it turned out to be nonrelevant, yes, Senator. But what they didn't get – and keep in mind, I never, just so there is no mistake, I never suggested that I was going to issue a subpoena to anybody in the White House for any records. I never suggested that to anyone.
I said, remember what I said was, "If this were IBM, this is the way I would handle it."
Was there a little bluff in that? Yes, there was a little bluff in that. But I never mentioned that I would do it. I mean, it's like we lawyers say, "If it were not a size time, I would run you through." The point was, I said, "If this were IBM." It wasn't IBM. It was the White House counsel, and I understand the difference.
Mr. Ben-Veniste. And we have covered the fact –
The Chairman. You were about to say, "But I didn't get." What were you going to say before you went off to explain that you weren't going to issue a subpoena?
Mr. Margolis. Can you give me a hint?
The Chairman. I don't know. You brought me right up to the bone and then took it away. You said – the question was –
Senator Sarbanes. What you didn't get was the opportunity to look at the stuff yourself.
Mr. Margolis. I think I was about to mention that I

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have a vague recollection that there was a map that Bernie had and I was interested there, you know, if it had Fort Marcy Park indicated in any way, I would be interested in that.
Mr. Ben-Veniste. And he put the map in the pile?
Mr. Margolis. Yes.
Mr. Ben-Veniste. And eventually the police looked at the map?
Mr. Margolis. Yes. We might have looked at it right then, as a matter of fact.
Mr. Ben-Veniste. Okay.
So, there was stuff that was of immediate interest to you. Was there anything of immediate interest that you really wanted to look at that he said "no"?
Mr. Margolis. No, and the reason for that is that I didn't know what was in there.
Mr. Ben-Veniste. Okay.
Mr. Margolis. It wasn't possible, and I think I complained about that during the search.

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[20] Mr. Ben-Veniste. In the process, though, it was
[21] something of an interactive procedure. We got to the
[22] question of bluff. There was a second bluff, and I am not
[23] suggesting that when I was a prosecutor, it was beyond me to
[24] perhaps make a statement that I might not have intended to
[25] fully execute on.

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[1] Senator Sarbanes. I wouldn't think that of either
[2] Mr. Ben-Veniste or Mr. Chertoff.
[3] Mr. Ben-Veniste. Thank you, Senator.
[4] But there was a second part of the bluff, and that was
[5] that you might leave. Mr. Nussbaum was concerned about you
[6] staying, and you said, "Well, you know, maybe we'll go get a
[7] bite. Maybe we'll catch a movie. You let us know. Give us
[8] a buzz. We'll be back in 50 minutes if you need us."
[9] Mr. Margolis. That was not a bluff.
[10] Mr. Ben-Veniste. I mean, the idea of leaving.
[11] Mr. Margolis. No. That was –
[12] Mr. Ben-Veniste. And not coming back for the procedure.
[13] Mr. Margolis. That is different. Now, that's
[14] different.
[15] Mr. Ben-Veniste. That's what I meant.
[16] Mr. Margolis. I did seriously, and almost did, go back
[17] with the intention of coming back.
[18] Mr. Ben-Veniste. Right.
[19] But the notion of leaving and saying, "Well, look, just
[20] mail us the results." That was a bluff?
[21] Mr. Margolis. That was an argument. I mean, I wanted
[22] to hear what his response would be. Why wasn't that
[23] satisfactory? I knew why it wasn't satisfactory to me.
[24] Mr. Ben-Veniste. But it was clear to you at the time
[25] that whatever the procedure was, you thought it would be

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[1] better to stay than to go?
[2] Mr. Margolis. That's correct.
[3] Mr. Ben-Veniste. And it was your understanding that
[4] Mr. Heymann agreed with that?
[5] Mr. Margolis. That's correct.
[6] Mr. Ben-Veniste. Now, you know now, do you not, that
[7] Mr. Heymann had a different view? He had a misunderstanding
[8] with you?
[9] Mr. Margolis. Or not a meeting of the minds. That's
[10] correct.
[11] Mr. Ben-Veniste. Not a meeting of the minds.
[12] Mr. Margolis. Although I am still not sure of that.
[13] Mr. Ben-Veniste. He so testified.
[14] Mr. Margolis. What did he testify?
[15] Mr. Ben-Veniste. He testified that [illegible]
[16] mind that he had not authorized you at that point to stay
[17] until he had the opportunity to reassess the situation or
[18] see what Mr. Nussbaum's final position would be and then
[19] make a determination of whether the Department of Justice
[20] lawyers would stay.
[21] In fact, that evening, he was upset because he felt that
[22] the Department of Justice lawyers stayed there without his
[23] authorization and that he should have had the option to call
[24] them back, and in fact that seemed to be the central point
[25] of his being upset with Mr. Nussbaum, according to his

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[1] testimony.
[2] Mr. Margolis. Thank you. Well, I didn't hear his
[3] testimony.
[4] But my understanding, for what it's worth, was that from
[5] the time it happened, was that he was upset because he
[6] thought he had an agreement with Mr. Nussbaum that if Bernie
[7] did not change his mind and go back and agree to the
[8] original procedure, that Bernie would call him and that they
[9] could discuss it further and Phil could make his
[10] determination.
[11] Mr. Ben-Veniste. Right. And that was a part of it.
[12] But you had a different recollection than Mr. Heymann did
[13] about whether you and he agreed that under any circumstances
[14] you would be staying? He thought that that had not been
[15] agreed to?
[16] Mr. Margolis. I can only tell you what my understanding
[17] was.
[18] Mr. Ben-Veniste. Of course, it is reasonable and
[19] possible that people under such circumstances could have a
[20] different interpretation of what was said and what was
[21] agreed to?
[22] Mr. Margolis. If he said that that was – if he said
[23] differently than my understanding, then certainly he is a
[24] reasonable person.
[25] Mr. Ben-Veniste. Incidentally, on the issue of this

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[1] newspaper article, it was the recollection of Captain Hume

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and others that you got into this discussion about whether the newspaper article could be avowedly the subject of privilege and that you agreed ultimately with Bernie because this is something you were familiar with and did at the Justice Department. Do you recall that?
Mr. Margolis. No. No, but I do recall saying it reminded me, it gave me a bit of deja vu all over again of dealing with the CIA, is what I said, not the Justice Department.
(Laughter.)
Mr. Margolis. I want that distinction to be very clear.
Mr. Ben-Veniste. In any event, you know, this got pretty rarified, and the law enforcement people there, I take it, hearing the lawyers discuss these kinds of issues, began to roll their eyes at some point?
Mr. Margolis. They were sitting behind me.
Mr. Ben-Veniste. Well, that's a good point, you know. Let's put up on the screen, if we will, the exhibit that reflects the layout of the office. Are you comfortable?
Mr. Margolis. Yes. I am getting a bit uncomfortable, but not for – I may have to make a phone call, as they say.
Mr. Ben-Veniste. Let's take a break now, if we may, Mr. Chairman.

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The Chairman. Why don't you make that phone call then?
Mr. Margolis. Five minutes?
The Chairman. Sure. Absolutely.
(Recess.)
Mr. Ben-Veniste. Mr. Margolis, I am showing you Exhibit 1 from, I think, August 7. Does that look familiar to you? That has been represented as more or less scale version of Mr. Foster's office, as it existed on or about July 20.
Mr. Margolis. I could not quarrel with its accuracy.
Mr. Ben-Veniste. Okay. And can you tell us – if we can summon the dotmeister – where you were sitting that day in the office?
Mr. Margolis. I was sitting in a chair, and in the first chairs, the first row of chairs. So, if that's accurate as to where the chairs were –
Mr. Ben-Veniste. If it's not, you tell us.
Mr. Margolis. I thought I was sitting more toward the center of the room. Do you see where the dot is now?
Mr. Ben-Veniste. Okay.
Mr. Margolis. A little bit, a couple of inches further back. That's my recollection of where I was sitting.
Mr. Ben-Veniste. That's where you recall sitting. Now let's move Mr. Margolis's – is that where the dot has landed?
Mr. Margolis. Yes.

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Mr. Ben-Veniste. Okay. Let's put that X and move Mr. Margolis's chair over there. Do you remember where Mr. Adams was sitting?
Mr. Margolis. My best recollection would be that he was sitting in roughly the same distance from the desk but off to the side from me, off to the upper side.
Mr. Ben-Veniste. To the side closest to the door, where the dot is now?
Mr. Margolis. No. The other side.
Mr. Ben-Veniste. The other side?
Mr. Margolis. Yes. Right about there.
Mr. Ben-Veniste. Okay.
Mr. Margolis. No, further up. Further up. Yes, about there.
Mr. Ben-Veniste. There.
The Chairman. He is having a little trouble.
Mr. Margolis. It won't stop on me.
(Laughter.)
Mr. Ben-Veniste. Okay. Now, do you remember where the law enforcement people were sitting?
Mr. Margolis. My recollection is they were behind us.
Mr. Ben-Veniste. Well, there's a coffee table right behind you there.
Mr. Margolis. Right. And then there's a sofa.

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Mr. Ben-Veniste. There were two on the sofa, as we have heard the testimony. Sergeant Markland to the left, and I believe Scott Salter was sitting next to him. Is that your recollection of where Mr. Salter was sitting?
Mr. Margolis. As I say, you know, because they were behind me, I didn't pay that much attention.
Mr. Ben-Veniste. Okay.
Mr. Margolis. Or any attention, really, to the location. I would have guessed that Mr. Salter was sitting in front of the sofa and behind me. That would have been my guess. But I'm not sure.
Mr. Ben-Veniste. In front of the sofa and behind you?
Mr. Margolis. Yes. Somewhere in between.
Mr. Ben-Veniste. Somewhere in between. Well, there's a coffee table in between, at the moment.
Mr. Margolis. Yes. But there is also a little room.
Mr. Ben-Veniste. So you think he was sitting in a chair

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just behind you?
Mr. Margolis. Behind me, a couple of feet behind me.
Mr. Ben-Veniste. Okay. On the other side of the coffee
table?
Mr. Margolis. I couldn't be sure of that.
Mr. Ben-Veniste. Okay. That he was then sitting in

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front of Detective Markland?
Mr. Margolis. If Detective Markland were sitting
against the back wall.
Mr. Ben-Veniste. Okay.
Let's put an X there for Agent Salter.
Now, you have no recollection of Mr. Nussbaum lifting
the briefcase: he might have done that or he might have
looked at it while it was on the floor?
Mr. Margolis. He might have looked at it on the floor
or he might have put it on the desk.
Mr. Ben-Veniste. The testimony seems to be uniformly
that he reached down behind him, removed the files from the
briefcase, which was –
Mr. Margolis. On the floor.
Mr. Ben-Veniste. – on the floor, and put the files up.
We have also learned that this briefcase snaps shut when
it's empty. I take it you could not see into the briefcase?
Mr. Margolis. I could not see into the briefcase.
Mr. Ben-Veniste. Okay.
If Detective Markland could see into the briefcase, he
would have to see through special Agent Salter, you, and the
desk in order to see through there?
Mr. Margolis. I don't see how he could have seen into
the briefcase in those circumstances.
Mr. Ben-Veniste. Neither do I.

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Now, it was your understanding, Mr. Margolis, that there
were personal financial materials of the President that were
in the office, in Mr. Foster's office, and investment
materials. Correct?
Mr. Margolis. I was told that there were – I don't
believe – maybe it was investment, but I was told by
Mr. Nussbaum that there were personal financial papers.
Mr. Ben-Veniste. Okay.
You have testified you had no interest in those, and Mr.
Adams has testified tonight, and Mr. Heymann has testified
that they were not surprised that such materials were in
Mr. Foster's office. Were you surprised?
Mr. Margolis. Which materials of whom now?
Mr. Ben-Veniste. Personal financial materials of the
Clintons.
Mr. Margolis. I will tell you, at the time that I was
told that, a shot – or a thought shot through my mind as to
the difference between personal papers that White House
counsel work on versus official papers, and I just said to
myself, that's not my issue and that's not my concern.
Mr. Ben-Veniste. Okay.
It was your understanding –
Mr. Margolis. You asked me if I was surprised. I had
never been in that situation before.
Mr. Ben-Veniste. Okay.

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So I take it you were not surprised?
Mr. Margolis. It did catch my attention, but I had, you
know, it was not of great interest to me.
Mr. Ben-Veniste. More importantly, it was your
understanding that those materials were to be dispersed to
the private attorney of the Clintons designated.
Mr. Margolis. That's right.
Mr. Ben-Veniste. I'm sorry?
Mr. Margolis. That's right.
Mr. Ben-Veniste. As were the private Foster materials
going to the Foster private attorney?
Mr. Margolis. That's correct.
Mr. Ben-Veniste. I see my time has expired,
Mr. Chairman, and I will try to pick this up in a few
moments.
The Chairman. Thank you, Richard. Thank you,
Mr. Ben-Veniste.
Senator Shelby?
Senator Shelby. Thank you.
Mr. Margolis, without trying to eat up a lot of time,
yours and the committee's both, I just want to recap a
little of your background.
You have been some 30 years with the Justice Department,
starting out in the U.S. Attorney's office more or less?
Mr. Margolis. Yes, Senator.

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Senator Shelby. What is your current position in the
Justice Department?
Mr. Margolis. Associate deputy attorney general.
Senator Shelby. And had you worked in criminal
divisions of the Justice Department off and on for a number
of years?
Mr. Margolis. Criminal has been really my only
expertise for all 30 years.
Senator Shelby. And you have been involved as working
with and then the head of several Justice Department

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strike
[11] forces, have you not?
[12] Mr. Margolis. Correct. As well as being in charge of
[13] the whole organized crime section and all its strike forces.
[14] Senator Shelby. Now, basically, you have spent most of
[15] your life working with the Justice Department, have you not?
[16] Mr. Margolis. That's correct.
[17] Senator Shelby. Your professional life, I would say.
[18] Mr. Margolis. My – actually, my whole life.
[19] Senator Shelby. Your whole life.
[20] (Laughter.)
[21] Mr. Margolis. Most of my whole life.
[22] Senator Shelby. You know Mr. Heymann, you have worked
[23] with him on several occasions at the Justice Department.
[24] Were you working at the Justice Department back in the
[25] Carter Administration when Mr. Heymann was in charge of the

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[1] criminal division?
[2] Mr. Margolis. Yes, I was.
[3] Senator Shelby. Were you working under him, so to
[4] speak?
[5] Mr. Margolis. Well, he appointed me.
[6] Senator Shelby. He appointed you?
[7] Mr. Margolis. As chief of organized crime, yes.
[8] Senator Shelby. So you were chief of organized crime
[9] under Mr. Heymann at the Justice Department?
[10] Mr. Margolis. And under his Republican successors until
[11] 1990.
[12] Senator Shelby. Who were the Republican successors?
[13] Mr. Margolis. First it was Lowell Jensen.
[14] Senator Shelby. Okay.
[15] Mr. Margolis. Then it was Steve Trott.
[16] Senator Shelby. Okay.
[17] Mr. Margolis. Then it was Bill Weld, Governor Weld.
[18] Senator Shelby. Governor Weld.
[19] Mr. Margolis. I still call him Bill.
[20] Then it was Ed Dennis. Then it was Bob Muller, and
[21] Muller was the last Republican appointee.
[22] Senator Shelby. Would you describe yourself as
[23] nonpartisan in your job?
[24] Mr. Margolis. Yes, I do, and I would hope my bosses
[25] would do the same.

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[1] Senator Shelby. You have known Mr. Heymann for how many
[2] years now?
[3] Mr. Margolis. Since 1978. So, 1978 – 17 years.
[4] Senator Shelby. Do you hold him in high regard?
[5] Mr. Margolis. Absolutely.
[6] Senator Shelby. All right.
[7] Mr. Margolis. He is – he is one – I have said this
[8] publicly and semipublic before – he is one of my heroes,
[9] and he is a very dear friend.
[10] Senator Shelby. And would you say without question that
[11] he has high integrity and that is generally accepted
[12] everywhere?
[13] Mr. Margolis. I have never heard it disputed, and I
[14] agree 100 percent.
[15] Senator Shelby. If he testified, which he did,
[16] according to the record right here, that after you came back
[17] from the White House, you and Mr. Adams went to the Justice
[18] Department on the occasion, was it the 21st or 22nd,
[19] whatever date, and you told him what had gone on at the
[20] White House, that the agreement was not going to be adhered
[21] to, at least your perception.
[22] Mr. Margolis. Right.
[23] Senator Shelby. If he told you that he went home to an
[24] apartment where he was renting and staying here in the
[25] Washington area, and then he picked up the phone and he

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[1] called Mr. Nussbaum and told him – and I am quoting
[2] Mr. Heymann –
[3] Mr. Margolis. Yes.
[4] Senator Shelby. – that, "I couldn't imagine why he
[5] would have treated me that way, how could he have told me he
[6] was going to call back before he made any decision on how
[7] the search would be done and then not call back?"
[8] If he testified to that, would you believe him without
[9] question?
[10] Mr. Margolis. Absolutely.
[11] I should add, he told me that at the time.
[12] Senator Shelby. He did?
[13] Mr. Margolis. Back at the time, that he was going to
[14] make that call and that he did make that call.
[15] Senator Shelby. and you believe he did, too, don't you?
[16] Mr. Margolis. Absolutely.
[17] Senator Shelby. And if he told Mr. Nussbaum –
[18] The Chairman. Let me ask you this, if I might, Senator,
[19] did he tell you afterward, sometime afterward, that he had
[20] indeed made that call?
[21] Mr. Margolis. Yes. He told me the next day.
[22] The Chairman. Could you recall what he told you?
[23] Mr. Margolis. What he told me?

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[24] The Chairman. Yes.
[25] Mr. Margolis. Well, first he told me, you know – I had

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[1] come back, told him what happened. I told him that I was
[2] perplexed, I didn't know if anything was being hidden from
[3] us. So that when he called Mr. Nussbaum and asked him if he
[4] was hiding anything, I must accept the responsibility for
[5] perhaps planting that in his mind.
[6] But he was angry on his own, and he said, "You know,
[7] Bernie was supposed to call me back and he didn't, and I am
[8] going to talk to him."
[9] And then the next day he said that he had called Bernie.
[10] I remember him mentioning that he called him from his
[11] kitchen in this apartment that he had, and I quote, I think
[12] he said, "I gave him a piece of my mind." I don't think he
[13] said much more than that.
[14] Senator Shelby. After you went to the White House and
[15] came back after the meeting, did it occur to you perhaps
[16] that maybe Mr. Nussbaum was hiding something, he was trying
[17] to thwart the investigation?
[18] Mr. Margolis. I tell you, Senator, I was perplexed as I
[19] am today.
[20] Senator Shelby. Sure.
[21] Mr. Margolis. As to what happened. I thought I had
[22] this figured out, that the torn-up scraps of paper were not
[23] in the briefcase the day that Mr. Nussbaum did the search in
[24] our presence. That's what – that was the explanation I
[25] came up with, and that somebody – that it had never been

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[1] there before and somebody put it in afterward or it had been
[2] there, somebody took it out and then decided they better put
[3] it back because there was public speculation of, you know,
[4] where is the suicide note.
[5] So, in my own mind, I speculated that must be what
[6] happened. But then, when I picked up the paper one day and
[7] saw that Mr. Spafford said that the note had been in there
[8] when the search was conducted, I am at a loss now. I just
[9] have no explanation. I don't know.
[10] Senator Shelby. Based on your 30 years as a lawyer in
[11] the Justice Department, involved in the criminal division,
[12] that made you ponder, did it not?
[13] Mr. Margolis. And to this minute.
[14] Senator Shelby. To this minute.
[15] Mr. Margolis. That's correct.
[16] Senator Shelby. Do you recall if anyone was in the
[17] office when Mr. Neuwirth claimed he found the pieces of note
[18] in the briefcase?
[19] Mr. Margolis. Whether anyone else was in the office?
[20] Senator Shelby. Yes. Other than Mr. Neuwirth.
[21] Mr. Margolis. I don't recall.
[22] Senator Shelby. You don't recall.
[23] Mr. Margolis. I don't recall, Senator.
[24] Senator Shelby. Now, if he were the only one in the
[25] office there when this was supposedly discovered, and he had

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[1] been in and out of that office that day, would that fuel
[2] your imagination a little bit?
[3] Mr. Margolis. I think my imagination is fueled so much
[4] now it would be an afterburn with anything else.
[5] (Laughter.)
[6] Senator Shelby. Thank you.
[7] Mr. Margolis, if Mr. Heymann said that he told Bernie in
[8] this phone call I was referring to from the apartment that
[9] you related a minute ago, "Are you hiding something," and he
[10] said, "No, I promise you we're not hiding something," and if
[11] Mr. Heymann then said to Mr. Nussbaum. "You misused us," or
[12] something to that effect, would you believe that?
[13] Mr. Margolis. Oh, absolutely.
[14] Senator Shelby. All right.
[15] Mr. Margolis. Because one thing that happened, Senator,
[16] was either that day, later that day of the search or the
[17] next day, a statement or information came from the White
[18] House to the media along the lines that I had feared. It
[19] was that the search was conducted under the supervision of
[20] the Department of Justice.
[21] And, you know, I worried about something like that, and
[22] I remember with Mr. Heymann's permission, telling our press
[23] office to correct that, that the search was conducted in the

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presence of the Justice Department.
So I think what Phil – Phil was troubled by that, and I

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think that's part of what he was talking about, that the impression was created that the Department of Justice Did
play a far larger role in the search than in fact it did.
Senator Shelby. Mr. Margolis, do you believe that the Justice Department was used on this occasion by the White
House counsel to dress up what he would term as a search of
the Foster files?
Mr. Margolis. Yes.
Senator Shelby. Thank you.
Was the meetings at the White House that you and
Mr. Adams went to, were they tense in nature?
Mr. Margolis. Not the first one.
Senator Shelby. Okay.
Mr. Margolis. Not that first evening. I did not find
that tense.
Senator Shelby. Was the second one tense?
Mr. Margolis. Yes. Yes.
Senator Shelby. Who was in control of the search at he
White House office there? Was that Mr. Nussbaum?
Mr. Margolis. Yes.
Senator Shelby. Was the Justice Department, the FBI,
the Park investigators in any way in control of the search
in the office?
Mr. Margolis. No.
Senator Shelby. Do you believe, Mr. Margolis, that the

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conduct of the White House counsel in setting the ground
rules of the so-called search later dispersing papers and so
forth, without the Justice Department having an opportunity
to evaluate them, compromised or contaminated the
investigation?
Mr. Margolis. I can't say that, Senator. What I would say –
Senator Shelby. What would you say?
Mr. Margolis. I would say, and I think Mr. Heymann said
it perfectly –
Senator Shelby. Okay.
Mr. Margolis. – that the way this was done – and I
don't think I can capture his exact words –
Senator Shelby. Okay.
Mr. Margolis. But the way this was done, it managed to
cast substantial doubt on the bona fides of the
investigation with no evidence that anything wrong was ever
done. It was the worst of all worlds.
Senator Shelby. But with the papers gone and the
Justice Department never being really able to conduct an
ordinary investigation, we will never know what was there,
will we?
Mr. Margolis. We will never know, but I got to tell
you, Senator, what I am focusing on, and all I am focusing
on, is that note.

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Senator Shelby. Sure.
Mr. Margolis. Is that note. If you had showed me a
bunch of financial documents – not if you had showed me –
if Mr. Nussbaum had showed me a bunch of financial documents
that day, I wouldn't have been very interested in them, I
wouldn't have understood them, I don't think my agents would
have had any interest in them.
But what happened was, the confusion or the problem that
was created is that there's a perception out there that we
have never gotten away from that there was something hidden.
Senator Shelby. Mr. Margolis, you had a high security
clearance, did you not?
Mr. Margolis. Top secret.
Senator Shelby. Top secret.
Mr. Margolis. Code word.
Senator Shelby. And so did Mr. Adams have that, too?
Mr. Margolis. I believe he had at least top secret.
Senator Shelby. But you had top secret?
Mr. Margolis. Yes. A little bit above that.
Senator Shelby. And you worked at the Justice Department, which is part of the executive branch of government, isn't it?
Mr. Margolis. That's correct.
Senator Shelby. If there was litigation or stuff like that requiring difficult things at the White House, does the

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Justice Department get involved rather than the White House
counsel on behalf of the –
Mr. Margolis. Litigation, yes. Yes, sir.
Senator Shelby. You mentioned a minute ago, I believe
it was your words that you felt like you had lost – you
used a metaphor, yours, I suppose – we had lost the battle,
lost the war.
Mr. Margolis. I should have said we lost the war, yes.

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[9] Senator Shelby. Lost the war.
[10] Thank you.
[11] The Chairman. Senator Sarbanes?
[12] Senator Sarbanes. Mr. Margolis, I just want to be clear
[3] on that E-mail that we discussed before.
[14] Mr. Margolis. Yes.
[15] Senator Sarbanes. Which, as I take it, the way you
[16] prepared it, had a heading on it.
[17] Mr. Margolis. My recollection is yes.
[18] I've got it here. Let me take a look at it. I should
[19] have it here. I think I can lay my hands on it.
[20] I've got it.
[21] Yes. That heading is "Subject: Vince Foster. Moot
[22] court. Media questions." That's my heading. Those are my
[23] words.
[24] Senator Sarbanes. Well, I would just make the
[25] observation, apparently this got leaked without the heading.

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[1] Mr. Margolis. Yes.
[2] Senator Sarbanes. And therefore was treated in the
[3] press without –
[4] Mr. Margolis. To my great consternation, as I lay home
[5] in bed and got a call from a friend of mine who read it to
[6] me early that Friday morning, and read it to me and said it
[7] was in the top part of the New York Times that day.
[8] I was, to put it mildly, outraged and very upset and I
[9] wound up asking Carl Stern, the department's press
[10] spokesman, to make sure the press got the real story.
[11] I don't – I am still outraged by that. It caused me a
[12] great deal of consternation. I don't know who did it. I
[13] would love to know. But I can't believe it was done
[14] innocently.
[15] Senator Sarbanes. All right.
[16] Mr. Margolis. Because not only was the caption left
[17] off, but the whole spin on the story was that this was
[18] my – that this was my feelings about what happened, and
[19] therefore leaving the caption off, which would have cut away
[20] from that, had to be purposeful, and then to have in the
[21] story a statement that, "Well, some Democrat Senator
[22] explained it by claiming that it was just moot court
[23] questions."
[24] So, having the true story, but then giving it the back
[25] of the hand troubled me a great deal. And at my insistence.

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[1] Carl was able to get a correction printed in the Times the
[2] next day. But I recognize that corrections, especially on a
[3] Saturday morning, in a corrections box of a story that
[4] appeared at the top of the front page of the paper, the
[5] correction maybe isn't worth much more than the paper it's
[6] written in.
[7] Senator Sarbanes. Yes. Okay. Thank you. I just
[8] wanted to clarify that.
[9] I yield to Mr. Ben-Veniste.
[10] Mr. Ben-Veniste. Thank you, Senator.
[11] Mr. Margolis, let me go to your speculation about the
[12] note because I think that is pretty interesting, and it is,
[13] among all the things we have discussed here, the one item
[14] that was clearly within the purview of what the police were
[15] looking for; that is, while not a suicide note, some
[16] indication of the mental distress that Mr. Foster clearly
[17] labored under in the days or weeks prior to his death.
[18] So at first you were highly suspicious when the note was
[19] discovered, that maybe it wasn't in the briefcase and it had
[20] been put there subsequent to the 22nd?
[21] Mr. Margolis. At first, I was just very upset and
[22] suspicious in general. But I didn't come up with that
[23] speculation until later on.
[24] Mr. Ben-Veniste. Okay.
[25] But when the note was discovered and the public

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[1] announcement was made that there was a note there after all,
[2] it caused criticism to be levied against the Park Police,
[3] and they were very sensitive to that.
[4] Mr. Margolis. Yes.
[5] Mr. Ben-Veniste. And so the fact that the note wasn't
[6] uncovered really led to a lot of problems that might not
[7] have surfaced at that point?
[8] Mr. Margolis. And I think there was criticism of the
[9] Department of Justice also.
[10] Mr. Ben-Veniste. Right.
[11] Mr. Margolis. And the White House. Everybody was
[12] criticized.
[13] Mr. Ben-Veniste. Everybody got smeared with that
[14] because you were in the room, and you didn't like that,
[15] because it wasn't your way of doing it in the first place.
[16] Mr. Margolis. That's right.
[17] But I also thought I had to admit to myself that the
[18] criticism of me I couldn't quarrel to. I made a judgment
[19] call to go along with it, so I had to accept the criticism.

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Mr. Ben-Veniste. You have been, as I understand it, following very intermittently these proceedings. Let me tell you what we have learned and see what your reaction is to that. We have learned that three people observed that there were scraps of paper in the bottom of that briefcase as of

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the 22nd. The first was Bill Burton, who was standing behind Bernie Nussbaum during the search, and he has testified that he saw yellow Post-its or something in the bottom of the briefcase, glimpsed for a second or two.

Mr. Margolis. During the course of the search.

Mr. Ben-Veniste. During the course of the search, that he saw something yellow in the bottom of the briefcase.

Mrs. Gorham, who was Mr. Foster's secretary, has testified that she and Mrs. Tripp, who was also a secretary or administrator in the office, were vitally interested in trying to learn any information about what might have caused Mr. Foster's death.

On the 22nd, after you had left the office, Mrs. Gorham came in, and Mrs. Gorham was in for a while helping Mr. Nussbaum, and then left.

Then Mrs. Tripp said to her, "Have they found the note?"

Mrs. Gorham says "no." Mrs. Tripp says, "Did they look in the briefcase?" Mrs. Gorham said, "Yes, they looked in the briefcase. The briefcase is empty except for some yellow scraps of paper."

Mr. Spafford's testimony, although not the recollection of Messrs. Sloan and Nussbaum, is that at the conclusion of the search he overheard a conversation, "Hey, there's yellow scraps of paper in the bottom of the briefcase," and Bernie said, "We'll get to that later," sitting on the couch

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exhausted.

Spafford didn't include it in his notes, didn't ask to see the yellow scraps of paper. It was Mr. Foster's briefcase, one of his personal effects.

So I put it to you that perhaps this was something that was hidden in plain sight. Everyone was looking for a note:

what they weren't looking for was torn-up scraps of paper in the bottom of the briefcase.

Does that compute?

Mr. Margolis. I don't know.

I mean, what computes with me is that if I had been looking at that briefcase and it was hidden in plain sight for me, I would go up to the Attorney General and ask her to fire me, and I would be humiliated.

Now, these guys aren't supposed to be as good at what they – what I do as I do.

Mr. Ben-Veniste. Right.

Mr. Margolis. But that's what I feel for myself.

Mr. Ben-Veniste. All right. But in terms of people of good faith certainly – you can say what you will of the secretaries – were clearly not interested in covering anything up, clearly interested in finding out what happened to Mr. Foster, clearly interested in finding a note, they said, "Well, there's no note, just some yellow scraps of paper in the bottom of the briefcase."

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Mr. Margolis. Does that boggle my mind? Yes. Especially since, you know, Mr. Neuwirth a couple of days later had the presence of mind to put it together.

Mr. Ben-Veniste. Well, they fell out, and he saw writing on them. Now he looks in and sees the rest. That's his testimony. I am not testifying.

Mr. Margolis. I see.

Mr. Ben-Veniste. Let's go to the newspaper story that so bothered you and Mr. Heymann.

Mr. Margolis. I didn't know it bothered him. It bothered me.

Mr. Ben-Veniste. Okay. You discussed it with him, did you not?

Mr. Margolis. Yes. And I asked him to clarify it. But he seemed to – you know, his ox was not gored by it. My ox was gored.

Mr. Ben-Veniste. The evening of the 22nd a statement was made by the White House, and then I guess things went out on the wire.

Do you remember where you learned about the spin either that evening or the next day?

Mr. Margolis. I'm sorry, by the way, I thought when you said the article that disturbed me, I thought you meant the

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recent New York Times article.
Now you're referring to the –

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Mr. Ben-Veniste. Yes, I am back on the 22nd.
Mr. Margolis. Okay.
The question there was when it came out?
Mr. Ben-Veniste. Yes. Well, when you learned that the media was carrying the story that the Department of Justice had supervised the search.
Mr. Margolis. I thought it was the next day or within a day or two.
Mr. Ben-Veniste. Okay.
Would it surprise you to learn that the evidence so far developed here has been that the statement released by the White House was that Bernie Nussbaum conducted the search in the presence of the Department of Justice and other law enforcement and that the newspaper story that came out made the jump suggesting that the White House supervised.
Mr. Margolis. Yes. I mean, all I know is what appeared.
Mr. Ben-Veniste. What appeared disturbed you?
Mr. Margolis. Yes. And that's why it was clarified.
Now, you're telling me our clarification went along with what the White House originally said.
Mr. Ben-Veniste. And finally, with respect to Mr. Heymann being angry, he was angry on the evening of the 22nd because, among other things, he felt he should have had the opportunity to make the decision to pull you and

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Mr. Adams out as your supervisors.
Mr. Margolis. I don't – I don't recall. I know that you have told me now that that's what he has testified to.
Mr. Ben-Veniste. That's what he has testified to.
Mr. Margolis. I don't recall that being what he told me was his anger at the time.
Mr. Ben-Veniste. Well, when you came back from the White House on the 22nd and you explained what happened to him, did he ask you how come you stayed?
Mr. Margolis. No. No. But he did tell me, he did tell me that Bernie was supposed to call him, and he was angry with that. But he did not say, "And that would have given me the opportunity to pull you guys out."
Mr. Ben-Veniste. So, at the time, as far as you remember, pulling you out of the office was not of concern to Mr. Heymann and, to the extent that he remembers it differently now, that's just a difference in your recollection?
Mr. Margolis. That's a difference in recollections.
Mr. Ben-Veniste. But in any event, he was angry because he felt that the department, according to your recollection, had been misused because, not because you had any right to be there but because your role was not the principal role but the role that you have explained in a secondary way commenting on what was found and requesting such information

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as you desired. Correct?
Mr. Margolis. Yes.
The Chairman. Let me, before I turn this over to Mr. Chertoff with some questions, Mr. Ben-Veniste mentioned good faith.
Can you put on the green, please?
I have to tell you I have trouble – and you raised this; I have never mentioned this publicly before – understanding this whole bit about the note and how it could be in this bag. It's not a briefcase with all kinds of compartments, it's basically a brief bag with one separator. You know, the little pockets, there's nothing that can get stuck in crevices or cracks, any of these pieces. I don't know if you have had the chance to examine it.
Mr. Margolis. I have since then.
The Chairman. So, would you agree with me? If you look in this bag and if there's 28 scraps of paper, you're going to see them.
Mr. Margolis. Correct.
The Chairman. It's impossible not to see them. It's just, you know, you have to be a blind man. I think Captain Hume testified, or Himes or one of them, said, "You've got to be blind."
Mr. Margolis. Actually, I read the article. I think he said, or one of them said, "Our blindest and oldest and

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maybe most incompetent investigator would have seen this."
The Chairman. So, this is what blows my mind. We have just got done looking for evidence of state of mind for why

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[4] Mr. Foster may have committed suicide. We're looking for
[5] this. That's number 1. It's not financial documents, it's
[6] not anything else. We're looking for some writing.
[7] And there in is briefcase are yellow scraps of paper,
[8] legal pad. Yellow scraps of paper. What is his stock in
[9] trade? He writes on legal pads.
[10] And Cliff Sloan is reported to say by an attorney,
[11] Mr. Spafford, an attorney who, what, represents the Foster
[12] family for this occasion, "Bernie, there's scraps of paper
[13] in the bag." And he says, "We'll look at that later."
[14] Now, why would you say, "We'll look at that later"?
[15] Mr. Margolis. I don't know. I do not have an
[16] explanation.
[17] The Chairman. Would it be possibly, and you have been
[18] in the criminal division, years of experience, seen all
[19] kinds of cases to wait till the room is totally cleared till
[20] he leaves because maybe he knows it might be what they're
[21] looking for? Is that reasonable?
[22] Mr. Margolis. It's possible. It's possible. I just
[23] don't know, Mr. Chairman. As I said, I have been puzzled.
[24] The Chairman. Otherwise, why wouldn't you look at it?
[25] Mr. Margolis. I would.

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[1] The Chairman. You would have?
[2] Mr. Margolis. I would.
[3] The Chairman. Would a reasonable person who has just
[4] been done conducting this search, would any reasonable
[5] person have said, "Let's look at it"?
[6] Mr. Margolis. I would. If we had done this the way I
[7] wanted to do it, I wouldn't be sitting here having to answer
[8] these questions, because I would either be – I would have
[9] found it, or I would be out on my tail.
[10] The Chairman. Now, who is to say that there weren't
[11] more than 28 scraps of paper?
[12] Mr. Margolis. Well, except the note appears to be self-
[13] contained. So if there were 32 scraps of paper –
[14] The Chairman. No. Supposing there was another page or
[15] two pages or three pages.
[16] Mr. Ben-Veniste. Or a whole book?
[17] The Chairman. Well, wait. Well, now, you know
[18] something, there is a question that's raised, and I just
[19] say, I don't know, but that's certainly something that came
[20] to your attention. It didn't come to Mr. Spafford's
[21] attention until he read where the note was found. And
[22] that's why he did not make any note that there's scraps. I
[23] mean, do we expect a young attorney who is taking scrupulous
[24] notes, to include in his notes that he heard someone say
[25] that there were scraps of paper in the bottom of a

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[1] briefcase. You wouldn't do that. You wouldn't expect it.
[2] But thereafter, when he learns where the note was found,
[3] he then has a privileged conversation with an attorney about
[4] that and he testifies to it.
[5] So, it certainly goes back to something that Mr. Heymann
[6] said, that the process was not one that was trustworthy or
[7] credible. And I don't know if you know that that's what he
[8] testified.
[9] Mr. Margolis. There is no – there is no doubt in my
[10] mind that that was the major problem. When Mr. Heymann
[11] called me that night from the White House counsel's office
[12] to tell me that he and the Attorney General were there and
[13] that a note had been found. I was startled.
[14] The next morning, when he showed me a copy of the note
[15] and asked me what I wanted to do, I was so concerned that I
[16] remember my exact words, one of the few times that I can
[17] remember that, that I said to him, "I want to unleash my
[18] 800-pound gorilla to solve this." And he knew, because of
[19] the way I talk, that I meant I wanted the FBI to investigate
[20] how this could happen. And I was just very troubled by it.
[21] And the FBI was unable to draw a conclusion as to how it
[22] happened.
[23] The Chairman. Mr. Chertoff?
[24] Mr. Chertoff. Something that you mentioned.
[25] Mr. Margolis, you said you were considering various theories

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[1] about what might account for these facts involving the note.
[2] Mr. Margolis. Yes.
[3] Mr. Chertoff. And you said one was that the note had

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been planted there, and the other was that it had been there
and had been taken out at some point.
Mr. Margolis. Yes.
Mr. Chertoff. And then someone had made a decision to
put it back and have it rediscovered.
Mr. Margolis. Those two were variations on the same theme, those two theories.
Mr. Chertoff. Now, at the time that you were considering these theories, had you heard that on the 26th,
after the time that Mr. Neuwirth has indicated he found the
note and assembled it, that later that day or the next morning Mr. Nussbaum brought in one of the secretaries or
Ms. Gorham that Mr. Ben-Veniste asked you about, and
actually sat her down and started to question her about what
she had seen the previous week in the briefcase, had she
seen a whole page or a torn-up page, had she seen more than
one page, and that to use her words, he grilled her about
that? I take it you didn't know that?
Mr. Margolis. I didn't. I think if I did, I don't think I would have forgotten it. I don't remember.
Mr. Chertoff. And in fact her testimony here was that she felt as if he was really trying to find out what she had

seen, what did she know back a week ago, almost as if he was
trying to break her story down.
Now, recognizing, of course, that, you know,
Mr. Ben-Veniste started you out, I guess, as an expert
witness on this and I am carrying on a little bit with
having your opinion, given what appears to be some
significant weighty evidence that people's attentions were
directed, had to be directed to these pieces of paper on the
22nd, that it was such an obvious thing to want to take a
look at as the chairman said, torn-up, yellow ruled paper, a
lawyer's stock in trade, given that fact, given the
absolutely mysterious notion that one would not then go and
put the paper together on that day, on the 22nd, given the
account that we've had about the accidental way in which
this was discovered on the 26th, and then given the fact
that after this accidental discovery on the 26th,
Mr. Nussbaum brings in Deborah Gorham, who was one of the
people who had seen the paper the previous week, and starts
to try to break her story down, these are facts which it
seems to me do suggest or at least are consistent with the
notion that someone had taken something out on the 22nd, had
looked at it and maybe had decided to replace it and have it
rediscovered on the 26th, you know, if you don't feel like
offering an observation, that's fine, but I wonder if you
have an observation about that.

Mr. Margolis. I don't know. I mean, until I learned
that a whole bunch of people, including Michael Spafford,
say it was in there on the 22nd. I thought – my speculation
was that it wasn't there on the 22nd. Now, you know, I am
prepared to say that that speculation is suspect.
I guess my answer is that I am glad that's Ken Starr's
problem, not mine.
(Laughter.)
Mr. Chertoff. Now, let me move you forward into the week which you have already started to talk about, which is
the week of the 26th. I think you indicated that the 27th
was when you learned that this paper had been discovered in
the briefcase.
Mr. Margolis. Look, I am not good on dates, but I know
that I discovered it because Phil called me from the White
House counsel's office at night saying it had just been
turned over. So it was the same time that he and the
Attorney General were there.
Mr. Chertoff. As a consequence of that, you said that you suggested to him that he unleash the FBI.
Mr. Margolis. Yes.
Mr. Chertoff. And did that happen?
Mr. Margolis. Yes. He authorized me to take care of it.
Mr. Chertoff. What did you do?

Mr. Margolis. I got together with the assistant
director of the Bureau for Criminal Investigations and told
them what the issues were, gave them a copy of the note and

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said. "Find out what happened, and don't – pull out all
stops. Pull out all stops."
Mr. Chertoff. Did there come a time that a woman named
Nancy McFadden had a conversation about this FBI
investigation in your presence?
Mr. Margolis. Actually, technically the conversation
she had was with Mr. Heymann outside my presence, but then
he came with her into my presence but he did the talking, as
I recall.
Mr. Chertoff. What do you remember?
Mr. Margolis. I remember that this was after the note
was discovered and after I had the FBI investigating it, and
Phil came in with Nancy and, I think, Cindy Monaco into my
office, and I think – I think Rod Rosenstein was present
with me in my office.
And Phil said that Nancy had reported to him that the
FBI was telling people during the course of their interviews
that they were investigating an obstruction of justice,
which they were, and which they were investigating to
determine whether there was an obstruction, which they were
doing and which they were doing at my direction.
But the question that she was raising was: Did they

have to tel people that that's what they were doing as
opposed to just telling them they were conducting an inquiry
and then do whatever they did?
And he asked me – that was her question – he asked me
what the answer was, you know, what we should do. And I
told him it was an interesting question and that I would
consider it and get back to him.
And he pressed me for an answer, and I just said, "I am
going to have to think about it and get back to you,"
because what I thought immediately was that maybe the FBI
was saying that, which as truthful as it was, as an
investigative technique to shake people up and to let them
know how serious it was, and if I said that, you know, that
that might be why they were doing it, that put Nancy in an
untenable position of, you know what does she do now? She's
got a complaint from the White House, that she go
back, and
if she tells them the truth, that "it's just an
investigative technique, don't worry about it," then the
advantage of the investigative technique is lost.
So, that's why I didn't want to put her in that spot,
and that's why I didn't want to discuss it in front of her,
and Phil could tell that I was not – he knew me well enough
and long enough that I wasn't about to move on that.
And so he said, "Well, you know, think about it and then
let me know." He obviously didn't know what was troubling

me.
I called the assistant director of the Bureau after they
all left that night and told them what my concern was. He
said he didn't think that it was an investigative technique,
he said, but he would check and get back to me.
He called me back a few minutes later and said, "No,
there is no valid reason why the agents are doing it. It
just, you know, was rote to them to say it and they're not
going to be saying it anymore."
So I explained that to Phil, I guess, late that night or
the next morning, and I remember him asking me why I was so
– I seemed to immovable about discussing it, and I think I
think he said angry.
And so I explained, I said to him, as I often do when I
want to take him to the woodshed, that. "Phil, you're one of
the brightest guys I have ever met. You don't do things by
accident. You don't make mistakes. Why did you put Nancy
in that position?"
And he said, "I'm not as smart as you think I am. It
was a mistake. I didn't think of it."
Mr. Chertoff. Thank you, Mr. Margolis.
Mr. Margolis. And that was the end of that.
The Chairman. Senator Sarbanes?
Senator Sarbanes. I yield to Mr. Ben-Veniste.
Mr. Ben-Veniste. In essence, if I understand you,

Mr. Margolis, the only concern you had about this was
whether any premature suggestion that this might be
inappropriate would interfere with any technique that the
FBI had developed on its own to conduct the investigation as
effectively as possible?
Mr. Margolis. That's right. If the FBI were telling

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people honestly that they were investigating to determine
whether there was an obstruction and if they were telling
them that in order to convince people this was serious and
you better be scared and talk, if people were then told
don't worry about it, the advantage would be lost.
As it turns out, that was not why they were doing it.
Mr. Ben-Veniste. This was a jurisdictional hook that
was applied bureaucratically to the case that they were
investigating and they simply by rote, if I understand you,
repeated that when they began their interview of each
witness?
Mr. Margolis. This was one of those rare cases where a
cigar was just a cigar.
(Laughter.)
Mr. Ben-Veniste. And the bottom line, are you
comfortable?
(Laughter.)
Mr. Margolis. No.
(Laughter.)

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Mr. Ben-Veniste. This is one of those cases where in
fact the concern was a legitimate one, the FBI didn't need
to be dong this, that the 800-pound gorilla was enough
without putting the obstruction of justice tag around its
neck, and you thought it was appropriate that they stop
doing it?
Mr. Margolis. That's right.
I should add that the next morning the section chief
called me and wanted to know if I was changing my signals.
In other words, was I saying go easy. And I had to explain
to him that that was not what I was saying.
Mr. Ben-Veniste. Now let me ask you about the
investigation. For some reason, Michael Spafford was not
interviewed by the FBI. Do you now know that?
Mr. Margolis. I do. I do.
Mr. Ben-Veniste. And this was not by design? Or this
was inadvertence that he was not interviewed, I take it?
Mr. Margolis. Yeah. You know, I can understand why,
because there were so many Federal law enforcement agents.
and I don't think – I did not know. I met – I met with
Mike Spafford outside [illegible]
finished the search, and I don't recall knowing at the time
that he had hung around in the White House counsel's office
because it seems to me I didn't have to wait very long for
him. So it couldn't have been a very long session.

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If I knew and the Bureau knew then that he had hung
around, we probably would have interviewed him.
Mr. Ben-Veniste. With respect to the investigation that
was done, you were aware that not only handwriting analysis
was done on the note, first I think by the Capitol Police
and then by the FBI to double check, belt-and-suspenders,
but every reasonable effort was made to lift prints from the
document?
Mr. Margolis. Yes. Yes.
Mr. Ben-Veniste. And in connection with that, we have
heard testimony from Louis Huff, who was the FBI technician
who actually did the work, it did not appear – everything
that he found was consistent with the note being torn prior
to the palm print which was ultimately identified as being
Bernie Nussbaum's, the one identifiable print, the one print
of value on the scraps of paper.
Everything was consistent with those, with that print
being put on it while the note was in pieces. You are aware
of that?
Mr. Margolis. I don't remember that, but I am sure
you're right.
Mr. Ben-Veniste. Okay.
The point I am getting to is, in addition, Louis Huff
concluded that no one had attempted to obliterate any prints
either by overlaying them with other prints or by utilizing

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some method to try to remove them, which would have
destroyed the fiber of the paper. You are aware of that?
Mr. Margolis. I don't recall it, but I am sure you're
right.
Mr. Ben-Veniste. From the standpoint, again, of this
speculation of the note being torn, someone would have to
have been very lucky if there were prints put on that note
and then the note was torn up, that the prints did not

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overlap the tear marks because then it would have been discovered with the technology available to the FBI. Is that so?
Mr. Margolis. I believe so.
Mr. Ben-Veniste. All right.
Senator Sarbanes?
Senator Sarbanes. Does Warren want to question?
The Chairman. Yes.
Senator Hatch?
Senator Hatch. Mr. Margolis, welcome to the committee. Glad to have you here. Do you feel okay for about another ten minutes?
Mr. Margolis. Yes, sir, Mr. Chairman.
Senator Hatch. I wish you a speedy recovery from your open heart surgery. I respect you for coming.
Mr. Margolis. Thank you.
Senator Hatch. Let me just cover some things just to

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make sure that we have got them covered. I think most of them have been. I want to make sure.
You were sent to the deputy attorney general by Deputy Attorney General Heymann to the White House on the 21st to discuss procedures for reviewing the documents in Mr. Foster's office. Right?
Mr. Margolis. That's correct.
Senator Hatch. Okay. I understand that you are a career department employee.
Mr. Margolis. Yes, sir.
Senator Hatch. You were faced with a situation that was particularly difficult, a situation involving a high-level White House employee, and employees, I might add. Could you give us a reason why Mr. Heymann chose you to do this job?
Mr. Margolis. I would like to think that it's because, A, he wanted a career person to do it rather th political appointee.
Senator Hatch. Right.
Mr. Margolis. And that, B, of the career people, that he held me in some regard.
Senator Hatch. Well, you have an excellen reputation, and I am sure that he chose you for your jud ent, your integrity, your ability and, of course, the fact that you are a career employee.

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Mr. Margolis. And I was there that day.
Senator Hatch. Well, yes.
(Laughter.)
Senator Hatch. You and thousands of others.
But he believed that you would provide an independent arbitration in this matter.
Mr. Margolis. Yes.
Senator Hatch. Now, we know that you went to the White House to meet with Mr. Nussbaum and during that meeting, you discussed a search protocol to review the documents. Right?
Mr. Margolis. Yes.
Senator Hatch. Okay. What method did you use to review the documents? Is it as it was described by the other witnesses, look at the first page?
Mr. Margolis. That was the – that was the proposal.
Senator Hatch. Yes.
Mr. Margolis. We would look at the first page or two of each document, we being Roger Adams and I, to determine its relevance. That was our proposal. That's what I was told by Mr. Heymann was his agreement in principle with Mr. Nussbaum before we went over, and that was my understanding was that Mr. Nussbaum agreed to when we left that night and we were to actually effectuate the agreement the next morning.
Senator Hatch. Right. Now, I know that you have been

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involved in criminal investigations before, or investigations involving crimes.
Mr. Margolis. Yes.
Senator Hatch. Testimony has been given that you don't generally search a lawyer's office. Why would you have wanted to review the documents in Mr. Foster's office?
Mr. Margolis. To determine whether there was a suicide note or an extortion note, a blackmail note, or any other bright-line indication that he had taken his own life and why he had taken his own life, because there was a strong suspicion at that time that this was a suicide.
Senator Hatch. Okay.
Mr. Margolis. It was a very narrow purpose.
Senator Hatch. Mr. Nussbaum has told this committee that he was concerned that executive privilege might be asserted if he allowed you to review these

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documents.
[17] Now, you have mentioned that during that time you held
[18] the highest security clearance, Code word?
[19] Mr. Margolis. Correct.
[20] Senator Hatch. Okay. And you had worked with documents
[21] protected by executive privilege before. Right?
[22] Mr. Margolis. Correct. And I knew that I was a member
[23] of the executive branch, and usually when I – I hate to say
[24] this, but when I use the phrase and hear the phrase
[25] executive privilege, the party on the other side is always

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[1] you people.
[2] Senator Hatch. Yes. It's us.
[3] Mr. Margolis. Not the Department of Justice.
[4] Senator Hatch. Well, in your career with Justice, have
[5] you ever, have you ever been in a situation in which a claim
[6] of executive privilege has been made against you as an
[7] executive branch lawyer?
[8] Mr. Margolis. Not – no, except for this.
[9] Senator Hatch. Except for this case.
[10] Mr. Margolis. Yes.
[11] Senator Hatch. Now, you have testified that during that
[12] meeting with Mr. Nussbaum in the White House, you reached an
[13] agreement with respect to the manner in which the document
[14] review should proceed. Right?
[15] Mr. Margolis. That's my understanding.
[16] Senator Hatch. I know this seems repetitive, but could
[17] you describe the terms of the agreement?
[18] Mr. Margolis. That Mr. Adams and I would review each
[19] document as to its first page or two so that we could
[20] determine whether they were relevant, whether that document
[21] was relevant to our investigation.
[22] As I indicated earlier today, the risk from that would
[23] be if we looked at a document that looked like a real estate
[24] conveyance and we looked at the first couple of pages and
[25] made that judgment, it was conceivable that on page 68 there

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[1] would be a little note saying, "I am going to kill myself
[2] for the following reason," that we would miss because we
[3] only looked at the first couple of pages.
[4] Senator Hatch. Right.
[5] Mr. Margolis. But we were willing to run that risk.
[6] Senator Hatch. But you seem certain about the existence
[7] of that agreement. Right?
[8] Mr. Margolis. That's correct. I was that day,
[9] Mr. Chairman, and I am today.
[10] Senator Hatch. And you are sure that Mr. Nussbaum
[11] understood that agreement?
[12] Mr. Margolis. I am certain. I was certain then and I
[13] am certain now.
[14] Senator Hatch. Now, lawyers often reach agreement on
[15] how to proceed in matters. In the circumstances of this
[16] case, did you fully expect that Mr. Nussbaum would honor
[17] your agreement?
[18] Mr. Margolis. Yes.
[19] Senator Hatch. Now, testimony has been given that
[20] during the meeting with Mr. Nussbaum, Mr. Neuwirth objected
[21] to the terms of that agreement. Now, does that comport with
[22] your recollection of the event?
[23] Mr. Margolis. Not exactly. I believe he didn't object.
[24] I believe what he said was, my clear recollection is, "Let
[25] me sum up," this is Mr. Neuwirth talking, "Let me sum up

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[1] what the agreement is that we have reached tonight," and
[2] then he stated an agreement that I did not and do not
[3] believe was our agreement.
[4] He said, "We have all agreed that Bernie will review the
[5] documents for relevance and privilege, and he will give you
[6] what he determines he can give you."
[7] Senator Hatch. And what did Mr. Nussbaum say or do in
[8] response to Mr. Neuwirth's assertions?
[9] Mr. Margolis. I said that's exactly what we haven't
[10] agreed to, and we have agreed that we, Roger and I, will do
[11] it, and my clear recollection is that Mr. Nussbaum told
[12] Mr. Neuwirth that I was right.
[13] Senator Hatch. Okay.
[14] Now, you know that Mr. Nussbaum claims that no such
[15] agreement has been reached?
[16] Mr. Margolis. I know that.
[17] Senator Hatch. He told this committee on page 22 of his
[18] opening statement that, "I said I would consider that
[19] option. I did not say I would agree to it."
[20] He says on the same page that, "If the Justice
[21] Department officials believe that we had reached an

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[22] agreement after July 21, after our July 21st meeting, then a
[23] misunderstanding and miscommunication occurred."
[24] Was there, in your opinion, any "misunderstanding" or
[25] "miscommunication" at the time the agreement was made?

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[1] Mr. Margolis. Not in my opinion.
[2] Senator Hatch. And do you not think, contrary to
[3] Mr. Nussbaum's suggestions yesterday, that with the passage
[4] of time you might have forgotten or confused the details of
[5] that agreement?
[6] Mr. Margolis. I suspect that's exactly what happened,
[7] that he confused the first day with the second day. When he
[8] testified here, as you read, that he said, "All I agreed to
[9] was that I would consider that option," that is certainly,
[10] if you put aside our first day's discussion and you focus in
[11] only on our second day's discussion, when I testified that
[12] he changed the rules and then I argued with him, he did say,
[13] "I will consider what you are arguing. I will take that
[14] into consideration."
[15] Senator Hatch. But the second day was an actual
[16] agreement, and you are not confused on it?
[17] Mr. Margolis. I don't believe I am confused.
[18] Senator Hatch. In fact, are you aware of the fact that
[19] notes were made of the meeting between yourself and
[20] Mr. Nussbaum by both Mr. Adams and Mr. Heymann?
[21] Mr. Margolis. Well, I think Mr. Adams made the notes a
[22] couple of days later.
[23] Senator Hatch. Right.
[24] Mr. Margolis. And Mr. Heymann, his notes would have
[25] been more of what we told him.

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[1] Senator Hatch. Right.
[2] You have seen those notes?
[3] Mr. Margolis. I have them here.
[4] Senator Hatch. Okay. Mr. Nussbaum has suggested that
[5] the notes were made sometime after the actual event. You
[6] have confirmed that, but, in your opinion, Mr. Margolis, do
[7] the notes taken by Mr. Heymann and Mr. Adams accurately
[8] reflect what occurred at that meeting?
[9] Mr. Margolis. We should concentrate, Mr. Chairman,
[10] on what Roger Adams wrote, because Mr. Heymann's really is
[11] here.
[12] Senator Hatch. Well, then, Roger Adams.
[13] Mr. Margolis. It's just based on what we told him, yes.
[14] Senator Sarbanes. I'm sorry, I didn't hear that.
[15] Mr. Heymann's are really what?
[16] Mr. Margolis. Mr. Heymann's notes are based on hearsay,
[17] rank hearsay.
[18] Senator Hatch. Right. But what Mr. Adams wrote, is
[19] that correct or not correct?
[20] Mr. Margolis. Yes.
[21] Senator Hatch. It was correct?
[22] Mr. Margolis. Yes.
[23] Senator Hatch. Okay.
[24] Now, Mr. Nussbaum denies that, and I might add
[25] Mr. Adams, Mr Salter, despite Mr. Nussbaum's claim yesterday

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[1] and the FBI agents at the scene clearly remember the same
[2] thing you do.
[3] Now, Mr. Margolis, I appreciate your testimony today. I
[4] just want to summarize what I think concerns me and many
[5] other members of this committee.
[6] This case is riddled with significant conflicts in
[7] testimony. How these conflicts are resolved represents the
[8] difference between what some think are willful obstruction
[9] of justice, which was a central, of course, criminal
[10] violation in Watergate, or simply panic and bad judgment,
[11] which it could very well be. Those who worked closely with
[12] the President have one story, and those who work for the
[13] Justice Department and law enforcement, all neutral and
[14] professional civil servants of the highest integrity, have a
[15] completely different recollection of what happened here.
[16] Number one, Mr. Nussbaum claims that you never reached
[17] an agreement on July 21 with him to permit you and Mr. Adams
[18] to review the documents in Mr. Foster's office. Mr.
[19] Neuwirth, the deputy White House counsel, supports that
[20] story.
[21] Yet Mr. Roger Adams, a career Justice prosecutor, and
[22] Mr. Phil Heymann, a Harvard Law School professor and deputy

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[23] attorney general of the United States, support your version
[24] of the events.
[25] FBI agents in a teletype similarly support the existence

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[1] of such an agreement.
[2] Number two, Mr. Neuwirth and Mr. Nussbaum claim that
[3] Neuwirth never objected to the agreement and that
[4] Mr. Nussbaum did not overrule him. Yet again, you,
[5] Mr. Margolis, Mr. Adams, and Mr. Heymann say that Neuwirth
[6] did object and that Mr. Nussbaum did overrule him.
[7] Number three, Mr. Nussbaum claimed that he did not
[8] remember talking to Deputy Attorney General Heymann the
[9] morning of July 22, but Mr. Heymann says that he did talk to
[10] him on the phone.
[11] Mr. Nussbaum said that Mr. Heymann did not express
[12] anger, did not tell him that he was making a terrible
[13] mistake.
[14] Mr. Nussbaum claims that he did not tell Mr. Heymann
[15] that he would talk to other people about the procedures and
[16] call him back. Yet Mr. Heymann, a professor and public
[17] servant of the highest integrity, you have testified to
[18] that, and others as well, and I know him personally and
[19] believe that, says that Mr. Nussbaum –
[20] The Chairman. Senator Hatch, at that point, in
[21] addition, I think Mr. Margolis, you said you put Mr. Heymann
[22] on the phone with Mr. Nussbaum.
[23] Senator Hatch. That's right.
[24] The Chairman. Is that correct?
[25] Mr. Margolis. There was no doubt in my mind, that's

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[1] right, they talked.
[2] The Chairman. In other words, you were speaking to Phil
[3] Heymann in the afternoon.
[4] Mr. Margolis. In the morning.
[5] The Chairman. In the morning. And then you put
[6] Mr. Nussbaum on with him?
[7] Mr. Margolis. That's right. And this phone
[8] conversation took place in Mr. Nussbaum's own office.
[9] The Chairman. Okay.
[10] Excuse me, Senator.
[11] Senator Hatch. Mr. Chairman, if I could just sum up the
[12] last few sentences here. I know my time is up.
[13] But Mr. Heymann says that Mr. Nussbaum did say those
[14] things and that he did promise to call before making a
[15] decision.
[16] Now, I find some of these contradictions and
[17] difficulties deeply troubling. You know, these are many.
[18] You would have to say there are many other such conflicts
[19] that concern, I think, people on this committee.
[20] For example, the differences in testimony concerning
[21] Susan Thomases's phone call to Mr. Nussbaum, the
[22] communication of the First Lady's concerns and the First
[23] Lady's calls or call to Mr. Nussbaum on July 22. These
[24] calls were critical because they were the only significant
[25] events which occurred between the time Mr. Nussbaum reached

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[1] an agreement with you and Mr. Adams and the time he decided
[2] to not honor that you consider to be agreements.
[3] So these are matters that I think are of great concern
[4] to this committee.
[5] I just want to thank you for being here. I know you, I
[6] know your reputation, you are everything that you would want
[7] in a law enforcement official, honest, decent, intelligent,
[8] very skilled, and I think you serve your country well, and I
[9] appreciate you testifying here today. Thank you for being
[10] here.
[11] Mr. Margolis. I appreciate that, Mr. Chairman, and I
[12] think you also know how much it pains me to be here today.
[13] Senator Hatch. Of course, I do. It pains me too.
[14] The Chairman. Senator Sarbanes?
[15] Mr. Margolis, the notes of Mr. Heymann that you referred
[16] to that you were asked about by Senator Hatch and you said,
[17] well, you would rather focus on Mr. Adams because those were
[18] rank hearsay, those are the notes that Mr. Heymann put down
[19] just before he left the Justice Department some nine months.
[20] I think, after this event that we're talking about.
[21] Mr. Margolis. About six months.
[22] Senator Sarbanes. Pardon?
[23] Mr. Margolis. About six months.
[24] Senator Sarbanes. March of '94, I think.
[25] Mr. Margolis. We sat down in late January.

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[1] Senator Sarbanes. Okay.
[2] Mr. Margolis. He left in February.

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Senator Sarbanes. All right.
So he made those notes on the basis of what people were
telling him at the time and I guess his own recollection of
some of these events.
Mr. Margolis. That's right. But as to – as to what
happened in Mr. Nussbaum's office, that's rank hearsay that
he got from Roger and I, not from any firsthand knowledge.
That's what I meant.
Senator Sarbanes. And Roger Adams made his notes about
a week after the event, I think?
Mr. Margolis. Just about. Just about.
Senator Sarbanes. Now, I take it everyone was concerned
to memorialize things, maybe, or try to get something down
after the discovery –
Mr. Margolis. No, Senator, I never take notes.
Senator Sarbanes. I understand that.
Discovery of the writing and the criticism that then
emerged in the press. There seemed to be a lot of
sensitivity to the criticism. In fact, the Justice
Department, as I understand it, was very upset by this
reference in the paper, which I think was unfortunate
because as we look at what the White House issued, it was
not the language that was in the newspaper story.

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So there was a disconnect there, and of course, the
Justice Department related to the language that was in the
newspaper story.
Mr. Margolis. Correct. And I was upset. I was
personally upset.
Senator Sarbanes. Oh, I understand that, and so was
Mr. Heymann, as I understand it from his testimony here
today.
The Park Police, I guess, were also upset during this
period, were they not?
Mr. Margolis. Their upset, according to Mr. Collier,
went far beyond – went far beyond that press statement.
They felt and he felt that they were being bullied.
Senator Sarbanes. Yes.
There was a considerable concern on the part of the law
enforcement people, somehow, though, that they were being
criticized for not having done a full investigation. Is
that right? Once the note was found.
Mr. Margolis. I believe I would have to concede that
that is a legitimate criticism, that we have to – that we
at the Justice Department have to answer and me in
particular because I was responsible for that decision not
to walk away. That was my decision.
Senator Sarbanes. All right.
I yield to Mr. Ben-Veniste.

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Mr. Ben-Veniste. Then a couple of days after –
Mr. Margolis. You're going to ask me the difference
between hearsay and rank hearsay. Right? I knew you were
going to do that.
Mr. Ben-Veniste. No, it's too late to do that. I am
not going to ask you why, as a prosecutor for all those
years, you don't take notes, because I try to get Jencks
material every once in a while from you.
Mr. Margolis. And I believe you learned that practice
in the Southern District.
Mr. Ben-Veniste. I did, and we all had a lot of fun in
those days.
But Mr. Adams wrote his memo a couple of days after the
note was found reflecting conversations that had occurred
the previous week.
Mr. Margolis. You know, I believe, and Roger would be a
better witness of this, but I believe he wrote that memo at
Mr. Heymann's request.
Mr. Ben-Veniste. Let me show you a memo that reflects a
meeting which you had with Tom Collier and Roger Adams.
Mr. Margolis. Yes.
Mr. Ben-Veniste. If we could hand the witness – do you
have it handy? It's F-139. It's a DOJ document.
Mr. Margolis. I have it now.
Mr. Ben-Veniste. I know, David, you haven't had a

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chance to study these materials, so I want to give you
whatever time you need to look at it.
It appears to reflect a meeting with Tom Collier on July
29, 1993, that you and Roger Adams attended.
Mr. Margolis. Yes.
Mr. Ben-Veniste. Do you remember that meeting?
Mr. Margolis. Yes.
Mr. Ben-Veniste. Now, at that meeting, Tom Collier was
really venting his concern.
Mr. Margolis. Yes.
Mr. Ben-Veniste. On behalf of his Park Police, since
that was his agency under his supervision, about what had
happened and reflected the fact that they were upset

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with
the kind of publicity that had gone on and now
re
looking back to the following – to the prior week and
now
they've got a lot of bruised feelings and they're being
criticized for the way the investigation has been run.
Mr. Margolis. Yes.
Mr. Ben-Veniste. Take a look at where it says "Next
topic." The next topic was –
Mr. Margolis. Which page is this?
Mr. Ben-Veniste. On the first page.
Mr. Margolis. On the first page?
Mr. Ben-Veniste. Right under the line that comes
across
about a third of the way down.

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Mr. Margolis. Yes.
Mr. Ben-Veniste. Next topic was David Margolis and
Roger Adams told Collier of the Wednesday meeting
where we
went over the ground rules for the search the next
day. Do
you see that?
Mr. Margolis. Yes.
Mr. Ben-Veniste. Okay.
In the meeting with Collier, were you trying to be
candid with him?
Mr. Margolis. Yes.
Mr. Ben-Veniste. And tell him whatever was
concerning
you in terms of, more or less –
Mr. Margolis. To let him know how this all developed.
He might have. I have a vague recollection of him
asking,
you know, how we came to do the search in the way
we did.
Mr. Ben-Veniste. Here he said, "Tell Collier of the
meeting between David Margolis and Roger Adams
and Nussbaum
on Thursday morning at which Bernie said he would
examine
the documents himself and we would not see them. I
told him
how we argued with Bernie that that was not a good
idea, a
big mistake. Nussbaum made us wait while he
considered the
question and after 1:00 p.m. conducted the search
with him
and his staff only actually seeing the documents."
Do you see that?
Mr. Margolis. Yes.

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Mr. Ben-Veniste. In that summary of that part of the
meeting with Collier, is it correct that at least it's not
reflected in the memo that Bernie went back on a
deal.
Mr. Margolis. It does not say that. That's correct.
Mr. Ben-Veniste. Okay. But nevertheless, that is your
recollection?
Mr. Margolis. Absolutely.
Mr. Ben-Veniste. Mr. Chairman, I think that that has
exhausted my inquiry.
The Chairman. We can finish up by 5:30. I know
Senator
Shelby has several questions and Mr. Chertoff has
several
questions, and I am going to recognize Senator
Shelby.
Senator Shelby. I thank you, Mr. Chairman. I will try
to be brief. I appreciate Mr. Margolis's being here
today.
Mr. Margolis, just to carry you back again to the time
that the so-called note was discovered or
rediscovered, when
did the Justice Department learn of that? Not
immediately?
Mr. Margolis. No. And while I don't have – I don't
have in front of me the date, it was the night that
Mr. Heymann and the Attorney General went to the
White House
and Mr. Heymann called me from there.
Senator Shelby. Did they go to the White House and
then
they were informed that the White House, that they
had found
the so-called note?
Mr. Margolis. My best recollection is that they weren't

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informed of the discovery of the note until they were
actually at the White House. But I may be wrong
about that.
Senator Shelby. Was this some more or less 27
hours
after the note was first so-called discovered?
Mr. Margolis. I believe that's about right.
Senator Shelby. Is that unusual in a high-level
investigation like this?
Mr. Margolis. Well, this is not, Senator, in a lot of
ways this is not a normal investigation –
Senator Shelby. No, it's not.
Mr. Margolis. – because it involves, because of the
people who it involves, and the sensitivities, and I
would
like – I would say I would like to have that note
immediately.
But the delay of 27 hours, I don't see what practical
significance that made. What it did, once again, was
it's
the optics, you know, people then begin once again
to
question the bona fides. And that's the problem.
Senator Shelby. It fueled the suspicion.
Mr. Margolis. Yes.
Senator Shelby. Did it not, sir?
Mr. Margolis. Exactly. Exactly.
Senator Shelby. Mr. Margolis, I know you don't know.

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[24] but do you believe that those 27 pieces of paper, yellow
[25] pieces of paper, cut out of a – torn out of a yellow sheet,

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[1] a yellow pad, a legal pad, do you believe that they stayed
[2] in that briefcase for some six days from the date of his
[3] death till they were so-called discovered? Do you believe
[4] this of your own, or do you doubt it?
[5] Mr. Margolis. I did not believe that until I first
[6] heard what Mr. Spafford said.
[7] Senator Shelby. Sure.
[8] Mr. Margolis. And now I learned this afternoon that
[9] there are other people who say the same thing, a lot –
[10] several other people.
[11] So I just don't know.
[12] Senator Shelby. I know you don't know.
[13] Mr. Margolis. I mean, if you had asked me that question
[14] three weeks ago –
[15] Senator Shelby. Do you have some doubt?
[16] Mr. Margolis. I have some doubt as to what happened,
[17] yes, sir.
[18] Senator Shelby. Okay.
[19] Mr. Margolis. And that's why I said before, Senator, I
[20] am glad Starr has to judge it now.
[21] Senator Shelby. Well, you're very candid.
[22] Is it incomprehensible that five or six days went on, no
[23] one looked at that briefcase after was it Mr. Sloan that
[24] told Mr. Nussbaum initially that there were yellow pieces of
[25] paper at the bottom of that briefcase and that no one looked

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[1] at it? I mean, just common sense, no one looked at it
[2] during that interval?
[3] Mr. Margolis. I have no explanation, you know, other
[4] than incompetence or being busy with other things.
[5] I say once again I would like to think that if I had
[6] gone through the briefcase –
[7] Senator Shelby. You would have looked at it first,
[8] would you not?
[9] Mr. Margolis. And I would have found it, I believe.
[10] Senator Shelby. You would have found it. Would it have
[11] given you reason to believe that somebody said, "Here's his
[12] briefcase. Oh, Bernie, there are some pieces of paper in
[13] the bottom of the briefcase," and you just move it on and
[14] don't look at it?
[15] Mr. Margolis. I would have – I would have taken it out
[16] and then I would have – I wouldn't have put it together
[17] myself because that would have probably taken six years, but
[18] I would have found somebody who could do it.
[19] Senator Shelby. Thank you.
[20] Mr. Margolis. But I should add that's what I get paid
[21] for. That's why I should have been allowed to do this.
[22] Senator Shelby. Sure.
[23] Mr. Chertoff. I just wanted to ask you just a couple of
[24] final questions, Mr. Margolis.
[25] On the issue of Mr. Heymann's notes, which you have in

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[1] front of you, those were prepared shortly before he left the
[2] department in 1994. Right?
[3] Mr. Margolis. Correct.
[4] Mr. Chertoff. And my understanding is that you and he
[5] and Mr. Adams and a couple of other people sat down to kind
[6] of pull together the records of these events before he left?
[7] Mr. Margolis. That's correct. In anticipation of his
[8] being interviewed by the independent counsel at that time.
[9] Mr. Chertoff. And of course, to the extent that that
[10] reflects his recollection of his own firsthand
[11] conversations, that is not hearsay. Right?
[12] Mr. Margolis. That's correct.
[13] Mr. Chertoff. And to the extent it reflects what you
[14] and Mr. Adams told him, it is what you and Mr. Adams told
[15] him really as part of your official responsibilities as
[16] employees of the United States Government.
[17] Mr. Margolis. Oh, sure. Sure.
[18] Mr. Chertoff. So, although it's rank hearsay, it's what
[19] would be considered admissible hearsay in court?
[20] Mr. Margolis. So it's really just plain hearsay.
[21] Mr. Chertoff. Right.
[22] Mr. Margolis. Okay.
[23] (Laughter.)
[24] Mr. Chertoff. Now let me ask you, did you ever read the
[25] 302s of the interviews of various people that were conducted

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[1] by Mr. Nussbaum, Mr. Neuwirth, by the FBI as part of this
[2] obstruction of justice investigation?
[3] Mr. Margolis. At the time, I did.
[4] Mr. Chertoff. Did you notice that in any of the
[5] 302 – well, I won't play guessing games with you.
[6] None of the 302s we have seen, or the reports, make
[7] mention of the fact that, among other people who were in the
[8] room with the note on the 26th, was the First Lady.

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When
[9] did you first learn that the First Lady was in the room on
[10] the 26th with the note after it had been assembled?
[11] Mr. Margolis. I am not sure that I know that. I
[12] just – that does not ring a bell with me. The 26th being
[13] the day that the note was found?
[14] Mr. Chertoff. Right. On the day the note was assembled
[15] – was supposedly found by Mr. Neuwirth, and it was
[16] assembled in Mr. Nussbaum's office. The testimony we have
[17] had is that Mr. Burton came in. You knew that. Right?
[18] Mr. Margolis. I am not sure I did. I probably did, but
[19] I don't remember.
[20] Mr. Chertoff. It's in the 302.
[21] Mr. Margolis. Okay. Then I did.
[22] Mr. Chertoff. And the 302 also indicates that
[23] Mr. Nussbaum was in there looking at the note and
[24] Mr. Neuwirth was in there with the note.
[25] Mr. Margolis. All at the same time, all of these people

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[1] at the same time?
[2] Mr. Chertoff. Yes. During that evening.
[3] The 302s we have seen do not indicate, and in fact the
[4] notes, the underlying notes taken by Agent Salter of his
[5] interview with Steve Neuwirth does not indicate, that the
[6] First Lady of the United States was also in there for some
[7] period of time, some short period of time on the 26th. and
[8] was at least shown the note if she didn't read it.
[9] Mr. Margolis. And Mr. Neuwirth would or would not know
[10] that.
[11] Mr. Chertoff. Mr. Neuwirth, according to all the
[12] testimony we have had here, this is one thing that has been
[13] consistent, Mr. Neuwirth was there and Mr. Nussbaum was
[14] there and in fact Mr. Nussbaum brought the First Lady in.
[15] Mr. Margolis. Okay.
[16] Mr. Chertoff. That has been the consistent testimony
[17] here, and my understanding from your previous answer is that
[18] you did not know from the investigative work done by the FBI
[19] on the obstruction of justice investigation, that the First
[20] Lady had been in that room with the note, until sitting
[21] right here. I have told you that.
[22] Mr. Margolis. That's right. And if I did know, I
[23] certainly don't remember it. But it was not in the
[24] report, I don't know how I would have known.
[25] Mr. Chertoff. Now, finally, let me ask you a question

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[1] that relates to what Mr. Ben-Veniste talked about with the
[2] fingerprints and he said that the fingerprint expert had
[3] indicated that the way in which the note was torn up was
[4] consistent with it not having been torn up after it was
[5] discovered, and of course I guess it follows from that it is
[6] also consistent that it was torn up after it was discovered.
[7] Were you aware that Mr. Foster's fingerprints were not
[8] discovered on the note?
[9] Mr. Margolis. That's my recollection.
[10] Mr. Chertoff. And do you know whether – I mean you can
[11] decline to answer on the grounds of expertise – did it seem
[12] to you likely that if someone were to take a piece of yellow
[13] paper, tear it into 26, 27, 28 pieces, applying whatever
[14] strength is necessary in order to make those tears, does it
[15] seem to you likely that a fingerprint would be left?
[16] Mr. Margolis. I do have enough experience to know that
[17] you can never tell what is going to happen with
[18] fingerprints.
[19] Mr. Chertoff. It is also clear that if one had two
[20] pieces of paper and folded them over and then torn them up
[21] into 28 pieces, it would only be the outside piece of
[22] paper, the second piece of paper, that would have the
[23] prints.
[24] Mr. Margolis. Yes.
[25] Mr. Chertoff. Thank you very much, Mr. Margolis.

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[1] Mr. Margolis. Can I go back?
[2] Mr. Chertoff. Sure.
[3] Mr. Margolis. The question about the First Lady being
[4] present in the room, that would be of no professional
[5] interest to me to know that one way or the other.
[6] The only interest would be if people were being
[7] interviewed and were purporting to say – identify all the
[8] people in the room and they left her out. That, their
[9] leaving her out, would be of interest to me.
[10] Mr. Chertoff. Well, that is a very good point. Let me
[11] make it clear. We have had a considerable amount of
[12] testimony here from Agent Salter. Mr. Neuwirth was
[13] confronted with this, we have had Mr. Neuwirth's not only
[14] [illegible] agent notes were
produced.

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[15] Mr. Nussbaum, we have his 302. We have Park Police reports.
[16] In none of those reports when there is an account given
[17] of what occurred and who came in and who came out, and
[18] particularly Mr. Neuwirth's, the notes of Mr. Neuwirth's
[19] interview indicates like a narrative the agent is copying
[20] down, these narratives consistently talk about Mr. Burton
[21] being present, Mr. Neuwirth being present, Mr. Nussbaum
[22] being present, Mr. McLarty being called, not one of them
[23] mention the fact, in not one of them is there any record of
[24] anyone having mentioned the fact in these narratives that
[25] the First Lady was present in the room.

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[1] I take it that you would consider of significance.
[2] Mr. Margolis. Yes. I mean, I think it's one of those
[3] examples that Phil gave of where you, for obvious motivation
[4] to not embarrass your boss – if there is any embarrassment
[5] there. I don't know what there would be – you cast
[6] significant suspicion on an otherwise legitimate operation.
[7] Mr. Chertoff. You would want to know why it is that
[8] people decided to omit the presence of one person who was in
[9] the room during the events of that day?
[10] Mr. Margolis. Yes.
[11] Mr. Chertoff. Thank you, Mr. Margolis.
[12] The Chairman. Senator Sarbanes?
[13] Senator Sarbanes. Well, Mr. Chairman, I am going to
[14] make an observation.
[15] The Chairman. Sure.
[16] Senator Sarbanes. Then Mr. Ben-Veniste wants to make an
[17] observation. Then I am going to yield to Senator Dodd, who
[18] I think has one.
[19] Mr. Margolis, Senator Shelby made quite a to-do about
[20] this note not being discovered for six days in his
[21] questioning to you.
[22] Mr. Margolis. Yes.
[23] Senator Sarbanes. Now, you were in the office on the
[24] afternoon of Thursday, the 22nd of July. Is that correct?
[25] Mr. Margolis. Correct.

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[1] Senator Sarbanes. And that is when Nussbaum took the
[2] files out of the briefcase and apparently then
[3] someone put the briefcase back against the wall behind his
[4] desk or by his desk. I am not sure which.
[5] The next day was Friday. That was the day Vince
[6] Foster's funeral was held in Little Rock. Are you aware
[7] that apparently everyone out of the counsel's office went to
[8] the funeral?
[9] Mr. Margolis. It wouldn't surprise me.
[10] Senator Sarbanes. Saturday and Sunday, Nussbaum
[11] testified earlier, he did not come into the office and in
[12] fact told his people to take the weekend off because they
[13] had been through a very harrowing week.
[14] That wouldn't surprise you either, I assume?
[15] Mr. Margolis. No.
[16] Senator Sarbanes. So, effectively, Monday, the 26th,
[17] was the first working day after Thursday, the 22nd, and it
[18] is on that day that Neuwirth, in packing this thing up,
[19] found these papers.
[20] I don't make a big point of it, but I think it's
[21] important to get on the record, since it was constantly
[22] asserted, well, six days passed and so forth and so on.
[23] Literally, in a working sense, it was found the next day. I
[24] mean, you were there on Thursday.
[25] Mr. Margolis. Correct.

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[1] Senator Sarbanes. Friday, everyone went to the funeral.
[2] Saturday and Sunday, the office was shut down and people
[3] were away. Monday, they came in. Monday is the day that
[4] Neuwirth had this matter.
[5] I think Mr. Ben-Veniste has one quick point, and then I
[6] know Senator Dodd has to be recognized.
[7] Mr. Ben-Veniste. Putting aside fingerprints, because I
[8] think you have given the answer that whether somebody is
[9] going to leave fingerprints tearing up a note has got a lot
[10] to do with the individual characteristics of the person.
[11] whether you sweat, you make the motion not reflected in the
[12] record of rubbing your fingers together, whether they sweat,
[13] what the conditions are in the room, how long ago the person
[14] has washed his hands and so forth. Correct?
[15] Mr. Margolis. Correct.
[16] Mr. Ben-Veniste. So that wouldn't surprise you that no

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fingerprints of Mr. Foster were on the note.
Mr. Margolis. Correct.
Mr. Ben-Veniste. With respect to the FBI, though, in producing 302 reports, a lot of it depends on what the question is that is asked.
Mr. Margolis. Excuse me?
Mr. Ben-Veniste. In terms of what answer you get and evaluating the answers that are reflected in a 302 report, is much determined on what question was actually asked by

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the agent.
Mr. Margolis. Correct.
Mr. Ben-Veniste. And where you see a reference that the note is touched by Bernie Nussbaum, Steven Neuwirth, and maybe Bill Burton, you would assume that the question was who touched the note.
Mr. Margolis. You would assume, but you wouldn't know.
Yes.
Mr. Ben-Veniste. I have nothing further.
Thank you very much.
Senator Sarbanes. Senator Dodd?
Senator Dodd. Thank you, Senator Sarbanes.
And thank you, Mr. Margolis.
Mr. Margolis. Senator.
Senator Dodd. I apologize for not getting over here at the outset of your comments and I appreciate under the circumstances healthwise that you were able to give us some time here.
Mr. Margolis. I should point out, Senator, I joined the U.S. Attorney's office on the recommendation of your father in Hartford in 1965.
Senator Dodd. Yes. It's nice to see you again. Thank you for mentioning it, too. I appreciate your doing that very much.
I don't have any specific questions, but, Mr. Chairman,

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I would like, and I gather we are going to have some votes coming up, and if I could, I would just like to make a couple of observations, the first of which is about you, Mr. Chairman.
I think you have done a first-rate job with these hearings. This is not an easy matter when you have emotional questions like this and to deal with it effectively. I just want to begin [illegible] remarks by thanking you for the very fine job that you have done, the fine job that Mr. Chertoff has done as well, a very, very competent, extremely cooperative. I know those of us on this side and I am confident each member will express their own views on this, but I wanted to take the opportunity to thank both of you.
I realize we are going to have more time together, I gather, this fall.
(Laughter.)
Senator Dodd. So I may reserve final judgment on those comments.
(Laughter.)
Senator Dodd. So I will limit them to this phase. I don't want to get carried away here, Mr. Chairman.
The Chairman. Subject to withdrawal.
Senator Dodd. Subject to modification, at any rate.
Secondly, to thank my colleague and dear friend from

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Maryland, Senator Sarbanes, for the tremendous job he has done as well. I know in working with you he spent a lot of hours, but the public doesn't always see is the amount of time that is spent between members and staff to work out how these hearings will be conducted and how the work will be done.
Senator Sarbanes has made unique and many contributions to this country over the years, and I suspect, and I haven't asked him, but this is not something he planned on spending a good part of a career out here, but he has done a magnificent job, in my view, over the last number of months.
We are very fortunate to have Richard Ben-Veniste and his staff as well.
So I am deeply grateful to all of them for the tremendous work on this first phase.
Mr. Chairman, as I said about four weeks ago, I guess, when we started this, our charge, as I understood it, and every person may have a different point of view, but our charge during this set of hearings was to answer a narrowly [illegible] question, despite sometimes we wander off in

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different directions.
The question that I understood it to be, anyway, was:
Did anyone at the White House impede the police
investigation of Vince Foster's tragic suicide?
That was really the bottom-line question for us, and

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having spent these past four weeks now, we have listened to
32 witnesses, there have been 62 depositions, testifying for
over 80 hours before this committee over some 13 days, in my
view, the answer to that question is "no." And I have deep
respect for all the witnesses who have been here.
I asked every relevant witness that came before the
committee, that is from the support staff and people who
worked at the White House, some 20 witnesses who are direct
employees of the White House, a series of questions.
I wanted to ask each one of them very pointedly the
question that it was important to have for the record, and
the sum and substance of those questions was: Was any
attempt made to destroy documents or hide them from law
enforcement officials during the investigation?
All 20, I would point out, which I know my colleagues
are all aware of all, 20 unequivocally answered negatively
to that question, that they had not.
Were there conflicts and contradictions in the
testimony. Absolutely. And I think as Senator Sarbanes
said earlier today, and I underscore it, I think all of us,
and I presume Mr. Margolis, with years of experience, when
you get all your witnesses singing out of the same page and
the same hymn book with the same recollections, you begin to
get suspicious.
I remember in law school that a professor of mine in

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criminal law used to say you never knew what was going to
come, but would have someone come into the classroom and
engage in this fake holdup. It would last about maybe 45
seconds or a minute, and then race out of the room. And
there may have been 50, 60, 70 students, and then for the
next hour he would ask each one of us to write down exactly
what we saw, exactly what we heard, exactly what

occurred.
It was not uncommon to get almost as many different
answers to those questions as there were students in that
room, a minute after the event had occurred, not two years
after an event occurred.
It is always an interesting exercise as to what people
who have no intention of engaging in any corruption of any
kind may see when faced with a similar set of circumstances.
At any rate, I wasn't surprised by some of those
contradictions, and certainly while people's recollections
differ when you ask them who they called or talked to at
precise moments, again I think any average, normal person
would expect that those would be difficult.
That should not surprise us. Obviously, as I said, many
of us have a hard time remembering what we did the day
before.
Nevertheless, the impression I was left with by these
contradictions was not people conspiring to do something
venal. I don't think I listened to a single witness that I

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thought at the end of it they were lying. I think they
honestly were reporting to us what they saw, what they
thought they heard, what they thought they did. And I
include all of the witnesses who were before us.
People were in shock, obviously. People were grieving.
Someone they had worked with, that they had loved and had
known, in some cases had known all their lives, had taken
his own life.
It is certainly easy, as all of us know, to second-guess
difficult decisions made during times like that.
Were mistakes made? Absolutely. With the benefit of
hindsight, can we question the appearance of some actions
and judgment, some decisions? Absolutely. No question
about it, and we certainly have.
But at the end of the day, as I said, mistakes and bad
political judgment are a far cry, in my view, from
illegality or unethical behavior. Therefore, there is no
evidence, as I see, that anyone did anything illegal or
unethical.
Even the sharpest critics of the White House have
stated

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pretty categorically that they did not see anything illegal or unethical. Disagreed with them, thought they ould have made some better judgments on some calls, but I ve never heard even the sharpest critics say that. So, Mr. Chairman, there are lots of theories, of course,

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spun at hearings, and these set of hearings are no different, based, in some cases, on innuendo and circumstantial evidence. And the normal contradictions that are to be expected when 32 witnesses, 61 depositions where people are trying to remember minute details that occurred in the midst of an incredible emotional event more than two years ago. But this was a suicide investigation. Law enforcement officials may have been upset about the way they were treated, perhaps with some good cause and reason. But they all confirmed when they testified before us here, that one of the conduct that we have spent these days reliving affected the results, the ultimate results, of their investigation. After all of the hearings and after listening to all of these witnesses, at least for my part, Mr. Chairman, as one member of this committee, I have concluded that, one, Vince Foster tragically committed suicide; number two, Whitewater had nothing to do with his tragic death; and, three, there is no evidence that anyone tried to hide Whitewater documents or any other documents that were destroyed or concealed from law enforcement officials. So, Mr. Chairman, again, I ask that we might include as well, and I say this only because I think people ought to try and keep some of this in perspective, based on the

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investigations done so far by our two independent counsels, Mr. Fiske and Mr. Starr, the work by the IRS and the FBI, at least up to March of this year, in excess of $18 million has been spent, including our work here. Now, I voted for these resolutions. I think we've got to go through this process. But there are a lot of people looking at these details, and again I understand that, but to put it in perspective and context, I think it's important to note that there is a tremendous amount of resource allocation, over $1 million between October and March of last year and this year, just on FBI travel on this case alone, to give you some idea of the magnitude of it. But at any rate, I know we are going to have other sets of hearings coming up on these matters, but as far as this set goes regarding the matters that I think we were narrowly asked to examine, those are my conclusions. Again, I thank you, Mr. Chairman, and thank your staff for the manner in which this was done, and I apologize for taking a bit more time here with the red light. The Chairman. Senator, let me thank you for your very, very gracious comments. Senator Moseley-Braun? Senator Moseley-Braun. Thank you very much, Mr. Chairman. First, I would observe that poor Mr. Margolis is still

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sitting there at the witness table. The Chairman. Yes. Senator Moseley-Braun. I don't know if we have forgotten him. The Chairman. I want to thank him appropriately for the entire committee. Senator Moseley-Braun. Well, I would like to thank Mr. Margolis also, and particularly given the circumstances of his testifying today. Mr. Margolis. Thank you, Senator. Senator Moseley-Braun. I thank you, Mr. Chairman. I want to associate myself with Senator Dodd's remarks. The chairman and staff of the ranking member and our staff, everybody has worked together and made this a little less excruciating than it could have been, and I am very grateful for that. But at the same time, I have a written statement I would like to share it, and I am afraid we have a vote in [illegible] The Chairman. We do.

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Senator Moseley-Braun. So I don't want to take a long time, except to observe that there was a statement by our staff early today quoting Voltaire, in which he said that, "Details that lead to nothing are like baggage to an army, an impediment."

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Well, I don't know that this has been anything like an impediment, but I would dare say that, if anything, this hearing, I think, has put to rest once and for all what Senator Dodd said, Vince Foster committed suicide, it didn't have anything to do with Whitewater, there was no improper conduct here, and I think that the extensive review of detail that this committee has afforded the American people has put some sunshine on that, and that is a positive thing. That is not an impediment; if anything, that is a contribution. So, even though it has been an extensive, excruciating review of detail, at the same time I think it served a positive function in allowing us to look at this as extensively, I think, as possible and to be able to reach some certainty and some finality. As we talked about at the beginning of these hearings, the good news today I think is that we really have reached the end of this road. I don't think there is anything else that could be said about the events that happened in those few days following Vince Foster's tragic death that hasn't been said already, that has not been reviewed already. This committee has done a thorough job, and I congratulate and commend the leadership for making that possible. The Chairman. Thank you, Senator.

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Senator Sarbanes?

Senator Sarbanes. Well, Mr. Chairman, I will be very, very brief, given the fact that there is a vote. I first want to say that I think the committee has conducted a set of responsible hearings over these last few weeks, and as we move now to the next stage or phase of our work under the resolution, I do think we can take a measure of satisfaction in the work that has been done here. That, of course, is in no small measure attributable to your efforts in chairing these hearings. We have seen previous congressional hearings, and so we know how sometimes they can go off track, and I think if they are to have any validity, they have to have a measure of responsibility to them and focus to them, and I think that has been done in the course of these hearings. We have tried very hard to work together in a cooperative fashion in carrying forward these hearings and seeking information and so forth. I want to pay my respects to the professionalism of the staff, Mr. Chertoff and his associates, Mr. Ben-Veniste and his associates. I deeply regret and lament the leaks which occurred, one of which Mr. Margolis addressed here today at the witness table. All of us were very badly served in that respect, and I know the chairman is as upset as I am about it, and he

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has expressed that very clearly here in the committee. I just sort of make this final observation. In his testimony, Mr. Heymann at one point says, "It seems to be entirely conceivable that they managed to throw suspicion over no wrongdoing." Throw suspicion over no wrongdoing. And I think as we look at this, that occurred, you can see places at which you should have done it this way, not that way, or, you know, that was not the right judgment, why didn't you do this. I don't think there was wrongdoing, but I think there was a certain amount of suspicion that was raised. Of course, there are lots of people [illegible]nd prepared to raise suspicion. Y[illegible] have to be on [illegible]d about that. I think we had a very trying time. I [illegible] struck by the emotional trauma of this period, and I think even the witnesses, when they come here now, two years later, and try to behave in a very rational way in front of the committee, I could still sense the underlying stress and trauma associated with this suicide.

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[20] Therefore, I think we have to keep that very much in
[21] mind as we look at how people were reacting and behaving. I
[22] think that had a marked impact on people, and I don't think,
[23] because we are two years later and out of that context, we
[24] should forget that that was the circumstance of that time.
[25] I know we are going to go on to other matters, now, as

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[1] the committee carries out its charge from the Senate, but I
[2] do again, Mr. Chairman, want to underscore your efforts to
[3] conduct these hearings in a thorough and fair and objective
[4] way.
[5] That doesn't mean that the perceptions of the testimony
[6] we have heard have always necessarily been the same, but I
[7] do think that we can take a measure of satisfaction that you
[8] have succeeded in steering through this set of hearings on
[9] this particular topic with gravity, severity, and soberness
[10] and responsibility, and I thank you very much for that.
[11] The Chairman. I want to thank you, Senator Sarbanes,
[12] and all the members, both of the minority and the majority,
[13] for their cooperative effort in making it possible, because
[14] any one or two could very easily derail our efforts or make
[15] them difficult in terms of reflecting upon the work that is
[16] entrusted to us really demean that effort.
[17] I think for the most part we have succeeded, and that
[18] has been because there has been a bipartisan recognizing,
[19] notwithstanding the political nature of all of the events,
[20] and that is the case. You can't deny that. And so I think
[21] this is extraordinary, given that political sensitivity.
[22] So I want to thank all of the members. And I have to
[23] then say that none of this could have taken place were it
[24] not for the professionalism of our staff, led by
[25] Mr. Chertoff for the majority and Mr. Ben-Veniste on the

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[1] minority, and all of [illegible] have
[2] conducted themselves in an exemplary manner.
[3] I think we can even do better, and you have made
[4] allusion to some of the things, I think, that we are going
[5] to do to try to get in place in terms of leaks.
[6] Last but not least, I want to say that the witnesses
[7] have been most cooperative.
[8] And, Mr. Margolis, maybe we do save the best for last in
[9] terms of the testimony not only that you have given today
[10] but in terms of throughout your life, throughout your career
[11] in serving people and being recognized by one Administration
[12] after another and not at a low level. You have a senior,
[13] senior position. Democrats and Republicans have recognized
[14] your stewardship in probably the most important area of our
[15] life, the justice system. If we don't have people that we
[16] can put total faith and credibility in in those areas, we
[17] are in trouble.
[18] So I want to thank you because you just continue to give
[19] that example that you have given over the years by your
[20] coming in on under the situation that you have labored
[21] under.
[22] We are delighted, number one, with obviously the
[23] recovery, the rate at which you are making it. We wish you
[24] continued success, and you have the thanks of this
[25] committee.

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[1] Mr. Margolis. Thank you, Mr. Chairman. If my mother is
[2] watching, I think she thinks that was a eulogy.
[3] (Laughter.)
[4] The Chairman. We stand in recess.
[5] (Whereupon, at 5:55 p.m., the committee was adjourned.)
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Look-See
Concordance Report

UNIQUE WORDS: 3,390
TOTAL OCCURRENCES: 20,301
NOISE WORDS: 391
TOTAL WORDS IN FILE: 62,960

SINGLE FILE CONCORDANCE

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0001

COMMITTEE CONFIDENTIAL
UNITED STATES SENATE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
* * *
IN RE: WHITEWATER
WEDNESDAY, JULY 12, 1995
DEPOSITION OF BERNARD W. NUSSBAUM
Washington, D. C.

Deposition of BERNARD W. NUSSBAUM, called for examination pursuant to notice of deposition, at 9:45 a.m. in Room 640-A of the Hart Senate Office Building before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, ESQ.
EVERETT C. JOHNSON, JR., ESQ.
Majority Counsel
RICHARD BEN-VENISTE, ESQ.
Chief Minority Counsel
NEAL E. KRAVITZ, ESQ.
Democratic Special Counsel
United States Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, D. C. 20510
On behalf of the Committee.
JAMES F. FITZPATRICK, ESQ.

Not asked about MW on 7/21

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PETER ZIMROTH, ESQ.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D. C. 20004-1202
On behalf of the Deponent.
-- continued --

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APPEARANCES (CONTINUED):
LAWRENCE B. PEDOWITZ, ESQ.
ROBERT B. MAZUR, ESQ.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6618
On behalf of the Deponent.
ALSO PRESENT:
VINCENZO DELEO
TIM MITCHELL

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COMMITTEE CONFIDENTIAL
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WITNESS EXAMINATION
Bernard W. Nussbaum
by Mr. Chertoff 4

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Page 6
PROCEEDINGS
Whereupon,
BERNARD W. NUSSBAUM
was called as a witness and, having first been duly sworn, was examined and testified as follows:
EXAMINATION
BY MR. CHERTOFF:
Q Would you please spell your name for the record.
A N-u-s-s-b-a-u-m, Bernard W. Nussbaum.
Q Mr. Nussbaum, before we proceed I'm going to give you some preliminary information concerning the nature of the proceeding. My name is Michael Chertoff. I'm the special counsel to the committee that's conducting this proceeding. Mr. Richard Ben-Veniste is the special counsel on the Democratic side.
The deposition here is being conducted pursuant to Senate Resolution 120 which establishes a Special Committee to conduct an investigation involving Whitewater Development Corporation and other related matters.

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Section 1.B.1 of that resolution authorizes investigation and public hearings into "whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death." And that's the topic that's going to be the focus of today's deposition.
How did you first learn that you had been requested to testify at the Senate proceeding?
A This --
Q This proceeding.
A This proceeding, not the last Senate proceeding?
Q No, this one.
A How did I first learn I was requested to testify?
Q Yes. From whom did you learn it?
A From my attorney, Mr. Pedowitz.
Q At the time that you learned it, were you asked or requested to provide any documents in connection with the deposition?
A These answers really would come much better

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from my attorney, but the answer is I believe I was.
Q Either in connection with this deposition or in connection with any other proceedings

(4) investigative proceedings regarding the handling of
(5) the Vincent Foster documents, have you furnished
(6) documents to somebody to be produced to investigators
(7) or to the Senate?
(8) **A** I believe we produced whatever was
(9) requested if we had possession of the documents
(10) requested.
(11) **Q** And was that produced to the White House in
(12) order to be furnished to the investigators or to the
(13) Senate, or is it produced directly?
(14) **A** I don't recall.
(15) **Q** You did that through your attorney,
(16) Mr. Pedowitz?
(17) **A** Yes, this was handled by my attorney,
(18) Mr. Pedowitz, and Mr. Mazur.
(19) **Q** Is there anything you're aware that you
(20) have in your personal possession that relates to the
(21) handling of the documents in Vincent Foster's office
(22) that you have not produced pursuant to a request by

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(1) law enforcement or by the Senate or Congress?
(2) **A** I'm not aware that I possess anything
(3) related to that subject matter, which was requested
(4) and which I have not produced.
(5) **Q** I should advise you this deposition is in
(6) advance of a public hearing that's going to start on
(7) July 18 and proceed for weeks thereafter, and there
(8) would be a likelihood that you will be called to
(9) testify in that. For purposes of this proceeding,
(10) we'll ask you a series of questions and you'll
(11) obviously be obliged to testify under oath in
(12) response.
(13) If you don't understand a question, please
(14) let me know and I'll rephrase the question.
(15) Likewise, please don't guess or speculate unless I
(16) ask you to guess or speculate. If you need a break,
(17) let me know, we'll take a break. We'll go off the
(18) record.
(19) The stenographer is going to prepare a
(20) transcript of the questions and answers, which is
(21) going to be treated as committee confidential until
(22) the beginning of the hearings. I should advise you

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(1) that once the hearings begin, there's a high
(2) likelihood that some or all of the deposition will
(3) become public at some point in time.
(4) You're represented by a number of counsel
(5) here. Can I ask which counsel is going to speak for
(6) the record?
(7) **A** Mr. Pedowitz.
(8) **Q** You may get an opportunity to talk to your
(9) counsel if you want at any point in time. Just
(10) indicate you want to do so, we'll go off the record.
(11) We'll make available to you a room if you want to
(12) talk at greater length. There may be some objections
(13) to the form of questions. Please wait until we get
(14) them on the record and then go ahead and answer.
(15) If there's an objection that's accompanied
(16) by a request that you not answer and instruction that
(17) you not answer, let us address it among ourselves.
(18) It may be that we can resolve it and you'll go ahead
(19) and answer. It may be that we can't resolve it and
(20) we'll agree to move on to something else. It may be
(21) that we'll contact the Chairman of the committee who
(22) will give the ultimate ruling about whether a

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(1) question should be answered or not.
(2) You're going to have an opportunity, as we
(3) said before we went on the record, to review the
(4) transcript of your deposition, approximately four
(5) days before the hearing begins, assuming that the
(6) transcript is completed by then, and at any point
(7) thereafter, and you can make corrections.
(8) I should advise you that if you make
(9) corrections that are other than ministerial or
(10) clerical, we can redepose you on those changes. You
(11) will receive a copy of the transcript four days
(12) before you testify on the condition that you agree to

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(13) keep that transcript to yourself and your counsel,
(14) not to disclose the content of it to anybody else
(15) except yourself and your counsel until such time as
(16) it becomes public. Is there any question based on
(17) what I've said?
(18) **A** No.
(19) **Q** Mr. Nussbaum, you've previously testified
(20) before the Senate last year in a deposition that was
(21) then conducted by the Banking Committee; correct?
(22) **A** That's correct.

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(1) **Q** There will be a little bit of repetition
(2) here just to kind of get moving. I'd like you to
(3) tell us your date of birth and Social Security
(4) number.
(5) **A** My date of birth is March 23, 1937.
(6) **Q** You don't know your Social Security number?
(7) **A** My Social Security number --
(8) **Q** You can supply it later.
(9) **A** 084-30-1187, and I believe that's correct.
(10) **Q** What's your current business address?
(11) **A** 51 West 52nd Street, New York, New York.
(12) **Q** You're currently engaged in the active
(13) practice of law?
(14) **A** I am.
(15) **Q** At Wachtell, Lipton, Rosen & Katz?
(16) **A** Yes.
(17) **Q** From the time you became aware of the
(18) request to have you testify before the Senate in this
(19) deposition, have you had any conversations with
(20) anybody but your own personal attorneys or members of
(21) your immediate family concerning the subject matter
(22) of what you've been asked to testify about?

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(1) **A** No. I've just talked to my attorneys about
(2) it.
(3) **Q** And when you say your attorneys, you mean
(4) personal attorneys?
(5) **A** My personal attorneys, yes.
(6) **Q** Without telling me what you have said or
(7) been asked, am I correct that on a number of earlier
(8) occasions you have been either interviewed or
(9) questioned under oath by various investigative
(10) agencies or individuals concerning the issue of the
(11) handling of the Foster documents?
(12) **A** Yes.
(13) **Q** In connection with those interviews or
(14) occasions of testimony, have you had any
(15) conversations with anybody about the subject matter
(16) of testimony on those occasions, except for your
(17) private attorneys and members of your immediate
(18) family?
(19) **A** You know, I talk to other partners in my
(20) law firm. I talk to people all the time, but I don't
(21) talk about the subject matter of my -- I say I'm
(22) going to testify or I'll be testifying or be

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(1) interviewed by various other agencies, you know.
(2) **Q** But in terms of the substance of what
(3) you've been asked or you've anticipated being
(4) asked --
(5) **A** No, I don't discuss that. I may discuss
(6) with others the fact that I'm going to be questioned,
(7) but I don't discuss the substance of what I'm going
(8) to be asked or what my prospective answers would be.
(9) **Q** Have you had conversations with anybody
(10) from the White House counsel's office concerning the
(11) subject matter of your testimony here, namely the
(12) handling of the Vincent Foster documents since you
(13) left the position of White House counsel in 1994?
(14) **A** Prior to the last set of hearings, I was
(15) interviewed by lawyers from the White House counsel's
(16) office. White House counsel -- that was Mr. Cutler
(17) and people who were working with him -- interviewed
(18) me with respect to certain matters under
(19) investigation. I believe then the hearings took
(20) place that you and I participated in.
(21) I believe since then, I have not been in

(22) contact directly with the lawyers for the White House

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(1) counsel's office. I've not been interviewed by them.
(2) **Q** In that set of interviews involving the
(3) White House counsel's office in the summer of 1994,
(4) did the subject of the handling of the Vincent Foster
(5) documents come up?
(6) **A** It may have. Those interviews were focused
(7) more on the context with the RTC, which were the
(8) subjects of our last hearings, but it may have come
(9) up. I don't recall. If it did, I responded to their
(10) questions.
(11) **Q** Do you remember who interviewed you?
(12) **A** Cutler, Jane Sherbourne, another woman.
(13) **Q** Did they take notes or record it in any
(14) way?
(15) **A** Yes, they took notes of the interview.
(16) **Q** Have you ever seen the notes?
(17) **A** No.
(18) **Q** Do you know whether your counsel has ever
(19) seen the notes?
(20) **A** No, I don't know if he's ever seen the
(21) notes. I doubt it.
(22) **Q** When did you become counsel to the

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(1) President?
(2) **A** January 20, 1993.
(3) **Q** When did you learn you were going to
(4) receive the appointment as counsel to the President?
(5) **A** Early in January 1993.
(6) **Q** When was the first time you had discussions
(7) with anybody concerning the possibility of being
(8) counsel to the President?
(9) **A** Late December -- either late December or
(10) early January 1993.
(11) **Q** When you say late December, you mean late
(12) December 1992?
(13) **A** Late December 1992.
(14) **Q** Or early January 1993; correct?
(15) **A** That's correct.
(16) **Q** And when did you learn Vincent Foster was
(17) going to become deputy counsel to the President?
(18) **A** When I arrived in Little Rock in early
(19) January of 1993. I don't remember the exact date.
(20) When I arrived in Little Rock to discuss my
(21) prospective appointment with the President, I learned
(22) that Vincent Foster was going to become deputy

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(1) counsel to the President. He was selected as deputy
(2) counsel, in effect, before I was selected as counsel
(3) to the President.
(4) **Q** Had you met Vincent Foster earlier than
(5) that?
(6) **A** No, I met him in Little Rock when I
(7) arrived.
(8) **Q** Did you participate in the presidential
(9) campaign conducted by Mr. Clinton in 1992?
(10) **A** In only a peripheral manner. I raised
(11) money for the campaign. I was involved in
(12) fundraising. But I wasn't involved in any full-time
(13) basis. And from time to time I talked to various
(14) people in the campaign.
(15) When the Clinton campaign came to New York,
(16) I went around with him. This is during the April
(17) 1992 primary. So I met some people from the campaign
(18) and discussed some issues with them, but my main
(19) activity -- not my sole activity but my main activity
(20) was to try to raise money, and I raised some money
(21) for the campaign but I didn't work on a full-time
(22) basis in the campaign. I was busy in the practice of

Page 18
(1) law in a major matter so it took me -- whatever
(2) desire I might have had to work more in the campaign
(3) was taken up by that.
(4) **Q** Did people in the campaign consult with you
(5) about questions that came up from time to time that
(6) you might have some expertise about?

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(7) **A** Yes, but it was not very frequent. Yes.
(8) **Q** During 1992, did you become aware that an
(9) issue was raised in the press concerning Whitewater?
(10) **A** Yes.
(11) **Q** How did you become aware of that?
(12) **A** By reading in the press.
(13) **Q** Did you have conversations with anybody in
(14) the campaign in 1992 about that?
(15) **A** I know I've had conversations about
(16) Gennifer Flowers, when that arose in 1992. I clearly
(17) remember -- that's what I remember being consulted;
(18) what's the appropriate thing to do, what can we do.
(19) I can't remember one way or another whether I had
(20) conversations with respect to Whitewater. I don't
(21) believe I did, but I cannot remember one way or
(22) another.

Page 19
(1) **Q** Were you aware that an issue arose during
(2) 1992 about whether the President's financial
(3) disclosure should be amended in order to disclose the
(4) Whitewater investment?
(5) **A** I have no memory of that.
(6) **Q** Did you have any discussion with anybody in
(7) 1992 about the way the President's taxes should be
(8) handled in connection with any impact Whitewater
(9) might have on the taxes?
(10) **A** I have no memory of that.
(11) **Q** Let me direct your attention to the period
(12) of time when you became counsel to the President as
(13) of January 20, 1993. Did you and Mr. Foster agree on
(14) a division of labor or any kind of allocation of
(15) responsibility within the counsel's office at that
(16) time?
(17) **A** No.
(18) **Q** Did you have discussion with him, either
(19) before you began or at the time you began your
(20) responsibilities, about his handling of personal
(21) matters for the Clintons?
(22) **A** No.

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(1) **Q** Were you aware at the time that you began
(2) your job as counsel to the President that he was
(3) going to be handling tax questions for the Clintons?
(4) **A** I was aware at around the time I became
(5) counsel to the President that he was working on
(6) certain matters which had a personal component, but
(7) also had an official component. That's what I was
(8) aware of.
(9) **Q** How did you become aware of that?
(10) **A** By talking to Foster.
(11) **Q** What were those matters?
(12) **A** I recall he was working on helping them
(13) file their tax returns. He was helping them with
(14) their financial disclosure statements. He was
(15) helping them with creating a blind trust, things like
(16) that. I recall those three things specifically or
(17) things related to that, that he was working with
(18) outside lawyers and outside accountants with respect
(19) to those matters, but they were the kind of things
(20) that were official and required for the President to
(21) do, and therefore, Foster was functioning in all
(22) those things.

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(1) **Q** Were you involved in any of those matters
(2) yourself, or did you become involved in any of those
(3) matters yourself at any point in time before
(4) Mr. Foster died?
(5) **A** I don't believe so. He reported to me
(6) generally what he was doing, and I knew what he was
(7) doing in a general way. I had great confidence in
(8) him as time went on, so I had very little concern
(9) about virtually anything he was doing.
(10) **Q** To whom did he report on those matters?
(11) **A** Well, he reported to me in the counsel's
(12) office, and he dealt with members of the First Family
(13) and their staff and outside people with respect to
(14) those matters.
(15) **Q** Now, the issue of the blind trust had to do

(16) with the establishment of a blind trust to hold the
(17) Clinton assets while he was President; correct?
(18) **A** Correct.
(19) **Q** And the issue of the disclosure form had to
(20) do with an official form that's required of all
(21) appointees indicating their various assets; correct?
(22) **A** Correct.

Page 22
(1) **Q** Do you know whether Mr. Foster worked on
(2) anything to do with the Arkansas state disclosure
(3) forms on behalf of the Clintons?
(4) **A** I don't recall at this time if I knew that
(5) at all. Arkansas state disclosure forms?
(6) **Q** Yes.
(7) **A** I don't recall if I knew that.
(8) **Q** Is it your understanding there's any
(9) federal official obligation or duty or responsibility
(10) or jurisdiction concerning state financial disclosure
(11) forms?
(12) **A** Is there any federal responsibility?
(13) **Q** Yes.
(14) **A** I don't know.
(15) **Q** Is it your view that there's an official
(16) function of the office of the counsel to the
(17) President in terms of assisting the President in
(18) filing state disclosure forms from prior offices
(19) being held?
(20) **A** Well, state disclosure forms -- state
(21) disclosure forms could have some relation to the
(22) federal disclosure forms that he's filing, and

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(1) consequently there may be a federal component to
(2) that. But the answer really is I don't know at this
(3) point.
(4) **Q** With respect to the handling of the
(5) Clintons' taxes, at the time that Mr. Foster entered
(6) on to his duties as deputy counsel, what was your
(7) understanding of what work he was doing in connection
(8) with the Clinton taxes?
(9) **A** He was helping him prepare their tax
(10) returns to be filed. The accountants were paying the
(11) tax returns. He was providing information to the
(12) accountants, gathering information for them for those
(13) tax returns to be filed, and the tax returns would be
(14) publicly disclosed.
(15) **Q** This would be the 1992 tax returns?
(16) **A** This would be the 1992 tax returns.
(17) **Q** Is there any regulation or law or rule that
(18) requires the tax returns to be publicly disclosed?
(19) **A** That's what this President does, and it
(20) becomes in my view an official act as a result of
(21) that. Is there any rule or regulation? I don't know
(22) of any rule or regulation. There may be. There may

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(1) not be.
(2) **Q** You're not aware of any requirement of law
(3) that the President and First Lady disclose their
(4) taxes?
(5) **A** As we sit here, I'm not aware of any
(6) requirement. I am aware that this is what this White
(7) House did and would do.
(8) **Q** Mr. Foster, had he assisted, to your
(9) knowledge, assisted the Clintons in the past in
(10) handling their taxes?
(11) **A** I don't know.
(12) **Q** He's not a tax lawyer, is he?
(13) **A** No, he's not a tax lawyer.
(14) **Q** Did you understand him to be giving tax
(15) advice?
(16) **A** He's a -- what I understood was he was
(17) assisting in the preparation of their returns, which
(18) was gathering information for the returns to be
(19) completed.
(20) **Q** Was he gathering information in a
(21) particular area?
(22) **A** I have no knowledge of any particular

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area. I have knowledge he was gathering information with regard to the tax returns.
Q Do you know whether he was gathering information in connection with the Whitewater real estate investment?
MR. BEN-VENISTE: Is the question did Mr. Nussbaum know then?
THE WITNESS: I was about to do that.
MR. CHERTOFF: Let me make it clear.
THE WITNESS: I was about to make a distinction. I know now that he was.
BY MR. CHERTOFF:
Q Before July 20, 1993, did you know that Mr. Foster was gathering information concerning the Whitewater real estate investment of the Clintons?
A Before July 20, no.
Q Do you remember discussion in the White House counsel's office concerning a real estate investment by the Clintons?
A As we sit here now, I don't remember what discussion you're talking about. It's possible there was such a discussion, but I don't remember at this

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moment.
Q You don't remember one way or the other if before July 20 --
A Not before July 20. Before July 20, I don't remember any discussion.
Q Let me be clear. In the period between the time that you first met Mr. Foster in Little Rock and July 20, 1993, were you aware of any discussions he participated in or was present for regarding Whitewater real estate investment of the Clintons?
A I have no memory of any such discussions.
Q Did that subject come up in the White House counsel's office in any way, to your knowledge, before July 20, 1993?
A As I sit here now, I have no such recollection.
Q Were there other elements of the Clintons' personal matters that were discussed in the White House counsel's office before July 20, 1993?
A Personal matters?
Q Yes.
A I have no memory of any such discussions.

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Q Was Mr. Foster, to your knowledge, spending a substantial amount of his time in the White House counsel's office working on personal financial matters for the Clintons?
A During which period of time?
Q From the time he started as deputy counsel until he passed away?
A From January 20th? No, I would say he was not spending a substantial portion of his time. He was spending a portion of his time working on personal matters which had an official component.
Q Did you observe a lot of typing activity or documents relating to the Clintons' personal taxes during the period from January 20, 1993 to July 20?
A No.
Q Did you observe a lot of documentation regarding disclosure forms in that period of time between January 20 and July 20, 1993?
A No.
Q Did you observe or hear his secretary discussing with him various aspects of the Clintons' financial documentation during the period January 20

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to July 20, 1993?
A No.
Q His secretary was Deborah Gorham; correct?
A Yes.
Q Was that a secretary he brought in with him?
A No.
Q How was she hired?
A He asked around. He needed a secretary

and she was recommended, and he hired her.
Q Who was Linda Tripp?
A Linda Tripp was a secretary who worked in our office, worked for me primarily.
Q And was she there when you entered on to duty?
A She was in the White House when I entered on to duty. I think she came into my office later on.
Q When was she working for you?
A I don't remember when she started. She wasn't there in the beginning, at least I don't believe she was there in the beginning. When I say

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the beginning, I mean in the White House counsel's office.
Q Was she working in the White House counsel's office at the point in time that you left the White House counsel's office?
A Yes.
Q What were her duties?
A She was one of my two secretaries for a long period of time.
Q The other one being?
A Betsy Pond.
Q And as your secretary, was she responsible for supervising any of the other secretaries in the White House counsel secretarial group?
A It's a matter of dispute.
Q Dispute between whom?
A She and the other secretaries.
Q Did she have an official responsibility to supervise the other secretaries?
A That's also a matter of dispute between her and the other secretaries.
Q In terms of your state of mind?

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A No. She was a senior secretary in my office, but it was a very small office, and I didn't consider her having supervisory authority over the other secretaries. She may have had supervisory authority over certain matters, correspondence or something like that, but not general supervisory authority.
Q Did you get along with her?
A Most of the time.
Q Let me direct your attention to July 20, 1993. Where were you when you first learned that Vincent Foster's body had been discovered?
A At a restaurant in Washington.
Q Which one?
A Galileo's.
Q Do you remember how you learned about that?
A I was beeped by the White House, to go to the telephone, and I went to the telephone.
Q At what time were you beeped?
A I don't remember. Do you want me to guess?
Q Can you approximate a time?

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A 8:30, 9:00, something like that.
Q Where were you in terms of the dinner, the progress of the dinner?
A Actually, dinner -- the dinner was almost complete.
Q Who were you eating with?
A My wife and another couple.
Q And who did you speak to on the phone from the White House?
A Mark Gearan.
Q And what did he tell you?
A He told me Vince Foster had just been found dead. He committed suicide.
Q He told you Mr. Foster had committed suicide?
A Yes, I think so.
Q What did you say?
A I don't remember very much. I was stunned and

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(19) shocked. I said I'd come to the White House right
(20) away.
(21) **Q** Did you do that?
(22) **A** Yes.

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(1) **Q** Did you stop anywhere on the way?
(2) **A** No. We went directly to the White House.
(3) **Q** Did you make any calls before you got to
(4) the White House?
(5) **A** No.
(6) **Q** Do you remember what time --
(7) **A** At least I don't remember. I don't believe
(8) so. I should say that. I doubt I made any calls.
(9) **Q** Do you remember what time you got to the
(10) White House?
(11) **A** 10 or 15 minutes after I received his call.
(12) **Q** Where did you go?
(13) **A** I went to the residence, to the ground
(14) floor of the residence.
(15) **Q** Why did you go there?
(16) **A** Because -- I don't have a precise memory of
(17) this. I think Gearan told me -- Mark Gearan told me
(18) people would be meeting there or gathering there. I
(19) also knew the President was on Larry King that night,
(20) and I wanted to see the President, but I knew he
(21) wouldn't be available until after the King thing. So
(22) that's why I went there, to see the President and

Page 33
(1) because I think Gearan told me, I think Gearan told
(2) me that people would be gathering there.
(3) **Q** When you got there, did you see anybody?
(4) **A** I did see people. This is vague in my
(5) mind. I've thought about this. I think I -- at some
(6) point I saw Gearan, Mack McLarty, the President after
(7) he finished and just other people were around. I
(8) don't remember who -- in the course of the evening I
(9) saw a number of people. I saw Roy Neel, I saw Sylvia
(10) Mathews. People started gathering in the White
(11) House. I don't remember when I saw them or what
(12) particular time I saw them.
(13) **Q** Do you remember seeing the President before
(14) he left to go to the Foster house?
(15) **A** Yes, I remember seeing the President before
(16) he left.
(17) **Q** Were you in the residence from the time you
(18) arrived at the White House until the time you saw the
(19) President continuously?
(20) **A** I believe so. That's my best memory.
(21) **Q** At what point did you learn that
(22) Mrs. Clinton had heard that Mr. Foster passed away?

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(1) **A** Mrs. Clinton was in Arkansas. I don't
(2) remember when I heard that she was told or how she
(3) was told.
(4) **Q** After the President had left to go to --
(5) well, let me withdraw the question.
(6) Where did you see the President in the
(7) residence that evening?
(8) **A** When he came down to the ground floor right
(9) after the -- where I was after the Larry King show,
(10) he came off the elevator and I saw him then.
(11) **Q** Did you have any discussion with him?
(12) **A** Just -- we just exchanged stricken
(13) condolences.
(14) **Q** Was he on his way out to go to the Fosters'
(15) house?
(16) **A** Yes. I remember McLarty saying -- McLarty
(17) was with him -- that they were on their way to the
(18) Foster house, and some people left with them to go.
(19) **Q** Did you consider going?
(20) **A** I considered going, but I decided not to
(21) go.
(22) **Q** Where did you go next?

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(1) **A** I decided to go to my office to call
(2) members of my staff, to try to reach some people to
(3) let them know what happened before the news became
(4) widespread. I didn't want people on my staff to hear
(5) it on TV or the radio -- see it on TV or hear it on
(6) the radio.
(7) **Q** Did you go directly to your office?
(8) **A** I recall walking from the residence
(9) directly to my office.
(10) **Q** And that's in the west wing; correct?
(11) **A** That's in the west wing.
(12) **Q** And how did you get into your office?
(13) **A** I walked to it.
(14) **Q** Did you unlock the door?
(15) **A** No, the door was open.
(16) **Q** Was anybody inside?
(17) **A** Yes.
(18) **Q** Who was inside?
(19) **A** No one was inside my particular office.
(20) **Q** Who was inside the suite?
(21) **A** In the suite as I walked into the suite, I
(22) noticed a light on in Foster's office, and I turned

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(1) to walk into Foster's office, seeing the light, and I
(2) saw Maggie Williams and Patsy Thomasson.
(3) **Q** What were they doing?
(4) **A** Maggie was sitting on a sofa crying and
(5) Patsy was sitting behind Vince's desk.
(6) **Q** Doing what?
(7) **A** Looking at the top of the desk.
(8) **Q** What happened?
(9) **A** You want to know what was said?
(10) **Q** Yes, what was said next?
(11) **A** I'll be glad to help you.
(12) **Q** I'm just asking you what happened next?
(13) **A** I said what are you doing here? And Patsy
(14) said -- Maggie didn't say anything. Patsy said I'm
(15) looking to see if he left a note. I said, that
(16) occurred to me also on the way over, which it did.
(17) Indeed I was going to go in and look for a note. I
(18) said well, actually, that occurred to me, too. And
(19) Patsy also said -- I said -- we just arrived. We're
(20) looking for a note. We just arrived. I'm looking
(21) for a note.
(22) I said well, that occurred to me also, and

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(1) I went over to stand next to her, and we looked on
(2) top of the desk, and we looked around, just sort of
(3) eyeballing the room. We opened a number of drawers
(4) in the desk. We saw nothing. There were a lot of
(5) papers on his desk. And it ended. It concluded.
(6) That cursory search for a note ended. We were
(7) looking for something obvious. At least I was
(8) looking for something obvious, a letter on the desk,
(9) to whom it may concern, designed to be found. We
(10) didn't see anything there.
(11) **Q** The three of you were in there together?
(12) **A** The three of us were in there together.
(13) **Q** Then what happened?
(14) **A** We chatted briefly about what a tragedy it
(15) was, and we got up and we left together.
(16) **Q** All three of you left together?
(17) **A** That's what I recall.
(18) **Q** And was it your suggestion that everybody
(19) leave, or was it kind of just everyone got up?
(20) **A** Everyone just got up and we all left
(21) together.
(22) **Q** Where did they go?

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(1) **A** They left the suite.
(2) **Q** Where did you go?
(3) **A** Into my office, which is right next to
(4) Vince's office.
(5) **Q** Did you shut the door to Mr. Foster's
(6) office?
(7) **A** No.
(8) **Q** When you went into your office, did you
(9) turn the light on?
(10) **A** Yes.
(11) **Q** And what did you do?
(12) **A** I went to the phone and started making

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(13) telephone calls.
(14) **Q** Who did you call?
(15) **A** I called members of my staff.
(16) **Q** Anybody else?
(17) **A** I probably called my wife to see if she was
(18) home from the restaurant.
(19) **Q** Did you try to reach the First Lady?
(20) **A** No, I did not try to reach the First Lady.
(21) **Q** Did you call the Foster home?
(22) **A** I did not call the Foster home.

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(1) **Q** Did you call the Department of Justice?
(2) **A** I did not call the Department of Justice.
(3) **Q** For how long were you in your office -- let
(4) me withdraw the question.
(5) How long were you in Mr. Foster's office on
(6) the occasion you were in there with Ms. Williams and
(7) Ms. Thomasson?
(8) **A** My best memory is in the area of 10 minutes
(9) or so.
(10) **Q** And how long were you in your office making
(11) calls?
(12) **A** My best memory is in the area of an hour or
(13) so. It could have been longer, it could have been
(14) shorter, but about an hour.
(15) **Q** How many people did you call?
(16) **A** I tried to reach -- I didn't reach
(17) everybody I wanted to reach. I tried to reach all
(18) the lawyers on my staff, as many of the lawyers I
(19) could reach. It was late at night, and I couldn't.
(20) I connected with a number of them. It was a
(21) difficult night, so the memory -- but I believe I
(22) reached Cliff Sloan, and I think I reached Steve

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(1) Neuwirth. I think I reached Beth Nolan. I may have
(2) reached others. I certainly left messages for others
(3) and when I did reach somebody, obviously the
(4) conversations were difficult.
(5) **Q** Did you leave your office at any point
(6) during this period that you were making telephone
(7) calls?
(8) **A** I don't remember. I just don't remember.
(9) It's possible, but I don't remember. I might have
(10) gotten up and walked out and come back. I was very
(11) distraught, and so it's possible. I don't remember.
(12) My memory is making the calls.
(13) **Q** Do you remember whether you left for any
(14) substantial period of time?
(15) **A** I don't believe I left for any substantial
(16) period of time.
(17) **Q** When did you decide to stop making
(18) telephone calls?
(19) **A** After about an hour. I think I tried to
(20) reach most people -- I either reached them or I
(21) didn't reach them, and I stopped.
(22) **Q** And then what did you do?

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(1) **A** What I did was I got up and walked out of
(2) the office.
(3) **Q** You say your office or the suite?
(4) **A** The suite. I shut the lights off and I
(5) shut the door. I went downstairs to the first floor
(6) of the west wing before I left the White House.
(7) **Q** Where did you go?
(8) **A** I remember when I went downstairs -- when I
(9) walked down, I saw the light on in the chief of
(10) staff's office, chief of staff's suite, so I walked
(11) into that suite.
(12) **Q** Who was there?
(13) **A** I recall Roy Neel being there, the deputy
(14) chief of staff.
(15) **Q** Anybody else?
(16) **A** I think maybe Bill Burton was there. I'm
(17) not sure of that. I spoke to Sylvia Mathews that
(18) night, and I think I spoke to her more than once. I
(19) may have seen her. People were walking around.
(20) **Q** Now, from the time you went into the chief
(21) of staff's office, did you go back into your suite,
(22) the White House counsel's suite at any point later

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(1) that night or into the early morning hours of the
(2) next day?
(3) **A** No. The next time I entered my office was
(4) the next morning when I arrived at the White House.
(5) **Q** At about 8:00 or so?
(6) **A** At about 8:00 or so, that's right.
(7) **Q** When you left the White House counsel's
(8) suite on the night of the 20th and you closed the
(9) door, did you lock it?
(10) **A** I believe so, yes.
(11) **Q** Did you call the guard to indicate that the
(12) alarm should be turned on?
(13) **A** I think so. I mean, the normal practice
(14) was to flip on the alarm, tell the guard you're
(15) leaving and locking the door. I believe I followed
(16) the normal practice. That's my best memory.
(17) **Q** Did you leave anybody in the suite when you
(18) left?
(19) **A** No, I did not.
(20) **Q** Did you remove anything from the suite as
(21) you walked out?
(22) **A** No, I did not.

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(1) **Q** When you walked into the suite and you saw
(2) Ms. Thomasson and Ms. Williams, did you ask them how
(3) they had gotten in?
(4) **A** No, I didn't.
(5) **Q** Did you wonder how they got in?
(6) **A** No.
(7) **Q** As you sit here now, do you have any idea
(8) how they got in?
(9) **A** No.
(10) **Q** It was the regular practice of the White
(11) House counsel's suite to make sure that the door was
(12) locked and it was alarmed at the end of business;
(13) right?
(14) **A** Yes.
(15) **Q** Were you the last one out that evening
(16) before you went to the restaurant?
(17) **A** That I cannot remember. In fact, I doubt
(18) it because I left early that evening. It was a good
(19) day -- in fact, I got home -- I do remember this. I
(20) got home early, early being 6:00, 6:30, to meet our
(21) guests for a drink prior to going to the restaurant,
(22) so I significantly doubt that I was the last one --

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(1) I'm virtually certain I was not.
(2) **Q** When you went in the suite for the first
(3) time that evening after you had seen the President
(4) and you were going back to the west wing, it's your
(5) testimony that Ms. Thomasson and Ms. Williams were
(6) already there?
(7) **A** That's correct.
(8) **Q** You did not take them into the suite?
(9) **A** My memory is that they were already there.
(10) I did not take them into the suite.
(11) **Q** Without telling me specifically what you
(12) have said to other investigators, am I correct that
(13) within the period of a few weeks after the events of
(14) July 20th, those events became the subject of various
(15) investigations and inquiries?
(16) **A** Yes.
(17) **Q** So you had occasion within a very short
(18) period of time after the events of July 20th to pay
(19) attention to those events because you knew you were
(20) going to be asked questions about them by various
(21) agencies; right?
(22) **A** Yes.

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(1) **Q** And it's also your testimony that when the
(2) three of you left the suite, Ms. Williams and
(3) Ms. Thomasson went out ahead of you and you remained
(4) in the suite?
(5) **A** We went out of Foster's office together.
(6) They went out of the suite. I remained in the suite

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(7) in the sense of going into my own office. That's my
(8) memory.
(9) **Q** Did anybody else come into the suite while
(10) you were in your own office?
(11) **A** I have no memory of somebody coming into
(12) the suite while I was in my office. Is it possible?
(13) It's possible. I can just give you my best memory.
(14) I have no memory of it.
(15) **Q** You didn't hear anybody?
(16) **A** I didn't hear anybody or see anybody. At
(17) least I don't remember hearing or seeing anybody.
(18) **Q** When you walked in the first time that
(19) evening, and you saw Ms. Thomasson and Ms. Williams
(20) in the office, were the lights to the suite and the
(21) lights to your office -- when I say that, the lights
(22) to the outer office and the lights to your office on

Page 46
(1) or off?
(2) **A** The lights -- my memory is the lights --
(3) there are three offices in the suite. There's the
(4) secretarial area, there's my office and there's
(5) Foster's office. My memory was that the lights in
(6) the secretarial area, which is the first light you
(7) turn on as you walk into the suites, and the lights
(8) in Foster's office, were on, with Maggie Williams and
(9) Patsy Thomasson there. I don't believe the lights to
(10) my office were on, but I don't know. I don't
(11) remember that.
(12) **Q** Did you ask Ms. Thomasson or Ms. Williams
(13) that evening how they had gotten in?
(14) **A** I don't believe so, no.
(15) **Q** Did you suggest to them at some point that
(16) it was better for all of you to leave Mr. Foster's
(17) office?
(18) **A** I don't remember suggesting that. I
(19) remember we were all getting up to leave.
(20) **Q** But you didn't make the suggestion?
(21) **A** I don't remember making the suggestion.
(22) **Q** Was Ms. Williams in there during the entire

Page 47
(1) time that you were in Mr. Foster's office?
(2) **A** Yes, that's what I remember.
(3) **Q** And Ms. Thomasson was?
(4) **A** That's what I remember.
(5) **Q** Do you know Evelyn Lieberman?
(6) **A** I know Evelyn Lieberman.
(7) **Q** Did you see her that night?
(8) **A** No -- well, I don't recall whether I saw
(9) her that night. I don't recall whether I saw her
(10) that night.
(11) **Q** Did you see her at the entrance to the
(12) White House counsel's suite?
(13) **A** I don't remember seeing her at the entrance
(14) to the White House counsel's suite.
(15) **Q** Was the First Lady's office open?
(16) **A** I don't know if the First Lady's office was
(17) open.
(18) **Q** Did you see a light emanating from it?
(19) **A** I have no memory of seeing that.
(20) **Q** That office suite is directly adjacent to
(21) the White House counsel's suite; correct?
(22) **A** Yes.

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(1) **Q** They both open into a common hallway?
(2) **A** Yes.
(3) **Q** And your recollection is when you left, you
(4) shut the door and you locked it?
(5) **A** That's my recollection.
(6) **Q** And it was your regular practice to alarm
(7) it?
(8) **A** If I was the last one out, it was my normal
(9) practice to alarm it.
(10) **Q** And when you left that night, you had no
(11) expectation anybody was going to be back in that
(12) office; right?
(13) **A** That's correct.
(14) **Q** You knew from your conversations with
(15) members of the staff that [illegible] staff were
(16) planning to come in; correct?
(17) **A** Nobody told me they were planning to come
(18) in.
(19) **Q** And as to the people that you left
(20) messages, you didn't indicate to them they ought to
(21) come in; right?
(22) **A** That's correct.

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(1) **Q** And you had no expectation they would come
(2) in; right?
(3) **A** No.
(4) **Q** So when you left, in your mind, no one else
(5) was going to have any business in that office;
(6) correct?
(7) **A** That's correct.
(8) **Q** Would you have had any reason --
(9) **A** I may have seen one of my staff members.
(10) **Q** Who?
(11) **A** Cheryl Mills. I have some vague
(12) recollection of maybe seeing her, but I'm not even
(13) positive.
(14) **Q** Did you see her in the suite?
(15) **A** I can't remember. It's possible. I can't
(16) remember.
(17) **Q** What is your memory, if any, about what she
(18) might have been doing in the suite?
(19) **A** Just crying.
(20) **Q** Was she in Mr. Foster's office?
(21) **A** I don't think so, no.
(22) **Q** Was she in your office?

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(1) **A** Maybe. I have this vague memory of perhaps
(2) coming up while I was on the phone trying to reach
(3) people. It's vague. I'm not positive about this
(4) memory.
(5) **Q** Was her regular office in the Executive
(6) Office Building or in the west wing?
(7) **A** Yes, but --
(8) MR. PEDOWITZ: You have to answer the
(9) question because it was an "or" question. Where was
(10) it?
(11) THE WITNESS: It was in the Executive
(12) Office Building.
(13) BY MR. CHERTOFF:
(14) **Q** Did she have a key to the west wing suite?
(15) **A** No.
(16) **Q** Did you expect that when you left, she was
(17) going to be getting back in the west wing suite?
(18) **A** No.
(19) **Q** Did she ask you to leave it open?
(20) **A** No.
(21) **Q** To the extent you recall a conversation
(22) with Ms. Mills when you were on the phone, how long

Page 51
(1) do you think that was?
(2) **A** Briefly. Just commiserating, if I had such
(3) a conversation. This is a vague memory, and I'm not
(4) positive about it.
(5) **Q** Do you have a vague memory she was there
(6) when you left in the suite?
(7) **A** No. My memory when I left is nobody was
(8) there.
(9) **Q** Is there any reason when you left the suite
(10) that night, July 20th, that you would have left that
(11) door open?
(12) **A** No, there's no reason I would have left
(13) that door open.
(14) **Q** And it was your regular practice on every
(15) other night when you believed yourself to be the last
(16) person in the suite to lock the door and alarm it;
(17) correct?
(18) **A** That's correct.
(19) **Q** Now, when you went down to the chief of
(20) staff's office, did you have a conversation in the
(21) presence of Sylvia Mathews concerning the White House
(22) counsel's office?

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(1) **A** In the presence of Sylvia Mathews?
(2) **Q** Yes.
(3) **A** Yes.
(4) **Q** What was the conversation and with whom was
(5) it?
(6) **A** I had -- I had two conversations with
(7) Sylvia Mathews that I remember. One conversation she
(8) came up to me someplace in the west wing. It could
(9) have been outside. My best memory it was outside the
(10) White House counsel's suite in the hallway, that's on
(11) the second floor, in which she said she'd run into
(12) the cleaning lady who had removed the trash from
(13) Vince's office and it was possible to recover the
(14) trash from Vince's office, should she do so? Did I
(15) think it advisable to do so. And I said yes.
(16) **Q** Was this encounter during the period of
(17) time that you were in the White House counsel's
(18) suite, I mean that it was open and you were in and
(19) out?
(20) **A** My memory is I was sort of standing in the
(21) hallway of the White House counsel's suite when she
(22) came up to me and asked me this question, and I

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(1) responded in the affirmative.
(2) **Q** This encounter occurred after Ms. Williams
(3) and Ms. Thomasson had left the suite; correct?
(4) **A** Yes, I believe so.
(5) **Q** And the suite was still open; right?
(6) **A** Yes.
(7) **Q** And you were still using your office to
(8) make calls; right?
(9) **A** Yes.
(10) **Q** So you agreed with her that she should
(11) reclaim the trash?
(12) **A** If she could. If she could, she should
(13) reclaim the trash.
(14) **Q** Did she come back with the trash?
(15) **A** That's why I started -- after I locked the
(16) suite and went down to Neel's office, I have this
(17) recollection of -- I think it was her -- coming with
(18) a -- trash in a plastic bag, see-through plastic bag,
(19) saying I've recovered the trash, this is the trash
(20) that I recovered from the cleaning lady who took it
(21) out of Vince's office. What should I do with it?
(22) **Q** And what did you say?

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(1) **A** I said leave it here in Roy Neel's office,
(2) because I had already closed the suite. I was down.
(3) I was on my way out. I said leave it here and we'll
(4) take it back up tomorrow. And so she just left the
(5) bag of trash in Roy Neel's office. That's my memory
(6) of that conversation.
(7) **Q** So the reason you didn't send her up to the
(8) suite to replace it in the suite was because you had
(9) already locked the suite?
(10) **A** That's correct.
(11) **Q** And did she, to your knowledge, do what you
(12) asked her to do?
(13) **A** Yes, she put it in Mr. Neel's office. She
(14) put it right down. I was in Mr. Neel's office when I
(15) said this to her.
(16) **Q** When you came into your suite earlier that
(17) night on the occasion you found Ms. Thomasson and
(18) Ms. Williams there, did you see any cleaning people
(19) around?
(20) **A** I don't recall whether I did or not.
(21) **Q** Did you see a uniformed Secret Service
(22) agent?

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(1) **A** I don't recall seeing a uniformed Secret
(2) Service agent.
(3) **Q** Do you know whether Ms. Thomasson had her
(4) security clearance as of July 20, 1993?
(5) **A** I don't know.
(6) **Q** Do you have any inkling?
(7) **A** Ms. Thomasson was a fairly senior official
(8) in the White House. I don't know. There was delay
(9) in getting people's security clearances, I took it
(10) long time to go through that process. I don't know
(11) if she had hers or she didn't have hers.
(12) **Q** Was there a delay that you remember in her
(13) particular case because of some things about her
(14) background?
(15) **A** No, I don't remember.
(16) **Q** You don't remember that?
(17) **A** No, I don't remember any delay because of
(18) some things in her background.
(19) **Q** So when she was in the office on July 20th,
(20) you didn't know at that point in time whether she had
(21) her security clearance or not?
(22) **A** That's correct.

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(1) **Q** Did you have a conversation with
(2) Ms. Mathews also that night after you left the White
(3) House counsel's suite and locked it up concerning the
(4) burn bag?
(5) **A** I don't remember any conversations about
(6) the burn bag.
(7) **Q** Now, the White House -- am I correct that
(8) the White House counsel's office had two types of
(9) ways of removing trash. There was the regular trash
(10) removed in plastic bags and wastebaskets and there
(11) were striped paper burn bags in which sensitive trash
(12) was put?
(13) **A** That's correct.
(14) **Q** Did you have a conversation with
(15) Ms. Mathews in which she indicated to you that she
(16) had retrieved a general burn bag for the second floor
(17) of the west wing?
(18) **A** I don't remember that conversation. All I
(19) remember is the conversation about the trash.
(20) **Q** So you don't remember one way or the other
(21) the conversation?
(22) **A** That's correct, I don't remember one way or

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(1) another.
(2) **Q** Did you have a conversation that night
(3) after you had left the White House counsel's suite
(4) and locked it up concerning whether the office was
(5) secured?
(6) **A** Do I remember having a conversation that
(7) night concerning whether the office was secured?
(8) **Q** Yes.
(9) **A** With whom?
(10) **Q** With Mr. Burton.
(11) **A** I don't remember that conversation.
(12) **Q** In the presence of Ms. Mathews?
(13) **A** I have no memory of it. I'm not saying it
(14) didn't take place. I just have no memory of it.
(15) That was a difficult night, you know.
(16) **Q** So you don't remember one way or the other?
(17) **A** I don't remember one way or the other.
(18) **Q** Let me ask you if I can refresh your memory
(19) by reading you a portion of a note by Sylvia
(20) Mathews. For the record it's Z139 and --
(21) MR. BEN-VENISTE: Hold on for a second,
(22) please.

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(1) MR. ZIMROTH: What is the number?
(2) MR. CHERTOFF: Z139. I'm just going to
(3) read you the second paragraph and ask if this
(4) refreshes your memory. This is from Sylvia Mathews:
(5) "I then asked the three of them if anyone had made
(6) sure that the trash had not been dumped in Vince's
(7) office. At that point Bill said we should get Bernie
(8) and lock the office. I am uncertain what time that
(9) was but probably after 10:00 p.m. I don't remember
(10) who told Bernie but he went up and locked the
(11) office."
(12) Does that refresh your memory?
(13) **A** No.
(14) (Pause.)
(15) **Q** Did you have any other conversations with
(16) anybody on the evening of the 20th regarding sealing
(17) or securing Mr. Foster's office?
(18) **A** Yes, I did.

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(19) MR. PEDOWITZ: The question is somewhat
(20) objectionable.
(21) THE WITNESS: Correct.
(22) BY MR. CHERTOFF:

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(1) **Q** Apart from any prior testimony, have you
(2) had any conversation -- did you have any conversation
(3) with anybody on the night of the 20th concerning the
(4) sealing or securing of Mr. Foster's office?
(5) **A** I have no memory of such a conversation.
(6) **Q** And you are confident that you didn't go up
(7) to lock the office at someone's request?
(8) MR. BEN-VENISTE: Excuse me. The first
(9) time you asked that question, you used the word
(10) "secure." Now you've used the word "seal."
(11) MR. CHERTOFF: I think I said secure and
(12) seal -- or seal.
(13) MR. MAZUR: Seal or secure.
(14) BY MR. CHERTOFF:
(15) **Q** You're quite confident you didn't go up to
(16) secure the office or lock the office at someone's
(17) request?
(18) **A** That's my best memory.
(19) **Q** After you -- I'm sorry, when you were in
(20) the chief of staff's suite with Mr. Neel and
(21) Ms. Mathews and whoever else was there, did you have
(22) any other conversations, apart from what you've

Page 60
(1) testified about?
(2) **A** Not that I remember.
(3) **Q** Do you remember how long you were there?
(4) **A** Not a long time, but I don't remember how
(5) long, five minutes, 10 minutes, 15 minutes. People
(6) were very depressed, very distressed.
(7) **Q** Were you involved at all in the preparation
(8) of a press release that was going out that night?
(9) **A** No.
(10) **Q** Did you have any contact with anybody at
(11) Vince Foster's home that night?
(12) **A** No.
(13) **Q** Did you have any conversations with
(14) Mr. Gearan after the period of time in which you left
(15) the residence?
(16) **A** I don't remember. I may have. I just
(17) don't remember.
(18) **Q** Did you see the President later that night
(19) or in the early hours of the next morning?
(20) **A** No.
(21) **Q** Did you talk to him again?
(22) **A** I did not.

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(1) **Q** Did you talk to Mr. Gergen?
(2) **A** No, I didn't. I don't remember talking to
(3) Mr. Gergen. Mr. Gergen may have been one of the
(4) persons who came down with the President from the
(5) Larry King show on the way to Foster's house and I
(6) may have said something to him then but I don't
(7) remember talking to him again.
(8) **Q** Did you talk to Mrs. Clinton that evening?
(9) **A** No.
(10) **Q** Did you talk to Susan Thomases?
(11) **A** No.
(12) **Q** Do you know Susan Thomases?
(13) **A** Yes.
(14) **Q** Did she have an official position with the
(15) White House in any way in July of 1993?
(16) **A** No.
(17) **Q** Do you know whether she had any
(18) professional relationship with the Clintons in July
(19) of 1993?
(20) **A** She had a relationship with the Clintons.
(21) **Q** A professional relationship?
(22) **A** What do you mean, "professional

Page 62
(1) relationship"?
(2) **Q** Was she their attorney?
(3) **A** She is an attorney and she may have
(4) represented them from time to time.
(5) **Q** To your knowledge, was she representing
(6) them on anything in July of 1993?
(7) **A** I don't know. One way or another, I don't
(8) know.
(9) **Q** From January 1993 until July 1993, did you
(10) have occasion to consult with or work with
(11) Ms. Thomases on any officially related matters?
(12) **A** I talked to Mrs. Thomases from January to
(13) July 1993. She was sort of an outside advisor to the
(14) President and the First Lady.
(15) **Q** On what kinds of subjects?
(16) **A** On political matters, just generally. She
(17) was like an outside advisor.
(18) **Q** What kinds of things did you talk to her
(19) about between January 20th and July 20, 1993?
(20) **A** Current press reports or political issues
(21) that had arisen or various public crises that were
(22) taking place. She was someone that the Clintons

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(1) looked to for advice and judgment as an outside
(2) advisor. They looked to her. They looked to other
(3) people on the outside and inside as was traditional
(4) for First Ladies and Presidents and other people.
(5) **Q** Was she involved at all in the President
(6) and First Lady's personal finances with Mr. Foster
(7) before July 20th?
(8) **A** I don't know. She was deeply involved in
(9) the campaign. She may have been.
(10) **Q** Did she relay messages or communications
(11) between the President or the First Lady and yourself?
(12) **A** No, she didn't relay messages between the
(13) President and First Lady and myself.
(14) **Q** Is there anything in particular -- any
(15) particular matter of a public issue or nature that
(16) you remember dealing with her on or discussing with
(17) her before July 20, 1993?
(18) **A** Not at this time, but we had a lot of
(19) conversations in that six-month period, so I don't
(20) remember any particular thing at this moment.
(21) **Q** After you were in the chief of staff's
(22) office at the White House on July 20th that night,

Page 64
(1) where did you go?
(2) **A** I left the White House and I went home.
(3) **Q** Did you call anybody from home?
(4) **A** I may have tried to continue some of my
(5) phone calls, people I couldn't reach. For example, I
(6) have this memory, from my apartment trying to call my
(7) secretary, one of my secretaries, Betsy Pond, and I
(8) didn't reach her. I got her machine and jingling
(9) noise on the machine, and I think that was from my
(10) apartment rather than the White House.
(11) So I think I just tried to continue making
(12) phone calls because I didn't reach a number of people
(13) and then I finally talked to my wife, and we went to
(14) sleep.
(15) **Q** Is there anybody you remember talking to
(16) from home?
(17) **A** No, I don't remember talking to anybody
(18) from home. It's possible I did, but I don't
(19) remember. I might have reached somebody.
(20) **Q** Did you receive any calls while you were
(21) home?
(22) **A** No.

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(1) **Q** Did you talk to Maggie Williams after she
(2) left --
(3) MR. PEDOWITZ: Mike, what was the time
(4) frame of that question, "did you receive any calls"?
(5) MR. CHERTOFF: During the period of time
(6) when he left the White House on the 20th through the
(7) early hours of the 21st until you went to sleep.
(8) THE WITNESS: I don't remember. It is
(9) possible that a staff member who I left a message for
(10) called me back at home. It's possible. I don't
(11) remember it happening, but that's possible. I don't
(12) remember talking to any other Dallas

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(13) BY MR. CHERTOFF:
(14) **Q** Still directing your attention to the
(15) period after you left the White House on the 20th
(16) late at night until you went to sleep early in the
(17) hours the next morning, did you talk to Maggie
(18) Williams again?
(19) **A** No.
(20) **Q** Did you talk to Patsy Thomasson again?
(21) **A** No.
(22) **Q** When did you get to the White House the

Page 66
(1) next morning?
(2) **A** About 8:00, a little later than I normally
(3) get in.
(4) **Q** At the time you got to the White House, did
(5) you go directly up to the White House counsel's
(6) suite?
(7) **A** I think so.
(8) **Q** Was Mr. Neuwirth there?
(9) **A** I think so. I know Betsy Pond was there.
(10) I think Neuwirth was there also.
(11) **Q** Was Mr. Foster's door opened or closed?
(12) **A** I think it was closed.
(13) **Q** At that point, to your knowledge, it was
(14) not locked; right?
(15) **A** It cannot be locked because it had no lock
(16) on it.
(17) **Q** There was nothing securing the door shut;
(18) right?
(19) **A** No, there was no lock on the door.
(20) **Q** And the suite was open because Betsy Pond
(21) was in there?
(22) **A** Yes.

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(1) **Q** Did you have any conversations with Betsy
(2) Pond about the fact that she had been in Mr. Foster's
(3) office?
(4) **A** Yes.
(5) **Q** What was the conversation?
(6) **A** She told me -- she was extremely
(7) distraught, full of grief. She said she had been in
(8) Vince's office to straighten out the papers to make
(9) it look neat. I said why did you go in to do that?
(10) She said because she knows people will want to come
(11) and see it and she wants it to be neat. I said
(12) Betsy, don't go into Vince's office, stay out of
(13) Vince's office.
(14) **Q** Why did you say that?
(15) **A** I just didn't want people going into
(16) Vince's office.
(17) **Q** Why?
(18) **A** Because I didn't want people disturbing
(19) Vince's office. Nobody -- I thought it was -- I
(20) didn't want people -- I didn't want his privacy
(21) invaded. That's why I didn't want people to go into
(22) his office.

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(1) **Q** Well, was that a feeling you had the night
(2) before when you saw Ms. Thomasson and Ms. Williams in
(3) there?
(4) **A** Yes, and that's why I said what are you
(5) doing here? And they said what they said, I'm
(6) looking for a note, and it occurred to me because on
(7) the way over I also thought I was going to look for a
(8) note, that made sense, so I said fine, we'll look for
(9) a note, and we looked for a note.
(10) **Q** By the way, on the night of the 20th when
(11) you asked Ms. Williams and Ms. Thomasson in
(12) Mr. Foster's office why they were there, did they
(13) indicate that anybody had asked them to look for a
(14) note?
(15) **A** I have no recollection of them saying
(16) anything like that.
(17) **Q** Did they indicate that they had spoken to
(18) anybody that night about going to look for a note?
(19) **A** I don't believe so.
(20) **Q** Directing your attention back to the
(21) 21st --
(22) **A** They may have. I just don't remember. I'm

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(1) not categorically denying that they may have said
(2) somebody told us to come look for a note. I just
(3) don't remember.
(4) **Q** Going back to the conversation on the 21st
(5) when you had your conversation with Ms. Pond, did you
(6) ask her what she had handled or touched or been
(7) looking at?
(8) **A** She just said she straightened up the
(9) papers in his office or on his desk. That's the
(10) extent of the conversation about the papers, what she
(11) did.
(12) **Q** Did you leave her an instruction to make
(13) sure no one else went into the office?
(14) **A** I may have. I may have. I don't remember
(15) that precisely, but I may have when she told me that.
(16) **Q** Do you know an individual named Craig
(17) Livingstone?
(18) **A** Yes.
(19) **Q** Did you see him on that morning?
(20) **A** I have no recollection of seeing him that
(21) morning. I don't believe so.
(22) **Q** Did you talk to him that morning?

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(1) **A** I don't remember talking to him that
(2) morning.
(3) **Q** Do you know whether he was carrying any
(4) boxes that morning?
(5) **A** No, I don't know if he was carrying any
(6) boxes that morning.
(7) **Q** Did there come a point shortly after you
(8) arrived that you had a meeting with members of your
(9) legal staff?
(10) **A** Yes.
(11) **Q** What was the subject of the meeting?
(12) **A** We have a traditional meeting at 9:00 each
(13) morning; the counsel's staff when I was counsel would
(14) meet, at least the senior members, but a lot of the
(15) staff, more than just the senior members, would meet
(16) to discuss the events of the day. And I believe,
(17) although that's a difficult day also, we had such a
(18) meeting that morning as well, which a number of
(19) people showed up. Not everybody was always there,
(20) but we had that meeting and obviously what we talked
(21) about there was Vince's death.
(22) **Q** Now, was there discussion in that meeting

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(1) about whether Mr. Foster's office should be secured
(2) in some way?
(3) **A** I don't remember if there was discussion of
(4) that meeting, but I do remember a discussion with two
(5) people who were at that meeting. I think after the
(6) meeting was over -- I don't really think we had a
(7) meeting in the classic sense that you normally have
(8) counsel's office meeting. We had a mini wake in
(9) which we consoled each other and people started
(10) drifting out and I recall a conversation with two
(11) members of my staff.
(12) **Q** Which two members were those?
(13) **A** Cliff Sloan and Steve Neuwirth.
(14) **Q** What was the conversation?
(15) **A** We discussed whether or not we should
(16) secure Foster's office in some fashion. I don't
(17) remember who raised it. I may have raised it or one
(18) of them may have raised that issue.
(19) **Q** What was the discussion?
(20) **A** Whether it was necessary or wise to do so
(21) and we discussed that issue, and we concluded at the
(22) end of the discussion, yes, it's probably best that

Page 72
(1) we do so, so we proceeded to call the Secret Service.
(2) **Q** What was the reason that you concluded it
(3) was best to do so?
(4) **A** That there would be investigations
(5) obviously with respect to Vince's death. And under
(6) those circumstances, I would do best to make sure

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that the office was secure in connection with those investigations.
Q Can you explain a little bit more fully why, what your thinking was?
A I'm thinking -- I can't really explain any more why. It's partly this privacy notion, too. I just didn't want people walking in and out of Vince's office. I didn't want that to become a scene, and it's the same kind of reaction I had when Betsy Pond told me she walked in the office. And we thought -- I just -- I don't want people walking into Vince's office because it was an invasion of his privacy, and also there would be investigations, and I was sure somebody would want to look there for a note. I had been there the night before but we did a cursory search and we were all so distraught,

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so I just felt -- the three of us concluded that the office should be secure.
Q So you assumed that there would be an investigation; correct?
A Oh, yeah, I assumed there would be an investigation.
Q And you understood it would be important to have the office secure so that the investigators could examine things in the office that might bear upon how he died?
A No, that the office -- they could look in the office to see if there was a suicide note or an extortion note or similar document which might explain why he did it.
Q You understood at that point, because Mr. Foster was a senior official at the White House, that if he committed suicide, there would need to be some investigation to see if he was being blackmailed or some potential compromise of security?
A Yes.
Q Did you also have discussion with Mr. Sloan and Mr. Neuwirth at this point in time about which

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agency should be brought in to conduct the investigation?
A I don't remember having a conversation with them at that time. It's possible I did. I don't remember. I remember thinking about that subject that day, or at least within a matter of hours, and concluding that we should ask the Justice Department to coordinate the various investigations. I remember thinking about that after being briefed by the Park Police.
Q So as of the point of this initial meeting, did you have any understanding which agencies would be involved in conducting an investigation?
A At some point during that day, I had an understanding of which agencies would be involved.
Q Are you familiar with a controversy that had arisen concerning the White House travel office before July 20th?
A Yes.
Q And was an element of that controversy the fact that the Federal Bureau of Investigation had been brought in to do some investigation of the

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travel office?
A Yes.
Q What's your recollection of that?
MR. PEDOWITZ: Recollection of what?
MR. CHERTOFF: The controversy.
BY MR. CHERTOFF:
Q What was the issue that was being raised in the press concerning the FBI's participation?
A Calling the FBI in to investigate possible malfeasance in the travel office.
Q Was the issue there that someone from the White House counsel's office had directly called someone in the FBI and asked them to come over?
A That is correct. That was one issue, yes.
Q And that was Mr. Kennedy who had made the call?
A Yes.
Q Do you remember who he called?
A He called some FBI agent that he had been working with with respect to security or various other things.
Q And he asked that person to come over and

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do some interviews or do some investigation?
A Well, I don't want to mischaracterize it -- actually he called to ask the FBI for advice as to how to proceed with respect to the travel office matter, that we had certain indications that everything was not correct in the travel office and how should we proceed. That's what I think his original request -- as you know, there have been a number of reports and studies, and it's all laid out there, everybody's version of what they said to whom and what.
Q In terms of your state of mind as of July 20, you understood there was a controversy or criticism about the way in which the White House counsel's office had dealt with the FBI in the so-called travel office matter?
A Yes.
Q And as of July 20th, was it your understanding that there had been any kind of public statements by the White House indicating that greater care would take place in the future in terms of dealing with law enforcement agencies?

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A There was a statement to that effect; not in those words, but to that effect.
Q What's your recollection of the statement?
A The statement was that if the White House was to call the FBI into a matter, it would be done through the higher echelons of the Justice Department, the Attorney General or Deputy Attorney General or some other senior official.
Q Did you yourself have any conversations with anybody at the Department of Justice concerning arranging a manner in which future contacts between the White House and investigative agencies would be carried out?
A Yes.
Q With whom?
A The Attorney General.
Q And do you remember when that was?
A It was during the travel office imbroglio.
Q So it was before July 20?
A It was before July 20.
Q What was the conversation?
A That we agreed that in the future, if the

Page 78
White House wished to request the FBI to advise or investigate with respect to a matter, it would be done through the higher echelons of the Justice Department.
Q That means that you or someone higher up in your office would contact the Attorney General or the deputy?
A I don't remember the list of officials, but there was a list, yes.
Q Did the Attorney General indicate to you in that conversation what her view was on this issue of how contacts should be handled between the Justice Department and the White House on these matters?
A She thought it was a good idea to have it done through the higher echelons of the Justice Department.
Q And what was her reason that she expressed for that?
A That we could avoid the kind of criticisms that the press was making with respect to a direct contact between the White House and the FBI.
Q Were the criticisms that you were

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discussing with the Attorney General those that suggested that the FBI was being -- might be pressured to do something?
A That's what the press was saying, that -- making charges that the FBI was contacted directly by the White House is subject or was subject to pressure.
Q Your understanding with the Attorney General was that by having the point of contact be at a high level of the Justice Department, that would insulate the line -- attorneys and line agents from pressure; correct?
A No.
Q Was it your understanding with her that it would create the appearance of insulation between the White House and the line prosecutors or line agents?
A Yes.
Q And you understood that that appearance, the appearance of propriety, was an important function and important element for the way the Department of Justice discharges its responsibility?
A Yes.

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Q Do you know who Bob Barnett -- on July 20th, did you know Bob Barnett at Williams & Connolly?
A Yes.
Q How did you know him?
A I met him through my role as White House counsel. He was one of the outside lawyers that the Clintons consulted from time to time with respect to personal matters.
Q And how did you interact with him as White House counsel in terms of his being counsel to the Clintons on personal matters?
A He worked more with Vince with regard to those personal/official things that Vince was doing. Vince interacted with him more, and I knew that because Vince would keep me informed as to what he was doing.
Q And what did Mr. Foster tell you, in general terms, about what he was doing with Mr. Barnett?
A I don't know what they were functioning. I just don't remember at this point. It was stuff in

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connection with Vince's duties but also had a personal aspect. And he would contact -- he would be in touch with Barnett with respect to that at the request of the Clintons.
Q On the 21st -- let me withdraw the question.
Do you remember seeing Mr. Barnett at the White House counsel's office before the 20th of July 1993?
A Before the 20th of July?
Q Yes.
A Probably. He probably met with me, too, but I believe I saw him in connection with meetings with Vince.
Q In meetings you had with him, do you remember what the subject was?
A No, at this time I don't.
Q Did he consult with you or did you contact him -- let me withdraw the question.
Did you have any discussion with him on the 21st concerning Vincent Foster?
A On the 21st?

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Q Yes, that's the Wednesday after Mr. Foster's body was discovered.
A I have no recollection of talking to him on the 21st. It's possible, but I have no recollection.
Q At around 10:15 in the morning after you've had your discussion with Mr. Sloan and Mr. Neuwirth, was a guard posted at the door to Mr. Foster's office?
A Yes.
Q And that was a Secret Service agent?
A Yes.
Q With a log?
A I think so. I'm not positive of that, but yes, I would assume he would note who went in and went out.
Q Who arranged for that?
A I probably -- my best memory is after we decided to do it, I said to one of them, Neuwirth or Sloan, please get it done.
Q Earlier that morning, you, by the way, attended a senior staff meeting?
A That was the normal practice, but I'm not

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sure -- that was the normal practice, but I think I arrived at the White House later that morning. Senior staff meeting started at 7:30 normally, and I arrived at the White House after 7:30 because I had been up very late the night before, so I may have missed the senior staff meeting that day. I don't remember being there. At times I did miss the senior staff meetings.
Q In the morning period -- let me withdraw the question.
Did there come a point around 11:00 on the 21st that you attended a Park Police briefing?
A Yes.
Q Where did that take place?
A In David Watkins's office.
Q Who set it up?
A I don't know.
Q How did you come to learn about it?
A Somebody told me.
Q Who was there?
A I'm not sure I will list everybody who was there. I remember people obviously from the Park

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Police being there. I don't remember their names at this point. I remember Watkins being there. It was his office. I was there. Bill Kennedy was there because he asked me to attend it when I told him I was attending it, and I said okay, come along because he was so close to Vince obviously. Stephanopoulos was there. I remember him being there. I believe Web Hubbell was there. I have a vague memory of Web Hubbell being there, and there may have been others. We sort of packed into a room. There may have been others that I just don't remember at this moment. Maybe Gergen was there. I don't remember. It's logical, but I don't remember.
Q What was the purpose of the briefing?
A To tell us what they found the night before, the day before.
Q As of that point in time, had anybody indicated to you that you would be the principal White House person in terms of dealing with contacts with the investigating agents or law enforcement on this matter?
A No.

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Q Did there come a point afterwards that you were told or you understood that you would be the principal point of contact in dealing with the agencies or law enforcement people on this matter?
A I don't remember if I was told later on. It was, I believe, part of my function to do that, and I did it to some extent.
Q On the 21st, did you have an understanding that there was anybody you ought to be consulting with in terms of deciding how to deal with the agencies or the law enforcement personnel?
A No.
Q Your understanding is that it was committed to your discretion?
A My understanding was it was part of my function as White House counsel.
Q At the time you went down to the Park Police briefing, did you understand the Park Police

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(19) were going to be conducting an investigation?
(20) **A** No.
(21) **Q** You learned that when you were at the Park
(22) Police briefing?

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(1) **A** Yes.
(2) **Q** What do you remember from the briefing?
(3) **A** All I remember from the briefing is they
(4) told us how they were called in and what they saw at
(5) Fort Marcy, where they found Vince and what the body
(6) looked like, where his car was, that kind of
(7) description. And it was virtually certain this was a
(8) case of suicide, and that's all I remember.
(9) **Q** Was there a discussion about the, by the
(10) Park Police about the need to get into Mr. Foster's
(11) office?
(12) **A** At some point there was. At that briefing,
(13) which was quite or shortly thereafter, as the
(14) briefing broke up or I met with them later, but at
(15) some point, they said yes -- there was no suicide
(16) note found at the scene, and they said we want to
(17) check in Foster's office to see if there's a suicide
(18) note.
(19) **Q** Did you indicate at that point that you had
(20) been in his office the previous evening and people
(21) had been looking for a suicide note?
(22) **A** I don't remember. I don't remember one way

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(1) or the other. I may have. I may not have. The
(2) problem is I knew that my search was cursory. We
(3) didn't really look on every level, every spot. I was
(4) confident there was nothing easily in public view
(5) that he left sticking on top of a desk, but it was
(6) cursory. I don't remember whether I told them when I
(7) was in there or not.
(8) **Q** As of this point in time, as of this
(9) briefing, had you made a decision to bring the
(10) Department of Justice into this?
(11) **A** Shortly thereafter. My best memory is
(12) shortly thereafter, I made a decision to ask the
(13) Department of Justice to coordinate various
(14) investigations.
(15) **Q** And when was that?
(16) **A** It was sometime that morning.
(17) **Q** What caused that decision?
(18) **A** What caused it is that I realized that the
(19) Park Police were going to conduct an investigation,
(20) which made perfect sense, if that's what they wanted
(21) to do; that the Secret Service, which was probably
(22) also present at this briefing, which is sort of

Page 88
(1) ubiquitous in the White House, may also conduct an
(2) investigation. Then I thought maybe the Department
(3) of Justice would conduct an investigation, and I saw
(4) the potentiality for multiple investigations and
(5) multiple requests for interviews and documents.
(6) And when that struck me, which it did
(7) sometime that morning, I said you know, I should ask
(8) the Department of Justice not to conduct the
(9) investigation. I'm not telling anybody what to
(10) conduct or not to conduct, but to coordinate with
(11) their investigations. So if people are interviewed
(12) by law enforcement agents, they could all be there at
(13) once. If documents are requested or anything is
(14) appropriate, all the requests could be made at once,
(15) and that's when I made the determination to call the
(16) Department of Justice, and that's why I made the
(17) determination to do it.
(18) **Q** Who did you call?
(19) **A** I believed I called -- it was either Janet
(20) Reno or Phil Heymann, and I think it was Phil
(21) Heymann. I have no great memory of that call, but if
(22) I had to guess between the two, it's probably Phil

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(1) Heymann.
(2) **Q** And what was the conversation?
(3) **A** Vince is dead. There's going to be

(4) obviously some investigations in connection with
(5) that. I don't want -- I really think it's more
(6) efficient for law enforcement, as well as the White
(7) House, not to do multiple investigations. Would you,
(8) the Justice Department, undertake a coordinating
(9) role.
(10) **Q** And whoever you spoke to was agreeable to
(11) that?
(12) **A** Yes -- well, maybe they said they would
(13) think about it, but they were not -- shortly
(14) thereafter they said yes, they think it would be
(15) something they would do.
(16) **Q** You got a call back shortly thereafter?
(17) **A** I don't know. It may have been agreeable
(18) in the conversation. I don't remember. I don't
(19) remember the conversation particularly. I just
(20) remember receiving a positive response quickly.
(21) **Q** Was there discussion about bringing the FBI
(22) into it at that point?

Page 90
(1) **A** I don't remember any such discussion.
(2) **Q** Was it your understanding that if the
(3) Department of Justice got involved, they would, as a
(4) matter of course, get the FBI involved as well?
(5) **A** Perhaps. If they did an investigation,
(6) they would get the FBI involved. For a coordinating
(7) function, they may get other people involved. I
(8) didn't know.
(9) **Q** Is there anything else you recall about the
(10) conversation with either Ms. Reno or Mr. Nussbaum at
(11) this point --
(12) **A** Mr. Heymann.
(13) **Q** I'm sorry, Mr. Heymann or Ms. Reno at this
(14) point concerning what you were requesting?
(15) **A** No.
(16) **Q** Did there come a point, also in the
(17) morning, that the President was in the White House
(18) counsel's office?
(19) **A** Yes.
(20) **Q** And what did he do there?
(21) **A** He arrived to comfort the people who worked
(22) in the White House counsel's office.

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(1) **Q** Did he have a private conversation with
(2) you?
(3) **A** I don't recall having a private
(4) conversation. He came in -- either he came in or I
(5) walked up with him from the Oval Office. Maybe we
(6) walked in together. Maybe I was there when he walked
(7) in. I don't remember that for sure.
(8) **Q** Did he take you aside into your office?
(9) **A** He came into my office, and then other
(10) people joined us in the office, and the purpose was
(11) to comfort people, including maybe to comfort me, but
(12) that's what the meeting -- that's what the gathering
(13) was about.
(14) **Q** Was there any discussion other than words
(15) of comfort?
(16) **A** We talked about Vince. One of the things I
(17) did when we were talking about Vince was to walk into
(18) Vince's office -- the Secret Service agent was
(19) standing outside -- to remove a picture of Vince, of
(20) Mrs. Mary's kindergarten class in Hope, Arkansas in
(21) the early 1950s which contains a picture of a
(22) five-year-old Vince Foster and a five-year-old Bill

Page 92
(1) Clinton, take it back into my office with the
(2) President standing there, showing the President the
(3) picture in the presence of these other people as the
(4) President talked about Vince.
(5) I remember that happening, but the
(6) conversation was just what a tragedy this was. What
(7) a wonderful person he was and what a great tragedy
(8) we've all suffered.
(9) **Q** Was there anybody else who entered -- up
(10) until this point in time, was there anyone else who
(11) entered Mr. Foster's office since the Secret Service
(12) agent had been posted outside there?

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(13) **A** I had no knowledge of anybody else in
(14) there.
(15) **Q** Had you been in there for any other reason?
(16) **A** No.
(17) **Q** During the morning or the afternoon, did
(18) you go in to get any document that had to be signed
(19) that was time sensitive?
(20) **A** I don't know. I don't remember right now.
(21) It's possible because the blind trust, something had
(22) to be signed by the end of the month or something

Page 93
(1) like that. It was virtually complete. I mean, that
(2) stuff was almost all –
(3) **Q** Was there a discussion about that blind
(4) trust being a time sensitive document on the 21st?
(5) **A** At some point there was a discussion about
(6) that, but I don't remember whether it occurred on the
(7) 21st.
(8) **Q** Now, after the Park Police briefing, did
(9) you have occasion to walk to another part of the
(10) White House and run into some Park Police who were
(11) waiting there?
(12) **A** Yes.
(13) **Q** How long after the Park Police briefing was
(14) that encounter?
(15) **A** I don't remember how long. It was sometime
(16) after. I just don't remember.
(17) **Q** Did you go down there because you had been
(18) told they were waiting there?
(19) **A** Either that or I ran into them. But I knew
(20) at some point, I became aware that they were waiting
(21) to talk to me and see me.
(22) **Q** Were you with somebody?

Page 94
(1) **A** I could have been.
(2) **Q** Were you with Maggie Williams?
(3) **A** I don't remember being with Maggie
(4) Williams.
(5) **Q** Was there any reason at that point in time
(6) that you were consulting with Maggie Williams
(7) concerning dealings with the Park Police or the
(8) documents in Vincent Foster's office?
(9) **A** No, I don't believe I was consulting with
(10) Maggie Williams at that time. On the other hand, I
(11) could have run into Maggie Williams. The west wing
(12) is a very small place, fairly intimate place so you
(13) run into people all the time. But I don't remember
(14) any discussions along the lines that you've just
(15) described.
(16) **Q** What was the conversation you had with the
(17) Park Police at this point?
(18) **A** Well, they said – because I knew they were
(19) going to say, from the briefing which was conducted
(20) by others, that they wanted to interview the people
(21) who knew Foster in the White House and certainly in
(22) the counsel's office, and they wanted to look at

Page 95
(1) Foster's office for a suicide note or extortion note,
(2) some other such document.
(3) **Q** And what did you say?
(4) **A** I said – and that's when I was recognizing
(5) the possibility of multiple investigations, and I
(6) wanted to get the Justice Department involved to
(7) coordinate. And I wanted to have that call – or
(8) maybe I already had it. I don't recall the precise
(9) chronology. And I said look – I said something to
(10) the effect that I want to do this all at once. I
(11) want to get the Justice Department involved to
(12) coordinate, if they'll agree to coordinate, so
(13) let's – we have to wait on them.
(14) In any event, I have a number of things I
(15) must do that day, so let's – you know, you'll have
(16) to wait until I consider, discuss with you the
(17) procedures to follow with respect to interviews that
(18) you're requesting and other things that you're
(19) requesting. And that's the conversation I had with
(20) them, and they sat – they then sat in the White
(21) House.
(22) **Q** What was their response to what you told

Page 96
(1) them?
(2) **A** They understood.
(3) **Q** Were they – did they seem annoyed?
(4) **A** No, they didn't seem annoyed.
(5) **Q** Do you know at what point the FBI came on
(6) to the scene?
(7) **A** Sometime after I spoke to – I guess it was
(8) Heymann.
(9) **Q** When did you learn they were arriving?
(10) **A** I don't remember. Sometime that day. I
(11) believe I learned they were arriving together with
(12) other representatives of the Justice Department.
(13) **Q** Were you surprised the FBI was coming?
(14) **A** No.
(15) **Q** After your meeting with the Park Police
(16) where they were told you would have to wait until the
(17) other law enforcement people could coordinate things,
(18) did you have any discussions with anybody, from that
(19) point on until representatives of the Department of
(20) Justice actually physically arrived, concerning the
(21) Foster documents? Do you follow me?
(22) **A** No, I follow you. Not that I recall.

Page 97
(1) **Q** Did you make any more calls to the
(2) Department of Justice?
(3) **A** Not that I recall.
(4) **Q** Did you talk to Webster Hubbell about it?
(5) **A** He may have been at that briefing, but I
(6) don't remember speaking to him about that subject.
(7) **Q** On the 21st, was it your understanding that
(8) Mr. Hubbell would be involved in any Department of
(9) Justice activities in connection with this
(10) investigation?
(11) **A** No, that wasn't my understanding. I dealt
(12) with Heymann. This wasn't in Hubbell's area.
(13) **Q** Was it your understanding on the 21st that
(14) Hubbell was going to be recused or asked not to be
(15) involved in anything to do with the investigation?
(16) **A** I don't recall that circumstance. I don't
(17) recall because this is Heymann's area. The criminal
(18) division, the FBI reported to Heymann, these kind of
(19) investigations. So Hubbell would normally have no
(20) role in this thing. That's why I don't recall any of
(21) the discussion about recusal or anything like that.
(22) **Q** Was there any point later in time, either

Page 98
(1) on the 21st or later, at any point, that you learned
(2) that Mr. Hubbell had been asked to keep himself out
(3) of anything to do with this investigation?
(4) **A** I have a vague recollection of that, but I
(5) don't know where it comes from or who told me. I
(6) have a vague recollection of it. I don't know. It
(7) may have happened.
(8) **Q** Do you have any sense when you might have
(9) learned that?
(10) **A** No, I don't have any sense of when I might
(11) have learned it.
(12) **Q** Were you involved in a press conference, or
(13) were you present at a press conference that was held
(14) by Gearan and McLarty in the afternoon of the 21st?
(15) **A** No, I was not. I was very busy that day,
(16) but I wasn't – I don't believe I was involved in
(17) that press conference.
(18) **Q** Were you present?
(19) **A** I don't think so.
(20) **Q** Were you aware it was happening?
(21) **A** I think so.
(22) **Q** Did they discuss any aspect of what they

Page 99
(1) were going to talk about with you before the press
(2) conference began?
(3) **A** I don't remember discussing that with
(4) them. What I do remember is making a speech with
(5) McLarty and the President that afternoon. I remember
(6) that morning.

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(7) **Q** That was to the staff?
(8) **A** And I remember us waiting -- the President
(9) and I waiting for McLarty to go make that speech.
(10) That I remember.
(11) **Q** To whom was that speech?
(12) **A** To the White House staff, the entire White
(13) House staff.
(14) **Q** And directing your attention back to the
(15) press conference, did you know that at the press
(16) conference there was discussion about the fact that
(17) the Department of Justice would be coordinating the
(18) investigation?
(19) **A** I don't know if there was or wasn't such a
(20) discussion.
(21) **Q** Did you communicate that, that the
(22) Department of Justice was going to be coordinating

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(1) the investigation, to anybody who was connected with
(2) the press operation in anticipation of the press
(3) conference?
(4) **A** Right now I have no memory of doing that,
(5) but it's quite likely that I would do something like
(6) that. But if you ask me do I remember it now, no.
(7) If you ask me is it likely I would have done it, the
(8) answer is yes.
(9) **Q** What's the next thing you recall on that
(10) day that you were involved in in connection with
(11) Mr. Foster's office and the handling of whatever was
(12) within it?
(13) **A** With respect to that subject, the next
(14) thing I recall is meeting on the afternoon of July 21
(15) with representatives of the law enforcement agencies.
(16) **Q** Now, where did you meet those people
(17) initially?
(18) **A** I believe we met in my office.
(19) **Q** Did they come up to the office directly, or
(20) did you go and fetch them from somewhere?
(21) **A** Someone would have fetched them.
(22) **Q** And who was present -- let's be clear.

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(1) Who was present in the suite during this --
(2) when this meeting began?
(3) **A** I don't remember with great precision.
(4) What I remember is this: I was present in this
(5) meeting. I'm fairly certain that Sloan was present
(6) and Neuwirth was present. I remember Dave Margolis
(7) being there. I remember -- I believe Roger Adams was
(8) there. I'm sure -- I know, I remember
(9) representatives of the Park Police being there. I
(10) don't remember their names at this point. And it's
(11) quite possible that an FBI agent was there and a
(12) Secret Service agent was there. Secret Service
(13) agents were usually the ones who escorted other law
(14) enforcement people around the White House, and they
(15) were present in most of these meetings or sessions.
(16) That's what I remember.
(17) **Q** Did you have a meeting initially inside
(18) your office?
(19) **A** With who?
(20) **Q** With any of these people.
(21) MR. PEDOWITZ: You mean separate from the
(22) meeting he's described?

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(1) MR. CHERTOFF: Let me withdraw the
(2) question.
(3) BY MR. CHERTOFF:
(4) **Q** Putting aside who was in the suite, did
(5) some of these individuals come into your office for a
(6) meeting?
(7) **A** No, I'm talking -- I believe virtually all
(8) of these individuals, if not all of them came into my
(9) office.
(10) **Q** When did you first learn that Mr. Margolis
(11) and Mr. Adams would be coming over from the
(12) Department of Justice?
(13) **A** I don't -- sometime that day.
(14) **Q** Had you ever met Mr. Margolis before?
(15) **A** I don't remember. I just don't remember
(16) now. I know I knew of him. He has a very good
(17) reputation. He's a senior person in the Justice
(18) Department, but I have no recollection of meeting him
(19) before. I may have.
(20) **Q** What about Mr. Adams, did you know anything
(21) about him before you met him?
(22) **A** No.

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(1) **Q** Was it your understanding that -- was
(2) Mr. Margolis doing most of the talking on behalf of
(3) the Department of Justice?
(4) **A** Yes.
(5) **Q** Now, initially in this meeting, the purpose
(6) of the meeting was to discuss the manner in which the
(7) review of the documents in Mr. Foster's office would
(8) take place; correct?
(9) **A** No.
(10) **Q** What was the initial purpose of the
(11) meeting?
(12) **A** To discuss the investigation that would
(13) occur that would be necessary to try to avoid
(14) multiple requests for interviews -- actually,
(15) interviews was the first thing. They wanted to talk
(16) to our people, and I had a lot of distressed people
(17) on my hands, and I was sort of trying to balance --
(18) try and calm people down, but I understood the need
(19) of the law enforcement to talk to these people. So
(20) we discussed interviews.
(21) **Q** Who did most of the talking for the
(22) Department of Justice?

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(1) **A** Margolis. He did most of the discussion
(2) for virtually everybody. The Park Police did chat
(3) and talk. Not everybody sat silent but Margolis was
(4) the primary spokesman for the law enforcement people
(5) there and I was the primary spokesman for the White
(6) House.
(7) **Q** What was the discussion concerning the
(8) interviews?
(9) **A** We want to talk to your people as soon as
(10) we can to see what they can tell us about his last
(11) hours, give us a clue as to why he killed himself. I
(12) said I perfectly well understand that. I have people
(13) enormously distraught at this point. I suggest we do
(14) this tomorrow morning. It's already late in the
(15) afternoon. They said fine, we'll do it tomorrow
(16) morning.
(17) **Q** Did you indicate in this conversation that
(18) in the intervening period of time until the next
(19) morning, members of the White House counsel's staff
(20) would be talking to the other witnesses or potential
(21) witnesses?
(22) **A** I remember -- I don't remember whether I

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(1) said that or not.
(2) **Q** Do you remember whether they had any
(3) reaction to that?
(4) **A** I certainly saw nothing negative.
(5) **Q** Did you say one of the reasons you wanted
(6) to delay was to give them an opportunity to consult
(7) with the lawyers?
(8) **A** I don't recall saying that. I don't recall
(9) saying that.
(10) **Q** It's possible?
(11) **A** No, I don't even think that's possible. I
(12) mean, I intended to have lawyers prepare people to be
(13) interviewed. It's traditional in my world, and
(14) appropriate.
(15) **Q** Which lawyers would prepare the people to
(16) be interviewed?
(17) **A** The lawyers in my office, preparing my
(18) staff members to be interviewed.
(19) **Q** Weren't the lawyers in your office
(20) themselves going to be interviewed?
(21) **A** Yes.
(22) **Q** Is it customary in your world to have

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lawyers who are themselves going to be witnesses preparing other potential witnesses for interviews?
A In this kind of situation, yes, because this was not -- this was an investigation of a suicide. They just wanted any indication from the people in my office about Vince's final hours and things like that. I didn't look upon this as a major criminal investigation in which people were witnesses themselves. I think under these circumstances, it was customary for people in the office who may themselves be interviewed to prepare other people. If Steve Neuwirth is going to be interviewed, I don't think there's anything improper or wrong about him preparing or helping his secretary with her interview.
Q Did you have lawyers prepare the other lawyers? Was it your intention to have the lawyers prepare the other lawyers?
A I don't remember. I don't think the lawyers really required -- I don't think Sloan -- I wasn't prepared. I didn't have somebody prepare Sloan or somebody prepare Neuwirth. I was really

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thinking of having the secretaries and other people like that, the nonlegal people prepared -- not prepared, just calmed down. Just get them -- calm them down. I looked at the lawyers to calm the staff down. That was really the preparation.
Q But what you said initially in your world, it's customary to have lawyers prepare people for interviews, was it your understanding the interviews here were going to be the type of interviews that you typically have to prepare witnesses for in your prior experience?
A In my prior experience, fact-gathering is fostered by having lawyers sit down and calm people down and prepare them for interviews.
Q You don't have prior experiences dealing with investigations of suicides prior to July 20th; right?
A No. I've been involved in situations involving other suicides. Not a lot. I had a client who committed suicide once, a corporate client and there was an investigation of that suicide.
Q Is it fair to say that when you talk about

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your prior experience and you say it fosters fact-gathering to have the lawyers preparing the witnesses, that you're talking mostly in the context of fact-gathering for a criminal investigation or for some kind of civil deposition or proceeding where there are potential adversaries?
A I'm talking in general.
Q In cases where there's interviews by law enforcement, it's been your habit and practice to have witnesses that you represent well prepared; right?
A Yes.
Q And is that in order to foster the fact-gathering on the part of the law enforcement people or in order to protect the witness and the witness's interest?
A Both. I think -- you may disagree, but I believe that a lawyer preparing a witness will both protect a witness and the witness's interest and foster the gathering of accurate facts.
Q But you'll also agree with me at least in the area of criminal representation, there are times

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when it's not in the interest of the witness to foster the gathering of facts?
A That's true at times, in criminal investigations. I did not consider this a criminal investigation. I didn't consider this an adversary proceeding.
Q As the conversation then continued after the interviews, what was the next topic that came up?
A The next topic I remember was a desire to look at Vince's office -- to search Vince's office to see if there was a suicide note or extortion note or something like that.
Q And is it fair to say what they indicated -- the law enforcement people indicated is they wanted to look at the office and see if they could determine a reason that he committed suicide?
A No.
Q They said what, then?
A We want to look for a suicide note or extortion note or some other such document.
Q They used the term "some other such document"?

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A Something like that. The discussion was a suicide note or extortion note. It was focusing on a suicide note. Extortion note was a possibility certainly but it was really -- or some other such document. I mean, I don't want to say they just limited it to that.
Q When you say "some other such document," you mean a document that might reflect what the motivation to commit suicide was; right?
A To reflect what he wrote down as to why he was committing suicide.
Q Did they restrict it to things in his own handwriting?
A No, I don't know if they restricted themselves but that was the subject of our discussion.
Q You would agree with me, then, that you certainly understood that any documents in his own handwriting would be of particular interest to the investigators?
A If they reflected his state of mind or they reflected an intention to take his own life.

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Q But by definition, then, if there was a document in there in his own handwriting, that would have to be looked at relatively closely to see if that were relevant; right?
A No, we're looking for a suicide note. We're looking for a suicide note. We're not looking for every document in his own handwriting. We're looking for a note -- we were looking for a document in his handwriting that says to my wife or to my kids or to the President or to Bernie. You know, I'm taking my -- I'm taking my life because I can't live anymore for whatever -- that's what we're looking for.
Q Is that what they restricted themselves to, Mr. Nussbaum?
A They were looking for a suicide note or an extortion note, or somebody leaving him a note threatening him in some fashion. That's the kind of -- yes, that's what I understood the search was for.
Q But they didn't say they wanted to limit themselves to a suicide note; right?

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A No, they didn't say solely a suicide note; a suicide note or extortion note or similar such document.
Q A similar such document would be a document that would reflect state of mind and indicate why he might have taken his life; correct?
A Yes.
Q And certainly a document in his own handwriting would be something that you would consider to be likely to be more relevant than, let's say, a copy of a report published by the general printing office?
A Yes.
Q And it would follow from that that you would want to look more closely at things in his own handwriting; correct?
A If it appeared to be a suicide note or extortion note or in his own handwriting -- I

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(19) don't think he's writing himself an extortion note.
(20) So I think if you're talking about suicide notes,
(21) yes, if it appeared to be a suicide note. There are
(22) a lot of documents in people's own handwriting in

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(1) their own offices.
(2) **Q** My question was would you agree with me
(3) that if documents were discovered in his office in
(4) his own handwriting, those would bear a particularly
(5) close look to see if they might be relevant to his
(6) state of mind in terms of taking his life; correct?
(7) **A** No. Only if they were -- a document in his
(8) own handwriting which concerned -- which didn't
(9) concern matters -- which didn't come close to
(10) constituting a suicide note would not be something
(11) that bears close looking at. If you have a document
(12) that said -- you saw a handwritten report by him
(13) saying Beth Nolan and I have had discussions on
(14) various ethics requirements with the White House
(15) officials, it doesn't bear close scrutiny. It's not
(16) a suicide note if he's writing it for Beth Nolan, a
(17) draft or report.
(18) On the other hand, something that was
(19) eventually found on July 26th, yes, that clearly
(20) bears close scrutiny with respect to this issue.
(21) **Q** But you would have to read things in his
(22) own handwriting in order to know whether they would

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(1) reflect -- at least read a significant portion in
(2) order to know whether they would reflect something in
(3) his state of mind; right?
(4) **A** You would have to look at them. You'd have
(5) to glance at them to determine whether they fall into
(6) this category of something akin to a suicide note.
(7) You wouldn't have to read them carefully or every
(8) word, or anything like that.
(9) **Q** In contrast, you would agree with me, for
(10) example, a typed report that was clearly labeled as a
(11) report, general printing office report or something
(12) of that sort, you could look at immediately and
(13) see --
(14) **A** Some you would look at immediately but some
(15) documents you would have to look at -- you could type
(16) a suicide note.
(17) **Q** Did Mr. Margolis indicate to you in this
(18) meeting that, in his view, that it was not really
(19) settled at that point that there was a suicide?
(20) **A** I don't recall -- I don't recall him saying
(21) that. He may have, but I don't recall -- I don't
(22) deny he might have said that. I don't recall.

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(1) Obviously there was going to be an investigation.
(2) The indication we received in the briefing that
(3) morning was that it was virtually certain it was a
(4) suicide, but no one said 1000 percent. And I
(5) recognized that an investigation would be done.
(6) MR. PEDOWITZ: Could we take a break for a
(7) few minutes?
(8) MR. CHERTOFF: Can I ask one more
(9) question?
(10) MR. PEDOWITZ: Yes.
(11) BY MR. CHERTOFF:
(12) **Q** Did Mr. Margolis indicate in this
(13) conversation that, in the absence of finding a note
(14) or something that would indicate that Mr. Foster had
(15) taken his own life, the possibility of foul play
(16) could not be excluded?
(17) **A** I don't recall that.
(18) **Q** One way or the other?
(19) **A** I don't recall that one way or the other.
(20) **Q** Did he mention at that point that there was
(21) a question about the gun which Mr. Foster had used to
(22) kill himself?

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(1) **A** I have no such recollection.
(2) MR. CHERTOFF: Good time for a break.
(3) (Recess.)
(4) BY MR. CHERTOFF:
(5) **Q** We were in the meeting on the 21st at 5:00
(6) on the documents. Now, after the investigators told
(7) you what they wanted and what they were looking for,
(8) what discussion was there concerning when they could
(9) get access to the documents?
(10) **A** The next day.
(11) **Q** You said the next day?
(12) **A** I said let's do it -- it was sort of
(13) connected with the interviews. Let's just do it the
(14) next day. This has been a difficult day.
(15) **Q** Did any of the investigative people
(16) indicate a desire to get in that day?
(17) **A** They may have, but it was not strongly
(18) expressed, but I don't remember. It was agreed that
(19) we would do it the next day.
(20) **Q** You say was it agreed or was it a decision
(21) that somebody made that it would be the next day?
(22) **A** A consensus was reached that we would do it

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(1) the next day.
(2) **Q** But it was a consensus?
(3) **A** I think it was a consensus, yes. Obviously
(4) I said -- the idea for the next day came from me.
(5) I'm not saying I was anxious to really walk in and
(6) they weren't. But it was a consensus, nonetheless.
(7) **Q** And in particular, was it set for the next
(8) morning?
(9) **A** It was set for sometime the next morning,
(10) yes. I think the term "morning" was used, the next
(11) morning.
(12) **Q** Was there a discussion about the manner in
(13) which the documents would be examined?
(14) **A** Yes.
(15) **Q** What was the discussion?
(16) **A** I said, and I was coming up one thing after
(17) the other. I said look, this is a lawyer's office.
(18) Foster's is a lawyer's office. There's all kinds of
(19) sensitive and privileged materials in a lawyer's
(20) office and especially in Foster's office. We have to
(21) work out some sort -- and I know you want to seek a
(22) suicide note, an extortion note or some other such

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(1) document, we have to work out some sort of procedure
(2) whereby I could make sure that we're not violating
(3) concepts of privilege or confidentiality or privacy,
(4) and yet at the same time enable you to conduct --
(5) enable you to satisfy yourselves as to whether or not
(6) there is a suicide note in the office. And we'll
(7) have to work that out in some manner, and I'm
(8) thinking about that issue. And they appeared to
(9) understand.
(10) The way I remember, I received a somewhat
(11) sympathetic response. They said yes, they understand
(12) it's a lawyer's office. They understand the concerns
(13) for privilege and confidentiality, maybe national
(14) security material in that office, I said Vince and I
(15) worked on stuff which had national security
(16) implications, power stuff, things like that. So I
(17) received a sympathetic response.
(18) The only other thing I remember is there
(19) may have been -- I have a vague memory, not a strong
(20) memory -- of a discussion of maybe we can look at the
(21) first page of the document or the cover of a
(22) document, and I said yeah, maybe that's a possibility

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(1) but I have to think it through. I'm concerned about
(2) waiver and things like that, so it was sort of
(3) left -- that's what I remember about that discussion.
(4) **Q** Do you have a good memory of that
(5) discussion or a hazy memory?
(6) **A** I have the memory I just expressed.
(7) **Q** Was there an agreement that evening with
(8) the Department of Justice that the lawyers from the
(9) Department of Justice would look at the documents
(10) first and determine, from at least an initial
(11) examination of the documents, whether they were
(12) privileged or not?

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(13) **A** No.
(14) **Q** There was no such agreement?
(15) **A** I don't believe there was any such
(16) agreement, and there are other people there at this
(17) meeting who can testify. You have Sloan. You have
(18) Neuwirth. You have others.
(19) **Q** Have you talked to them about it?
(20) **A** No.
(21) **Q** How do you know how they're going to
(22) testify?

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(1) **A** You can ask their recollections.
(2) **Q** And presumably, we can ask the
(3) recollections of -- that's argumentative. I won't
(4) even finish it.
(5) I'm going to read you a statement. I'll
(6) ask you if you agree it or disagree with it.
(7) MR. BEN-VENISTE: What are you reading
(8) from?
(9) MR. CHERTOFF: F149.
(10) THE WITNESS: What is it?
(11) BY MR. CHERTOFF:
(12) **Q** It's a memorandum prepared by a participant
(13) at the meeting.
(14) MR. PEDOWITZ: Can you tell us who it is?
(15) MR. CHERTOFF: I can. The question is
(16) whether I will, which I'm thinking about.
(17) MR. PEDOWITZ: If you're going to ask the
(18) witness about whether or not he agrees with a
(19) statement that is made, you're telling us that it's a
(20) participant at the meeting, we'd like to know who it
(21) is.
(22) MR. CHERTOFF: Let's say one of the Justice

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(1) Department lawyers.
(2) MR. PEDOWITZ: Can you tell us which
(3) Justice Department lawyer?
(4) BY MR. CHERTOFF:
(5) **Q** I can't tell you. I would rather not
(6) because I think it divulges evidence that's someone
(7) else's evidence at this point. I could reframe the
(8) question by simply making the statement myself and
(9) asking you whether you agree so there's not a point
(10) in wasting a lot of time on it. I prefer to leave it
(11) as I have.
(12) "At the Wednesday meeting there was
(13) agreement that the Justice Department attorneys would
(14) look at each document or at least each file to
(15) determine if it contained privileged material, in
(16) which case it would not be examined by the Park
(17) Police or the FBI."
(18) Do you agree with that? Did that happen?
(19) **A** I don't agree that there was any
(20) agreement. I do believe there could have been
(21) discussion. There was likely discussion about that
(22) being a possible procedure.

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(1) **Q** Did Mr. Neuwirth say at some point, in
(2) substance in trying to summarize the conversation,
(3) that you would look at the documents and determine
(4) whether they were privileged and if so, you would
(5) turn them over to the authorities?
(6) MR. PEDOWITZ: Mike, could you rephrase
(7) that question and just indicate to us when Neuwirth
(8) is supposed to have said that?
(9) BY MR. CHERTOFF:
(10) **Q** In this meeting that you had with law
(11) enforcement authorities, did Mr. Neuwirth say in
(12) substance in summarizing the discussion that his
(13) understanding of the discussion was that you would
(14) look -- you, Mr. Nussbaum, would look at the
(15) privileged documents and make a determination about
(16) whether there was a privilege and if there was not a
(17) privilege, you would then show it to the law
(18) enforcement authorities? Did he make that statement?
(19) **A** I don't remember. I just don't remember.
(20) **Q** And did you then correct him in that
(21) statement and say to him no, it would be the Justice
(22) Department lawyers who would make that determination?

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(1) **A** I don't believe that happened. That I
(2) don't remember happening.
(3) **Q** Meaning you believe it did not happen?
(4) **A** I believe it did not happen because my
(5) memory is we reached no conclusion. We discussed
(6) various options, and among the options discussed are
(7) the kinds of things that are reflected in that memo
(8) that you read, but I do not believe, and my memory is
(9) such, that no agreement was reached at the conclusion
(10) of that meeting.
(11) MR. BEN-VENISTE: Mike, I think he
(12) unintentionally misinterpreted the last part of your
(13) question about who may have corrected, according to
(14) the writer of this memorandum.
(15) MR. CHERTOFF: Let me rephrase it
(16) slightly.
(17) BY MR. CHERTOFF:
(18) **Q** Did someone then correct Mr. Neuwirth and
(19) did you then agree that the Justice Department people
(20) would be the ones to determine privilege?
(21) **A** I've already answered that. I have no
(22) memory of that.

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(1) **Q** So my mild modification doesn't change your
(2) answer?
(3) **A** It doesn't change my answer.
(4) **Q** So your testimony is it was not agreed with
(5) the Department of Justice people as of the end of
(6) that meeting on June 21st, late in the day, that they
(7) would be the ones to make the initial determination
(8) of privilege?
(9) **A** That's correct.
(10) **Q** Now, did you have a doubt about the ability
(11) of the Department of Justice people to be cleared to
(12) a sufficient degree to see national security
(13) documents?
(14) **A** Not ultimately, no. Ultimately, I think I
(15) would have no doubt that there are people in the
(16) Department of Justice who could be cleared to see
(17) national security documents, but it wasn't just a
(18) clearance issue.
(19) **Q** What were the other issues?
(20) **A** Executive privilege issues, attorney-client
(21) issues. There were other issues other than
(22) clearance.

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(1) **Q** Doesn't the Department of Justice itself
(2) often review documents in the office of the President
(3) or the executive -- or the White House generically to
(4) determine whether the President ought to take a
(5) position that it's subject to executive privilege?
(6) **A** At times.
(7) **Q** In fact, there's an office called the
(8) office of legal counsel that often performs that?
(9) **A** At times, yes.
(10) **Q** Is it your understanding that there is an
(11) executive privilege to withhold documents from
(12) another executive branch agency?
(13) **A** Yes.
(14) **Q** You believe, within the executive branch,
(15) the White House can exert executive privilege to
(16) decline to turn something over to another executive
(17) branch agency?
(18) **A** Ask Mr. Ben-Veniste about that. Yes, the
(19) answer is yes. I believe such a privilege exists and
(20) I believe the Supreme Court also believes such a
(21) privilege exists.
(22) **Q** Do you believe there's an executive

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(1) privilege that applies -- did you believe there was
(2) an executive privilege that applied for the President
(3) to prevent the Department of Justice -- let me
(4) withdraw the question and make sure we're clear.
(5) I'm not talking about the President as an
(6) individual, whether he has any privileges. Whether

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(7) the executive privilege, if the President
(8) institutionally can be exerted against the Department
(9) of Justice? Was that your understanding?
(10) **A** Yes, that's my understanding, that there
(11) can be circumstances in which such a privilege exists
(12) against the Department of Justice by the President.
(13) **Q** What circumstances are those, as you
(14) understood it?
(15) **A** With respect to presidential communications
(16) of a nature that he doesn't want the Department of
(17) Justice -- that he believes should not be disclosed
(18) to the Department of Justice. I believe the
(19) President has a right vis-a-vis the Department of
(20) Justice to exercise that kind of privilege.
(21) **Q** Even though the Department of Justice is
(22) part of the executive branch?

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(1) **A** Even though the Justice Department is part
(2) of the executive branch, that's correct.
(3) **Q** And we're talking about something distinct
(4) from the President simply ordering the Attorney
(5) General not to ask for something?
(6) **A** Yes, we are talking about something
(7) distinct from that.
(8) **Q** What other privileges were you concerned
(9) about in the context of this meeting on the 21st of
(10) July?
(11) **A** The attorney-client privilege.
(12) **Q** And this would be --
(13) **A** Work product privilege, attorney work
(14) product privilege.
(15) **Q** When you say the attorney-client privilege,
(16) who was the client whose interest you were concerned
(17) about at this point?
(18) **A** The President in his official capacity.
(19) **Q** And the President in his official capacity
(20) you view as having an attorney-client privilege
(21) distinct from the executive privilege?
(22) **A** There is such a possibility that he does,

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(1) yes.
(2) **Q** Was there an attorney-client privilege
(3) pertaining to the President or to the First Lady in
(4) their personal capacities that you were concerned
(5) about?
(6) **A** There is such a privilege, but that was not
(7) a primary concern. I believe such a privilege
(8) exists.
(9) **Q** But that wasn't present in your mind on the
(10) 21st?
(11) MR. BEN-VENISTE: I think he said it wasn't
(12) a primary concern.
(13) THE WITNESS: That's what I said, it --
(14) MR. CHERTOFF: I'm asking a different
(15) question.
(16) THE WITNESS: It wasn't a primary concern.
(17) I don't remember whether it was present in my mind.
(18) I was thinking more of executive privilege, more of
(19) attorney-client privilege, the President in his
(20) official capacity, but I recognized there were other
(21) potential privileges, too, with respect to the
(22) documents that might be in the office.

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(1) BY MR. CHERTOFF:
(2) **Q** At that point in time on the 21st of July,
(3) you understood there were personal financial
(4) documents of the Clintons in Mr. Foster's office?
(5) **A** I understood there was likely to be
(6) personal documents of the Clintons' in Mr. Foster's
(7) office because Mr. Foster had been working on these
(8) personal/official functions. But I wasn't -- that's
(9) correct, I understood that.
(10) **Q** Was there a discussion during this meeting
(11) about putting a lock on Mr. Foster's office?
(12) **A** When did we put a lock on it? We put a
(13) lock on it that day. The Secret Service was the
(14) one -- I don't remember any discussion about putting
(15) a lock on Mr. Foster's office. I do remember the
(16) Secret Service, at the end of the day, saying to me
(17) look, we're going to convey -- when I say "saying to
(18) me," it could be saying to me through one of my staff
(19) members -- saying instead of having an agent stand
(20) out here, we're going to put a lock on the office.
(21) You'll have a key, you Nussbaum, will have
(22) a key. We'll have a key. Is that okay? I said yes,

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(1) it's okay. I don't want an agent standing there 24
(2) hours a day if they felt it wasn't necessary.
(3) **Q** Who had the keys to the lock that was put
(4) on?
(5) **A** The Secret Service retained the key and
(6) they gave me the key. I retained the key.
(7) **Q** Was there another key that Mr. Foster's
(8) secretary had?
(9) **A** Maybe. I don't remember. I only remember
(10) two keys, but it is possible that she had one. I
(11) just don't remember that. I don't think so. If you
(12) ask me what my best belief is, I believe that she did
(13) not. If you're asking me is it possible that she had
(14) one, yes, it's possible.
(15) **Q** Did you have a conversation with
(16) Mr. Heymann either during the meeting that took place
(17) on the 21st with Mr. Margolis and Mr. Adams or later
(18) that day?
(19) **A** The only conversation I remember with
(20) Mr. Heymann -- I spoke to Mr. Heymann a lot, but the
(21) only conversation that I remember -- I'm not saying
(22) there weren't others but I don't remember them -- is

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(1) the conversation, would you coordinate the
(2) investigations, and I remember that. I'm not even
(3) 100 percent sure it was with him, although I'm 90
(4) percent sure it was with him, rather than Janet Reno.
(5) **Q** At a point in this meeting we're talking
(6) about, with Mr. Margolis and Mr. Adams and the other
(7) law enforcement people, did the Park Police conduct
(8) an interview of you concerning the previous evening?
(9) **A** I know the Park Police interviewed me.
(10) They may have asked me questions there and if they
(11) asked me questions, I would have responded, I
(12) believe.
(13) **Q** Was that after the point in time in which
(14) the discussions about the mechanics of the
(15) investigation had been completed?
(16) **A** I don't remember. I don't remember.
(17) **Q** And your recollection is that at the time
(18) you finished discussing the mechanics of the document
(19) review with Mr. Margolis and Mr. Adams, your
(20) recollection is there was no settled agreement as to
(21) how it was to proceed?
(22) **A** There was no settled agreement as to how it

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(1) was to proceed. There were various options
(2) discussed, and it was sort of left hanging, that we
(3) would think about what's the best way of doing it.
(4) It was in flux. That's what I remember, and I was
(5) trying to come to grips with the various issues.
(6) **Q** And who was it left -- how was it left in
(7) terms of who would make that final decision?
(8) **A** It was sort of left with both of us. This
(9) was not adversary. I had a problem. The problem was
(10) I had an institutional responsibility to protect
(11) certain privileges, certain institutional concerns.
(12) They had a goal of searching an office to see if
(13) there was a suicide note. Both of us were working
(14) together. We weren't adversaries. How do we solve
(15) this problem that you have, I have, we both have and
(16) we would talk about it. We could do this, we could
(17) do that. That has this problem, that has that
(18) problem.
(19) We sort of left it at the end of the
(20) meeting, yeah, we'll think about it. We're going to
(21) do it tomorrow anyway. We'll think about it. We'll
(22) work together to try to solve it. That was the

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spirit of that discussion, and that's how it was left.
Q And it was not left that anyone would make a decision?
A You know, look, ultimately I'm the White House counsel but it was not left in a way -- at least I don't remember -- listen, I will decide, and I will let you know. It's we'll discuss it, we'll discuss it. That's my style, I think, and I think I followed that in this situation.
Q Now, apart from discussing the interviews to take place the next day and the review of Mr. Foster's office to take place the next day, was there any other discussion in this meeting about the mechanics of coordinating these investigations?
A There may have been, but I don't remember.
Q In the context of this meeting, did the Park Police ask you about what had happened on the 20th, July 20th, in connection with Mr. Foster's behavior and what occurred back at the White House after you learned that he had been found?
A You may be looking at a report or have

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notes or something. I don't remember. They may have. It's sort of a likely thing. I mean, I was in -- I mean, I was distraught that day, too, and full of grief and tired, but I was functioning, and I could answer questions.
If they wanted to ask me some such question, I would answer it to them. I wasn't saying don't talk to me today, talk to me tomorrow, I will be better tomorrow. Since they were with me, if they were asking me questions, I would undoubtedly have responded.
Q Did they interview you the next day?
A They interviewed me at some point.
Q You don't know if it was the 21st or the 22nd?
A I don't remember. Obviously I was somebody there they wanted to talk to.
Q Did you tell them on the night of the 20th, you and Ms. Thomasson and Ms. Williams had conducted a brief search of Mr. Foster's office?
A I've been thinking about that. I don't remember. I have a -- you would know. I have some

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sort of vague recollection that I may have mentioned to them or probably did mention to them that I had been in the office briefly the night before to see if there was a suicide note but I'm not positive. I just don't know.
Q Did you tell them when you came into the office that Ms. Thomasson and Ms. Williams were there already?
A I don't remember what I told them.
Q Is it fair to say that when you came in to the White House counsel's suite on the 20th, that night, and found Ms. Thomasson and Ms. Williams there, you didn't know how long they had been there?
A I know what they said.
Q My first question is as you walked in, you didn't know how long they had been there?
A That's correct.
Q You hadn't seen them go in?
A I hadn't seen them go in.
Q And what you knew is that they had told you, what?
A That we had just arrived. We just got

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here, something like that.
Q Did they volunteer that to you?
A Yes. I remember saying -- because it was in response to my question, what are you doing here? We just arrived. We just got here. We're looking for a note. That's what I remember of the conversation.
Q Did you tell that to the Park Police on the 21st?
MR. PEDOWITZ: He doesn't remember. He's already testified he doesn't remember whether he was questioned by them that day, and he doesn't remember what, if anything, he said to them.
BY MR. CHERTOFF:
Q Let me withdraw the day and say did you tell the Park Police over the next couple of days this interchange with Ms. Williams and Ms. Thomasson?
A The interchange?
Q Concerning the fact --
A They didn't -- I had just arrived. The answer is I don't remember. If they did the kind of questioning that you were doing now, did they say

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okay, what did you do, then I would have told them. If it came up were you in the office, you know, prior to -- were you in the office after Vince's death on July 20, I would have said yes, I was in there looking for a note.
It depends. If they asked the questions you ask, obviously the way you're asking, I would have responded, and they may have. See, I'm not sure. They may have done it step by step. On the other hand, if they said were you in there at all or I volunteered -- I made a cursory look, I probably didn't give the kind of chronology.
MR. PEDOWITZ: Can we just have a very short break?
MR. CHERTOFF: Sure.
(Witness conferred with counsel.)
BY MR. CHERTOFF:
Q Is there an answer you want to supplement?
A No.
Q Is there anything else you remember about your being interviewed by the Park Police concerning the events of the night of July 20th?

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A No.
Q Was there a point -- let me withdraw the question.
When the meeting broke up, the Park Police and the FBI and the Department of Justice people left the White House as far as you knew?
A Yes.
Q Did any of them stay behind?
A I don't believe so.
Q Did you have any further contact with anybody from the Department of Justice or the FBI that day after that?
A I don't believe so.
Q Did someone come in with a bag of trash that had been in Mr. Neel's office?
A Yes.
Q Who was that?
A Cliff Sloan.
Q Did he tell you why he was bringing it back in?
A No. I think -- I don't remember how that happened. My best memory is that I asked that --

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somebody reminded me or I remembered -- maybe nobody reminded me, I just remembered that we had left this bag of trash and I asked Cliff to go down to Roy Neel's office and bring the trash back into Foster's office and he did so.
Q Do you know where he put it?
A All I know is he put it in Foster's office.
Q Now, I want to direct your attention to the period of time after the department -- let me withdraw the question.
During the meeting with the Department of Justice people and the Park Police, Mr. Margolis and Mr. Adams, did you make any telephone calls?
A Perhaps.
Q Did you receive any calls?
A I don't remember.
Q Did you have any conversations with anybody [illegible] telephone [illegible] subject matter of the

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(19) meeting?
(20) **A** I don't recall. I just don't remember. It
(21) could be. I don't remember.
(22) **Q** From the time that -- and I want to direct

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(1) your attention to the period of time from the
(2) beginning of the meeting with Mr. Margolis and
(3) Mr. Adams, including any interruptions there may have
(4) been, through to the time that you went to sleep that
(5) night. During that period of time, did you have a
(6) telephone conversation with Susan Thomases?
(7) **A** I don't remember speaking with Susan
(8) Thomases on the 21st. Maybe I did. I just don't
(9) remember. I remember speaking with Susan Thomases on
(10) the 22nd.
(11) **Q** Was that conversation with her on the 22nd
(12) in person or by telephone?
(13) **A** By telephone.
(14) **Q** When that conversation on the 22nd took
(15) place, did you know where Ms. Thomases was?
(16) **A** No.
(17) **Q** Did you know that she was in Washington?
(18) **A** I don't remember. I really should say I
(19) don't remember. She may in a conversation say I'm
(20) calling you from Washington. I just don't remember.
(21) **Q** Did she call you or did you call her?
(22) **A** My memory is she called me, but that

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(1) doesn't mean that I didn't get a message from her and
(2) I called her back. My memory is she called me.
(3) **Q** What was the conversation on the 22nd with
(4) Susan Thomases?
(5) **A** The conversation on the 22nd was that she
(6) asked me what was going on with respect to -- what
(7) was going on with respect to the investigation or the
(8) examination -- the examination of Mr. Foster's
(9) office. She had heard there were discussions in the
(10) White House with respect to this issue, which there
(11) were on the 22nd, which you'll get to, I presume.
(12) Was everything okay, what was going on, and I said I
(13) am having discussions with people.
(14) See, I remember this conversation before
(15) the search, but it could have been after the search.
(16) That's one of my problems.
(17) But I remember saying Susan, I've been
(18) talking to people in the White House, how the search
(19) would be conducted. I will determine what the right
(20) procedure is or I have determined what the right
(21) procedure is and I followed it, depending on if that
(22) conversation took place before or after the search.

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(1) We're going to follow the procedure that I think is
(2) right, and that's the way -- that's what I'm going to
(3) do, and that's the kind -- I think -- what I'm
(4) determining is the proper way to act with respect to
(5) this matter.
(6) **Q** How long was the conversation?
(7) **A** A few minutes, not very long.
(8) **Q** Did she tell you how she had heard there
(9) were discussions concerning the manner in which the
(10) review would occur?
(11) **A** The search would occur.
(12) **Q** The search would occur.
(13) **A** No -- she didn't say how. She just said
(14) she had heard.
(15) **Q** And what else did she say in the
(16) conversation?
(17) **A** That's all I remember, that she heard there
(18) were discussions or that there were -- she might have
(19) even said disagreements, that she'd heard that and
(20) what was going on.
(21) **Q** Did you ask her where she heard that?
(22) **A** No, I didn't ask her where she heard that.

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(1) (Pause.)
(2) **Q** Did you feel comfortable talking about this
(3) issue with her?
(4) **A** Yes.
(5) **Q** Did you feel it was her business?
(6) **A** Yes. She's a friend. She's a friend of
(7) mine. She's a friend of a lot of people in the White
(8) House, including the President and the First Lady.
(9) She's an advisor. This was a decision that had to be
(10) made as to how the search was going to be conducted,
(11) and I felt comfortable discussing it with her.
(12) **Q** Do you know whether anybody had asked her
(13) to give advice regarding how the search would be
(14) conducted?
(15) **A** I don't know anybody who gave her advice.
(16) **Q** Did you hear whether anybody had asked her
(17) to give that kind of advice?
(18) **A** No.
(19) **Q** Did she mention the First Lady in the
(20) telephone call?
(21) **A** I don't recall her mentioning the First
(22) Lady in the telephone call.

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(1) **Q** Did she say that the First Lady was
(2) concerned about giving the law enforcement people
(3) unfettered access to the documents?
(4) **A** No.
(5) **Q** Did she say that anybody was concerned
(6) about giving law enforcement people unfettered access
(7) to the documents?
(8) **A** She said people are concerned about whether
(9) I was using the correct procedure or whether the
(10) procedure was -- people were concerned or
(11) disagreeing, something like that, whether a correct
(12) procedure was being followed, whether I was using the
(13) correct procedure, whether it was proper to give
(14) people access to the office at all, something like
(15) that. But I said Susan -- she wasn't in the White
(16) House -- at least I didn't know she was in the White
(17) House -- I said I'm having discussions with various
(18) people. As far as the White House is concerned, I
(19) will make a decision as to how this is going to be
(20) conducted. It's going to be done the right way. It
(21) will balance out the various interests. It's going
(22) to be done the way I think it should be done.

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(1) **Q** Did she say people were concerned about
(2) giving unfettered access to the law enforcement
(3) people to the documents?
(4) MR. PEDOWITZ: Those words?
(5) MR. CHERTOFF: In substance, that they had
(6) that particular concern.
(7) THE WITNESS: No, no. What I remember --
(8) it was not a concern about giving people access to
(9) documents. There was a sense of -- this notion of
(10) people's privacy shouldn't be invaded, that kind of
(11) sense, that people were concerned that any procedure
(12) that's followed is done with appropriate regard for
(13) people's privacy interest.
(14) There was no fear of documents or people
(15) looking at any particular document, but there was
(16) that sense -- but in any event, I would deal with the
(17) issue and I told her I would deal with the issue, and
(18) I would make a decision as to what to do.
(19) BY MR. CHERTOFF:
(20) **Q** Who did you understand the people were that
(21) she was referring to when she said people were
(22) concerned?

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(1) **A** I didn't have any understanding.
(2) **Q** You had no impression?
(3) **A** No, I had no impression because she has
(4) contact with various people in the White House.
(5) **Q** Was it your impression that when she made
(6) this -- when you had this discussion with her, that
(7) the people she was talking about that had expressed
(8) some kind of concern were the President or the First
(9) Lady?
(10) **A** She didn't say that the President or the
(11) First Lady had that kind of concern.
(12) **Q** Was it your impression she was referring to

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(13) the President or the First Lady?
(14) **A** No, it wasn't my impression that she was
(15) referring to the President or the First Lady
(16) specifically. It wouldn't surprise me. I mean,
(17) Susan talks to a lot of people. She has access to
(18) the President and the First Lady. The President and
(19) First Lady were removed from this thing. They
(20) weren't involved -- I had no discussions with the
(21) President or the First Lady about this, and it
(22) wouldn't surprise me that the President or the First

Page 147
(1) Lady would have had a discussion with her with
(2) respect to this issue.
(3) And indeed, I think the President or the
(4) First Lady, who are able people, would also wish a
(5) proper procedure to be followed with appropriate
(6) protection of institutional -- of the interests that
(7) I talked about and the privileges that I talked about
(8) and the privacy interest that I talked about. So
(9) it's not as if I thought it's impossible she talked
(10) to the President or First Lady or it's likely she
(11) talked to the President or First Lady, she was
(12) expressing a concern that people in the White House
(13) were expressing on that day, July 22nd.
(14) **Q** Wasn't it your impression that when she
(15) talked to you about people having a concern, that she
(16) was talking about, and conveying to you, that it was
(17) the First Lady who had a concern about it?
(18) **A** No, that was not my specific impression,
(19) although it's quite possible that the First Lady did
(20) have a concern about it. I don't know. I didn't
(21) talk to the First Lady. It was not my specific
(22) impression that she was conveying a concern of the

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(1) First Lady.
(2) **Q** Didn't you tell Mr. Neuwirth after that
(3) conversation -- please wait for the question -- that
(4) Susan --
(5) **A** I wasn't answering it.
(6) **Q** -- that Susan Thomases had indicated that
(7) she and the First Lady were concerned about the way
(8) in which this procedure was going to be carried out?
(9) **A** I remember what Susan -- I don't remember
(10) what I said to Mr. Neuwirth, if I said anything to
(11) Mr. Neuwirth. I don't remember a conversation with
(12) Mr. Neuwirth after this conversation that I had with
(13) Susan Thomases. I'm telling you that she did not
(14) mention in this conversation -- I don't have any
(15) memory of Susan Thomases mentioning the First Lady to
(16) me in this conversation. I do remember her saying
(17) what I said, that people were concerned.
(18) Now, is it possible that I extrapolated
(19) after that conversation and said something to
(20) Neuwirth along those lines? I guess it's possible
(21) that I did that. I'm not saying if Neuwirth has
(22) testified or says that, I have no memory of that.

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(1) **Q** You'd have had no reason at that point in
(2) time to mislead Mr. Neuwirth or give him erroneous
(3) information about the call; right?
(4) **A** Absolutely. I would have no --
(5) **Q** No reason to do that?
(6) **A** -- no reason to do that.
(7) **Q** Did you have any conversation with the
(8) President or the First Lady on the 21st concerning
(9) Vincent Foster's documents?
(10) **A** No.
(11) **Q** Did you have a conversation with anybody
(12) else on the 21st concerning Vincent Foster's
(13) documents?
(14) **A** On the 21st?
(15) **Q** I'm sorry. I withdraw the question.
(16) On the 22nd, did you have a conversation --
(17) let me withdraw the question and start over.
(18) Did you have a conversation with the
(19) President or the First Lady on the 22nd concerning
(20) Vincent Foster's documents?
(21) **A** No.
(22) **Q** Who is Carolyn Huber?

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(1) **A** Carolyn Huber is a friend of the Clintons
(2) from Arkansas who works on the White House staff,
(3) primarily, I think, in connection with the First
(4) Lady.
(5) **Q** Doing what?
(6) **A** I don't know. Social things, gift things,
(7) things like that. I don't remember at this point.
(8) **Q** Did you talk to her on the 21st of July
(9) after your meeting with Mr. Margolis and Mr. Adams?
(10) **A** I don't remember talking to her on that
(11) day. I believe no.
(12) **Q** Did you try to reach her?
(13) **A** No, I didn't.
(14) **Q** Did you page her?
(15) **A** I have no memory of paging her. I can't
(16) think of any reason why I would page her other than
(17) perhaps what are the funeral arrangements going to be
(18) made for Vince. That's the only thing I can think of
(19) talking to her on that day.
(20) **Q** Was she handling the funeral arrangements?
(21) **A** I don't know. I don't remember talking to
(22) her or remembering this, but if I'm thinking back on

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(1) those days, if I wanted to find out about the funeral
(2) arrangements, she's the kind of person I might ask
(3) about that because she's an Arkansas person, so she
(4) may know what's going on with respect to the funeral
(5) arrangements.
(6) But having said that, I have no memory of
(7) talking to her about the funeral arrangements or
(8) anything else.
(9) **Q** Mr. Kennedy was an Arkansas person who
(10) would know about the funeral; right?
(11) **A** It's possible I could talk to Mr. Kennedy.
(12) **Q** Mr. Watkins was an Arkansas person who
(13) would know about it?
(14) **A** Yes, but it was more likely she would know
(15) about it.
(16) **Q** Carolyn Huber?
(17) **A** Because she had been in touch with people
(18) in Arkansas. There were Arkansas people working in
(19) the White House. Carolyn was an Arkansas person
(20) working in the White House but I believe she was
(21) involved more in Arkansas affairs, more social things
(22) with regard to the Clintons.

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(1) **Q** Wasn't Maggie Williams involved with
(2) scheduling?
(3) **A** Yes.
(4) **Q** Wouldn't she be someone who would know
(5) about the funeral?
(6) **A** She could, that's right.
(7) **Q** Is there any reason you paged Carolyn Huber
(8) on the 21st?
(9) **A** I have no memory of paging Carolyn Huber on
(10) the 21st, and I don't believe I paged Carolyn Huber
(11) on the 21st.
(12) **Q** Can you explain why there's a record that
(13) you paged her?
(14) **A** No, I can't explain why I paged Carolyn
(15) Huber on the 21st. The record may be incorrect. I
(16) certainly don't remember talking to her or reaching
(17) her.
(18) MR. PEDOWITZ: Is this a good time, Mike,
(19) or do you want to continue?
(20) MR. CHERTOFF: Just a moment longer. I
(21) just need a second.
(22) BY MR. CHERTOFF:

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(1) **Q** Does the number 757-2258 mean anything to
(2) you?
(3) **A** No.
(4) **Q** You don't recognize the number?
(5) **A** No.
(6) **Q** Does the 757 exchange mean anything to

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you? Is that a White House exchange?
A It doesn't ring a bell.
Q Is that a signal office through which you can reach people through the White House?
A I don't remember it. I've been gone now for a while.
MR. PEDOWITZ: Off the record.
(Discussion off the record.)
BY MR. CHERTOFF:
Q At the end of the day on the 21st, your testimony is -- let me withdraw the question. As of the end of the day on the 21st when you went home, did you -- had you made a decision concerning the manner in which the law enforcement authorities would be permitted to look at the documents in Mr. Foster's office?

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A Had I made a decision at the end of the 21st, no. I was still thinking about it.
Q When did you make that decision?
A I made it sometime the morning of the 22nd after talking to people about it, engaging in a number of conversations. I made it sometime the morning of 22nd.
Q During the 21st until you went to bed, went to sleep, either late in the night of the 21st or early hours of the 22nd, did you have any conversations with anybody that you understood to be communicating to you the wishes of either the President or the First Lady in connection with the handling of the Vincent Foster documents?
A No.
MR. CHERTOFF: Good time for a break.
(Whereupon, at 12:35 p.m., the deposition was recessed, to be reconvened at 2:00 p.m. this same day.)

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AFTERNOON SESSION (2:18 p.m.)
Whereupon,
BERNARD W. NUSSBAUM
resumed the stand and, having been previously duly sworn, was examined and testified further as follows:
EXAMINATION (Continued)
BY MR. CHERTOFF:
Q Let me direct your attention to July 22nd, which is the Thursday. Did you have occasion to talk to John Podesta early in the morning that morning?
A I don't recall talking to John Podesta that morning.
Q Did you beep him, try to beep him?
A I don't recall trying to beep him.
Q Did he try to beep you?
A I have no memory of that.
Q Did he beep you and leave you a message, "did you find Heymann"?
A I have no memory of that, or no knowledge of that.
Q Is there any reason that Mr. Podesta would have been involved early in the morning on any

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matters where he would be concerned with whether you talked to Mr. Heymann?
A We had -- I don't recall any matters at this point. We had numerous matters going on in the White House and it may have been one of those matters, except I have no memory of that fact at this time.
Q Was Mr. Podesta involved in discussions about the handling of the documents in Mr. Foster's office?
A Not to my recollection.
Q Did you get paged by Susan Thomases at 8:00 a.m.?
A I don't remember that. I talked to her that day. I remember talking to her, as I testified earlier. A normal way of talking with somebody in the White House is to be paged and to put a call in to that person.
Q Do you remember her trying to get you at 8:00 in the morning?
A I don't remember. I remember talking to her sometime that day.

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Q I'm going to read you, just for the sake of refreshing your recollection, from Z647. It has number 88331, which I assume is some code number. It says "please call Susan Thomases at 202-659-8787, operator 71." And I can tell you that it's been represented to us that this is a document provided to us by the White House that is a log of messages left on the pager. And it's 8:01 a.m. is listed next to it.
Does that refresh your recollection that Susan Thomases was in Washington on the 22nd and tried to have you call her in Washington at 8:01 a.m.?
A No.
Q Does it help you recall whether you called her later that day or whether she called you?
A No, it doesn't. It was often the case that I would be paged by someone and not get back to them for a while, but I don't remember that particular page.
Q Does it help you to remember whether your conversation with Ms. Thomases occurred earlier in

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the day on the 22nd?
A You see, as I testified earlier, I'm not 100 percent sure whether I talked to her prior to the search of the office on that day or after the search of the office on that day. It sort of leads me to believe, if that's accurate -- and I have no reason to believe it's not accurate -- that I ended up talking to her prior to the search. I just have no memory. I'm not positive.
Q Could it be that you talked to her in the morning of 22nd before you met again with Mr. Margolis and Mr. Adams?
A It's possible I did. I don't remember when I talked to her. I know I talked to her that day either before or after the search. It could have been before meeting with Margolis and Adams on that day or after meeting with them on that day.
Q Did you know there was a point in that day that she was meeting with Maggie Williams?
A Did I know? No, I didn't know.
Q Did Maggie Williams tell you on the 22nd that she had been meeting or had seen Susan Thomases

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in her office?
A I have no recollection of her telling me.
Q Directing your attention to approximately 8:00 in the morning, did you come in to the White House at that time on Thursday, about 8:00 in the morning?
A It would be later than I normally come in. It's possible. Again, it was a hectic time. I would bet I came in earlier. I would bet I came in for the 7:30 meeting but I don't remember.
Q Did you have your own staff meeting at 8:00?
A My own staff meetings are usually at 9:00.
Q Did there come a point, let's say, around 8:00 or 9:00 when people --
A It could be that, on that day because of the interviews of staff, we changed the meeting schedule, but I don't remember. I really just don't remember.
Q Now, the night before, on the 21st, were there -- did the attorneys in your office talk to members of the staff concerning the anticipated

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interviews on the 22nd?
A I don't know. Neuwirth and Sloan were with me when we had this meeting on the afternoon of the

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21st. It may be, since I was looking to them to assist the staff members who would be giving interviews, it may be that they commenced their activities late that afternoon or it may be that they did it early the next morning. I just don't remember.
Q Did you direct them to help prepare the witnesses for the interviews with the Park Police the next day?
A Yes, I told Neuwirth and Sloan to assist the witnesses to testify the next day.
Q And did you yourself work with any of the witnesses to prepare them for the next day?
A No.
Q Now, the next day, Mr. Margolis and Mr. Adams came back?
A Yes, they came back.
Q And they came back with the FBI and the Park Police?

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A They came back with the FBI and the Park Police. The Park Police, I believe, came in early to conduct the interviews. I don't think they all came in at once necessarily. They all came back, but whether they came back together or not, I don't remember.
Q So your recollection is that the Park Police may have come in even before Mr. Margolis and Mr. Adams?
A Yes.
Q Did they begin interviewing immediately?
A Fairly early –
MR. PEDOWITZ: "They" being?
MR. CHERTOFF: The Park Police.
THE WITNESS: I believe so, fairly early. I wasn't there when they were beginning to interview people.
MR. PEDOWITZ: You weren't where?
THE WITNESS: Where the interviews were taking place.
BY MR. CHERTOFF:
Q Well, let me try and understand this. At

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the time that law enforcement officials first started to come in on the 22nd, were they waiting for some decision about what was going to happen next in terms of the investigative process, or did they simply immediately begin the process of asking to start interviews?
A My recollection is when they came in, they started interviews. That's what I remember.
Q And who assigned locations where the interviews would take place?
A I don't know. I would assume Neuwirth or Sloan.
Q Do you know whether the FBI agents were also involved in, sitting in the interviews with the Park Police?
A I don't remember.
Q Did you sit in on any of the interviews?
A I did not sit in on any of the interviews.
Q Did you enter any interviews?
A Yes. When I returned to my office from another conversation someplace in the White House, another meeting -- maybe the senior staff meeting, I

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don't know -- I heard that the interviews were going on, which didn't surprise me because that's what was intended to do, so I just as a courtesy opened the door to one of the interview rooms and walked in. I don't remember whose interview it was even and greeted the Park Police and greeted the people being interviewed, and I said is everything okay, and is everything fine, hello, and they said everything is fine. I said nice to see you, closed the door, left.
Q When you say you entered as a courtesy –
A Said hello.
Q Did you knock on the door?
A I was just making a joke. No, I don't believe so. I opened the door.
Q Did you burst through the door?
MR. BEN-VENISTE: I think he said he opened it.
THE WITNESS: I just opened the door, walked in.
BY MR. CHERTOFF:
Q And what was the reaction of the people inside? Did they appear to be surprised?

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A They looked up. They didn't expect me to come in, I guess. The door was closed. I walked in. I don't remember bursting in, but after the last set of hearings, everybody talking about my intense manner, it could be somebody thought I burst in.
Q Who was being interviewed in that –
A I don't remember who was being interviewed.
Q Was there a lawyer from White House counsel's office present?
A Yes, there was a lawyer present.
Q Who made the decision that lawyers from the White House counsel's office should sit in on the interviews?
A I did.
Q When did you make that decision?
A The day before when we discussed that interviews would take place of my staff members.
Q When you say we discussed it, when who discussed it?
A When I discussed it with the law enforcement people present in my office.
Q So in the presence of Margolis and Adams

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and the other law enforcement people, you said that lawyers from the White House counsel's office would be sitting in on the interviews?
A I don't remember saying it. I may have said it. I probably said it. I just don't remember, but I made the decision to do it, and I acted in accord with that decision.
Q But you're clear that there came a point in time at least where you directed Sloan and Neuwirth to sit in on the interviews?
A Oh, yes.
Q Now, you understood that Sloan and Neuwirth themselves would be interviewed at some point?
A Yes.
Q Why did you place potential witnesses in the position of being lawyers present at interviews with other witnesses?
MR. BEN-VENISTE: Didn't we cover this before lunch?
MR. CHERTOFF: No, I don't think we did, Mr. Ben-Veniste.
MR. BEN-VENISTE: I believe we did in some

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detail.
MR. CHERTOFF: No, I think we discussed preparation before lunch. Now we're discussing presence during the interview process.
BY MR. CHERTOFF:
Q To get back to my question -- let me get it read again.
(The reporter read the record as requested.)
THE WITNESS: I didn't consider this an adversary investigation; this was a fact-gathering inquiry. I thought my staff was -- the secretaries and others were in grief and distraught. I thought I was helping the fact-gathering process by having experienced lawyers who I had confidence in calm people down, just calm them down, explain to them that it was necessary to provide what they know, to tell the truth. It would facilitate, as I said earlier, in our last repartee with respect to this, the fact-gathering process, it would calm my people down, which I was very concerned about, that they just should not crack up under the strain of Vince's

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(22) death.

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(1) So I felt it was serving the purposes of
(2) law enforcement to the extent that law enforcement
(3) wanted facts, which they did, and it was serving the
(4) purposes of my office, just to bring some calm to it
(5) in a difficult time.
(6) BY MR. CHERTOFF:
(7) **Q** Did you think it might tend to confuse, in
(8) the minds of the lawyers who were present, their own
(9) recollections of what they were hearing other
(10) witnesses saying?
(11) **A** No, I didn't think so.
(12) **Q** Did you think it might have a chilling
(13) effect on the witnesses?
(14) **A** No, I didn't think so.
(15) **Q** Did you think that if one of the witnesses,
(16) for example, might want to suggest that Mr. Foster
(17) had a problem with you, that that witness might be
(18) reluctant to do so when one of your lawyers was
(19) present in the room?
(20) **A** No, I didn't think that any witness would
(21) be reluctant to say anything because one of the
(22) lawyers was present in the room.

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(1) **Q** Because one of the lawyers that's in the
(2) counsel's office that works for you is present?
(3) **A** Correct. If a witness wanted to say that,
(4) then that person should say it and a lawyer in the
(5) room present would not inhibit that witness.
(6) We had a small cohesive staff. I don't
(7) think it would have any inhibiting effect.
(8) **Q** Was this actually something you thought
(9) about and rejected or you just didn't think about it?
(10) **A** What?
(11) **Q** The question of inhibiting effect or
(12) chilling effect?
(13) **A** That's a good question. I don't remember
(14) really whether I thought about it or not. I may
(15) have. It's possible that it occurred to me but if I
(16) did, I rejected it out of hand. It would have no
(17) inhibiting effect, it would have a facilitating
(18) effect.
(19) **Q** Did you think the White House counsel's
(20) office should recuse itself from any participation in
(21) the investigation other than simply providing witness
(22) statements?

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(1) **A** No.
(2) **Q** Did it occur to you that where the
(3) investigation could, to some degree, look into the
(4) question of Mr. Foster's work relationships and
(5) whether he had problems with work, that perhaps the
(6) people he worked with ought not to be the people who
(7) were intimately involved in the investigation?
(8) **A** The White House counsel's office – I
(9) didn't consider the White House counsel's office
(10) conducting the investigation. The investigation was
(11) not delegated to the White House counsel's office.
(12) The White House counsel's office, the investigation
(13) was being conducted by a number of law enforcement
(14) agencies, initially primarily the Park Police and
(15) others who were working with the Park Police.
(16) They were conducting the investigation. We
(17) were just responding to inquiries and assisting in
(18) that investigation. There was nothing to recuse
(19) ourselves from and indeed, I thought the assistance
(20) of lawyers for the witnesses would aid the
(21) fact-gathering inquiry, which was being conducted by
(22) us.

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(1) **Q** Who was making the decisions about the way
(2) in which the interviews would be conducted?
(3) **A** The law enforcement people.
(4) **Q** Was it their decision that lawyers from the
(5) White House counsel's office should sit in?
(6) **A** No. It was my decision, but there was no
(7) objection to that decision. Later on, after the
(8) handwritten list was found, other investigations took
(9) place and a request was made of me that lawyers not
(10) sit in on those interviews, and I thought about it
(11) and I adhered to the request, I accepted the request.
(12) **Q** Is it your testimony that at the time the
(13) interviews were being conducted, the law enforcement
(14) people didn't express any objections to any of the
(15) lawyers about their being present for these
(16) interviews?
(17) **A** I have no memory of any objections being
(18) expressed or certainly – well, I'll leave it at
(19) that.
(20) **Q** Did you ask the Park Police or the FBI
(21) whether they were willing to have or agreeable to
(22) having lawyers from the White House counsel's office

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(1) participating in these interviews?
(2) **A** I don't recall asking anyone.
(3) **Q** There came a point in time that you saw
(4) Mr. Margolis and Mr. Adams; right?
(5) **A** On July 22nd, yes.
(6) **Q** Was this during the course of the
(7) interviews being conducted or after they've been
(8) completed?
(9) **A** I can't recall. I think it was in the
(10) course of the interviews being conducted, but it
(11) could have been at the conclusion of the process.
(12) **Q** Did you meet in your office with them?
(13) **A** I believe so, yes.
(14) **Q** What was the discussion?
(15) **A** That we would now – we were going to enter
(16) the Foster office to conduct a search for a suicide
(17) note or an extortion note or something like that.
(18) **Q** And this was in the morning; right?
(19) **A** It was sometime in the morning, but I don't
(20) remember when. It could be late in the morning. The
(21) search didn't start until the afternoon, early
(22) afternoon, but I met with them in the morning. I

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(1) think it was in the morning.
(2) My memory is there was a delay between the
(3) time of my initial meetings with them and the time we
(4) started.
(5) **Q** And what did they say when you said we're
(6) going to go into – what was the discussion in this
(7) meeting about going in to conduct the search?
(8) **A** There may have been a number of
(9) discussions, but I'll tell you what I remember. I
(10) remember the substance of it. I remember coming and
(11) saying okay, let's go in, and we'll search for a
(12) note, a suicide note, and the way I intend to conduct
(13) this, because you know my concerns about privilege
(14) and confidentiality and privacy, here's what I'd like
(15) to do and what I intend to do is, we'll go in
(16) together. We'll, in effect break – we'll walk in
(17) together.
(18) Nobody has been in that office now for a
(19) while. We'll walk in together, and I will go through
(20) the files. You'll all come in with me. You will see
(21) what I'm looking at. I will describe to you what I'm
(22) looking at in some general terms, but I will do the

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(1) looking. I may show you the first page of something
(2) or the title of something, but we'll see as it goes
(3) along and obviously if I find a suicide note or
(4) extortion note, I'll give it to you.
(5) But I would like – I intend to – I would
(6) like to and I intend to conduct the search in this
(7) matter because this basically enables us all to see
(8) whether there's a suicide note or extortion note, and
(9) also enables me to preserve the privileges that I
(10) think it's my obligation to preserve.
(11) I said something like that. Did I make it
(12) in that speech form that I just gave to you?
(13) Probably not. It was probably more in a dialogue,
(14) but that was the essence of what I said.
(15) **Q** What did they say?

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(16) **A** They didn't -- they weren't happy. I have
(17) a vague recollection of somebody -- the first page
(18) being mentioned again, as we discussed the day
(19) before, that possibility. That was an option that
(20) was discussed the day before, mentioned again. I
(21) said look, I want to conduct it -- I think the right
(22) way to conduct it is the way I just described. That

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(1) meets your interest and it meets our interest. I'm
(2) worried about things like waiver and other things
(3) like that. I don't know what good that does to let
(4) you look at the first page, anyway, of something.
(5) I don't know where it gets us in this
(6) process, and it may create waiver problems for me,
(7) but let's go in and let's do it. And let's see how
(8) it goes. And if you have objections later on, we can
(9) discuss it, but you want to go in, you're anxious to
(10) go in, you're anxious to look for this note. I'm
(11) anxious to see if there's a note there, to conduct an
(12) intense search for that. So let's just do it.
(13) Let's try it my way and if it doesn't work,
(14) ultimately we can discuss it some more, whether we
(15) can do it some more, and they -- look, I was a
(16) prosecutor. I understand they would rather see more
(17) or read more than less, but I said let's try to do it
(18) this way. I think it meets everybody's needs, and
(19) they went along. They said okay.
(20) **Q** So what did you do?
(21) **A** We went into the office.
(22) **Q** Right away?

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(1) **A** At some point, yes. See, I said earlier I
(2) may have had a number of discussions. I don't
(3) remember the sequence of events. This was sort of
(4) the penultimate discussion I described to you because
(5) it's the only one I remember. There may have been
(6) preliminary discussions, but this is the essence of
(7) the discussion that I remember.
(8) **Q** What were the preliminary discussions?
(9) **A** I don't remember. If there were others, I
(10) don't remember. I'm saying it's possible there were
(11) others.
(12) **Q** Did you talk to anybody about it besides
(13) Mr. Adams and Mr. Margolis from the Justice
(14) Department?
(15) **A** I don't remember. My memory is Adams and
(16) Margolis.
(17) **Q** Did you have a conversation with
(18) Mr. Heymann?
(19) **A** It's possible, but I don't remember. It is
(20) possible I spoke to Mr. Heymann on the phone, but I
(21) don't remember that.
(22) **Q** What was that discussion about?

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(1) **A** I don't know.
(2) **Q** You have no recollection of it?
(3) **A** I have -- I recollect discussions with
(4) Heymann. I don't recollect the discussion on that
(5) day with Heymann. I recollect the July 21 discussion
(6) with Heymann. I also recollect discussions
(7) subsequent to the events with Heymann, but I don't
(8) recollect -- and I've been searching my
(9) recollection -- a discussion with Heymann on that
(10) day, although it's possible because I talked to
(11) Heymann a lot, and I know that I talked to Heymann
(12) about these matters and certainly if Heymann
(13) suggested there was a discussion, I'm not disputing
(14) that fact.
(15) I don't know what he's going to say but I'm
(16) not disputing that fact. If you're asking me do I
(17) remember such a discussion, the answer is no, I don't
(18) remember.
(19) **Q** When you had your conversation with
(20) Mr. Margolis in the morning and you told him the way
(21) you wanted to proceed with this, did he tell you that
(22) he was upset with this as a change in plan?

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(1) **A** I don't remember that. I do remember some
(2) expression of unhappiness, but I don't remember that.
(3) **Q** Did he threaten to leave?
(4) **A** I don't remember him threatening to leave.
(5) **Q** Did he say mail us the results?
(6) **A** I don't remember him ever saying that.
(7) **Q** Did he place a call to Mr. Heymann?
(8) **A** I have no recollection of that happening.
(9) **Q** Did you then get on the phone with
(10) Mr. Heymann in his presence?
(11) **A** I've just testified that I have no
(12) recollection of having a conversation with
(13) Mr. Heymann, though it's possible I did. If you have
(14) something you wish to refresh my recollection with,
(15) I'm open to it.
(16) **Q** Let me stimulate your memory with the next
(17) questions. Did Mr. Heymann indicate to you "you're
(18) making a terrible mistake" on the telephone?
(19) **A** I have no memory of that being said.
(20) **Q** Did he say he was going to call
(21) Mr. Margolis and Mr. Adams to come back to the
(22) Department of Justice?

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(1) **A** I have no memory of him saying that.
(2) **Q** Did you ask Mr. Margolis not to leave?
(3) **A** I have no memory of that.
(4) **Q** Did Mr. Heymann say to you that he was
(5) willing to have members of the office of legal
(6) counsel come over and review the documents if you
(7) were concerned about executive privilege?
(8) **A** I have no memory of that because I have no
(9) memory of a discussion with Mr. Heymann. On the
(10) other hand, you can try to refresh me.
(11) **Q** Did you tell Mr. Heymann I have to talk to
(12) some people about this, and promise to get back to
(13) him?
(14) **A** I don't remember that.
(15) **Q** Did you check with anybody after your
(16) initial conversation with Mr. Margolis and
(17) Mr. Heymann?
(18) **A** See, it is possible that I talked to
(19) Margolis and we didn't go right in. The conversation
(20) I described was a little later on. I talked to
(21) Margolis, and I talked to others in the White House
(22) in between, although the major conversation I had

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(1) with Mr. Margolis was after I talked to other people
(2) in the White House because I did have a number of
(3) conversations with people in the White House that
(4) morning which I do remember.
(5) **Q** About this?
(6) **A** About the way --
(7) **Q** This subject?
(8) **A** Yes, how the office search should be
(9) conducted.
(10) **Q** Who did you talk to?
(11) **A** I talked to Bill Burton. I talked to
(12) McLarty. I talked to Jack Quinn. Neuwirth and Sloan
(13) were around during some of these conversations. I
(14) don't remember which ones. I talked to a number of
(15) people because they wanted to talk to me about the
(16) way that I was going to proceed with regard to the
(17) search of Vince's office for a suicide note.
(18) **Q** These people reached out for you?
(19) **A** Yeah, they did reach out for me.
(20) **Q** In a group or one by one?
(21) **A** Both.
(22) **Q** What did Mr. McLarty say to you about it?

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(1) **A** Mr. McLarty said -- I have a recollection
(2) of Mr. McLarty asking me to come to his office, of
(3) somebody asking me to go to Mr. McLarty's office. It
(4) may be while I was talking to Mr. Margolis, I got a
(5) request to go to Mr. McLarty's office.
(6) That's why I don't remember one continuous
(7) conversation with Margolis and the others, and
(8) McLarty saying to me Bernie, I want to understand
(9) what you're doing, what's going on, how you're going

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(10) to conduct this, explain it to me, what are you going
(11) to do. And I said to McLarty basically the same
(12) thing I described in my conversation with Margolis.
(13) **Q** This is McLarty himself?
(14) **A** Yes. I think I met with McLarty himself
(15) for a short time -- oh, Burton, who is McLarty's
(16) senior aide, might have been with me. Burton asked
(17) me the same question, and I explained to Burton what
(18) I intended to do.
(19) **Q** Did they explain why they were concerned
(20) about it?
(21) **A** They said -- they wanted to understand --
(22) well, McLarty is not a lawyer. Burton's a lawyer.

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(1) Burton's saying you're letting people go into a
(2) lawyer's office. There's all sorts of institutional
(3) issues, privileged issues, and you're just -- you're
(4) going to describe the documents to people and look at
(5) them but you have a whole bunch of people there.
(6) There's going to be stuff, files all over, which
(7) there were. Nobody went in to do any straightening
(8) up, other than that Betsy Pond thing for an instant
(9) on July 21.
(10) I mean, is that the right thing to do? Is
(11) that the right way to proceed, to let people into a
(12) lawyer's office, a high executive branch official?
(13) Why are you doing what you're doing? And I said I
(14) think it is the right way to proceed, and similar
(15) inquiries were made of me by McLarty and by -- they
(16) brought Jack Quinn to talk to me.
(17) **Q** Why did they bring Quinn in?
(18) **A** Because they said look, why don't you talk
(19) to Jack also? Jack is a lawyer. He may have -- he
(20) was the counsel to the Vice President, at one point,
(21) now chief of staff to the Vice President. He's a
(22) very able guy -- we should get Jack's views. Jack is

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(1) a smart guy, experienced lawyer, let's see what he
(2) says. Let's see if he agrees with you on this thing.
(3) **Q** What was his position?
(4) **A** He didn't agree with me.
(5) **Q** What did he think?
(6) **A** He thought it was a mistake and stressed it
(7) very firmly. He thought it was a mistake for me to
(8) let any law enforcement people go into Foster's
(9) office. He thought the proper way to handle this is
(10) the way we would handle -- I remember him saying
(11) something like this: The way to handle a major
(12) litigation, if we were on the outside, a request to
(13) examine potentially privileged documents or at least
(14) a space in which there were privileged documents, he
(15) believed -- he said what we should do is we should go
(16) in. We should tell the law enforcement people that
(17) they cannot go into Foster's office, that we would go
(18) in ourselves, we, the White House would go in, the
(19) White House counsel's office.
(20) We would make a log of privileged
(21) documents, and we would -- and an inventory and other
(22) appropriate things that were appropriate to

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(1) inventory, and we would inform them in due course,
(2) when we completed our process, what would be
(3) available for them to examine after they made some
(4) specific request for us to examine things, and what
(5) would not be available to examine. And I said to him
(6) I didn't agree.
(7) **Q** Why didn't you agree with that?
(8) **A** I said that would mean -- I said Jack, that
(9) would mean -- that will take days, maybe weeks to do
(10) it. There's hundreds of pages of documents,
(11) thousands of pages of documents in that office
(12) potentially. That means these people won't go in for
(13) weeks to this office, they won't have any clue for
(14) weeks. They're looking for a suicide note, or an
(15) extortion note, and that's their job, that's law
(16) enforcement.
(17) This is a high visibility investigation,
(18) and for me to tell law enforcement that this is like
(19) same major antitrust case, go home, we will do a log,
(20) that's not realistic. They'll be frustrated.
(21) They'll be angry. They may be suspicious.
(22) **Q** They might seek a subpoena?

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(1) **A** If they seek a subpoena, Quinn wouldn't
(2) mind that because that would mean you'd go through
(3) this whole log procedure.
(4) I said they have a narrow request. They
(5) want to search the office to see if there's a suicide
(6) note or an extortion note. It's crazy for us to keep
(7) them out and to create all these negative feelings
(8) and potential suspicion, when all we've got to do is
(9) just walk in and we'll look through the office. And
(10) I've come up with a way of satisfying their interests
(11) and satisfying the White House's interest. I'll walk
(12) in with them. I haven't been in the office since --
(13) obviously I was in the office for a short time the
(14) night of the 20th -- I'll walk in. I'll go through
(15) the documents. I'll see if there was a suicide note
(16) or an extortion note. If I find one, I turn it over
(17) to them. If I don't find one, I tell them I haven't
(18) found one. And they're there, and I'll tell them
(19) what I'm generally looking at.
(20) That preserves privilege. We're not
(21) showing them privileged documents. We're not going
(22) to violate attorney-client privilege, or executive

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(1) privilege or anything like that. That does that, so
(2) we preserve our institutional rights and the rights
(3) of other people who have the privilege right. At the
(4) same time, we give them the comfort that there is a
(5) note or there isn't a note in the office. That
(6) accommodates their interest. That's the way to do
(7) it, I said.
(8) **Q** And what did Mr. Burton say?
(9) **A** Mr. Burton, I think, leaned toward
(10) Mr. Quinn. They thought I was -- but I was the
(11) fairly persuasive, too. I mean I made clear to them
(12) all I was willing to listen to any one of them.
(13) Fine. If McLarty wants to talk to me, fine. If
(14) Burton wants to talk to me, fine. If they want to
(15) bring Quinn into it, who I have great respect for,
(16) also fine.
(17) I was going to make this decision. We were
(18) going to do it the way I thought was right. I was
(19) willing to listen, but at the center of this thing at
(20) this point, we had to respond to the request. These
(21) people, I felt had legitimate needs and desires to
(22) get into that office quickly, and I felt we had to

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(1) try to satisfy those needs and desires; at the same
(2) time, protecting valid institutional and privilege
(3) interests of the White House.
(4) I felt like I came up with a way to do it.
(5) They were uneasy about it. I understand that. I
(6) just disagreed with it. And I told them that and I
(7) told them we're going to do it my way.
(8) **Q** Did you tell Mr. McLarty, Mr. Burton and
(9) Mr. Quinn that the law enforcement people had said
(10) what they were interested in looking for was a
(11) suicide note or an extortion note?
(12) **A** Yes.
(13) **Q** And you put it to them that way?
(14) **A** Suicide note, extortion note or something
(15) similar to that. That's what we're looking for,
(16) that's what the search was about.
(17) **Q** And you told them a suicide note, an
(18) extortion note or something similar to that?
(19) **A** Something like that, right.
(20) **Q** Did you indicate to them that the law
(21) enforcement people wanted to look to see if there was
(22) anything that might explain motivation on the part of

Page 187
(1) Mr. Foster to kill himself?
(2) **A** No. Because to the extent that words like
(3) "motivation" or "state of mind" were used in

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(4) conversations, I understood them to mean expressed
(5) state of -- you know, an expression of intent to
(6) commit suicide for certain reasons. It wasn't some
(7) sort of generalized notion that you're being looking
(8) for anything that could bear on a generalized state
(9) of mind. It was specifically tied into the suicide
(10) and tied into looking for a suicide note or an
(11) extortion note.
(12) **Q** Where was Mr. Margolis when you were having
(13) this conversation with Mr. Quinn and Mr. McLarty and
(14) Mr. Burton?
(15) **A** I believe he was sitting either in my
(16) office or in the waiting area in the White House.
(17) **Q** So that's a very short distance away from
(18) where you were having this meeting?
(19) **A** Yes.
(20) **Q** Did you ask him to come in and explain what
(21) he was interested in getting at?
(22) **A** No, no, I didn't.

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(1) **Q** Were you told why Mr. McLarty and
(2) Mr. Burton called you in and expressed an interest or
(3) a concern about how you were going to handle this?
(4) **A** No, I wasn't told why. They were aware of
(5) what was going on. Again, it's a small place, the
(6) west wing, and we had law enforcement people in the
(7) west wing. Everybody -- they just wanted to be
(8) assured that the right thing was being done.
(9) **Q** In that call you had with Susan Thomases on
(10) that day, did you have a similar discussion about
(11) whether the law enforcement people should be allowed
(12) into the room?
(13) **A** She just -- as I testified earlier -- I
(14) testified to that conversation -- she didn't -- I
(15) don't remember her specifically saying that. She
(16) might have. I don't know. I just remember her
(17) expressing the sort of same kind of thing as McLarty,
(18) what are you doing? What's going on? What are you
(19) doing and why are you doing it that way? Now, that's
(20) what I remember her saying, and I responded to her in
(21) the same way I responded, as I just did, to McLarty
(22) and ultimately to Quinn and to the others.

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(1) This is what I'm doing, and this is the
(2) reason I'm doing it. I'm trying to balance out
(3) different, conflicting interests, and this is the
(4) right way to do it, to go in with these people and to
(5) do it that way.
(6) **Q** At the time you had this conversation with
(7) Mr. Quinn where he raised the option of simply
(8) sending the law enforcement people away and doing the
(9) review yourself and then submitting the results to
(10) the Justice Department, hadn't Mr. Margolis already
(11) said to you we're going, mail us the results?
(12) **A** No, not to my memory.
(13) **Q** Had Mr. Heymann said to you I'm going to
(14) have Mr. Margolis and Mr. Adams come back. We'll do
(15) it in a very low key way. We won't make a big fuss?
(16) Hadn't that happened as of that point in time?
(17) **A** Not to my memory.
(18) **Q** Isn't it, in fact, you who told
(19) Mr. Margolis and Mr. Heymann that you want to have
(20) the Justice Department lawyers stay?
(21) **A** I may have said that I wanted them to say,
(22) but it wasn't -- I don't remember any threat to

Page 190
(1) leave.
(2) **Q** When Mr. Margolis -- let me withdraw the
(3) question and put it this way.
(4) Do you remember saying to Mr. Margolis in a
(5) discussion "I know this is for show"?
(6) **A** Do I remember saying that to Mr. Margolis?
(7) **Q** Or "I know it's for show"?
(8) **A** No, I don't remember saying that to
(9) Mr. Margolis.
(10) MR. PEDOWITZ: Mike, could we take a brief
(11) break.
(12) (Recess.)
(13) BY MR. CHERTOFF:
(14) **Q** Did you tell Mr. Margolis and Mr. Adams to
(15) stay in the lobby and not to leave after you finished
(16) your conversation with him?
(17) **A** I have no recollection of that.
(18) **Q** Did there come a point where Mr. Margolis
(19) walked outside and you went out after him to catch
(20) him to make sure he wasn't leaving?
(21) **A** I don't recall that either. God. God was
(22) not on the record.

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(1) **Q** Did you have a second conversation with
(2) Phil Heymann, if you remember, on the 22nd of July,
(3) later in the morning or in the early afternoon?
(4) MR. PEDOWITZ: Can I have that question
(5) read back.
(6) (The reporter read the record as requested.)
(7) MR. PEDOWITZ: He said he doesn't recall
(8) when the first one was, based on your question.
(9) THE WITNESS: I don't remember a
(10) conversation with Heymann in the afternoon. It's
(11) possible. I just don't remember.
(12) BY MR. CHERTOFF:
(13) **Q** Did there come a point when you called
(14) Mr. Margolis and Mr. Adams and you told them that you
(15) wanted to begin this search of the office?
(16) **A** Yes.
(17) **Q** And in fact, they were over having lunch in
(18) the Executive Office Building?
(19) **A** That could be. That's right. That could
(20) be.
(21) **Q** And you told them it's settled, come on
(22) over?

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(1) **A** I told them -- I was talking to people.
(2) These conversations I described earlier and that
(3) was -- I didn't want to begin to -- people wanted to
(4) talk to me about it in the White House so I had to
(5) talk to them about it. I couldn't begin until I
(6) finished talking to them about it. When I finished
(7) talking about it, I called -- I asked Margolis and
(8) Adams and whoever else was with them, let's do the
(9) search.
(10) **Q** Who else did you talk to in the White
(11) House, of White House personnel, besides Mr. McLarty,
(12) Mr. Burton and Mr. Quinn?
(13) **A** Neuwirth and Sloan. There may have been
(14) others. I don't remember. I remember the McLarty,
(15) Burton and Quinn conversations.
(16) **Q** In the conversations you've had with White
(17) House personnel about the alternatives that might be
(18) followed, did you consider going forward with the
(19) alternative of sending the law enforcement people
(20) away and saying you would respond back with a
(21) detailed inventory and privilege log?
(22) **A** Well, when it was raised by Quinn, I

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(1) considered it.
(2) **Q** And at that point in time, you were
(3) familiar, from your experience, with the procedures
(4) that are followed when outside lawyers are faced with
(5) a request for documents; right?
(6) **A** Yes, I am.
(7) **Q** And in that situation, an outside lawyer,
(8) for example, would Bates stamp the documents to have
(9) a complete inventory of all the documents, for
(10) example, in response to a request for production;
(11) correct?
(12) **A** Yes, that would happen in a litigation type
(13) situation.
(14) **Q** In a situation where there was a request
(15) for documents and a subpoena, and there were
(16) documents that were sought to be withheld on the
(17) ground of privilege, you would provide a privilege
(18) log that would identify the documents being withheld;
(19) correct?
(20) **A** Correct.
(21) **Q** And you would characterize them in some way

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(22) and state the basis of the privilege; correct?

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(1) **A** Correct.
(2) **Q** And that would be done document by
(3) document; correct?
(4) **A** Correct.
(5) **Q** And then you would have a complete record
(6) of all the documentation in the universe of material,
(7) either by having a record of the Bates stamp numbers
(8) or by having them on the privilege log?
(9) **A** Maybe yes, maybe no. It depends on what
(10) the request was. If the request was you produce
(11) every document in Foster's office, if that's -- then
(12) that would be the process followed. If the request
(13) is you produce a suicide note or an extortion note,
(14) then you might not have to go through all that.
(15) You would not -- you might -- they might
(16) say well, we don't just want to take your word. Now
(17) we want a list of every document with respect to --
(18) it depends on the give-and-take.
(19) **Q** We're now talking about the --
(20) **A** It wouldn't inevitably result in indexing
(21) every document and logging every document. It
(22) depends on what the request was. It depends on the

Page 195
(1) legitimacy of the request. It depends on a lot of
(2) things.
(3) **Q** Your testimony is Mr. Quinn raised the
(4) possibility of this using the model of what would
(5) happen on the outside?
(6) **A** He did.
(7) **Q** And I want to understand the model, of the
(8) way it works on the outside with ordinary lawyers and
(9) ordinary citizens, as you understood it at that point
(10) in time.
(11) **A** Depending on the scope of the request --
(12) **Q** If an ordinary lawyer and ordinary citizen
(13) were faced with a request by the law enforcement
(14) agencies to come in and conduct a search to look for
(15) relevant documents pertaining to a suicide, the
(16) ordinary lawyer could say no, unless you have a
(17) search warrant, you can't come in; correct?
(18) **A** Yes, that could be.
(19) **Q** If the agents or the police showed up with
(20) a search warrant, they could then search; correct?
(21) **A** They can search in accordance with the
(22) scope of the search warrant.

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(1) **Q** And the private citizen or private lawyer
(2) couldn't stop that; right?
(3) **A** That's correct.
(4) **Q** Then if there were issues concerning
(5) particular privileged documents, depending on whether
(6) they fell within the scope of the search warrant, you
(7) would find some way to log them and identify them and
(8) put them aside to be ruled on by a judge; correct?
(9) **A** Correct.
(10) **Q** If an ordinary citizen were in this
(11) situation we're talking about and the authorities
(12) wanted to issue a subpoena, they would serve a
(13) subpoena upon the ordinary citizen; right?
(14) **A** Correct.
(15) **Q** And at that point, any destruction of
(16) documents or placement of documents outside the
(17) custody or control of the recipient of the subpoena
(18) could constitute an obstruction of justice; correct?
(19) **A** Perhaps. Depending on the circumstances,
(20) it could.
(21) **Q** If it was willful?
(22) **A** It could constitute, under certain

Page 197
(1) circumstances, an obstruction of justice.
(2) **Q** Under those circumstances, the authorities
(3) could insist, if they wanted to, to get either the
(4) documents themselves or an accounting of any
(5) documents not being produced; correct?
(6) **A** Perhaps.
(7) **Q** That's the way it works with ordinary
(8) citizens and private lawyers; right?
(9) **A** Sometimes.
(10) **Q** Could an ordinary citizen insist that the
(11) FBI sit in a room while the ordinary citizen or
(12) lawyer made a decision on the spot about what
(13) documents would be sorted out?
(14) **A** Yes.
(15) **Q** You think the ordinary citizen could insist
(16) that the FBI sit there?
(17) **A** Could insist, ask, request and the FBI
(18) either will or won't. I think the FBI probably would
(19) if they thought there was a chance of going in the
(20) room and sitting.
(21) **Q** And see what they could spot?
(22) **A** Seeing what -- they would see what was

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(1) being made available to them. I don't think the FBI
(2) would storm out necessarily, it depends. It depends
(3) on the circumstance. It depends on what they're
(4) looking for. It depends on the relationship. It
(5) depends on if there's some adversary proceeding. It
(6) depends on a lot of circumstances.
(7) **Q** In this particular case, did you want to
(8) have the FBI and the Justice Department present when
(9) you went through the review of the documents you were
(10) going through?
(11) **A** I wanted the FBI and the Justice Department
(12) to be satisfied that we were conducting a good faith
(13) search for a suicide note or an extortion note.
(14) That's what they asked to do, and that's what I
(15) wanted -- I understood that. It was mentioned from
(16) the first briefing on July 21, you know, we want
(17) to -- or shortly after that briefing. We want to
(18) look in Foster's office for a suicide note.
(19) It's a natural reaction for the FBI and the
(20) Park Police to have, it's the reaction I had on July
(21) 20th. I wanted to assure -- I wanted them to go in
(22) and see for themselves -- and I wanted to see because

Page 199
(1) my search was very cursory on the 20th -- if there
(2) was a suicide note or extortion note, and I wanted to
(3) satisfy them with respect to that. I thought that
(4) was a legitimate interest and I wanted to satisfy
(5) that legitimate interest.
(6) **Q** You wanted to satisfy them that your search
(7) was being conducted in an appropriate fashion?
(8) **A** No. I wanted to satisfy our search. We
(9) were searching for a suicide -- our search, we were
(10) searching together for a suicide note or an extortion
(11) note, and this was a way we could conduct our search.
(12) **Q** At the time you went in with the law
(13) enforcement authorities to begin going through the
(14) documents in Mr. Foster's office, is it your
(15) understanding that Mr. Margolis was happy with this
(16) procedure you had in place?
(17) **A** I didn't think he was happy with this
(18) procedure. I think you're -- I thought he -- I
(19) thought he thought law enforcement should have maybe
(20) a little more of a role. But he recognized the
(21) problem. He was sympathetic to the conundrum and
(22) therefore, this first page discussions were made we

Page 200
(1) had, and therefore looking at -- file label
(2) discussions we had.
(3) **Q** At the time you went in, hadn't
(4) Mr. Margolis repeatedly expressed his dissatisfaction
(5) and his strong opposition to a procedure in which you
(6) would make the determination about what would be
(7) withheld and what would be turned over?
(8) **A** I don't remember that happening.
(9) **Q** Hadn't Mr. Heymann expressed his strong
(10) opposition to the procedure you recommended or you
(11) insisted upon in which you would make the decision
(12) about what would be withheld and what would be turned
(13) over?
(14) **A** I don't remember that happening.
(15) **Q** Anyway, it was you who made the decision the

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(16) way this procedure was going to be conducted?
(17) **A** That's correct.
(18) **Q** At that point, you became in control of the
(19) search; right?
(20) **A** No. I made a decision, and I conducted the
(21) search in the manner I sought to conduct it.
(22) **Q** At that point, it became your

Page 201
(1) investigation; right?
(2) **A** No, it didn't become my investigation.
(3) **Q** At that point, it was your decision about
(4) how the search would be carried out; right?
(5) **A** It was my decision which was conveyed to
(6) them and which they somewhat reluctantly agreed to.
(7) They wanted more. They wanted more. Look at the
(8) first page or something like that.
(9) **Q** When you went into the office, you sat
(10) behind Mr. Foster's desk; correct?
(11) **A** For a time, not entirely.
(12) **Q** Initially.
(13) **A** More than initially. Maybe initially,
(14) maybe –
(15) **Q** And Mr. Sloan was behind you –
(16) **A** Yes.
(17) **Q** – behind one shoulder, and Mr. Neuwirth
(18) was behind you on the other shoulder; right?
(19) **A** Yes.
(20) **Q** And they were facing out into the room with
(21) you; correct?
(22) **A** Yes.

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(1) **Q** And Mr. Spafford, who's the Foster family's
(2) private lawyer, was also present; right?
(3) **A** Right.
(4) **Q** Young man?
(5) **A** I think so. I haven't seen him in a long
(6) time.
(7) **Q** And he was off to the side; correct?
(8) **A** He may be old by now.
(9) **Q** He was off to the side; correct?
(10) **A** He was off to the side.
(11) **Q** And Mr. Margolis and Mr. Adams were on the
(12) opposite side of the desk; correct?
(13) **A** Correct.
(14) **Q** And the law enforcement people were on the
(15) opposite side of the desk going back into the room;
(16) correct?
(17) **A** Correct.
(18) **Q** And you went through the documents and you
(19) picked up documents, and you characterized them in
(20) certain ways; correct?
(21) **A** Correct.
(22) **Q** And you didn't show the documents to the

Page 203
(1) people, did you?
(2) **A** Sometimes I did.
(3) **Q** How many times did you do it?
(4) **A** A few – more than a few. At times I did.
(5) At times I would – at times I would say this is a
(6) book on ethics regulations. Here, take a look – not
(7) a book, but a file on ethics because we had a lot of
(8) ethics issues in the office. Here, take a look. It
(9) says "ethics regulations" on the top.
(10) I showed them the first page of that. I
(11) would do that from time to time because I thought it
(12) was a good way of doing it, to see it. Other times I
(13) just described what I was looking at. That's the way
(14) the search was conducted.
(15) **Q** Is it fair to say that most of the time you
(16) simply looked at the document yourself and
(17) characterized in some way?
(18) **A** The majority of the time, maybe the large
(19) majority of the time but not always, not always.
(20) **Q** And most of the time you characterized it
(21) in a very general way?
(22) **A** Yes.

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(1) **Q** Were there handwritten pieces of paper that
(2) you ran across in this inventory or search?
(3) **A** Yes. There were files that Foster had
(4) which contained handwritten notes – handwriting,
(5) yellow pieces of paper or other pieces of paper with
(6) handwriting on them.
(7) **Q** Did you read those out?
(8) **A** I looked at them. I glanced at a file. I
(9) looked at a file. There was a file on ethics. I
(10) would see a page listing some ethics regulations or
(11) some comments with respect to ethics regulations.
(12) I'd glance at them. Did I read every word on the
(13) page, no. Did I glance at them, yes. I was looking
(14) for a suicide note or extortion note.
(15) **Q** You glanced at it. Did you read it out
(16) loud?
(17) **A** Did I read it out loud? No.
(18) **Q** Did you open all the drawers?
(19) **A** I believe I opened all the drawers, yes.
(20) **Q** Was there a credenza or bookcase behind
(21) Mr. Foster with some personal files?
(22) **A** There was a credenza. Was it behind the

Page 205
(1) desk or was it to the side – I don't remember
(2) anymore, it's been almost two years – but I did open
(3) the credenza instead of looking through those files.
(4) **Q** Did you remove the files?
(5) **A** Some – I believe I removed some and others
(6) I didn't. With those I didn't I looked at and
(7) described generally what they were.
(8) **Q** Characterizing them –
(9) **A** Characterizing them, yes.
(10) **Q** As you thumbed through them?
(11) **A** As I thumbed through them, yes.
(12) **Q** During this process, did Mr. Margolis
(13) continue to raise objections about the way you were
(14) handling things?
(15) MR. PEDOWITZ: We're talking about while
(16) we're in the room –
(17) BY MR. CHERTOFF:
(18) **Q** The process of reviewing the documents in
(19) the room. Did he continue to raise objections?
(20) **A** I don't remember him doing that.
(21) **Q** Did he indicate that at that point in time,
(22) the possibility of foul play could not be excluded?

Page 206
(1) **A** I don't remember him – I don't remember
(2) him saying it. Is it possible? Yes, it's possible
(3) he said it, but I don't remember him saying it.
(4) **Q** In your understanding, to the extent that
(5) foul play remains a possibility as of the state of
(6) mind that people had at that point in time
(7) admittedly, that the investigation was not only to
(8) determine the course of a suicide but whether, in
(9) fact, there was a crime that had been committed?
(10) **A** I understood that the investigation had not
(11) concluded there was a suicide, and consequently was
(12) looking into other possibilities, including the
(13) possibility of foul play. However, unlikely as it
(14) may seem, but obviously you have to conduct an
(15) investigation to make a final determination.
(16) **Q** During the course of this process, did you
(17) consult with Mr. Sloan and Mr. Neuwirth?
(18) **A** As we were doing the search for the note?
(19) **Q** Right.
(20) **A** They were standing and watching it. I
(21) don't know if I consulted with them in the presence
(22) of the other law enforcement people. I don't

Page 207
(1) remember that. I may have turned and asked them a
(2) question about it. Maybe there was a file they were
(3) familiar with and asked them something about it, but
(4) I don't remember that right now.
(5) **Q** Was Mr. Burton there, by the way?
(6) **A** Mr. Burton was there, yes.
(7) **Q** Did Mr. Burton or Mr. Sloan or Mr. Neuwirth
(8) come in and out of the office at points of time?
(9) **A** There might have

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(10) **Q** Did they bring anything with them at any
(11) point in time?
(12) **A** I don't remember.
(13) **Q** Did you get up and move around the office?
(14) **A** Yes.
(15) **Q** Did you open drawers?
(16) **A** Yes.
(17) **Q** Did you pull files out?
(18) **A** Yes.
(19) **Q** Did you show those files to anybody in law
(20) enforcement?
(21) **A** I described them.
(22) **Q** As you held them and read them?

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(1) **A** Yes, and sometimes I -- and I might have.
(2) I remember sometimes showing a file. I was sort of
(3) following a procedure where, every so often for a
(4) change of pace, I would show them a file, just to
(5) confirm what I was saying was accurate.
(6) **Q** Was there a Dictaphone?
(7) **A** Did I have a Dictaphone?
(8) **Q** Was there a Dictaphone in the office?
(9) **A** I'm not sure. I don't remember now.
(10) Maybe.
(11) **Q** Did anybody ask to have the tape listened
(12) to?
(13) **A** Tape of what?
(14) **Q** What was in the Dictaphone, the tape in the
(15) Dictaphone. Did anyone ask to have the tape listened
(16) to?
(17) **A** I don't remember.
(18) MR. PEDOWITZ: Is your question was there a
(19) tape on the Dictaphone?
(20) BY MR. CHERTOFF:
(21) **Q** I'm asking did anybody ask to have the
(22) Dictaphone listened to?

Page 209
(1) **A** I don't remember that.
(2) **Q** Was there a computer?
(3) **A** Yes -- there was a computer in the office?
(4) I don't remember if there's a computer in his
(5) office. The secretary had a computer.
(6) **Q** You don't remember whether anyone asked to
(7) have the computer turned on?
(8) **A** I remember something being asked with
(9) respect to the computer. I do remember that.
(10) **Q** To have it turned on?
(11) **A** Perhaps.
(12) **Q** Did you deny that request?
(13) **A** No. I think I accepted some sort of
(14) request that we would do something eventually with
(15) respect to the computer. We would look -- what I
(16) remember is they -- as the search went on, certain
(17) requests were made for documents, and I created a
(18) separate pile -- I heard those requests, and I
(19) accepted those requests. I started making a pile of
(20) documents. I said we would look at these later and
(21) we'd make a determination with regard to --
(22) **Q** Whether you would turn those over?

Page 210
(1) **A** Whether they're privileged or whether we
(2) would exercise privilege.
(3) **Q** You weren't making just a privilege
(4) determination. You were also deciding whether you
(5) would turn over unprivileged documents; correct?
(6) **A** They made requests for certain documents --
(7) they made requests for certain documents. I said we
(8) would look at those documents, and we would make a
(9) determination whether to turn them over. I was
(10) thinking of privilege. This was a lawyer's office,
(11) and I think privilege applied to many of the
(12) documents, virtually all of the documents,
(13) attorney-client, executive, work product. On the
(14) other hand, maybe not to every single document.
(15) In any event, I never had to reach the
(16) decision, the final decision whether I really was
(17) just deciding between privileged documents or not
(18) privileged documents, because I decided -- or we
(19) decided, when we had time to look at the documents,
(20) that we would turn everything over that was
(21) requested.
(22) **Q** But when you went into that office, was it

Page 211
(1) your understanding that you were simply going to sort
(2) through and withhold privileged documents or that you
(3) were going to decide whether even unprivileged
(4) documents would be turned over?
(5) **A** No. I was looking -- the request was a
(6) search to look for a suicide note or an extortion
(7) note. I was conducting a search for a suicide note
(8) or extortion note. I was not reviewing files to make
(9) determinations whether they were privileged or not
(10) privileged, whether it would be turned over or not
(11) turned over.
(12) No files were requested prior to that
(13) search. Some documents were requested in the course
(14) of the search, which I then put in a pile to give to
(15) them. The search -- it was for do I see a suicide
(16) note or an extortion note? That's what the search
(17) was for. That is what we were doing in that office
(18) that day.
(19) **Q** Your understanding in your mind was that
(20) you were not making a determination about whether
(21) documents were simply privileged or unprivileged with
(22) the notion being that the unprivileged documents

Page 212
(1) would be turned over. You were deciding whether
(2) there were documents that would satisfy the
(3) description of suicide note or extortion note?
(4) **A** Correct.
(5) **Q** And that is all that -- your testimony is
(6) that's all that the law enforcement people wanted,
(7) was to see if there's a suicide note or extortion
(8) note in the files?
(9) **A** That day -- that's correct. That was the
(10) basic object of that search.
(11) **Q** The purpose of having them sit there and
(12) watch you search for a suicide note or an extortion
(13) note was what?
(14) **A** We were going in together. The office had
(15) been secured, and their purpose was to see -- they
(16) wanted to search for a suicide note or extortion
(17) note.
(18) **Q** But you didn't let them?
(19) **A** I did let them. We did it together. I did
(20) it. I searched in their presence.
(21) **Q** You opened the drawers; right?
(22) **A** I opened the drawers.

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(1) **Q** You looked at the documents?
(2) **A** Correct.
(3) **Q** You read them what you wanted to read them?
(4) **A** Correct.
(5) **Q** You characterized what you wanted to
(6) characterize?
(7) **A** Correct.
(8) **Q** Your testimony is that all they wanted, as
(9) you understood it, was an extortion note or a suicide
(10) note?
(11) **A** Or some similar such document. The
(12) document we found, obviously the torn-up note in the
(13) bottom of the briefcase, is a classic example of what
(14) some similar such document would be. It is not
(15) clearly a suicide note, it is not an extortion note,
(16) but it's something that directly reflects on his
(17) state of mind and consequently, was turned over when
(18) it was found. That's the kind of thing we were
(19) looking for. A suicide note or an extortion note or
(20) some similar such document.
(21) **Q** But your understanding is that they wanted
(22) to rely upon your judgment about what kinds of

Page 214
(1) documents would be relevant for them to look at?
(2) **A** Look. If they had their preference -- they
(3) understood my privileged concerns. They're lawyers,

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(4) some of them and they were sensitive, and they
(5) understood what I was doing. If they had their
(6) preference, we want to do it, we'll look, we want to
(7) look, we'd rather do it ourselves rather than have
(8) you do it. I said hey, this is a lawyer's office.
(9) We can't do it like that.
(10) On the other hand, you have a legitimate
(11) desire to look for a suicide note or extortion note.
(12) This is the way we'll do it: we'll do it together. I
(13) will do it. I'll look. If I find a suicide note or
(14) extortion note, unless I'm fooling you, unless I'm
(15) reading one in front of it and saying this concerns
(16) Supreme Court nominees but it's really a suicide
(17) note, I could have done that maybe, razzle-dazzle,
(18) but I didn't.
(19) **Q** But if there's a document --
(20) **A** That was the nature of the search.
(21) **Q** I want to get to this point. The point is
(22) you were not merely subtracting privileged documents

Page 215
(1) and leaving the rest for some future occasion for the
(2) agents to go through to see if there's anything that
(3) would bear on the state of mind of the victim;
(4) correct? Am I correct?
(5) **A** There was no request for us to examine the
(6) files -- we want all files, produce all files of
(7) Foster's office so we can go through it, not on that
(8) day nor actually on any day, until very recently.
(9) **Q** When you characterized the various files,
(10) did you mention that there was a file involving
(11) Whitewater in there?
(12) **A** What I recall with respect to that is at
(13) one point coming across a series of Clinton personal
(14) files, and I recall saying these are Clinton personal
(15) files. I wanted to give them a sense of what was in
(16) the office. They wanted a sense, in the course of a
(17) suicide note or extortion note. I said these are
(18) Clinton personal files and I looked through them.
(19) I started looking at them. I wasn't
(20) familiar with them. Vince had been working on this
(21) stuff. I said they involve financial stuff, tax
(22) returns, real estate investments, things like that.

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(1) And I would look, as I passed these files, I would
(2) point out the files to them, and we just passed over
(3) them.
(4) **Q** When you say "point out the files to them,"
(5) what do you mean?
(6) **A** Here, these are the personal files.
(7) **Q** You held them up in a group?
(8) **A** I don't remember holding them up in a
(9) group. I remember opening drawers -- opening
(10) credenza drawers actually and pointing them out.
(11) Some I might have pulled out and held up and some I
(12) didn't.
(13) **Q** Did you look to see if there were
(14) handwritten notes in the Clinton personal files?
(15) **A** I flipped through the files to see, not so
(16) much if there was a suicide note or extortion note
(17) but you start looking through those things rapidly,
(18) you're not likely to find something stuck in a file
(19) like that but who knows?
(20) My job was to see if it was there, and so
(21) I'd open a file, see handwritten notes. I'd glance
(22) at it and see it relates to the file. No suicide

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(1) note, no extortion note. I'd close the file, put it
(2) back and go on.
(3) **Q** Were there, in fact, a substantial number
(4) of handwritten notes in the Clinton personal files?
(5) I mean in Vince Foster's handwriting.
(6) **A** I don't remember.
(7) **Q** You recognized his handwriting?
(8) **A** I recognized his handwriting.
(9) **Q** Would you agree with me that handwritten
(10) notes that might express his own feelings about
(11) something would be something that might bear some
(12) closer looking at?
(13) **A** Only if they would look like there were a
(14) suicide note or an extortion note. A handwritten
(15) item, which I glanced at, discussing ethics
(16) regulations doesn't require a closer examination. A
(17) handwritten item, such as that which was eventually
(18) discovered at the bottom of the briefcase, would
(19) require closer examination.
(20) **Q** Suppose it expressed concerns about
(21) something or anxieties about something, you don't
(22) think that's something they'd want to look at?

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(1) **A** If none of it is part of a file. This is a
(2) lawyer's office. I mean, a lawyer would make notes
(3) with respect to various legal theories or things like
(4) that. No, if it's a part of a file -- if it's not a
(5) suicide note or extortion note --
(6) **Q** And that was your touchstone in the
(7) analysis, in your mind, as to what you would consider
(8) something worth identifying and showing, if you ran
(9) across it, was a suicide note or extortion note?
(10) **A** Or something similar.
(11) **Q** Well, if the something similar is the part
(12) that could cover a very little piece or a very large
(13) piece.
(14) **A** No. It covers the proper piece.
(15) **Q** In your mind, you were making the decision
(16) about those items that you felt you should bring to
(17) the attention of Mr. Margolis and Mr. Adams and the
(18) rest of the law enforcement people?
(19) **A** It was not a lot of discretion. I mean, it
(20) was a suicide note or extortion note or something
(21) similar. Something similar is fairly clear. And we
(22) have, as I've mentioned five times --

Page 219
(1) **Q** I want your state of mind --
(2) **A** That was my state of mind. My state of
(3) mind, I was looking for a suicide note or an
(4) extortion note or something similar. If you want to
(5) know what something similar is, look at what we
(6) ultimately found on Tuesday the 26th, or Monday the
(7) 26th.
(8) **Q** Did you unpack the trash?
(9) **A** I believe the trash was turned over on the
(10) top of the desk.
(11) **Q** Turned over to who?
(12) **A** Unpacked.
(13) **Q** And spread out on the desk?
(14) **A** Maybe I'm wrong about that. I have a vague
(15) memory of looking through the trash.
(16) **Q** Did you look in the burn bag?
(17) **A** If there was a burn bag there, I would
(18) probably have looked through the burn bag. We did
(19) look through the burn bag, if there was a burn bag
(20) there. I just don't remember it.
(21) **Q** Did an agent stand up during the course of
(22) the search?

Page 220
(1) **A** A number of agents were standing during the
(2) course of the search.
(3) **Q** Did one of your associate counsel make a
(4) comment about that?
(5) **A** Yes.
(6) **Q** What was the comment?
(7) **A** He's -- I think some FBI agent in the back
(8) of the room, he's looking -- Cliff Sloan said he's
(9) looking at the files or something like that. I said
(10) stop that. I chastised him, my associate, and I
(11) think I made him apologize or something.
(12) MR. ZIMROTH: Chastised who?
(13) THE WITNESS: My associate. Not the FBI
(14) agent.
(15) BY MR. CHERTOFF:
(16) **Q** Let me go through it step by step.
(17) Mr. Sloan stood up and he said something to the
(18) effect of indicating an agent -- he's looking at the
(19) files?
(20) **A** Yeah, he's looking at some files on the
(21) desk.

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(22) **Q** And did the agent say something like let's

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(1) not get carried away here?
(2) **A** That could be.
(3) **Q** And then did you have to chastise Mr. Sloan
(4) after having made what in effect was a rude
(5) statement?
(6) **A** Yes.
(7) **Q** Is that indicative in your mind that the
(8) tenor of this proceeding was a nonadversary type
(9) procedure or that it was in fact was an adversary
(10) type procedure?
(11) **A** It was a nonadversary type procedure. That
(12) wasn't indicative of anything, except an inadvertent
(13) and not wise remark.
(14) **Q** Did anybody, to your knowledge, go out to
(15) receive phone calls, any of your White House people
(16) who were in the room?
(17) **A** I don't know. It's possible.
(18) **Q** Did anybody report back to you on any of
(19) the phone calls they received?
(20) **A** I don't remember. It went on for a couple
(21) of hours so it's unlikely everybody stayed in place
(22) for the hours except for me.

Page 222
(1) **Q** It was about an hour and a quarter
(2) actually, wasn't it?
(3) **A** If I had to guess, I would have said two,
(4) 2-1/2 hours but it could have been an hour and a
(5) quarter. I would say closer to two hours.
(6) **Q** Now, Mr. Foster had a couple of briefcases,
(7) didn't he?
(8) **A** I only remember one. There may have been
(9) others, but I only remember one.
(10) **Q** And the one you remember looked like what?
(11) Describe it.
(12) **A** Like an accordion kind of briefcase, like
(13) that one over there.
(14) **Q** It doesn't do any good for the record to
(15) indicate somebody's briefcase unless we're going to
(16) attach it to the deposition.
(17) MR. ZIMROTH: I hope you're not going to
(18) attach it because it's mine.
(19) BY MR. CHERTOFF:
(20) **Q** Is it the kind of briefcase that
(21) essentially opens up at the top and you can look
(22) inside it, and it's not fastened at the top, you just

Page 223
(1) pull it apart and it opens up?
(2) **A** That's correct.
(3) **Q** Did you pick the briefcase up to look
(4) inside it?
(5) **A** What I recall is the briefcase was against
(6) the wall. I reach back. I pulled it to the side of
(7) me, next to the chair I was sitting in, Vince's chair
(8) behind Vince's desk. I saw files in it, I reached
(9) in, and I pulled out all the files from the
(10) briefcase, and I said okay, this is his briefcase.
(11) Apparently these are the files in the briefcase. I
(12) looked at them. I described the files, and in some
(13) general way, and I put them down, and that's what I
(14) remember. Then I think I just moved the briefcase
(15) back.
(16) **Q** Was the briefcase empty?
(17) **A** I believe I had emptied the briefcase of
(18) all the files. I don't remember seeing anything else
(19) in the briefcase. I didn't see scraps of paper. I
(20) don't remember seeing scraps of paper in the bottom
(21) of the briefcase but I didn't necessarily look at the
(22) bottom of the briefcase. By reaching in, I felt I

Page 224
(1) had emptied the briefcase of all its files.
(2) **Q** You were looking for a note, weren't you?
(3) Wasn't that what you were looking for?
(4) **A** Yes.
(5) **Q** Like a note that would come in a small
(6) envelope?
(7) **A** Yes.
(8) **Q** Didn't you want to check inside the
(9) briefcase to see if there was a note?
(10) **A** I thought I had emptied the briefcase. I
(11) don't remember looking to the bottom of the
(12) briefcase. I may have looked at the bottom of the
(13) briefcase and I just don't remember. I'm not saying
(14) I didn't look at the bottom of the briefcase. I
(15) probably did look at the bottom of the briefcase.
(16) **Q** After all, as you've testified repeatedly
(17) here, the thing you were looking for was a suicide
(18) note or an extortion?
(19) **A** I got that across, yes.
(20) **Q** And that might include a letter that might
(21) be in a letter-sized envelope; right?
(22) **A** That's correct.

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(1) **Q** That's something you wouldn't pick up if
(2) you reached in to pick up a group of files?
(3) **A** What I did is when I reach in to pick up, I
(4) glanced -- after I picked it up, I glanced down at
(5) the briefcase and I didn't see anything like --
(6) anything else that I thought I should pick up. I
(7) don't remember seeing little scraps of paper. I'm
(8) not -- I must tell you if I saw little scraps of
(9) paper, I'm not sure I would have done anything at
(10) that point. I don't remember seeing any scraps of
(11) paper.
(12) **Q** Were you in a rush to get the agents out of
(13) the office?
(14) **A** No, I was not.
(15) **Q** You didn't have an appointment later or
(16) something?
(17) **A** No, I did not.
(18) **Q** Or anything you needed to do afterwards?
(19) **A** No.
(20) **Q** And how many times did you have to go into
(21) the briefcase to pull the files out? Was it all the
(22) files in one motion or did you have to go back

Page 226
(1) several times?
(2) **A** I don't remember. I just don't remember.
(3) It may have been in one motion. It may have been two
(4) motions, but it was something like that. Then I
(5) glanced down to see that I have everything, saw
(6) nothing else that should be pulled out, and described
(7) the files and went on.
(8) **Q** Did you make any attempt while this process
(9) was going on to have what you were doing inventoried?
(10) **A** No.
(11) **Q** Or indexed?
(12) **A** No.
(13) **Q** Did you know Mr. Sloan was making little
(14) notes about what you were saying?
(15) **A** No, I did not know that. I discovered that
(16) later but I did not know it at the time.
(17) **Q** Did you know Mr. Spafford made little notes
(18) of what you were saying?
(19) **A** I didn't know that either.
(20) **Q** But wholly apart from what people were
(21) writing down, based on what you were saying, you
(22) didn't have anyone in there who was actually

Page 227
(1) physically going through the documents and logging
(2) them --
(3) **A** No.
(4) **Q** -- or keeping any kind of record?
(5) **A** No, the purpose was to search for a suicide
(6) note or extortion note. It was not to log and index
(7) all the files in Vince Foster's office.
(8) **Q** As this drew to a conclusion, did you have
(9) any further conversation with Mr. Margolis concerning
(10) the procedures you were just undertaking?
(11) **A** I don't recall any.
(12) **Q** Did Mr. Margolis say to you that if this
(13) were IBM, he'd have subpoenaed all these documents?
(14) **A** I don't recall him saying that.
(15) **Q** Was there anyone at the end of this process?

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(16) **A** I don't -- this is some source of
(17) contention maybe but I don't recall him being angry
(18) at the end of the process.
(19) **Q** Did you say to Mr. Margolis if this were
(20) IBM, a smart lawyer would have removed the documents
(21) and asserted privilege would have attached?
(22) **A** Did I say that?

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(1) **Q** Yes.
(2) **A** I don't remember saying that.
(3) MR. BEN-VENISTE: I didn't get the last
(4) part of what you said.
(5) MR. PEDOWITZ: Maybe you can read it again
(6) because it didn't sound like English.
(7) MR. CHERTOFF: Let's get it reread.
(8) THE WITNESS: Then maybe I said it.
(9) MR. CHERTOFF: I'll rephrase it this way.
(10) BY MR. CHERTOFF:
(11) **Q** Did you say to Mr. Margolis in substance
(12) that if this were IBM, a smart lawyer would have
(13) removed them, meaning the documents, and the
(14) privilege would have attached?
(15) **A** I don't remember saying that.
(16) **Q** Was there discussion about having an
(17) inventory prepared of the documents at any point with
(18) Mr. Margolis in this process?
(19) **A** I don't remember any such discussion.
(20) **Q** Did Mr. Margolis ask you to keep the room
(21) secured or the office secured after this process of
(22) reviewing them was completed?

Page 229
(1) **A** I don't believe so. I think not.
(2) **Q** And it follows, therefore, you didn't
(3) refuse to do that?
(4) **A** That's correct.
(5) (Pause.)
(6) MR. PEDOWITZ: Do you want to take a break
(7) for a minute, Mike?
(8) MR. CHERTOFF: No, that's fine.
(9) BY MR. CHERTOFF:
(10) **Q** At the conclusion of this process, did
(11) someone raise the possibility of the documents that
(12) were Mr. Foster's own personal documents going back
(13) with the Foster family lawyer?
(14) **A** Yes, that issue was raised. I believe it
(15) was raised prior to the conclusion of the process,
(16) although it may have been at the conclusion of the
(17) process, because one category of documents we were
(18) coming across as we were conducting the search was
(19) Foster personal documents.
(20) **Q** And you were separating those in a separate
(21) file?
(22) **A** That's correct.

Page 230
(1) **Q** And there were another pile of documents
(2) that you believe the Park Police might want to look
(3) at eventually?
(4) **A** They requested -- like, for example, the
(5) one I remember is saying this is -- I would pick up a
(6) document on his desk and say this is a telephone log
(7) listing, and they said oh, you know, we want to see
(8) telephone logs. And I said well, all right, it's not
(9) a suicide note or extortion note. Let me put it
(10) aside and I will --
(11) **Q** Address it later?
(12) **A** I'll address it later on. Then other
(13) things would come up like that or similar to that,
(14) and I'd say all right, all right, we'll put it in.
(15) **Q** And there was a third pile; right?
(16) **A** The third pile was just working files -- I
(17) don't remember what the third pile was at this
(18) point. I remember most of the documents in the
(19) office were just Foster working files, White House
(20) counsel's office working files and I would just pile
(21) them up, too.
(22) **Q** As to the category of Foster personal

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(1) documents, at some point in time the question was
(2) raised about giving them to the Foster lawyer?
(3) **A** Correct.
(4) **Q** And ultimately the law enforcement
(5) personnel did not object to that; correct?
(6) **A** That's correct.
(7) **Q** And they agreed that they would deal with
(8) the Foster lawyer personally afterwards to look at
(9) those; right?
(10) **A** I made that suggestion, I believe.
(11) **Q** And they agreed to that?
(12) **A** They agreed to that suggestion.
(13) **Q** There came a point where the law
(14) enforcement people went outside to wait, and you were
(15) going to turn those documents over to Mr. Spafford;
(16) correct?
(17) **A** What I remember -- well, that's possible,
(18) too. I don't want to say --
(19) **Q** What do you remember?
(20) **A** What I remember is after piling it up
(21) because I was running across a fair amount of it, of
(22) his personal documents, leases, insurance policies,

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(1) things like that, I believe, were starting to pile
(2) up. I remember saying look, if there comes a time
(3) when you want to look at any of these documents, you
(4) should talk to Foster's personal lawyer so what I'm
(5) going to do or what I suggest I do is give it to them
(6) and you can start with them. And I did that in their
(7) presence.
(8) **Q** Now, there was a point where they were
(9) leaving the room and Mr. Spafford was in the room,
(10) Mr. Foster's office, with you; right?
(11) **A** That could be. I don't really remember
(12) that. I guess at the end of the search you're
(13) talking about?
(14) **Q** Right.
(15) **A** It's possible that Spafford didn't walk out
(16) with the rest. It's possible he stayed a little
(17) behind as they walked out.
(18) **Q** At that point in time, thereabouts, give or
(19) take a few minutes, did Mr. Sloan say to you in a
(20) very low voice that he had seen scraps of paper in
(21) Mr. Foster's briefcase?
(22) **A** No.

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(1) **Q** And did you say to Mr. Sloan in substance
(2) well, we'll deal with that later or we'll look at it
(3) later?
(4) **A** I remember no such conversation. I
(5) remember no such conversation, and I believe if such
(6) a conversation would have taken place, it's a
(7) conversation I would likely remember. But I remember
(8) no such conversation.
(9) **Q** With anybody on the 22nd of July in that
(10) room?
(11) **A** About scraps of paper at the bottom of the
(12) briefcase, that's correct.
(13) MR. PEDOWITZ: Is this a good time for a
(14) short break?
(15) MR. CHERTOFF: Yes.
(16) (Recess.)
(17) BY MR. CHERTOFF:
(18) **Q** Now, once the law enforcement people left
(19) Mr. Foster's office, did you lock Mr. Foster's
(20) office?
(21) **A** I don't think so.
(22) **Q** And what did you do next with respect to

Page 234
(1) Mr. Foster's office?
(2) **A** Let's see. I had handed the documents --
(3) the Foster personal documents to Mr. Spafford with
(4) the agreement of the law enforcement people, and he
(5) left. I believe the search was over. We did not
(6) find a suicide note or an extortion note, and I, at
(7) some point thereafter, asked to see Maggie Williams.
(8) I asked her to come in. I don't know if I
(9) did it directly or asked Neuwirth or Sloan to get

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her. I don't remember because I was anxious to get on with the work of the office. I asked Maggie Williams to select with me the Clinton personal files so we could deal with the Clinton personal files like we did with the Foster personal files, which is to send them to the Clintons and their personal lawyers.
Q Why did you decide to do it at that point?
A I had just done it with the Foster files. The search was over. There was no extortion or suicide note. I was anxious to get on with the work of the office. Indeed, actually even before I -- I think I even asked to see Maggie, I told Neuwirth that Steve, I want to assign the working files of the

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office to other lawyers. And look, when we get back from the funeral, I want you to prepare an inventory of these files. I want you to pack up the rest of Foster's personal stuff and send it to the family's personal lawyer because there were some pictures and wall hangings and stuff like that.
I want you to inventory the files and what files were in the office -- we went through them but we weren't writing them down -- so I could send them to the other lawyers so the work of the office can go on, and he said he could do that when he got back, he couldn't do it that night -- we were going to leave the next morning, early, for Little Rock and everybody was still in a state of depression -- because that would take some time. And part of that process, the natural process, having gotten the Foster personal files out now, we'll get the Clinton personal files out, let them go to their lawyers or to the Clintons and any lawyer they select. I said to Maggie, you should check with the Clintons. They probably would want to send these files to Bob Barnett, who I think has been working

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with Vince on some of this stuff, but you check with them. You just take the files and we'll send it out.
Q Let me ask you a question. As of the point that the law enforcement people left, not all of Mr. Foster's personal files had been segregated; right?
A Not all? Perhaps not all, but virtually all. At least all that I ran across.
Q And that was part of the process you were going through; right?
A Yes.
Q As to those that were already separated out, you gave them to Spafford?
A That's correct.
Q And you told Neuwirth, in the course of his inventory when he got back the next week, he should identify any further Foster personal papers and in the next week he could get that to the Foster family; right? Correct?
A If there were any more Foster personal files. I knew there were Foster personal items, wall hangings, things like that.

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Q But that could wait until the next Monday?
A The wall hangings could wait.
Q And any other personal files?
A If there were other personal files I didn't see, that could wait.
Q And you put off the inventory until the next Monday?
A I put off the inventory until the next Monday because it was an extensive thing to do.
Q Had you separated out the Clinton personal files at this point in time?
A I hadn't separated them out but in going through the search, I saw they were in one discrete place -- at least I believed they were in one discrete place -- in a drawer at the bottom -- in the credenza.
Q And what made you believe that?
A Because as I was going through, I saw tax returns, investment files, real estate files. I saw them --
MR. CHERTOFF: Can we go off the record for a second.

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(Discussion off the record.)
(Recess.)
BY MR. CHERTOFF:
Q Let me direct your attention again back to the afternoon of the 22nd after the law enforcement people left. Now, at that point in time, did you direct Mr. Neuwirth and Mr. Burton to try to get ahold of Ms. Williams?
A I didn't mention Mr. Burton, but it's possible that I asked Mr. Burton to get ahold of Ms. Williams, but I think I asked -- I don't know who I asked. I asked somebody to get ahold of Ms. Williams.
Q Did there come a point in time where you called Ms. Williams?
A I don't remember calling Ms. Williams. I remember Ms. Williams being in the office with me but I don't remember calling Ms. Williams.
Q In the period of time between when the law enforcement people left and the time Ms. Williams came, what did you do?
A I don't have any memory of what I did.

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Q And Ms. Williams came in and what did you say to her?
A I said the search is over, we didn't find a suicide note or an extortion note. I came across -- I came across Clinton personal files, which I understood would be in the office and those are files we should send back to the Clintons or their personal attorneys, their personal file to the Clintons. I sent the personal files to his family's personal attorney. Let's get the Clintons' personal attorneys.
I don't know who they'll use for these matters, probably Bob Barnett with Williams & Connolly. You help me get these files out and you take them and we'll go on with the work in the office.
Q And how long did this conversation take?
A How long did it take?
Q Yes.
A A short time.
Q Then what did you do?
A Then together Maggie and I started looking

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to try to select -- making sure we took out Clinton personal files rather than any other files.
Q And where did you look?
A Primarily in the credenza. I don't think we looked very many other places, if we looked in any other place 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.
Q Who took them out?
A I don't remember who took them out. I remember just -- I don't remember. It could be Tom Castleton. I have some recollection of -- he's the kid who worked in our office -- calling somebody to help Maggie take them. I didn't carry them out, and I don't think Maggie herself carried them out, although it's possible she did carry some of them out.
Q What was your understanding of where they were going?

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A I'm trying to think what I knew at that time. Obviously, I presumed they were going to the residence, and I think Maggie and I probably

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(4) discussed that. That's the most likely, send them to
(5) the residence and talk to the Clintons and they will
(6) be sent from the residence on to their personal
(7) attorneys.
(8) **Q** What was the discussion about putting them
(9) in the residence?
(10) **A** Simply take the files, give them to the
(11) Clintons, which means give them to the Clintons in
(12) their residence. The Clintons weren't there --
(13) Hillary wasn't there.
(14) **Q** The President was there?
(15) **A** The President was there.
(16) **Q** You didn't call the President and talk to
(17) him about this?
(18) **A** No. And when you get instructions from
(19) them as to which personal attorney, although it's
(20) probably going to be Williams & Connolly, we'll send
(21) it over to Williams & Connolly.
(22) **Q** What did she say?

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(1) **A** She said okay, fine.
(2) **Q** While you two were present in there, did
(3) either of you make any calls to either the President
(4) or the First Lady to get some further direction?
(5) **A** No.
(6) **Q** Did Ms. Williams make any calls to execute
(7) the arrangement?
(8) **A** I don't think so, other than -- let me take
(9) that back. I don't know.
(10) **Q** In your presence?
(11) **A** Oh, in my presence?
(12) **Q** Yes.
(13) **A** I don't have any memory of any such calls
(14) in my presence.
(15) **Q** And then you were with her until someone
(16) came and picked up the boxes and took them out?
(17) **A** We may have been walking in and out. This
(18) was not like the search where we're all together for
(19) an hour or two hours. This is Maggie walks in.
(20) Let's do this, Maggie. We start doing it. I may
(21) walk out to take a call. We complete doing it, but
(22) it was done relatively promptly.

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(1) **Q** How long did this process of going through
(2) the documents with Maggie Williams take?
(3) **A** My best guess -- it's a guess because I
(4) don't remember -- it wasn't lengthy, less than a half
(5) hour. They were fairly easily identifiable. It was
(6) a limited number of files. It was not a large amount
(7) of files.
(8) **Q** And both of you went through this process
(9) of identifying them?
(10) **A** Yes.
(11) **Q** Did Maggie Williams go and inspect certain
(12) files herself and pull them out?
(13) **A** She might have. That's possible.
(14) **Q** And during the period of time you were
(15) there, you have no knowledge or recollection of her
(16) making any telephone calls?
(17) **A** I have no knowledge or recollection. It
(18) doesn't mean she didn't do it, but I have no
(19) knowledge or recollection.
(20) **Q** The next day you all were planning to go to
(21) the funeral in Little Rock?
(22) **A** That's correct.

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(1) **Q** You were going to leave with the President
(2) in the morning on Air Force 1?
(3) **A** Early, yes.
(4) **Q** And come back the same night; right?
(5) **A** We weren't sure we were going to come back
(6) the same day, but it did turn out we came back the
(7) same day.
(8) **Q** These plans were in the process of being
(9) firmed up during the 22nd?
(10) **A** That's right.
(11) **Q** As of the time you had Maggie Williams come
(12) in, you understood that early in the morning on the
(13) next day, the two of you were going to be going out
(14) to Arkansas for the funeral; right?
(15) **A** Yes, or at least -- I wasn't positive. I
(16) mean, those plans were being firmed up during the
(17) day. I'm not sure I was absolutely positive when
(18) Maggie was in. Obviously sometime during that day, I
(19) became positive, but at what time, I don't
(20) recollect. I knew it was highly likely we would be
(21) going the next day, and early the next day.
(22) **Q** Did you know, from your discussions with

Page 245
(1) Maggie Williams, that she was involved in the process
(2) of helping to put together the manifest and working
(3) out the arrangements?
(4) **A** It doesn't surprise me.
(5) **Q** Did you ask her whether she had had any
(6) conversations with Mrs. Clinton that day?
(7) **A** No -- did I ask if she had any
(8) conversations with Mrs. Clinton?
(9) **Q** Yes.
(10) **A** I don't remember if I asked her if she had
(11) any conversations with Mrs. Clinton.
(12) **Q** At the time that you and Ms. Williams went
(13) through the documents, you didn't know which lawyer
(14) was going to wind up taking the documents; right?
(15) **A** That's right. I wasn't positive.
(16) **Q** And Maggie Williams certainly didn't tell
(17) you she had any knowledge of that; right?
(18) **A** I don't recall her saying that she had any
(19) knowledge of that.
(20) **Q** And you didn't call Bob Barnett?
(21) **A** No, I didn't call Bob Barnett.
(22) **Q** These are documents that you previously

Page 246
(1) characterized as kind of partly official?
(2) **A** Well, they're personal files, but we were
(3) using them for official purposes.
(4) **Q** Like the blind trust?
(5) **A** Correct.
(6) **Q** Like the personal disclosure forms?
(7) **A** Correct.
(8) **Q** And the taxes?
(9) **A** Right.
(10) **Q** And it was your understanding, at this
(11) point in time, that the White House counsel's office
(12) was no longer going to be involved in handling this
(13) for the President?
(14) **A** That at least -- it was my understanding --
(15) it was my determination -- it was more than my
(16) understanding -- when I saw these files, I knew from
(17) having talked to Vince and from how the office was
(18) proceeding, how the matters were proceeding, that
(19) these matters were at an end or virtually at an end.
(20) The tax returns had been filed. The financial
(21) disclosure forms had been completed. The blind trust
(22) was virtually had been done.

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(1) I know Vince had been telling me this stuff
(2) is coming to an end so I knew, number one, what we
(3) needed these files for was over, almost totally over;
(4) and number two, Vince was the one who was -- the only
(5) one in our office who was familiar with these
(6) matters. He had been working with outside lawyers
(7) and accountants, particularly, I thought, Bob
(8) Barnett, and they were the repository of knowledge.
(9) We no longer had any significant knowledge
(10) because with Vince's death, he was the one with the
(11) relationship, he was the one with the knowledge. And
(12) therefore, to the extent that any work had to be
(13) done, on these matters, it was -- we didn't have the
(14) capacity -- not the capacity -- it was not likely
(15) that we would have to do it with the loss of Vince.
(16) So there was no point in holding on to the Clinton
(17) personal files at that particular point in time.
(18) **Q** This was a decision that you made on the
(19) spot?
(20) **A** These are my thoughts at the time as to why
(21) it wasn't necessary for us to have these files any

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(22) longer.

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(1) **Q** Did you know at that point in time that the
(2) White House counsel's office would no longer be
(3) working on personal disclosure forms?
(4) **A** It might work on personal disclosure forms
(5) in future years and if, in fact, we had to assist
(6) lawyers on the outside, we would. We didn't have any
(7) need anymore for these files.
(8) **Q** When you are doing your future year
(9) personal disclosure forms, don't you want to have
(10) your previous ones?
(11) **A** The bulk of the work was not going to be
(12) done by us with respect to future ones. The bulk of
(13) the work now was going to be -- we would assist, but
(14) the bulk -- with Vince gone and with his knowledge
(15) gone, with Barnett the repository of knowledge with
(16) respect to personal matters, we were no longer going
(17) to have the same major role with respect to these
(18) matters that we had in the past.
(19) **Q** Was this a determination that you made? In
(20) other words, you made a decision that you felt from
(21) this point on the White House counsel's office would
(22) not be involved in doing this?

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(1) **A** Would not have a significant role anymore.
(2) **Q** And that was because of some feeling you
(3) had about a decision you wanted to make as White
(4) House counsel?
(5) **A** Well, it was logical. It was sensible.
(6) Vince was gone. He was the one who knew about this
(7) stuff, and the particular matters that he had been
(8) working on were over. And Bob Barnett was the one --
(9) was the only other person in the world who knew as
(10) much, if not more, than Vince about this stuff and
(11) it's logical the stuff goes to him, if that's what
(12) the Clintons want. I wasn't going to make a
(13) determination that it go to Barnett. That's up to
(14) the Clintons to make.
(15) **Q** Didn't the files include files on the '93
(16) Clinton taxes?
(17) **A** Yes -- I shouldn't say yes. I'm not sure.
(18) I don't remember at this point. The '93 --
(19) **Q** I'll represent to you --
(20) MR. BEN-VENISTE: '93? It was '93.
(21) MR. CHERTOFF: The '93 taxes were to be
(22) filed in '94; correct?

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(1) THE WITNESS: I understand what you're
(2) saying. I thought you said the tax return --
(3) BY MR. CHERTOFF:
(4) **Q** The file for the '93 Clinton files, that's
(5) due to be filed in '94?
(6) **A** That's correct.
(7) **Q** And I suppose if there are any estimated
(8) taxes, that has to be filed quarterly; right?
(9) **A** Yes.
(10) **Q** So that would be something that Mr. Foster
(11) had that would be an ongoing issue?
(12) **A** That's correct.
(13) **Q** And it's not your testimony that you felt
(14) there was anything improper in the White House
(15) counsel's office working on the matter?
(16) **A** That's right.
(17) **Q** So you weren't making a determination here
(18) that as a matter of what's appropriate for the White
(19) House counsel's office, you didn't want to do this
(20) anymore?
(21) **A** That's correct.
(22) **Q** Did you talk to the client?

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(1) **A** Did I talk to the client? No, I did not
(2) talk to the client. I made the decision.
(3) **Q** Didn't you feel --
(4) **A** I'm running the White House counsel's
(5) office.
(6) **Q** If the Clintons had said to you, we
(7) prefer -- let me ask this, Mr. Nussbaum.
(8) **A** I didn't say anything. I shook my head.
(9) **Q** If the Clintons were to say to you we
(10) prefer to have your office continue to handle the
(11) personal disclosure forms or continue to handle the
(12) taxes or continue to follow the blind trust, you
(13) would have honored that?
(14) **A** If they would have said that, of course I
(15) would have honored that.
(16) **Q** In fact, up to the point in time of the
(17) 22nd when you had Maggie Williams in, your office
(18) had, in fact, continued to work on this?
(19) **A** Because Vince Foster was alive.
(20) **Q** And you knew that Mr. Foster was spending a
(21) fair amount of time working on it?
(22) **A** Some time on it.

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(1) **Q** It didn't seem to you, before you made a
(2) decision to move them out of the White House
(3) counsel's office, that you would want to consult with
(4) either Mrs. Clinton or the President?
(5) **A** No, because this is a judgment for me to
(6) make. I'm the one who decides, subject to them
(7) obviously, what the White House counsel's office is
(8) able to do. This is a judgment of how my office
(9) should run. They wouldn't overrule that judgment.
(10) They wouldn't say to me after the files got back,
(11) Bernie, we want you to continue or -- they could
(12) always do that. They're not going to do that.
(13) If I make the judgment that, with Vince
(14) gone and with the repository of knowledge in Bob
(15) Barnett or other outside lawyers and accountants,
(16) they're not going to overrule that judgment, and they
(17) wouldn't overrule that judgment. This is my
(18) relationship with them. I know how they react. If I
(19) don't think the files have to be -- it's appropriate
(20) for them to be in our office, it's unlikely they
(21) would overrule that judgment but if they did, they
(22) can in the future.

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(1) **Q** Did you make a judgment it was
(2) inappropriate to be in the office?
(3) **A** No, it wasn't inappropriate -- in a working
(4) sense. I don't mean in a legal sense. If I used the
(5) word "inappropriate," I did not mean it was
(6) inappropriate in any legal sense to be in the
(7) office. I mean, it was a judgment about what should
(8) be in the office from a working point of view. With
(9) Vince gone, there was no reason for these documents
(10) to be in our office.
(11) **Q** Were there personal disclosure forms -- I
(12) guess they're called 278s -- for other members of the
(13) White House official family that were in the White
(14) House counsel's office? When I say "official
(15) family," I mean the senior level personnel.
(16) MR. PEDOWITZ: Could you ask that question
(17) again or just have it reread.
(18) (The reporter read the record as requested.)
(19) MR. PEDOWITZ: In Vince's office?
(20) MR. CHERTOFF: In the White House counsel's
(21) suite.
(22) BY MR. CHERTOFF:

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(1) **Q** Did you maintain personal disclosure forms
(2) for other senior members of the White House staff?
(3) **A** We may have had copies of those files, but
(4) we didn't fill out the disclosure forms or assist
(5) other senior White House -- well, no --
(6) **Q** You didn't assist other senior White House
(7) personnel with handling the personal disclosure
(8) forms?
(9) **A** I take that back. We did assist other
(10) White House senior personnel but basically it was
(11) their responsibility to fill out the disclosure
(12) forms. Some of them had their own lawyers and
(13) accountants, and we would assist them, but we weren't
(14) possessed with the personal files of other members of
(15) the White House official family.

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(16) **Q** But you had copies of personal disclosure
(17) forms of other senior members of the White House;
(18) correct, so you could help them?
(19) **A** That's probably true. I don't have a
(20) specific memory at this time but that's probably
(21) true.
(22) **Q** And in this instance, you didn't keep a

Page 255
(1) copy of the personal disclosure file of the
(2) President; right?
(3) **A** That's a public document.
(4) **Q** Were there notes or backup documentation or
(5) drafts or memos relating to how that form was
(6) prepared?
(7) **A** I don't recall whether there was such a
(8) note.
(9) **Q** Did you look to see whether there was a
(10) copy of documentation that you should keep in order
(11) to be able to assist the President in the future with
(12) the personal disclosures?
(13) **A** Did I do what?
(14) MR. CHERTOFF: Read the question back.
(15) (The reporter read the record as requested.)
(16) THE WITNESS: Not at that time.
(17) BY MR. CHERTOFF:
(18) **Q** You just moved it out of the office?
(19) **A** I moved the personal files out of the
(20) office, yes.
(21) **Q** What was the rush?
(22) **A** There was no rush. It was a logical and

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(1) natural thing to do. I'd just moved the Foster files
(2) out of the office. There was no rush. It was a
(3) natural thing to do. Foster's personal lawyers were
(4) there, I handed them the files, the law enforcement
(5) people agreed. The search was over.
(6) I told Neuwirth we're going to assign
(7) matters to other attorneys as soon as we get back
(8) because that will take some time. I gave him that
(9) instruction.
(10) **Q** You didn't tell Neuwirth to get started on
(11) the 22nd, did you?
(12) **A** Because that would take a long period – I
(13) told him on the 22nd it's something I wanted him to
(14) do, and he would get started immediately after we
(15) returned because that would take a while. The
(16) personal files of the Clintons was – there was a
(17) limited number of files of the Clintons.
(18) With the search was over, it was the most
(19) natural thing in the world to say we're not going to
(20) work on this stuff. The official matters are over.
(21) Maggie, send them to the new lawyers. Just like I
(22) did with the Foster files, I did with the Clinton

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(1) files.
(2) **Q** But with the Foster files, you had
(3) completed the process in the course of sitting with
(4) all the agents and Mr. Spafford was right there;
(5) correct?
(6) **A** Correct.
(7) **Q** With the Clinton personal files, you had to
(8) send people out to call Maggie Williams; correct?
(9) **A** That was – yeah, a 30-second endeavor.
(10) **Q** Would it surprise you to learn that there
(11) were two people who called over a period of 30
(12) minutes to locate her?
(13) **A** My instructions to call her was a 30-second
(14) endeavor.
(15) **Q** You had to wait for her to come; right?
(16) **A** Yes.
(17) **Q** Her office was in the Old Executive Office
(18) Building; correct?
(19) **A** No.
(20) **Q** That was her main office?
(21) **A** No. Her main office was in the west wing,
(22) right down the hall from me.

Page 258
(1) **Q** Do you know whether that day she was in the
(2) Old Executive Office Building?
(3) **A** I don't know. I don't know where she was.
(4) **Q** You had her come in to help you start –
(5) begin to start sorting through the files; right?
(6) **A** It was an easy task.
(7) **Q** I just want to make sure I'm correct. You
(8) had her then come in so you could work with her
(9) sorting through the files; right?
(10) **A** Yes.
(11) **Q** You then got somebody to come and take the
(12) files up to the residence?
(13) **A** Yes. She had somebody come and take the
(14) files to the residence.
(15) **Q** And this was on the late afternoon or
(16) evening before you were all about to go on to Little
(17) Rock the next day; correct?
(18) **A** Correct.
(19) **Q** At that point in time, there was still a
(20) lock on Mr. Foster's door; right?
(21) **A** So?
(22) **Q** You could have left the office at any point

Page 259
(1) in time and locked it; correct?
(2) **A** I could have.
(3) **Q** And of course, the regular security system
(4) and alarm system at the White House counsel's suite
(5) was continuing to be operative on the 22nd; right?
(6) **A** Yes.
(7) **Q** And as far as you knew, it would be
(8) operative on the 23rd and the 24th and the 25th;
(9) correct?
(10) **A** I had every reason to believe the White
(11) House alarm system would be operative on Friday,
(12) Saturday and Sunday. I really had confidence in the
(13) alarm –
(14) **Q** So you were not possessed of any sudden
(15) concern of a lapse in security with respect to
(16) Mr. Foster's office?
(17) **A** Absolutely not. I was absolutely confident
(18) of the White House security.
(19) **Q** Did you have Ms. Gorham come in at a point
(20) in time to ask her some questions concerning the
(21) Clintons' personal documentation?
(22) **A** Perhaps. I don't remember. It's

Page 260
(1) possible. If I saw a file which I wasn't sure was a
(2) personal file or not, I might have asked her if she
(3) had any knowledge with respect to the file. But the
(4) answer to the specific question is I don't have any
(5) recollection of that.
(6) **Q** Did she – did you ask her to review the
(7) contents of the various file folders in the drawer
(8) that contained the Clintons' personal financial
(9) files?
(10) **A** I don't recall doing that. It's possible,
(11) but I don't recall.
(12) **Q** Did you stop her in the middle of the
(13) process and tell her to leave?
(14) **A** I don't recall that at all.
(15) **Q** Did you know whether there was an index
(16) that was at the front of the drawer with the
(17) documentation that listed all the contents of the
(18) drawer?
(19) **A** I have no memory of that.
(20) **Q** You've never seen such a thing?
(21) **A** I have no memory of seeing such a thing.
(22) **Q** Did you keep an inventory or list of all

Page 261
(1) the documents you were sending over to the Clintons?
(2) **A** No.
(3) **Q** You recall Ms. Gorham certainly being
(4) outside in the outer area of the office while you
(5) were going through the documents with Ms. Williams;
(6) correct?
(7) **A** Probably.
(8) **Q** Is there any reason you know she couldn't
(9) have come in and prepared a list and a transmittal

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(10) document to show the Clintons what they were getting
(11) and to keep a record of what was being sent up there?
(12) **A** Could it have been done? Of course it
(13) could have been done.
(14) **Q** Did you think of doing it?
(15) **A** No, I didn't think of doing it.
(16) **Q** Did you make a decision not to do it?
(17) **A** I didn't make a decision not to do it.
(18) **Q** Did you tell Maggie Williams to get the
(19) documents to Bob Barnett?
(20) **A** No. I told Maggie Williams that the
(21) documents would probably be sent to Bob Barnett, but
(22) that she -- my memory is I said you better check with

Page 262
(1) the Clintons, with the President or with Hillary, to
(2) see if Bob Barnett is the guy they want to send these
(3) personal files to, but I'm virtually certain, I said,
(4) that it will be Bob Barnett.
(5) **Q** But you didn't instruct her to send it to
(6) Bob Barnett; right?
(7) **A** No, I didn't instruct her to send it to Bob
(8) Barnett.
(9) **Q** Because you didn't know if he was the
(10) person to get it; right?
(11) **A** That was my memory. I was like 99 percent
(12) sure it would happen, but I have this memory that --
(13) I wasn't 100 certain, so I said to her to check with
(14) them.
(15) **Q** And she didn't say no, I'm certain Barnett
(16) is going to get it?
(17) **A** She didn't say that. I don't remember her
(18) saying that.
(19) **Q** So your recollection is the way you left it
(20) was that it should go up to the residence?
(21) **A** Yes, my recollection is the documents were
(22) going to the residence until she could check with the

Page 263
(1) Clintons and until it could be sent over to whoever
(2) they selected, which was going to be Bob Barnett.
(3) MR. PEDOWITZ: Which was going to be Bob
(4) Barnett?
(5) THE WITNESS: Which was likely to be Bob
(6) Barnett.
(7) BY MR. CHERTOFF:
(8) **Q** And you didn't call the President to find
(9) out what he wanted to do at that point?
(10) **A** No.
(11) **Q** Was there any discussion about whether
(12) there were any logistical difficulties in getting the
(13) documents over to Mr. Barnett, if that were to be the
(14) decision?
(15) **A** It was getting late in the afternoon, but I
(16) don't remember any discussion about logistical
(17) difficulties.
(18) **Q** Was there any discussion with Carolyn Huber
(19) at this point in time concerning getting the box of
(20) documents into the residence?
(21) **A** No.
(22) **Q** Would it surprise you to learn that Carolyn

Page 264
(1) Huber was the person who was the custodian of the key
(2) for the closet in which the box was eventually
(3) placed?
(4) **A** It would not surprise me.
(5) **Q** Does that help you recall why, the previous
(6) day, you paged Carolyn Huber?
(7) **A** It does not.
(8) **Q** Did you have any further discussion with
(9) Maggie Williams after she left with the boxes?
(10) MR. PEDOWITZ: About?
(11) MR. CHERTOFF: Anything, during the rest of
(12) the day.
(13) THE WITNESS: I recall no further
(14) discussion. I may have had further discussions.
(15) Maggie's office was 15 feet from my office, and I see
(16) her all the time.
(17) BY MR. CHERTOFF:
(18) **Q** In your conversation with Susan Thomases on
(19) the 22nd, was there any discussion about the boxes of
(20) documents going up to the residence?
(21) **A** I don't recollect that being part of that
(22) conversation. I believe not.

Page 265
(1) **Q** Was there any discussion about the boxes of
(2) documents going anywhere?
(3) **A** I don't believe we discussed boxes of
(4) documents with Susan Thomases.
(5) **Q** Did you have any conversation with anybody
(6) on the 22nd in which they communicated to you that
(7) the President or the First Lady had any desire with
(8) respect to the disposition of their personal files in
(9) the Foster office?
(10) **A** No, I had no such conversation.
(11) **Q** Did you have a conversation with
(12) Mr. Heymann later that day?
(13) **A** Yes.
(14) **Q** Did you make the call or did he make the
(15) call?
(16) **A** My recollection is this -- and it's a
(17) little vague -- I remember one call -- that I
(18) received a call from Mr. Heymann. It was either that
(19) evening or the following week after the note or the
(20) handwritten note was found, so this is why I'm a
(21) little vague on this. I'm fairly sure now. I've
(22) been thinking about it more recently.

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(1) The call I remember took place probably
(2) after the note was discovered because I remember
(3) Mr. Heymann at that point saying to me he thought
(4) under the circumstances that the office should be
(5) kept intact. I remember him saying something like
(6) that to me, but for a while, I thought that was
(7) before the note was discovered. Now I think it was
(8) after the note was discovered, but I'm still
(9) unclear. It was clearly no earlier than the night of
(10) July 22nd. This call probably took place the 27th or
(11) the 28th of July.
(12) **Q** Do you remember a call where Mr. Heymann
(13) specifically criticized you for the way in which you
(14) had handled the search on the 22nd?
(15) **A** The answer to that is no. The answer to
(16) that is what I remember is what I just said. I
(17) remember this call which he said -- I think the
(18) office should be kept intact, and I said the
(19) office -- I don't agree with you, the office is not
(20) intact. It's a working office of assigned files.
(21) Other people are working on things.
(22) **Q** Well, you're clear that the call you're

Page 267
(1) referring to here occurred after the search on the
(2) 22nd?
(3) **A** For a while I thought it was -- after the
(4) search on the 22nd? Oh, there's no question, after
(5) the search on the 22nd.
(6) **Q** So at least bearing that in mind, in that
(7) period after the search on the 22nd, whether it be on
(8) the 22nd or later the next week, did Mr. Heymann have
(9) a call to you where he said you misused the
(10) Department of Justice?
(11) **A** No, I don't believe -- I don't remember any
(12) such statement by Mr. Heymann.
(13) **Q** Did he have a conversation with you in
(14) which he asked you if you had anything to hide?
(15) **A** I don't remember any such conversation.
(16) **Q** Can you remember any occasion in your
(17) tenure as White House counsel in which the Deputy
(18) Attorney General of the United States said to you
(19) that you misused the Department of Justice?
(20) **A** No, I can't think of any set of
(21) circumstances.
(22) **Q** That would be a memorable thing, wouldn't

Page 268
(1) it?
(2) **A** It would be a memorable thing.
(3) **Q** And, of course, in this period of time, this

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(4) was within a month or so of the travel office
(5) controversy which had resulted in your having had an
(6) agreement with the Attorney General concerning future
(7) relations between the White House counsel and the
(8) Department of Justice; correct?
(9) **A** Yes.
(10) **Q** So you had, even before July 20th, had your
(11) attention drawn in particular to the need to maintain
(12) a certain relationship with the Department of
(13) Justice; right?
(14) **A** The answer to that is yes. The answer to
(15) that is yes. But there was never any belief in the
(16) White House at any time that we misused the
(17) Department of Justice, including with respect to –
(18) I'm talking about White House counsel's office. Let
(19) me limit it to that for the moment – that we – that
(20) there was a misuse of the Department of Justice in
(21) connection with the travel office matter or any other
(22) matter.

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(1) No one in the White House counsel's office,
(2) myself or Mr. Foster or anybody else, we didn't
(3) believe we had misused the Department of Justice, nor
(4) do I believe the Attorney General believed we misused
(5) the Department of Justice in connection with the
(6) travel office thing. We agreed to a procedure to be
(7) followed in the future to mitigate the appearance or
(8) the claims of possible misuse, but nobody thought we
(9) were misusing the Department of Justice.
(10) **Q** And having been made sensitive to the need
(11) to maintain a proper appearance in the relationship
(12) between the White House and the Department of
(13) Justice, would you agree with me that a statement by
(14) the Deputy Attorney General shortly thereafter that
(15) you had misused the Department of Justice in another
(16) instance would be a memorable thing?
(17) **A** I remember no such statement, and if he
(18) made such a statement, I would have vehemently
(19) disagreed with him, but I don't remember it because
(20) we didn't misuse the Department of Justice.
(21) **Q** Did you see the scraps of paper in the
(22) briefcase in Mr. Foster's office after the law

Page 270
(1) enforcement people left on the 22nd of July?
(2) **A** No.
(3) MR. PEDOWITZ: Mike, you're talking
(4) about – the question had a certain ambiguity in
(5) terms of time frame. You're talking about on the
(6) 22nd?
(7) MR. CHERTOFF: On that day.
(8) THE WITNESS: No. I assumed you meant
(9) that. The answer is no.
(10) BY MR. CHERTOFF:
(11) **Q** On the 22nd of July, after the law
(12) enforcement people left, are you aware of anybody who
(13) looked at those scraps of paper?
(14) **A** No, I'm not aware of anybody looking at
(15) those scraps of paper.
(16) **Q** Do you know whether Ms. Gorham saw what
(17) looked like scraps of paper there?
(18) **A** I don't know if she saw them.
(19) **Q** Did anybody in the staff mention to you
(20) there were scraps of paper there?
(21) **A** No.
(22) **Q** Do you know of anyone who assembled the

Page 271
(1) scraps of paper that were in the – any scraps of
(2) paper from the briefcase at any time before the
(3) middle of the day on the 26th of July, 1993?
(4) **A** No.
(5) **Q** You went to Little Rock on Air Force 1 with
(6) the President on the next Friday; correct?
(7) **A** Right.
(8) **Q** Did you tell the President the documents
(9) had been moved into the residence?
(10) **A** No.
(11) **Q** Did you speak to the President about the
(12) review of Mr. Foster's office?
(13) **A** No. We were focusing on other things that
(14) day, such as the funeral of Vince Foster.
(15) **Q** When you came back from the funeral, you
(16) came back with the President and the First Lady?
(17) **A** Right. I spoke to Bob Barnett on Air Force
(18) 1.
(19) **Q** We'll come to that in a second. You came
(20) back with the President and First Lady; correct?
(21) **A** That's correct.
(22) **Q** At any time on the 23rd, did you speak to

Page 272
(1) the First Lady about anything to do with the
(2) documents in Vincent Foster's office?
(3) **A** No.
(4) **Q** Was Susan Thomases at the funeral?
(5) **A** I don't remember.
(6) **Q** At any time on the 22nd, did you speak to
(7) the President about any documents that had been in
(8) Vincent Foster's office?
(9) **A** No.
(10) **Q** You didn't tell the President or the First
(11) Lady about any controversy with the Department of
(12) Justice?
(13) **A** No.
(14) **Q** When you saw Mr. Barnett, did you have a
(15) conversation with him about the documents?
(16) **A** Yes.
(17) **Q** What was the conversation?
(18) **A** I said to Bob on Air Force 1 that we're
(19) transferring the Clinton personal files out of
(20) Foster's office in view of Foster's death, that I
(21) believed the personal files should go to the Clintons
(22) and their personal lawyers. I assumed that the

Page 273
(1) Clintons would probably be sending it to him, and I
(2) wanted him to be aware of that fact.
(3) I didn't know for sure, but I was like 99
(4) percent sure, and also, what did he think of the idea
(5) of him getting the files, and he said he thought it
(6) was a good idea for him to get the personal files,
(7) and that's what the Clintons decided.
(8) **Q** So he indicated to you he didn't know what
(9) the Clintons' decision would be?
(10) **A** That's my memory. My memory is that there
(11) was no decision at that point that they would go to
(12) him, although we were all acting on the assumption
(13) that they would go to him, and they did go to him.
(14) **Q** He didn't tell you on this flight on the
(15) 23rd that he had any conversations with anybody about
(16) anybody taking possession of the files?
(17) **A** That's correct. I don't remember him
(18) telling me about any such conversations.
(19) (Pause.)
(20) BY MR. CHERTOFF:
(21) **Q** Was Mr. McLarty on the flight out to Little
(22) Rock?

Page 274
(1) **A** Yes. I'm virtually certain. I don't have
(2) a specific memory in my mind at this time, but he
(3) was.
(4) **Q** Was Mr. Burton on the flight out?
(5) **A** Yes.
(6) **Q** Was Mr. Quinn on the flight out?
(7) **A** I think so.
(8) **Q** Now, you've previously testified – and I'm
(9) just characterizing it generally – that you had
(10) conversations on the 22nd with people in the White
(11) House who expressed certain views concerning how the
(12) document search in the Foster office ought to occur.
(13) Did any of these people ask you, after that
(14) search was over on the 22nd up through the 23rd, how
(15) it went?
(16) **A** Burton was there, and I assumed he talked
(17) to McLarty. I'm virtually positive he did. And I
(18) think we all believed it went fine, it went well, it
(19) served its purpose. We looked for a note. We didn't
(20) waive privilege or anything. Certain requests were
(21) made for additional documents, and we'll get to

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(22) those, and we'll comply. There was no discussion

Page 275
(1) about any controversy with the Department of Justice
(2) because there was no controversy with the Department
(3) of Justice.
(4) **Q** So there was no discussion you had with
(5) anybody in the White House on the 23rd concerning the
(6) way in which that search had been conducted?
(7) **A** It's possible there was a discussion, but
(8) just that things went well. I don't remember any
(9) such discussion, but I don't exclude the possibility
(10) that such a discussion took place. Nothing sticks in
(11) my mind.
(12) **Q** And you didn't warn anybody or say anything
(13) to anybody about the possibility that there might be
(14) some complaints from the Department of Justice about
(15) the way in which the procedure was handled?
(16) **A** No.
(17) **Q** You didn't discuss any of your
(18) conversations with Phil Heymann with anyone on the
(19) 23rd?
(20) **A** No.
(21) **Q** Now, when did you get back on the 23rd?
(22) **A** Very late in the evening, I believe.

Page 276
(1) **Q** And both the President and the First Lady
(2) came back on Air Force 1; correct?
(3) **A** Correct.
(4) **Q** To your knowledge, they stayed in the White
(5) House over the weekend?
(6) **A** I believe that, yes.
(7) **Q** Did you learn on Monday the President went
(8) out to Chicago with Mr. McLarty?
(9) **A** Yes, I knew that.
(10) **Q** But you also knew that on Monday, the First
(11) Lady was still at the White House; right?
(12) **A** That's right.
(13) **Q** You yourself went away over the weekend?
(14) **A** Yes.
(15) **Q** When did you leave?
(16) **A** Probably early Saturday morning, I think.
(17) **Q** And where did you go?
(18) **A** Maine.
(19) **Q** When did you get back?
(20) **A** Late Sunday night.
(21) **Q** During the period of time you were away,
(22) did you have any conversations with anyone affiliated

Page 277
(1) with the White House?
(2) **A** I don't recall any conversations. It's
(3) possible I had, but I don't recall. I don't think
(4) so. I don't think so, but that's the best I can say.
(5) **Q** On Monday, you had Mr. Neuwirth go and
(6) start the process of inventorying the work files;
(7) correct?
(8) **A** Yes.
(9) **Q** And you actually directed him to prepare an
(10) inventory?
(11) **A** Of the list of files, not every document in
(12) the office. What files -- the working files that
(13) were in Vince's office. This is not an inventory of
(14) each specific document in the office. It's an
(15) inventory of files in the office so we can decide who
(16) gets file A, who gets file B. I directed him to do
(17) that.
(18) **Q** And how long did it take him to do that?
(19) **A** I don't know. A couple of hours, maybe
(20) more. I don't know.
(21) **Q** By that point, when you came in on Monday
(22) morning, the 26th, was the office -- Vincent Foster's

Page 278
(1) office door opened?
(2) **A** No, it was locked. My recollection is that
(3) when we left, the office door was locked. I had the
(4) key. I locked the office, and we went off to
(5) Arkansas, and for three days I don't believe anybody
(6) went into the office. I had the key. Secret Service
(7) had the key. I'm not sure whether Deborah Gorham had
(8) a key or not. She may have had a key, but I don't
(9) know of anybody going in the office during that three
(10) days.
(11) **Q** But Mr. Foster's office was opened on the
(12) 26th?
(13) **A** Yes, it was opened on the 26th.
(14) **Q** And once the business hours --
(15) MR. PEDOWITZ: Did you say open or opened
(16) on the 26th?
(17) MR. CHERTOFF: Opened, -e-d.
(18) BY MR. CHERTOFF:
(19) **Q** Once business hours were in effect, did the
(20) door remain locked except for specific times or did
(21) it remain open generally as Mr. Neuwirth went in and
(22) out?

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(1) **A** I think it remained, from that time on, it
(2) remained opened.
(3) **Q** And there was no Secret Service person
(4) posted?
(5) **A** No Secret Service person posted.
(6) **Q** No entry log?
(7) **A** No.
(8) **Q** No restriction on access?
(9) **A** No.
(10) **Q** Do you know whether Ms. Gorham went in from
(11) time to time?
(12) **A** Probably. Now we're going to move files to
(13) other people.
(14) **Q** And this is in the period of time after the
(15) Clinton personal files had been removed?
(16) **A** They would have been removed, yes.
(17) **Q** Was it important to you to have the Clinton
(18) personal files removed before the general process of
(19) inventorying the documents occurred?
(20) **A** It wasn't important. It seemed natural to
(21) remove them at that point in time because I had just
(22) removed -- what made it seem natural is that I just,

Page 280
(1) I was sort of focusing on removing personal files.
(2) I'd just removed the Foster personal files in the
(3) presence of law enforcement. I saw the Clinton
(4) personal files. It was natural to move them. Was it
(5) important? It wasn't important.
(6) **Q** Now, there came a point in time when you
(7) heard something about pieces of paper found in the
(8) briefcase?
(9) **A** Yes.
(10) **Q** And how did you first hear about that?
(11) **A** I walked into my office, my office.
(12) **Q** About when was this?
(13) **A** I have a recollection it was in the
(14) afternoon, 3:00, something like that, and I saw Steve
(15) Neuwirth in my office sitting at a conference table
(16) that I had in my office, putting pieces of, scraps of
(17) paper together, and I said what are you doing? You
(18) know, he had free run of my office. It wasn't
(19) unusual that my staff would come into my office even
(20) if I wasn't there. It was very -- I had a good
(21) working relationship with my staff members and they
(22) can show up and walk in my office and wait for me if

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(1) they wish to.
(2) But he was sitting there sort of putting
(3) scraps of, pieces of paper together. I said what are
(4) you doing? He says I just found these. I was
(5) packing Vince's briefcase to send back along with his
(6) other personal effects and I turn over the briefcase
(7) and these things floated out. And I looked down and
(8) saw handwriting on them so I picked them up to see if
(9) I could put them together, and I'm putting them
(10) together. He was 7/8 of the way through putting them
(11) together. He was sort of reading and he said look at
(12) this.
(13) **Q** Did you read it?
(14) **A** I looked down and started reading it, and
(15) we saw that it was in Vince's handwriting, and it was

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(16) a list of things, reflecting things that were
(17) troubling Vince.
(18) **Q** Now, at that point, Mr. Neuwirth had told
(19) you that it was found in the briefcase, which you had
(20) previously looked at on the 22nd of July?
(21) **A** It was found in the briefcase from which I
(22) removed files and glanced down to see that I removed

Page 282
(1) all the files.
(2) **Q** Do you actually remember, back on the 22nd
(3) when you glanced down at the briefcase, that you
(4) opened the briefcase visibly to those present in
(5) order to indicate that you were looking in it, that
(6) it was empty?
(7) **A** No, I don't remember doing that.
(8) **Q** Your recollection is you didn't do that?
(9) **A** My recollection is I don't remember doing
(10) that. I don't remember doing it. I just don't
(11) remember that.
(12) **Q** You remember glancing at it?
(13) **A** I remember glancing down at it, you know, I
(14) remember sort of talking while I was doing it, sort
(15) of describing something, I'm going to reach into
(16) Vince's briefcase and I'm pulling out these files.
(17) And I glance down and these are the files in the
(18) briefcase and putting them down. That's all I
(19) remember.
(20) **Q** You don't remember opening it up and
(21) looking for a note?
(22) **A** I don't remember picking it up and opening

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(1) it up.
(2) **Q** Or even leaning over and opening it?
(3) **A** I don't remember doing that.
(4) **Q** When Mr. Neuwirth indicated to you that he
(5) had found these scraps of paper which had been
(6) assembled into this page, were you -- how did you
(7) feel about the fact that you had been, on the
(8) previous Thursday, conducting a search for a note in
(9) that very briefcase?
(10) **A** I don't know -- it's hard to answer that
(11) question. I don't know -- I was concentrating on
(12) what I was reading.
(13) **Q** So you didn't think about whether you had
(14) made a mistake or there might be some problem about
(15) the previous Thursday's search, given the fact that
(16) you had missed this writing?
(17) **A** Not at that moment, although shortly
(18) thereafter I had such thoughts.
(19) **Q** Did the individual pieces of torn up paper
(20) make up a single page or more than one page?
(21) **A** They made up a single page.
(22) **Q** Were there any extra pieces of scrap paper?

Page 284
(1) **A** I don't think so.
(2) **Q** Were there any missing pieces of scrap
(3) paper?
(4) **A** At some point I realized there was one
(5) missing piece of scrap paper, but I don't know when I
(6) realized it. The writing was clear. I mean, there
(7) was nothing missing in the middle of the writing.
(8) You can read the whole writing, and I didn't look to
(9) see if there was anything missing in any other part
(10) of the sheet after we pieced it together.
(11) **Q** After you read it, what did you do?
(12) **A** I'm a little vague, but I went -- I think I
(13) went down to Burton. I went down to the chief of
(14) staff's office. I was first going to tell the chief
(15) of staff but on the way down it hit me that the chief
(16) of staff wasn't there. He was in Chicago with the
(17) President. I mean, I didn't think of it until I
(18) started walking down.
(19) So I saw Burton, who was a logical person
(20) to talk to in any event because he was the one who
(21) had been dealing with me, and I said look, Steve
(22) Neuwirth found something, and you should see it and

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(1) let's go up and see it. And we walked up, and he
(2) went over to read it.
(3) **Q** Now, when he came in, did you shut the
(4) door?
(5) **A** I may have, yes.
(6) **Q** Did you tell him, as he walked in or on the
(7) way up, what had been found?
(8) **A** I don't remember when I told him. I may
(9) have just said come here, here's something you should
(10) see, here's something you should look at.
(11) **Q** Once he got into the room, by then had you
(12) informed him that something had been found in the
(13) briefcase?
(14) **A** I don't remember when I informed him of
(15) that. Obviously, I informed him sometime during that
(16) period.
(17) **Q** He walked over?
(18) **A** He walked over to the table.
(19) **Q** He read the note?
(20) **A** He read the note.
(21) **Q** Did he identify it also as Vincent Foster's
(22) handwriting?

Page 286
(1) **A** I don't know whether he did or didn't.
(2) There was no question in my mind that it was.
(3) **Q** Did he touch the note?
(4) **A** I don't know if he did.
(5) **Q** At some point did you touch the note?
(6) **A** Yes, I touched the note. I was piecing it
(7) together, Neuwirth was piecing it together, but I was
(8) sort of helping him and I touched the note
(9) subsequently, later. As you know, my fingerprints
(10) and palm prints are all over the note.
(11) **Q** You've been told subsequently that you have
(12) a palm print that was matched with a latent palm
(13) print on a latent piece of paper?
(14) **A** Yes, I was handling the note. I took
(15) possession of the note.
(16) **Q** Mr. Burton read the note in your presence?
(17) **A** Yes.
(18) **Q** What discussion did you have?
(19) **A** The next thing I remember is getting up and
(20) walking over to the First Lady's office.
(21) **Q** Now, before you did that, did you have any
(22) discussion amongst yourselves as to what to do with

Page 287
(1) this?
(2) **A** I don't think so. I don't think we did. I
(3) wanted to inform certain people what Neuwirth had
(4) found.
(5) **Q** So you went over to the First Lady's
(6) office?
(7) **A** Yes, and I walked into her office.
(8) **Q** And she was in the office?
(9) **A** She was in the office.
(10) **Q** This is around 5:00 in the evening?
(11) **A** I don't remember. If you asked me could it
(12) have been 3:00, my best guess is it would have been
(13) 3:00, but it could have been 5:00.
(14) **Q** Did you shut the door?
(15) MR. PEDOWITZ: Which door?
(16) MR. CHERTOFF: To the First Lady's office.
(17) THE WITNESS: I don't recall whether we
(18) shut the door.
(19) BY MR. CHERTOFF:
(20) **Q** What did you tell her?
(21) **A** I told her that I wanted to accompany her
(22) to my office which was very close to her office. I

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(1) found something that I thought she should see.
(2) **Q** Did you say found it in connection with
(3) what?
(4) **A** All I remember -- we found something that
(5) Vince wrote. I don't know the words that I used. I
(6) found something that I think you should take a look
(7) at.
(8) **Q** Did you tell her in this conversation that
(9) it was something Vince wrote?

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(10) **A** I may have. I may not have. I don't
(11) remember.
(12) **Q** Did she ask you what it was?
(13) **A** I don't remember.
(14) **Q** Did you tell her what it was?
(15) **A** I don't remember. I remember I said --
(16) what I remember is what I've told you. I asked her
(17) to come with me. I wanted to show her something in
(18) my office.
(19) **Q** Did she get up immediately to go?
(20) **A** Yes, she did.
(21) **Q** Did anyone else come with you?
(22) **A** No.

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(1) **Q** You walked into your office?
(2) **A** Correct.
(3) **Q** Mr. Burton was there?
(4) **A** Mr. Burton was there and Mr. Neuwirth was
(5) there.
(6) **Q** Did you shut the door?
(7) **A** Did I shut the door? I don't remember
(8) whether I shut the door or not.
(9) **Q** What did you say?
(10) **A** I probably shut the door.
(11) **Q** What did you say?
(12) **A** I said here, take a look at this. I want
(13) you to read this.
(14) **Q** Did she walk over and read it?
(15) This is Mr. Johnson who works with me.
(16) Did she walk over and read it?
(17) **A** She walked over and glanced -- looked at
(18) it. I may have told her -- this is the thing. I may
(19) have told her look, we found something Vince wrote.
(20) I'm not positive of it. I don't have a specific
(21) memory of it, but it's something Vince wrote. It's
(22) something you should read. So my best memory is she

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(1) sort of knew what she was going to look at, and she
(2) just -- she looked at it, and all of a sudden she had
(3) some sort of an emotional -- she began to read it but
(4) she didn't read it. She didn't appear to read it.
(5) When she sat down and looked at it, she
(6) just said -- she had an emotional reaction and she
(7) said I just can't deal with this. This is like -- I
(8) just can't deal with this. Bernie, you deal with
(9) this. And she walked out of my office.
(10) **Q** Did you have any discussion with her during
(11) this entire period about what should happen with this
(12) writing in terms of whether it should be turned over
(13) to anybody?
(14) **A** No.
(15) **Q** It wasn't discussed?
(16) **A** No.
(17) **Q** She did not read the note?
(18) **A** I don't believe she read the note. What I
(19) remember is -- because it happened so fast. She --
(20) it sort of shocked -- it surprised me at least, I
(21) think the rest of us, she looked at it. I thought
(22) she would sit and read it and we would talk, but that

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(1) was not what happened. What happened was she
(2) looked -- she just looked down and she said -- she
(3) maybe read a word or she saw his writing. Maybe she
(4) didn't even read a word and said I cannot deal with
(5) this, I cannot deal with this and she said you deal
(6) with it, and she stepped out.
(7) **Q** Your understanding was, as of this point in
(8) time, the question whether Mr. Foster had written any
(9) kind of a note or writing indicative of his state of
(10) mind that might have caused him to commit suicide was
(11) a very burning issue in the White House; right?
(12) **A** No, we all assumed that he left no note.
(13) At this moment in time? No, it was not a burning
(14) issue in the White House.
(15) **Q** Earlier it had been a burning issue?
(16) **A** Yeah, earlier we wanted to know if he left
(17) a suicide note or an extortion note or some similar
(18) such document and now we found a similar such
(19) document.
(20) **Q** You knew Ms. Thomases had been looking for
(21) it?
(22) **A** Yes.

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(1) **Q** You had been looking for it?
(2) **A** Yes.
(3) **Q** The FBI had been looking for it?
(4) **A** The law enforcement people wanted us to
(5) look into his office to see if there was such a
(6) document there, yes.
(7) **Q** The Park Police were also looking for it?
(8) **A** Yes.
(9) **Q** And on the 26th, you found the first
(10) writing that, to your mind, was what you would call
(11) something like a suicide note?
(12) **A** That's correct, and that was sort of an
(13) initial conundrum, at least for certain people,
(14) although it really wasn't a conundrum with me. I'm
(15) talking about the conversations with Burton and
(16) Neuwirth in the office after she left. It wasn't
(17) clearly a suicide note.
(18) **Q** But it was in the ballpark of a suicide
(19) note?
(20) **A** That's right. It was in the ballpark of a
(21) suicide note. At least I thought it was in the
(22) ballpark of a suicide note.

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(1) **Q** And you obviously were very interested to
(2) read it; right?
(3) **A** Was I very interested to read it? Yes, I
(4) was interested to read it.
(5) **Q** Mr. Burton was interested in reading it?
(6) **A** Yes.
(7) **Q** And you called Mr. McLarty in Chicago?
(8) **A** Right.
(9) **Q** And you read it to him?
(10) **A** Yes.
(11) **Q** And he was so interested, he said I want to
(12) come back and look at it myself as soon as possible;
(13) right?
(14) **A** Right.
(15) **Q** And you went over to Mrs. Clinton in that
(16) same period of time, into her office; right?
(17) **A** Right.
(18) **Q** To tell her you found something?
(19) **A** Right.
(20) **Q** Now, you understood it was a sensitive
(21) issue; right?
(22) MR. PEDOWITZ: What was sensitive?

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(1) MR. CHERTOFF: This whole issue of the note
(2) and Mr. Foster's death.
(3) THE WITNESS: I don't know what that
(4) means. Mr. Foster's death was beyond being a
(5) sensitive issue.
(6) BY MR. CHERTOFF:
(7) **Q** It was an emotional issue?
(8) **A** It was an emotional issue and it was a
(9) great tragedy.
(10) **Q** You weren't looking to play games with
(11) Mrs. Clinton?
(12) **A** No, I wasn't.
(13) **Q** You weren't looking for something to try to
(14) surprise her, were you?
(15) **A** No, I wasn't.
(16) **Q** Is it your best reaction you told her or
(17) didn't tell her that a writing of Vincent Foster had
(18) been found?
(19) MR. PEDOWITZ: When?
(20) BY MR. CHERTOFF:
(21) **Q** When you walked into her office.
(22) **A** I already testified to this. I don't have

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(1) any specific memory of telling her or -- I think I
(2) told her a writing was found.
(3) **Q** Because there would be no point in bringing

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(4) her in there without giving her a warning; right?
(5) **A** That's why I think I told her a writing was
(6) found. It's possible I said look, come into my
(7) office, I just want to show you something. She would
(8) listen to me and she would come in and see it. But I
(9) think I probably said we found a writing by Vince
(10) which you should see.
(11) **Q** Because you'd want to prepare her --
(12) **A** That's right. I think it's more likely
(13) that happened than not telling her that I found a
(14) writing, but I'm not positive. That's the thing. I
(15) just don't have a precise recollection of the
(16) conversation.
(17) **Q** And you certainly weren't looking to shock
(18) her or surprise her?
(19) **A** No, I wasn't looking to shock her or
(20) surprise her, but I knew the finding of this thing --
(21) we were all emotional -- it would have an impact on
(22) us.

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(1) **Q** And at the same time, it's not your
(2) recollection -- you hadn't copied down the content of
(3) the note at that point, had you?
(4) **A** No, but I read it, and it was very
(5) poignant.
(6) **Q** But you hadn't memorized it?
(7) **A** Not word for word.
(8) **Q** You certainly weren't in a position to tell
(9) Mrs. Clinton when you walked into her office that
(10) afternoon or early evening what the content of the
(11) note was?
(12) **A** I didn't attempt to tell her what the
(13) content of the note was.
(14) **Q** You brought her in; right?
(15) **A** Correct.
(16) **Q** You brought her into a place where there
(17) were two other people; right?
(18) **A** Correct.
(19) **Q** Mr. Burton and Mr. Neuwirth?
(20) **A** Right.
(21) **Q** Those were not people in your mind who were
(22) particularly close friends of the First Lady?

Page 297
(1) **A** That's not so.
(2) **Q** They were close friends?
(3) **A** Not close friends but people she knew very
(4) well in the White House. She knew -- Steve Neuwirth
(5) had been working with Vince Foster on a lot of stuff
(6) for the First Lady, not personal stuff, but other
(7) kinds of things, and he was the member of my staff
(8) who knew the First Lady best, other than Vince
(9) Foster. And Bill Burton is somebody she knows very
(10) well, for a long time. I wasn't walking into an
(11) office with two people that she didn't know.
(12) **Q** You didn't have a privacy concern?
(13) **A** I didn't have a privacy concern. With
(14) Burton and Neuwirth, I had no concern.
(15) **Q** And your testimony is that, to the best of
(16) your recollection, although she may have glanced at
(17) the note, she did not read it?
(18) **A** I don't think she read it. Because this
(19) outburst that I cannot deal with this came so fast, I
(20) don't think she had time to read it.
(21) **Q** She said I don't want to deal with this and
(22) she walked out?

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(1) **A** That's correct.
(2) **Q** At any later point in the day, did she ask
(3) you to see the note?
(4) **A** I don't recall her asking me to see the
(5) note at any time later in the day. I don't think
(6) so. I would have remembered that.
(7) **Q** Did it surprise you that she didn't want to
(8) read the note?
(9) **A** Only for an instant, but because -- then I
(10) totally understood. I realized -- it surprised me,
(11) but I understood immediately she just had this
(12) emotional reaction that overcame her. It brought
(13) back Vince's death and the whole circumstance, so in
(14) the final analysis, I wasn't surprised.
(15) **Q** Did she go back to her office?
(16) **A** I believe she went back to her office.
(17) **Q** At any point later, did she call you or ask
(18) you at any point later that day, did she call you or
(19) ask you to tell her about the content of the note?
(20) **A** I don't recall any such conversation.
(21) **Q** And you had no discussion with her about
(22) what the note might say concerning why he took his

Page 299
(1) life?
(2) **A** I didn't convey it to her. And she may
(3) have seen some of it. I don't know. I don't know.
(4) Only she can answer what she saw and didn't see. I
(5) never really discussed that with her. But it's my
(6) understanding that she was aware -- that she became
(7) aware of the contents of the note. I didn't make --
(8) maybe Burton discussed it with her later.
(9) **Q** Where did you get that idea?
(10) **A** I don't have that idea. I said maybe. My
(11) impression is that she learned the contents of the
(12) note.
(13) **Q** When?
(14) **A** I don't know when.
(15) **Q** That day?
(16) **A** I don't know if it was that day or not.
(17) **Q** The next day?
(18) **A** I don't know. I don't know. I don't
(19) know. But soon.
(20) **Q** By the way, there were writings in Vincent
(21) Foster's handwriting that were in the box of
(22) documents that were sent up from Vincent Foster's

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(1) office to the residence on the 22nd; right?
(2) MR. PEDOWITZ: Could we have that question
(3) read back, please.
(4) (The reporter read the record as requested.)
(5) THE WITNESS: I don't recall. I don't
(6) remember right now.
(7) BY MR. CHERTOFF:
(8) **Q** You don't remember, from your review on the
(9) 22nd, that there were things in Vincent Foster's own
(10) handwriting included in the Clinton personal
(11) documents?
(12) **A** I would imagine there probably were. I
(13) just don't have any memory of it today.
(14) **Q** How many times did you call Mr. McLarty on
(15) the 26th?
(16) **A** I only remember calling him once.
(17) **Q** And did you ask him to tell the President
(18) the note had been found?
(19) **A** I think I did that, yes. My best memory is
(20) I called McLarty to tell him what I found, to read it
(21) to him, but I assumed he would tell the President so
(22) I don't think I said tell the President. I mean,

Page 301
(1) that's not the relationship I have with the chief of
(2) staff. I found this, tell the President. I just
(3) assumed he would tell the President.
(4) **Q** Did he indicate to you he was going to copy
(5) down the content of the note?
(6) **A** I don't remember him indicating that.
(7) **Q** The President and Mr. McLarty were due back
(8) that day; right?
(9) **A** They were due back very late that day, yes,
(10) very late.
(11) **Q** Did you wait around to see the President?
(12) **A** No, I didn't wait around to see the
(13) President.
(14) **Q** Did you see the President that day?
(15) **A** I didn't see the President that day.
(16) **Q** Did you speak to him that day?
(17) **A** I didn't speak to him that day.
(18) **Q** At any point during that day, after the
(19) note -- after Mr. Neuwirth -- withdrawn.
(20) At any point on the 26th after you walked
(21) in and saw Mr. Neuwirth putting together the scraps

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(22) of paper that became this writing, did you start to

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(1) consider whether there was a potential problem in the
(2) fact that on the 22nd you had had custody of the
(3) briefcase and had been supposedly doing a search of
(4) the briefcase?
(5) **A** No, I didn't consider it a potential
(6) problem. I considered that when the note was -- or
(7) the handwritten list -- I'm using the word "note,"
(8) really it's a handwritten list which wasn't clearly a
(9) suicide note. I said earlier was in the ballpark of
(10) a suicide note. I believe it's in the ballpark, but
(11) it may also be outside the ballpark in some people's
(12) view. Lisa Foster, for example, doesn't believe it's
(13) a suicide note. And if you asked me today, I would
(14) say I don't believe it was a suicide note.
(15) But it's clear to me from the beginning of
(16) finding it, this is the kind of thing if I had found
(17) it on the 22nd, I would have turned it over to law
(18) enforcement. And it's clear to me that this should
(19) be turned over to law enforcement, and that was my
(20) position from the moment I realized what we had
(21) found.
(22) **Q** Were you concerned on the 26th about the

Page 303
(1) fact that it was found in a briefcase that you had
(2) had custody and control over on the 22nd?
(3) **A** No, I wasn't concerned. I don't know what
(4) you mean, was I concerned. Was I concerned that I
(5) would be criticized in some fashion?
(6) **Q** Were you concerned you'd be criticized?
(7) **A** The answer is no. I recognized that I
(8) might be criticized. Did I recognize I might be
(9) criticized, yes, I recognized I might be criticized,
(10) but I recognize that every day in the White House and
(11) everything I did in the White House was the subject
(12) of potential criticism. Was I concerned, was I
(13) distraught, the answer is no.
(14) **Q** Now, you had conversations with Mr. Burton
(15) and Mr. Neuwirth concerning what should happen with
(16) this writing?
(17) **A** Yes.
(18) **Q** Did you also talk about it with
(19) Mr. McLarty?
(20) **A** Probably, but I can't recall.
(21) **Q** And tell me what the tenor of the
(22) discussions was on the 26th with Mr. Neuwirth and

Page 304
(1) Mr. Burton?
(2) **A** I remember discussions with them. They're
(3) both lawyers. They're both able people. Burton was
(4) the one who made -- he says we read it and after the
(5) emotional state wore off a little bit, after we read
(6) it and digested it, because it was a poignant
(7) document, especially the last line about how ruining
(8) people in Washington is considered sport, we all
(9) said -- Burton made the point and we all recognized
(10) this is clearly not a suicide note.
(11) It was not to my wife or to whom it may
(12) concern, I cannot deal with all these matters,
(13) therefore I have to take my own life. It's not
(14) that. It's a list of things and sentiments of what
(15) was disturbing him in that period of time, some of
(16) which I knew about or most of which I knew about from
(17) my conversations with him. So it was not clearly a
(18) suicide note and therefore, the issue was raised, is
(19) this the kind of thing that we were searching for
(20) that day. That was -- to me it was clear it was the
(21) kind of thing.
(22) I didn't have a problem with that issue but

Page 305
(1) then Burton said, on the other hand, since it's
(2) clearly not a suicide note, you may think it's the
(3) kind of thing we're searching for on that day. Are
(4) there attorney-client privileges? Are there privacy
(5) issues? If we don't turn it over, is there an
(6) obstruction of justice issue with respect -- because
(7) obviously the law enforcement was searching for a
(8) suicide note or an extortion note or some similar
(9) document, as I said, and he said I think we should
(10) research these issues.
(11) **Q** This is what Mr. Burton said?
(12) **A** That's what I remember. I think before we
(13) do anything precipitous, we should research these
(14) issues.
(15) **Q** What was your view?
(16) **A** My view -- my view was, as I was thinking
(17) about it, we're going to turn this over to law
(18) enforcement, and we're going to turn it over
(19) promptly. But I decided somewhere in the course of
(20) the hour or two or three after the finding of this
(21) thing, that I'm the White House counsel, the
(22) President's counsel. Once I turn this over -- and

Page 306
(1) I'm going to turn it over -- I'll do the research,
(2) but I'm going to turn it over unless something comes
(3) up that I -- I didn't think anything would come up in
(4) the research -- the minute I turn it over, I have to
(5) assume it would become public immediately. I don't
(6) want Lisa Foster to hear about this on the radio or
(7) on TV.
(8) Now, I know I can call her up and read it
(9) to her on the phone, but I wanted her to see this
(10) thing. I wanted her to be able to digest it. And
(11) she's in Arkansas. I called Jim Hamilton. I had a
(12) concern about Lisa Foster. That was really my
(13) primary concern. I had a concern about Lisa Foster,
(14) so I called Hamilton, and I discovered -- I believe I
(15) called Hamilton. I discovered shortly thereafter
(16) that Lisa was going to be in the next day. She was
(17) coming in to Washington the next day in connection
(18) with -- she's returning to Washington after the
(19) funeral. She's going to be in the next day on the
(20) 22nd. The President was out of town. He was to come
(21) in late that night. He would be available the next
(22) day.

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(1) I thought it was common decency, before I
(2) turn this over to law enforcement, to let Lisa see it
(3) and digest it and let the President see it and digest
(4) it, and I didn't see any harm in letting them have
(5) that. In the meantime, we could do the research that
(6) Burton was talking about, although I didn't expect
(7) that research was going to produce anything that
(8) would change my decision. So I made the decision to
(9) show the note the next day to Lisa and to show it to
(10) the President if he wanted to see it when he came in
(11) the next day.
(12) **Q** Did you have a serious question about
(13) whether this note was an attorney-client privileged
(14) document?
(15) **A** Did I have a serious question?
(16) **Q** Yes.
(17) **A** I had no serious question.
(18) **Q** And you certainly didn't think it was
(19) executive privilege, did you?
(20) **A** No, I didn't think there was any
(21) privilege. This is the kind of thing they were
(22) looking for. This is the kind of thing I was looking

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(1) for. I thought this was the kind of thing we're
(2) going to turn over.
(3) **Q** But your conclusion was, before you turned
(4) it over, you wanted to show it to Lisa Foster?
(5) **A** I wanted to show it to Lisa. I wanted her
(6) to see it. And I wanted the President to see it if
(7) he wished to see it.
(8) **Q** Now, did you call the Attorney General and
(9) say to her we found a writing by Vincent Foster, but
(10) we'd like to show it to Mrs. Foster and the President
(11) first?
(12) **A** No.
(13) **Q** Why not?
(14) **A** No reason.
(15) **Q** Did you want to keep your options open in

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(16) case someone made a decision not to turn it over?
(17) **A** I was going to make the decision, and I was
(18) making the decision to turn it over. I didn't want
(19) to keep my options open, no.
(20) **Q** What if the President or First Lady decided
(21) they wanted to overrule you, they'd be able to do
(22) that; right?

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(1) **A** It was inconceivable that they would. If I
(2) determined to turn it over, it was inconceivable they
(3) would seek to overrule me because all they wanted to
(4) do was the right thing, and if I said this was the
(5) right thing, it's inconceivable in terms of my
(6) relationship with both of them that they would
(7) overrule it. Therefore, it was not a conceivable
(8) option that they would overrule me.
(9) **Q** You can't think of a reason why you didn't
(10) simply at least give notice to the law enforcement
(11) authorities that something had been found?
(12) **A** There was no -- I can't think of a reason
(13) why I didn't give notice. There was no reason to
(14) give notice. There was nothing -- there was no
(15) reason to give notice.
(16) **Q** That was your decision?
(17) **A** That was my decision.
(18) **Q** So in terms of whether there was an
(19) investigative significance about the timing of it,
(20) you didn't consult with the Department of Justice,
(21) you made your own decision?
(22) **A** I made a decision that a one-day delay, in

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(1) order to give Lisa Foster or the President an
(2) opportunity to see it and digest it, would not have
(3) any investigative significance.
(4) **Q** And at any point afterwards, did you
(5) discuss that decision on the delay with the First
(6) Lady?
(7) **A** No, I never discussed the decision with the
(8) First Lady. At least I don't remember discussing the
(9) decision with the First Lady. I don't think I did.
(10) **Q** You didn't leave a copy of the note or
(11) handwritten transcription of the note for the
(12) President overnight; right?
(13) **A** I did not. I read it to McLarty and I was
(14) certain that McLarty would describe it to the
(15) President in whatever fashion he thought appropriate.
(16) **Q** The next morning you had a meeting about
(17) the note?
(18) **A** I don't remember. We had discussions about
(19) the note the next morning. We had discussions about
(20) the handwritten list. I'll call it a note, but I
(21) really think it's a handwritten list.
(22) **Q** And did you have a meeting between 10:00

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(1) and 11:00 in the morning with Mr. Neuwirth,
(2) Mr. Burton, Mr. McLarty and Mr. Gergen?
(3) **A** I think so, yes.
(4) **Q** Was there a discussion at that point about
(5) whether to turn the document over to law enforcement
(6) authorities?
(7) **A** I believe so, yes, but I was taking --
(8) we're going to turn it over.
(9) **Q** Why did you need to discuss it?
(10) **A** Because Burton was raising issues about is
(11) this a proper -- he wasn't opposing -- he was acting
(12) like a devil's advocate.
(13) **Q** How old is Burton?
(14) **A** I don't know.
(15) **Q** What was Burton's prior experience as a
(16) lawyer?
(17) **A** Burton has experience as a lawyer.
(18) **Q** Burton was an associate at a law firm;
(19) right?
(20) **A** But some people are very able associates at
(21) law firms and some partners are not so able.
(22) **Q** That's true.

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(1) **A** But he was -- he was an honest graduate of
(2) a Texas law school, I believe. I do know he was
(3) first in the bar exam actually, I once heard, in
(4) either Texas or Arkansas. He was a bright guy and he
(5) had good judgment. Whether he was an associate in a
(6) law firm or not, he was an able guy and he was sort
(7) of -- you know, he was playing an interesting role.
(8) He was like a devil's advocate; like he was sort of a
(9) devil's advocate on the procedure for the search, he
(10) was a devil's advocate here. I happen to like
(11) devil's advocates.
(12) **Q** You didn't invite anyone from the
(13) Department of Justice to come over and play devil's
(14) advocate --
(15) **A** No, because I knew that we were going to
(16) turn this over.
(17) **Q** You spent an hour discussing this as an
(18) academic exercise?
(19) **A** I don't believe we spent an hour discussing
(20) it. It may have been an hour. It made no
(21) difference. I knew it was going to be turned over.
(22) Research was being done. I sent Neuwirth out to

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(1) research things. I knew it was going to be turned
(2) over. Lisa was coming in that afternoon at 2:00 or
(3) 3:00. I was going to show it to Lisa. I've got to
(4) prepare myself for that because that could be very
(5) emotional. I was going to get ahold of the President
(6) sometime that day. He was very busy that day. It's
(7) not that he didn't know about the note. He was very
(8) busy that day other than to sit with me and discuss
(9) the note, but I knew I was going to get to see him
(10) later in the day one way or another. And when those
(11) things were done, I was going to turn it over to law
(12) enforcement.
(13) **Q** And then Mr. Hamilton came; right?
(14) **A** Yeah. I think so. I don't remember that.
(15) I remember Lisa coming, but I don't think she came
(16) with Hamilton.
(17) **Q** Did Mr. Hamilton come in the morning around
(18) 11:00?
(19) **A** That could be.
(20) **Q** And Ms. Foster came later?
(21) **A** Yes.
(22) **Q** And that was around 5:00; right?

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(1) **A** Again, I would say 3:00, but I'm almost
(2) fixated on 3. You're fixated on 5:00.
(3) **Q** At around 6:00, the President was finally
(4) informed about the note?
(5) **A** The President had been informed -- 6:00 is
(6) when I discussed the note with the President.
(7) **Q** Tell us about that. How did you finally
(8) get in to see the President about the note?
(9) **A** The President had a series of meetings that
(10) day, I think on foreign policy I have this vague
(11) recollection. So it was hard to get to see him. I
(12) just walked into his office.
(13) **Q** In the Oval Office?
(14) **A** In the Oval Office.
(15) **Q** Were you by yourself?
(16) **A** Yes, I was by myself.
(17) **Q** McLarty wasn't with you?
(18) **A** McLarty may have walked in. McLarty may
(19) have been there for part of the time. I wasn't --
(20) this turned out not to be a very long -- I had the
(21) note with me -- I think I had the note with me.
(22) **Q** You had the scraps with you?

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(1) **A** I don't think I had the scraps with me. I
(2) had a -- I don't think I had the scraps with me. I
(3) had a transcription -- I had written out myself a
(4) transcription of the handwritten list.
(5) **Q** When did you do that?
(6) **A** I think I did it on the -- when we
(7) discovered it. It was a way of having a physical
(8) copy of the note without always putting together the
(9) scrapsful. I just wrote out what it looked like.

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(10) **Q** You did it on the 26th?
(11) **A** I think I did it on the 26th.
(12) **Q** That's the Monday?
(13) **A** That's the Monday.
(14) **Q** By the way, where did you keep the actual
(15) torn-up note Monday night?
(16) **A** In my desk.
(17) **Q** In your desk?
(18) **A** Yes.
(19) **Q** Locked?
(20) **A** It was in an envelope in my desk.
(21) **Q** Locked?
(22) **A** What, the desk?

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(1) **Q** Yes.
(2) **A** No, the desk was not locked.
(3) **Q** Did you have a safe?
(4) **A** I had a safe -- actually, I had it in the
(5) safe for a while -- I probably had it in the safe on
(6) Monday night.
(7) **Q** How did it get into the safe?
(8) **A** I put -- I shouldn't be so sure. I'm not
(9) sure if it was in the safe or the desk. I have no --
(10) actually, my best memory it was in the safe but I'm
(11) not positive because I know, at some point I remember
(12) it being in my desk drawer so I probably I took it
(13) out of the safe on Tuesday, kept it in my desk drawer
(14) and eventually turned it over.
(15) **Q** You have two safes in your office?
(16) **A** Yes.
(17) **Q** You have the combination to both of them?
(18) **A** Yes.
(19) **Q** Do you know how to work both of them?
(20) **A** Sometimes.
(21) **Q** Did Mr. Foster have a safe in his office?
(22) **A** No, he used my safe if he wanted to use it.

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(1) **Q** Both safes in your office were your safes?
(2) **A** Yes.
(3) **Q** There wasn't one that was dedicated to
(4) Mr. Foster?
(5) **A** No.
(6) **Q** And you, at least nominally, had access to
(7) both of them in terms of knowing the combination?
(8) **A** Yes, and I could open them or my secretary
(9) could open them for me.
(10) **Q** Getting into the President's office, your
(11) recollection is you had a transcription --
(12) **A** Probably. That's my recollection, yeah,
(13) that I had a single-page transcription which maybe
(14) was in my jacket pocket or something like that.
(15) **Q** And what did you say to the President?
(16) **A** I already had arranged, by the way, at this
(17) time for the Attorney General to come over.
(18) **Q** How did you arrange that?
(19) **A** I had called. By the time I saw the
(20) President, which I don't remember what time it was,
(21) about 6:00, I already had an appointment or I already
(22) had been in contact with the Department of Justice,

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(1) that I wanted to meet with them.
(2) **Q** Wasn't she coming over for something else?
(3) **A** I discovered that. I don't remember who I
(4) called. Maybe I called Heymann. My recollection is
(5) I called -- my best recollection may be incorrect, is
(6) I called Heymann -- no, no, no, no, no. My best
(7) recollection is I called the Attorney General.
(8) **Q** Herself?
(9) **A** I may not have reached her. I may have
(10) found out -- I don't remember if I reached her on the
(11) phone or I discovered, from talking to one of her
(12) aides, that she was coming over to the White House
(13) anyway. And then I said well, just give her a
(14) message that I want to see her and that I think she
(15) should have Phil Heymann along.
(16) That's my best memory. It could be that I
(17) called Heymann and told him to talk to the Attorney
(18) General and he did it, but my best memory is I did it
(19) the way I just described.
(20) **Q** So you're walking --
(21) **A** And I already had that set up when I walked
(22) into the Oval Office.

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(1) **Q** And what did you say to the President?
(2) **A** I said you want to see the note, do you
(3) want to see the handwritten list?
(4) **Q** What did he say?
(5) **A** He said no, you do whatever you think is
(6) right, which is --
(7) **Q** Did you read it to him?
(8) **A** No.
(9) **Q** Do you have any knowledge that he'd ever
(10) seen a copy of it?
(11) **A** No.
(12) **Q** Did that strike you as odd?
(13) **A** No. He was emotional. He was -- they were
(14) so torn up about Vince's death, that it did not
(15) strike me as odd. But I was acting on the
(16) assumption -- one of the reasons it didn't strike me
(17) as odd is I had read it to McLarty and it's
(18) inconceivable to me that McLarty, in one form or
(19) another, didn't convey what I read. I offered to
(20) show him the document itself -- I don't mean the
(21) actual pieces, but what it looked like on a sheet of
(22) paper.

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(1) **Q** Did McLarty tell you that he hadn't told
(2) the President?
(3) **A** No, he hadn't told me that.
(4) **Q** When you walked in there -- this is quite
(5) important -- when you walked in there, did the
(6) President act surprised that a note had been found?
(7) **A** No.
(8) **Q** Did he indicate that he had prior knowledge
(9) a writing had been found?
(10) **A** Yes.
(11) **Q** Did he indicate that he knew what the
(12) content of the writing was?
(13) **A** That was the impression I got, yes.
(14) **Q** Did Mr. McLarty ever tell you that he had
(15) read or described the content of the writing to the
(16) President?
(17) **A** No.
(18) **Q** And your recollection of your conversation
(19) with Mr. McLarty the night before was that you didn't
(20) read it to him in such a way it would have enabled
(21) him to copy it down?
(22) **A** No, I think it did read it to him in such a

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(1) way that enabled him to copy it down.
(2) **Q** Oh, you think he was copying it down?
(3) **A** I'm not sure -- I don't know. He was on
(4) the other end of the phone, but I certainly read him
(5) line for line what the note said.
(6) **Q** Did he ask you to repeat words or did he
(7) indicate to you in any way that he was copying the
(8) note down?
(9) **A** I don't remember.
(10) **Q** Is it honestly your impression you think he
(11) was transcribing and copying it down?
(12) **A** No, I'm not sure -- I don't have an
(13) impression with respect to that one way or the
(14) other. I just don't remember one way or the other.
(15) **Q** Did he ever tell you that he had made a
(16) decision not to tell the President about it until he
(17) saw the note with the writing himself?
(18) MR. PEDOWITZ: Could we have that question
(19) read back.
(20) (The reporter read the record as requested.)
(21) THE WITNESS: No.
(22) BY MR. CHERTOFF:

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(1) **Q** But in your encounter with the President in
(2) the Oval Office on Tuesday evening, July 27th, the
(3) President indicated he did not want to see the note?

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A Yes.
Q And he did not tell you that he had ever seen its contents earlier or that its contents had been read to him earlier?
A He did not tell me that, but my impression was that he was aware of the contents.
Q Where did you get that impression?
A I don't know. Just from what -- I think he said something to the effect of Bernie, I know all about it. I said do you want to see the note, something to these words; Bernie, I know about it or I know all about it. Do what you think is right.
Q In terms of people --
A Something like that, you know -- I don't have the exact words but something like that.
Q By this point in time, just so I get it straight, in terms of the people that you -- let me withdraw the question.
You had possession of the note from the

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time, let's say, you spoke to Mr. McLarty on the evening of 26th or late afternoon of the 26th up until the time that you went into the Oval Office on the 27th; right?
A Correct.
Q Were you the only person who made a transcribed writing of it?
A I'm not sure of that. Neuwirth may have had one or I may have had a transcribed writing made and Xeroxed it and Neuwirth had a copy.
Q Who did you give it to?
A The only people -- Neuwirth might have had a copy. I don't know if he did or didn't. Maybe I gave a copy to Burton.
Q Well, it was your purpose to keep it a very close hold --
A Yeah, it wasn't designed to be discussed with everybody in the White House, that's correct.
Q In fact, the very purpose of not telling the Department of Justice was so that it wouldn't leak out; right?
MR. BEN-VENISTE: I don't think that was

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the testimony.
BY MR. CHERTOFF:
Q So that Mrs. Foster could get to see it first; is that more correct?
A Yes, Mrs. Foster and the President if he wished to see it, that's correct.
Q So your state of mind was that, apart from Mr. Neuwirth and Mr. Burton and Mr. McLarty who, so far as you were aware, were the only people with knowledge of the content of the note besides yourself, that the next person who ought to see it is -- other than maybe another couple people in the immediate circle at the White House was Mrs. Foster; right?
A Yes.
Q And incidentally, did you bring a transcription of the note to the meeting with Mr. Gergen and Mr. McLarty and Mr. Burton on the morning of the 27th?
A I don't remember, but I would say probably.
Q Was there discussion in that meeting about how you'd deal with the media aspect of all this?

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A There probably was. I don't remember the discussion very much, but I have no -- I'd be surprised if there wasn't such a discussion about ultimately how we're going to have to deal with the media.
Q Was there a discussion about how and when the note would be released to the public?
MR. PEDOWITZ: At that meeting?
MR. CHERTOFF: At that meeting.
THE WITNESS: There may have been. There was a discussion whether we could release it or we'd have to get permission from the Department of Justice before we released it. There may have been that kind of discussion. There were certainly discussions after we turned it over to the Department of Justice about that.
There was a group of people in the White House who really urged that we release it as soon as possible because it was going to get out one way or the other, but the Department of Justice was urging us not to do it. But I don't remember that -- those are discussions after we turned over the note.

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BY MR. CHERTOFF:
Q I'm focusing on before the note was turned over. Was there discussion how and when it would be released to the media?
A There may have been but I have no recollection of a specific discussion.
Q As of the time you went into the President's office, was it your understanding that the universe of people who had knowledge of and a copy of the content of the note --
A Knowledge or a copy of the content of the note.
Q I'll break it into two parts. To your knowledge, the people who may have had an actual copy of the content of the note were yourself; correct?
A Yes.
Q Maybe Mr. Neuwirth?
A Maybe.
Q Maybe Mr. Burton?
A Right.
Q Anybody else?
A Probably not.

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Q To your knowledge, did Mr. Burton go in to see the President at any point to tell him about the note or show it to him before you went in to see him on the 27th?
A I have no knowledge of that. I don't know.
Q And certainly, you know Mr. Neuwirth didn't go in without you to tell the President about the note?
A No, Mr. Neuwirth didn't go in.
Q Now, in terms of additional people who had knowledge of the content of the note, there was Mr. McLarty to whom you read the note; correct?
A Correct.
Q And then who else was there?
A Mr. Gergen.
Q And when did you tell Mr. Gergen?
A Mr. Gergen was with Mr. McLarty.
Q On the morning of the 27th?
A He was with Mr. McLarty in Chicago.
Q To your knowledge, did Mr. Gergen go in to tell the President -- let me withdraw the question.
When you had your meeting at about 10:00 in

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the morning on Tuesday, July 27th with Gergen, McLarty, Burton and Neuwirth, was it your understanding the President had not yet been shown the note?
A I didn't believe at that point the President had been shown the note but I thought it was highly likely he knew the contents of the note. I had told it to McLarty the day before. Gergen was with him. They were traveling back on the airplane from Chicago. I believed -- it was likely the President knew the contents and hadn't seen a copy of the note. That's what I believed on the 27th.
Q And to your knowledge, the way in which Mr. McLarty or Mr. Gergen could have communicated the content of the note was by means of anything they wrote down at the time you read it to Mr. McLarty?
A Or they remembered. It wasn't that long a document. You can read -- you read it to somebody, they remember -- they may not remember it word for word but they remember the thoughts and they could have conveyed that.

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(22) **Q** So that other than --

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(1) **A** Vince left a handwritten list expressing he
(2) was concerned about A, B, C, D and E. They could
(3) remember that and convey it to the President. I
(4) don't know if they did that, but that could have
(5) been --
(6) **Q** To your knowledge, the only people who
(7) would have been in the position to tell the President
(8) about the content of the note before you went into
(9) the Oval Office on the 27th, starting from the period
(10) when Mr. Neuwirth -- when you encountered
(11) Mr. Neuwirth with the note on the 26th, the only
(12) people that could have gone in there and told him
(13) about it before you did were Mr. Gergen, Mr. McLarty,
(14) Mr. Neuwirth, Mr. Burton and yourself; right?
(15) **A** Mrs. Clinton.
(16) **Q** If Mrs. Clinton read it --
(17) **A** Or Mrs. Clinton had discussed it with one
(18) of us. She didn't discuss it with me but she could
(19) have discussed it with McLarty. She could have
(20) discussed it with Burton.
(21) **Q** So other than those people, you have no --
(22) there's no one else who, to your knowledge, had any

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(1) knowledge of the content of the note from the time
(2) that you first encountered it with Mr. Neuwirth on
(3) the 26th up until the time you spoke to the President
(4) on the 27th; correct?
(5) MR. PEDOWITZ: We've mentioned Jim Hamilton
(6) and Lisa Foster.
(7) MR. CHERTOFF: We'll come back to that.
(8) THE WITNESS: Thank you. I called
(9) Hamilton, yes, Jim Hamilton and Lisa.
(10) BY MR. CHERTOFF:
(11) **Q** You have no reason to believe Lisa Foster
(12) told the President about the content of the note?
(13) **A** I have no reason to believe it.
(14) **Q** And you have no reason to believe Jim
(15) Hamilton told the President?
(16) **A** I had no reason to believe that, but Jim
(17) Hamilton had his own relationship with the President
(18) and they talked from time to time, and it's not
(19) inconceivable that Hamilton was known by the
(20) President, he was very well known, and respected by
(21) the President but I have no reason to believe they
(22) had a conversation about that.

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(1) **Q** You didn't give Mr. Hamilton a copy of the
(2) today?
(3) **A** I didn't give him a copy of the note but I
(4) read it to him over the phone and to me, knowing Jim
(5) Hamilton, he wrote down what I was reading.
(6) **Q** When he came in the next day, didn't you
(7) show him the note?
(8) **A** Yes.
(9) **Q** Didn't he come in in the morning to look at
(10) it?
(11) **A** Yes.
(12) **Q** Did he tell you he had copied it down the
(13) night before?
(14) **A** I don't remember what he said. One thing
(15) to copy it, one thing to look at it.
(16) **Q** There's an element to looking at the note
(17) that conveys much more than just reading the content
(18) as someone has copied it down; correct?
(19) **A** There is an element. There is an
(20) additional element when you look at the document,
(21) yes, that's correct. I don't know how much that
(22) departs from the contents; also important.

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(1) **Q** Where did you meet the Attorney General and
(2) Mr. Heymann -- and I'll stop in a minute -- where did
(3) you meet the Attorney General and Mr. Heymann later
(4) on the 27th?
(5) **A** In Mr. McLarty's office.
(6) **Q** Was anybody else there?
(7) **A** Mr. McLarty was there, I think.
(8) **Q** Anybody else?
(9) **A** Neuwirth, I think, was with me most of the
(10) time.
(11) **Q** What was the conversation?
(12) **A** I told the Attorney General that we had
(13) found something that I thought should be turned over
(14) to the appropriate law enforcement authorities. It
(15) was a torn-up sheet of paper, which we had pieced
(16) together, and it reflected things that were bothering
(17) Mr. Foster. I didn't know if it was a suicide note
(18) or not, but it was the kind of thing we were
(19) searching for on the 22nd. And I thought law
(20) enforcement should have it and I wanted her to have
(21) it to give it to whoever she thought was appropriate.
(22) **Q** What did she say?

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(1) **A** She said -- she was taken aback a little
(2) bit. She was a little surprised by this thing. It
(3) was sort of -- she had sort of a shock reaction and
(4) her reaction was I don't think I'm the person you
(5) should hand it to. You should give it to the people
(6) doing the investigation, namely the Park Police. And
(7) I said if that's what you believe, which is logical,
(8) I said I'd be glad to do it. And Heymann then went
(9) over to the phone to call the Park Police to ask them
(10) to come over to the White House, and I said fine,
(11) we'll wait for the Park Police. And she shortly
(12) thereafter left while Heymann, I think, remained
(13) waiting for the Park Police.
(14) **Q** Was there any discussion before she left,
(15) any other discussion you remember?
(16) **A** No.
(17) **Q** Did you raise with her --
(18) **A** That was the substance of the discussion.
(19) **Q** Did you raise with her any questions about
(20) who should see the note or how it should be handled
(21) or privilege?
(22) **A** No.

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(1) **Q** There was no dispute?
(2) **A** No dispute with her?
(3) **Q** Yes.
(4) **A** No.
(5) **Q** No disagreement about how it should be
(6) handled?
(7) **A** Handled in the future?
(8) **Q** No, how they ought to handle the note you
(9) were telling her about?
(10) MR. PEDOWITZ: He's described a discussion
(11) in which she said it should be turned over to the
(12) Park Police.
(13) BY MR. CHERTOFF:
(14) **Q** Up to that point in time, was there any
(15) disagreement or question you were raising about how
(16) the note ought to be handled?
(17) **A** I didn't make any suggestions about how it
(18) ought to be handled. I was in the act of turning it
(19) over to her. I wasn't saying here it is and you
(20) should handle it A, B, C and D. No, here it is.
(21) **Q** Did you tell her when the note was located?
(22) **A** When?

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(1) **Q** Yes.
(2) **A** Yeah, I told her. I think I told her.
(3) **Q** What did she say?
(4) **A** I don't remember. She may have said why
(5) did you wait a day. I don't really remember this but
(6) if she did say it, I gave her the reason. Other
(7) people who were there can testify about this, too.
(8) She said why did you wait 24 hours or something like
(9) that. If she asked that question I said because I
(10) wanted Lisa to see it and I wanted the President to
(11) see if he wanted to see it. That's what I would have
(12) said to her, but I don't remember if we had that
(13) colloquy.
(14) **Q** Did Mr. Heymann say anything about the
(15) delay in the note?

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(16) **A** No.
(17) MR. PEDOWITZ: The delay?
(18) MR. CHERTOFF: In turning over the note.
(19) THE WITNESS: No.
(20) BY MR. CHERTOFF:
(21) **Q** Did you indicate in the conversation the
(22) note had been found in the briefcase?

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(1) **A** I think so, yes.
(2) **Q** Did Mr. Heymann say anything about the fact
(3) that it had been found in the briefcase which had
(4) been in the room on the 22nd?
(5) **A** No.
(6) MR. CHERTOFF: I think this is a good point
(7) to stop.
(8) (Whereupon, at 6:10 p.m., the deposition
(9) was adjourned, to reconvene at 9:30 a.m., on
(10) Thursday, July 13, 1995.)
(12) ----------
(13) BERNARD W. NUSSBAUM

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