Collotor - Kavanaugh 8-7-96 Memorandum (Foster)

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Note for the file:

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See Braun case file NW 28484.

MFM

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

MEMORANDUM

TO: Independent Counsel Kenneth W. Starr
OIC Attorneys

FROM: Steven M. Colloton
Brett M. Kavanaugh

DATE: August 7, 1996

Attached are two memoranda. The memorandum at Tab 1 sets forth the most important evidence gathered during this Office's investigation into whether any individual or entity obstructed justice, made false statements, or committed any other federal crime with respect to activities occurring in the aftermath of the July 20, 1993, death of former Deputy Counsel to the President Vincent W. Foster, Jr. The memorandum at Tab 2 describes the criminal statutes potentially applicable to this evidence, and identifies particular factual circumstances for consideration under these statutes. As we have discussed with Ken and John, these memoranda are designed to facilitate consideration and discussion of whether any indictments should be sought.

Under no circumstances should these memoranda be taken by anyone when leaving employment with the Office. It should go without saying, moreover, that the contents of these memoranda should never be disclosed to or discussed with anyone outside this Office.

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FOSTER DOCUMENTS MEMORANDUM

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List of Main Witnesses -- Positions as of July 1993

The White House and Affiliated Persons (alphabetical)

Bob Barnett, attorney for the Clintons
Bill Burton, Staff Director to the Chief of Staff
Lisa Caputo, Press Secretary to the First Lady
Tom Castleton, intern in the Counsel's Office
William Jefferson Clinton, President
Hillary Rodham Clinton, First Lady
Helen Dickey, babysitter to the Clintons
David Dreyer, Deputy Director of Communications

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Vince Foster, Deputy Counsel to the President
Mark Gearan, Director of Communications
David Gergen, Counselor to the President
Deborah Gorham, secretary to Vince Foster
Webb Hubbell, Associate Attorney General
Carolyn Huber, Special Assistant to the President
Vernon Jordan, attorney at Akin Gump
David Kendall, attorney for the Clintons
Gail Kennedy, wife of William Kennedy
William Kennedy, Associate Counsel to the President
David Leavy, employee in Office of Communications
Evelyn Lieberman, Assistant to the Chief of Staff to the First Lady
Bruce Lindsey, Senior Advisor to the President
Craig Livingstone, Director of Personnel Security
Sylvia Mathews, Special Assistant to Robert Rubin
Cheryl Mills, Associate Counsel to the President
Dee Dee Myers, Press Secretary
Kelli McClure, employee in Office of Management and Administration
Mack McLarty, Chief of Staff to the President
Roy Neel, Deputy Chief of Staff to the President
Miriam Nemetz, now an Associate Counsel (not in White House in 7-93)
Steve Neuwirth, Associate Counsel to the President
Bernie Nussbaum, Counsel to the President
Howard Paster, Director of Legislative Affairs
Betsy Pond, secretary in the Counsel's suite
Jack Quinn, Chief of Staff to the Vice President
Marsha Scott, Director of Correspondence
Cliff Sloan, Associate Counsel
Patti Solis, scheduler for the First Lady
Gene Sperling, Deputy Assistant to the President
George Stephanopoulos, Senior Advisor
Susan Thomases, attorney at Willkie Farr & Gallagher
Harry Thomason, friend of the Clintons

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Patsy Thomasson, Director of the Office of Administration
Linda Tripp, secretary in the Counsel's suite
David Watkins, Director of Management and Administration
Margaret Williams, Chief of Staff to the First Lady

Foster Family Attorneys at Swidler & Berlin

Jim Hamilton
Michael Spafford

GSA Cleaning Personnel

Terri Cobey
Diann Walters

Park Police

Cheryl Braun
Patrick Gavin
Robert Hines
Charles Hume
Robert Langston, Chief
Peter Markland
Leonard Megby
John Rolla
E.J. Smith

FBI

Dennis Condon
John Danna
Scott Salter

DOJ

Roger Adams, Deputy Assistant Attorney General
Phil Heymann, Deputy Attorney General
David Margolis, Associate Deputy Attorney General
Cynthia Monaco, Special Assistant to the Deputy Attorney General
Janet Reno, Attorney General

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Secret Service

Bruce Abbott
Tom Canavit
Donald Flynn
Paul Imbordino
Scott Marble
Dennis Martin
Henry O'Neill
David Woltz

Emergency Medical Service

Todd Hall

Miscellaneous

Judith Doody and Mark Feist, couple at Fort Marcy Park
Audrey Evans, friend of Margaret Williams
Patrick Knowlton, civilian at Fort Marcy Park
Larry Patterson and Roger Perry, Arkansas troopers
Lyda Holt Samuel, friend of Patsy Thomasson
Officer David Tipton, Fairfax County Police
CNN-CW
CW, civilian at Fort Marcy Park

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MEMORANDUM

TO: Independent Counsel Kenneth W. Starr
OIC Attorneys

FROM: Steven M. Colloton
Brett M. Kavanaugh

DATE: August 7, 1996

This memorandum sets forth the most important evidence gathered during this Office's investigation into whether any individual or entity obstructed justice, made false statements, or committed any other federal crime with respect to activities occurring in the aftermath of the July 20, 1993, death of former Deputy Counsel to the President Vincent W. Foster, Jr. We have referred to this investigation as the "Foster documents" investigation. It has examined three overlapping issues: (1) whether any person criminally obstructed any of the various investigations of Foster's death -- in particular, possible obstruction of those aspects of the death investigations that focused on Foster's state of mind and activities before his death; and (2) whether any person obstructed justice in connection with the handling and disposition of documents (including "the note") from Foster's office; and (3) whether any

person made false statements or committed perjury during investigation of these matters.[1]

BACKGROUND

I. The 1993 Park Police and FBI Investigations

Foster died on Tuesday, July 20, 1993. Because his body was found in Fort Marcy Park in suburban Virginia, on land operated by the National Park Service, the United States Park Police investigated his death. The Park Police was assisted in some aspects of its investigation by the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ).[2]

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[1] In the text, the memo indicates the source for factual information where appropriate. The footnotes provide citations to the relevant testimony and documents. Unless otherwise indicated, the citations for documents refer to the DC Bates-stamp number.

Steve Colloton has taken primary responsibility for drafting the portions of the memorandum that address the search on the 22nd (and discussions leading up to it) and the subsequent disposition of documents from Foster's office. Brett Kavanaugh has taken primary responsibility for drafting the portions of the memorandum that address the night of the 20th, the morning of the 21st, and the various issues related to the discovery of the note.

The factual information contained in this memorandum is derivative of information contained in reports, transcripts, and documents produced to the OIC and does not itself constitute the statement of any witness.

[2] At the press conference concluding the investigation on August 10, 1993, Deputy Attorney General Phil Heymann stated:

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

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A review of documents and other items in Foster's office was conducted by White House Counsel Bernard Nussbaum in the presence of Park Police, FBI, and DOJ personnel on Thursday, July 22, 1993. That "search" was conducted because investigators sought to determine whether a suicide note or similar document was in Foster's office. No such document was found during the search. On Monday, July 26, 1993, (four days later), however, Associate Counsel to the President Stephen Neuwirth discovered a torn "note," which appeared to have been written by Foster, in a briefcase in Foster's office. The White House produced the torn note to the Park Police on July 27, 1993.

Following the note's discovery, the DOJ directed the FBI to conduct an obstruction of justice investigation. That FBI investigation focused primarily on two issues: (a) whether the note was seen or found by any individual other than Foster before

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the Park Police.

8/10/93 Press Conference, Federal News Service. As it turns out, Mr. Foster apparently was not covered by the federal assassination statute because, according to information provided by the White House, Foster was not a "person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President." See 18 U.S.C. § 1751 (provision entitled "Presidential and presidential staff assassination, assault, and kidnapping" and defining persons covered by the statute). Rather, he was appointed under Section 105(a)(2)(B). In substance, that meant that he did not hold as high a rank or make as much money as those persons, such as Mr. Nussbaum, appointed under Section 105(a)(2)(A). See August 25, 1995, Letter from Miriam Nemetz to Brett M. Kavanaugh. 210-5151.

July 26, 1993; and (b) why the note was not produced to investigators for approximately 27 hours after its discovery.[3]

The Park Police investigation into Foster's death and the DOJ/FBI obstruction investigation concluded on August 10, 1993, with a joint press conference held by representatives of each agency. The Park Police determined that Foster's death was caused by a self-inflicted gunshot wound in Fort Marcy Park. Chief Langston of the Park Police explained:

> The condition of the scene, the medical examiner's findings and the information gathered clearly indicate that Mr. Foster committed suicide. Without an eyewitness, the conclusion of suicide is deducted after a review of the injury, the presence of the weapon, the existence of some indicators of a reason, and the elimination of murder. Our investigation has found no evidence of foul play. The information gathered from associates, relatives and friends provide us with enough evidence to conclude that Mr. Foster's -- that Mr. Foster was anxious about his work and he was distressed to the degree that he took his own life.[4]

Meanwhile, the DOJ and FBI concluded that there was insufficient evidence to prosecute any individual or entity for obstruction of justice.

In large part because of the December 1993 disclosure that Whitewater-related documents were in Foster's office at the time of his death, we have investigated whether the Park Police investigation or any later investigation into Foster's activities and state of mind were obstructed by White House officials or

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[3] 8/10/93 Press Conference, Federal News Service.

[4] 8/10/93 Press Conference, Federal News Service.

others. Separate but overlapping questions have been raised about whether Foster's documents (in his office, his car, or his house) were destroyed or otherwise have been concealed from investigators.

II. Jurisdiction

Two other potentially relevant federal investigations were ongoing as of July 1993. First, the Resolution Trust Corporation (RTC) was investigating Madison Guaranty Savings & Loan, which had been operated by James McDougal, a partner of the Clintons in the Whitewater Development Corporation. Indeed, the RTC had sent one criminal referral on Madison to the U.S. Attorney's Office in Little Rock in the fall of 1992. (Several more criminal referrals were sent in the fall of 1993.) Second, the FBI was investigating the activities of Capital Management Services, Inc. ("CMS"), which was owned and operated by David Hale. A magistrate judge signed a search warrant for CMS's offices on July 20, 1993; the FBI executed the search warrant on July 21, 1993. Hale was indicted on September 23, 1993.

The CMS/Hale prosecution and the Madison investigation were transferred in November 1993 from the U.S. Attorney's Office in Little Rock to the Fraud Section of the Department of Justice. As those investigations were proceeding, on December 20, 1993, an article in the Washington Times reported that Whitewater documents were in Foster's office at the time of his death and suggested that White House officials had removed those Whitewater

documents from Foster's office on the night of his death.[5] The Times article did not provide a source for the suggestion that documents were removed from Foster's office on the night of the 20th rather than at a later time. In any event, the disclosure that Whitewater documents had been in Foster's office at the time of his death, but had not been shown to investigators during the Nussbaum search on July 22, prompted a bevy of Foster/Whitewater stories over the ensuing few weeks.[6] Some news stories even repeated as fact the suggestion made by the Times story regarding

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

[6] Safire, Foster's Ghost, The New York Times, Jan. 6, 1994, at A21 ("What terrible secret drove Vincent Foster . . . to put a bullet through his head? . . . From the moment Foster's body was found, White House Counsel Bernard Nussbaum acted to keep those Whitewater files away from prying eyes."); Clymer, G.O.P. in a Bind in Seeking an Inquiry on Clinton Deals, The New York Times, Dec. 28, 1993, at A9 ("The Whitewater issue first arose during last year's Presidential campaign, then arose again last week after White House officials said that a file with material about the Clintons' investment had been removed from the office of [Foster] without being shown to agents investigating his death."); Johnston, Investigator to Seek Ex-White House Aide's Files on Clinton Land Dealings, The New York Times, Dec. 21, 1993, at A20 ("Mr. Gearan's statement of Monday night . . . has revived lingering questions about the way the White House responded to Mr. Foster's death and handled papers left in his office.").

the removal of the documents on the night of the 20th.[7] The Foster link to Whitewater substantially escalated the entire Whitewater controversy,[8] culminating in the President's January 12, 1994, request to Attorney General Reno for a regulatory independent counsel. On January 20, 1994, Attorney General Reno appointed Robert B. Fiske, Jr., as regulatory independent counsel.

Mr. Fiske's jurisdictional statement gave him authority to investigate whether any individuals or entities committed federal crimes "relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with (1) Madison Guaranty Savings & Loan Association, (2) Whitewater Development Corporation, or (3) Capital Management Services."

After his appointment, Mr. Fiske assumed both the Hale prosecution and the continuing Madison investigations. In

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[7] See Rosenbaum, The Whitewater Inquiry, Questions That Are Lingering, The New York Times, Jan. 13, 1994, at A18 ("On the day last July when Mr. Foster committed suicide, a file on Whitewater was removed from his office before Federal investigators could see it.").

[8] See Kurtz, After Slow Start, Network TV Grabs Whitewater, The Washington Post, Jan. 14, 1994, at A18 ("The story was not ready for prime time until just before Christmas, when White House aides acknowledged they had removed Whitewater files from deputy counsel Vincent Foster's office after he committed suicide last summer."); O'Neil, White House Took Clinton Files After a Top Aide Killed Himself, The New York Times, Dec. 21, 1993, at A1 ("Mr. Gearan's statement provided a solid link between Mr. Foster . . . and Whitewater. . . . The disclosure raised as many questions as it answered -- notably, why the White House waited so long to acknowledge the existence and removal of the Whitewater files.").

addition, Mr. Fiske opened a new investigation of Foster's death, and of whether any individual or entity obstructed justice (or committed any other federal crime) in connection with the handling of papers and documents from Foster's office. On June 28, 1994, Mr. Fiske issued a report concluding that Foster's death was caused by a self-inflicted gunshot wound in Fort Marcy Park. He found "no evidence that any issues related to Whitewater, Madison Guaranty or CMS played any part in his suicide."[9] Mr. Fiske had not concluded his Foster documents investigation at the time this Office was created on August 5, 1994.

This Office ("the OIC") was given essentially the same jurisdiction over criminal matters as that granted to Mr. Fiske (except that James McDougal's name was added to the order). The OIC opened a new investigation of Foster's death and continued the investigation of the handling of papers and documents from Foster's office.

Mr. Fiske's office and the OIC have investigated Foster-related matters because Foster would have been a key witness on various Whitewater and Madison matters that have been investigated by the OIC and that had been investigated by Mr. Fiske's office and the DOJ Fraud Section. Foster performed work for Madison Bank and Trust (owned by Jim McDougal) in 1981 and

[9] Fiske Report, 6/30/94, at 58.

1982.[10] According to Mrs. Clinton, Foster had involvement in the retention of Madison Guaranty as a client of the Rose Law Firm in 1985. Foster was blind-copied on a July 14, 1986, letter from Mrs. Clinton to McDougal regarding the Rose Firm's work for Madison.[11] He gathered documents, including Rose billing records of Mrs. Clinton's work for Madison, and analyzed Madison-related issues to assist Mrs. Clinton during the 1992 campaign. He provided legal service to the Clintons when they sold their interest in Whitewater to Jim McDougal in December 1992. He performed work with respect to the treatment of Whitewater on the Clintons' personal taxes in April 1993. He had Whitewater-related documents in his White House office at the time of his death. For these reasons, and more, Foster would have been a key witness in our investigation of Whitewater- and Madison-related matters.

In light of Foster's work on the above-listed issues, the OIC sought to obtain all information Foster might have possessed about Whitewater and Madison to aid investigation into those

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[10] See Madison Bank & Trust v. First Nat. Bank of Huntsville, 635 S.W.2d 268 (Ark. 1982).

[11] See Pillsbury Report, Dec. 28, 1995, at 42.

matters. To obtain and account for all information that Foster possessed concerning Madison and Whitewater, and to determine whether the investigations of Foster's death were criminally obstructed, we have focused on the distribution of documents from his office in the days and weeks following his death. The investigation has included an intensive examination of: activities in the White House on the night of July 20; circumstances surrounding the review of documents in Foster's office on July 22; the subsequent transfer of Clinton personal documents to Williams & Connolly by way of the residence of the White House; and the discovery of a note in Foster's office on July 26.

DISCUSSION

I. The Foster Briefcase

On the morning of July 20, 1993, Foster drove to work and arrived as usual at his office in the Counsel's suite on the second floor of the West Wing of the White House. Counsel Bernard Nussbaum and Deputy Counsel Foster had offices in that suite. In addition, three secretaries (Betsy Pond, Linda Tripp, and Foster's secretary Deborah Gorham) and an intern (Tom Castleton) had desks in the outer office of the suite.

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Foster attended the Rose Garden ceremony announcing the nomination of Louis J. Freeh to be Director of the FBI.[12] At about noon, Foster asked secretaries Tripp and Pond to get lunch for him from the White House cafeteria. Tripp and Pond went downstairs and obtained lunch for Foster.[13]

A 911 call at 5:59 p.m. reported a dead body in Fort Marcy Park. When the Park Police and emergency personnel arrived at Fort Marcy Park shortly after 6:00 p.m., they found Foster dead with a gun in his hand. Because Foster was found with a gun in his hand and with an apparent gunshot wound through the head, and because there were no signs of a struggle or of a robbery, the Park Police quickly came to the preliminary conclusion that

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[12] See, e.g., Pond USPP Report, 7/22/93, at 1.

[13] Pond USPP Report, 7/22/93, at 1; Tripp USPP Report, 7/22/93, at 1.

[14]

Foster had committed suicide in Fort Marcy Park.[15] That conclusion has been the subject of separate investigative work by the OIC.

We have investigated the whereabouts of Foster's briefcase in the aftermath of his death. The evidence suggests that the two Foster brief bags produced to the OIC (a large brown litigation bag and the now-famous black briefcase that was displayed in a Senate hearing) were in Foster's White House office on July 22, two days after his death. Testimony of numerous persons and contemporaneous notes taken by Michael Spafford, a Foster family attorney from the firm of Swidler & Berlin, indicate that the black briefcase was searched by Nussbaum on the 22nd.[16] In addition, various witnesses have testified that a separate litigation bag was in Foster's office during the search on the 22nd.[17]

Testimony about the events of July 20, the day of the death, has raised two briefcase-related questions: (1) whether Foster's black briefcase was found in his car at Fort Marcy Park but was returned to his office before it was handled by Nussbaum during the search on July 22, 1993; and (2) whether Foster possessed another briefcase that was in his car but has not been produced

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[15] Langston & Hines 302, 5/17/94, at 2.

[16] 296-16.

[17] [redacted] Spafford 302, 5/24/94, at 2.

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to the OIC.

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Linda Tripp, Betsy Pond, and Tom Castleton said they saw Foster leave the Counsel's suite on July 20. They were interviewed separately by the Park Police on July 22, 1993.

The Park Police report of the interview with Tripp states:

> Ms. Tripp makes it a habit to notice what the staff members are taking with them when they leave the office in order to determine for herself how long she may expect them to be away from the office. Ms. Tripp was absolutely certain that Mr. Foster did not carry anything in the way of a briefcase, bag, umbrella, etc. out of the office.[18]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

The relevant portion of the Park Police report of Pond's interview of July 22, 1993, does not address what Foster carried when he left the office:

> At around 1300 hours he came out of the office and stated "I'll be back, there are M&M's left in my office." Ms. Pond recalled she and Linda were in the office when he left. She wasn't sure if Tom was in the office or not. . . . There was nothing unusual about his emotional state.[20]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[18] Tripp USPP Report, 7/22/93, at 1 (emphasis added).

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[20] Pond USPP Report, 7/22/93, at 1.

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The Park Police report of Castleton's interview of July 22, 1993, does not address what Foster carried when he left the office:

> Mr. Castleton stated that he worked on 7/20/93 and remembers that Mr. Foster ate lunch in his office, although he could not place the time. Mr. Castleton was present when Mr. Foster left the office after eating lunch and said "So long." Mr. Foster did not respond and seemed to Mr. Castleton to be "in his own world," focused, disturbed.[22]

However, a report of Castleton's May 3, 1994, interview with Mr. Fiske's office summarizes Castleton's statement as follows:

> He [Foster] then sat at the coffee table in his office, ate his sandwich, <u>then took his briefcase and his suit jacket and left the office saying "I'll be back later."</u> . . . Foster seemed to be in good spirits when he left the office.[23]

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[22] Castleton USPP Report, 7/22/93, at 1.

[23] Castleton 302, 5/3/94, at 2 (emphasis added). Note that the report of Castleton's 5/3/94 statement appears to differ in several respects from the report of his 7/22/93 statement.

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Rolla and Braun were the only two people known to have been in Foster's car at Fort Marcy Park.[26] The photographs of the interior of Foster's car taken at Fort Marcy Park do not show a briefcase. Most of the other witnesses at the scene do not recall a briefcase in Foster's car. One emergency technician (EMT) and two civilian witnesses, however, say they have some recollection of a briefcase in a car at the park.

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[24] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[25] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[26] E.J. Smith of the Park Police searched the car at the Park Police impoundment lot after it was towed there from Fort Marcy Park. He says he found no briefcase. E.J. Smith 302, 2/17/95, at 2.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

EMT Todd Hall stated, according to a report of his March 18, 1994, interview[27] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure that he recalled seeing a briefcase in Foster's car, although he was uncertain of the color. However, in a July 20, 1994, Senate deposition, he stated: "We saw a suit coat and I think his briefcase, something like that . . . All I know for sure was his suit coat. And I thought I may have seen, he may have had a briefcase or something in there."[29]

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It is apparent from his testimony and a reenactment conducted with CW at the scene by FBI personnel, however, that CW was describing the car of Judith Doody and Mark Feist, a couple who were at the park on July 20, when he referred to the briefcase.[31]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[27] Hall 302, 3/18/94, at 3.

[28] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[29] Hall Deposition, 7/20/94, at 27 (emphasis added).

[30] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[31] See Clemente, Copeland & Greene, Foster Death Memo, 3/1/96, at 44; see also Feist 302, 2/7/95, at 1 ("[I] may have had a briefcase" in Doody's car).

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

(The report of Knowlton's initial call to the Park Police on July 22, 1993, does not mention the contents of the car with Arkansas plates.[33])

In addition to the evidence regarding Foster's departure from the Counsel's suite and the observations regarding the contents of his car at Fort Marcy, two other pieces of evidence are relevant to the briefcase issue.

First, an official Secret Service report prepared at 10:01 p.m. on July 20 states in relevant part:

> SA Tom Canavit, WFO PI squad, advised that he has been in contact with US Park Police and was assured that if any materials of a sensitive nature (schedules of the POTUS, etc.) were recovered, they would immediately be turned over to the USSS. (At the time of this writing, no such materials were located).[34]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[33] Knowlton USPP Report, 7/22/93, at 1.

[34] 211-147 (emphasis added); see also Canavit 302, 8/3/95, at 2.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

II. Notification to the White House of Foster's Death

Officers from the Park Police notified the United States Secret Service of Foster's death at approximately 8:30 p.m. on July 20, according to the Secret Service memorandum prepared by SA Scott Marble at the Secret Service Duty Desk at 10:01 p.m. In relevant part, that report states:

> On 7/20/93, at 2130 hrs, Lt Woltz, USSS/UD -- WHB, contacted the ID/DD and advised that at 2030 hrs, this date, he was contacted by Lt Gavin, US Park Police, who provided the following information:
>
> > On the evening of 7/20/93, unknown time, US Park Police discovered the body of Vincent Foster in his car. The car was parked in the Ft. Marcy area of VA near the GW Parkway. Mr. Foster apparently died of a self-inflicted gunshot wound to the head. A .38 cal. revolver was found in the car.
>
> * * *
>
> The following notifications were made by the USSS/UD -- WHB:
>
> Dave Watkins Dir. of Personnel, WH

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36 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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Insp. Dennis Martin	USSS/UD
Craig Livingstone	WH Security Coordinator

* * *

Director Magaw	Dir

* * *[38]

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Lieutenant Woltz confirmed that he was notified by Gavin of the apparent suicide. Woltz recalls that Gavin told him it was Park Police standard policy to notify the Secret Service of the death of a White House pass holder.[41]

Woltz stated that he then attempted to telephone David Watkins because Watkins was in charge of White House personnel. Watkins was not at home but was paged by a White House operator

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[38] 211-147. "Marble is aware that the information in his report about Foster's body being found in his car differs from other accounts of the circumstances of Foster's death. Marble believes that the inaccuracy of the information reflected in his report can be attributed to the fact that the information he recorded was, at best, fourth hand information [USPP at scene to USPP Communications Center to Gavin to Woltz to Marble]." Marble 302, 6/27/95, at 1-2.

[39] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[41] Woltz 302, 7/5/95, at 2. The Park Police had found Foster's White House pass in his car. Braun 302, 4/28/94, at 3.

and called Woltz back. Woltz stated that he told Watkins that Foster had apparently committed suicide in Fort Marcy Park.[42] Watkins, then the Director of Management and Administration for the White House, testified that he was informed of the death in a call by the Secret Service while attending a movie with his wife.[43]

Woltz stated that he also notified his supervisor, Inspector Dennis Martin, as well as personnel at the Secret Service Duty Desk.[44] Martin confirmed that he was notified of Foster's death by a call from Woltz. Martin indicated that Woltz said that he had been notified by the Park Police of the death of a White House employee.

Martin stated that he then called Craig Livingstone, then the Director of Personnel Security at the White House (an administrative position related to background checks) and informed him of Foster's death. Martin stated that he asked Livingstone to identify the body because, according to Martin, a staff member needed to identify the body and Livingstone was the

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[42] Woltz 302, 7/5/95, at 2.

[43] Watkins 302, 6/22/94, at 3; Watkins Deposition, 7/11/95, at 31. Records reflect that Watkins called the Secret Service from his mobile phone at 9:05 p.m. for 2 minutes. 210-2348. This may not have been the initial contact between the Secret Service and Watkins. See Woltz 302, 7/5/95, at 2-3 (indicating that Watkins called back twice after initial notification).

[44] Woltz 302, 7/5/95, at 1-2.

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security officer. Martin recalled that Livingstone was quite shocked and upset, but said that he would take care of it.[45]

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(Records indicate that Livingstone exited the White House at 8:31 p.m.[47]) On July 21, Livingstone prepared a chronology of his activities, which states that he was notified by Martin at 9:00 p.m. on the night of the 20th as he arrived home.[48]

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Various other officials at the White House such as Bruce Lindsey, George Stephanopoulos (then Senior Advisor),

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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45 Martin 302, 5/2/94, at 1.

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47 211-1103.

48 33-1772.

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50 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

also recall learning of Foster's death from Burton.[51]

Webster Hubbell recalls being called by Stephanopoulos while at a restaurant in Washington.[52]

Mrs. Clinton recalls McLarty informing her by phone at her mother's house in Arkansas[54] where, according to Secret Service records, she had arrived that night at 9:09 p.m. Eastern time.[55] Maggie Williams, Chief of Staff to the First Lady, recalls Mrs. Clinton calling her at Williams' home in Washington.[56]

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[51] See Lindsey 302, 6/22/94, at 3 (unsure of time; by Burton); Stephanopoulos Interview, 5/24/94, at 5 (after show started; by Burton);

[52] Hubbell 302, 1/13/95, at 5; see Stephanopoulos Interview, 5/24/94, at 6.

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[54] H. Clinton Interview, 6/12/94, at 15;

[55] 337-141.

[56] Williams 302, 8/3/93, at 1; see H. Clinton Interview, 6/12/94, at 16. Records show that Williams received a page at 9:46 p.m. indicating that Mrs. Clinton wanted to talk to her. 210-2660. Records show a 16-minute call from the Rodham house to Williams' house at 10:13 p.m. 65-9.

Williams originally had been uncertain of the time of notification by Mrs. Clinton: She placed the time at 9:30 p.m. in her first interview on August 3, 1993; However, phone records of which Williams testified she was unaware before the summer of 1995 show that Williams had a 26-minute call with personal friend Audrey Evans

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According to President Clinton [redacted] McLarty informed the President at the conclusion of the Larry King show at 10:00 p.m.[57]

This initial flurry of communication with respect to the death would not be particularly noteworthy except that Arkansas Trooper Roger Perry has stated that the White House learned of Foster's death some time earlier than 8:30 p.m. Eastern time. Perry stated that he was notified of Foster's death before 8:30 p.m. Eastern time by Helen Dickey, at that time a 24-year-old nanny who lived on the third floor of the White House.[58] Dickey, Perry explained, had been a babysitter for the Clintons for years and thus knew Perry.[59] According to the report of interview, "Perry conceded he could possibly be mistaken about the time the call from Dickey was received. The call could have been as late as 8:30 PM, Arkansas time. However, he still felt

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in Little Rock at 9:18 p.m. Eastern time. Williams testified that she had not learned of Foster's death at the time of that conversation. Senate Hearing, 11/2/95, at 77. Evans similarly does not recall knowing of the death at the time of the call or learning of the death from Williams during the call. Evans 302, 11/17/95, at 1.

[57] B. Clinton Interview, 6/12/94, at 23; [redacted]

[58] Perry 302, 11/9/95, at 2.

[59] Id.

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his best recollection was that the call was received sometime between 4:30 PM and 7:30 PM [Arkansas time]."[60]

Another Arkansas trooper, Larry Patterson, stated that Perry called him soon after the Dickey call. Patterson "placed the time of this telephone call at approximately 6:00 PM."[61]

Helen Dickey denies that she knew of the death before approximately 10:00 p.m. Eastern time. She testified that she was notified of Foster's death by John Fanning, a doorman in the White House, at about 10:00 p.m.[62] She then contacted her mother in Virginia and her father in Georgia from a phone in the second floor of the residence of the White House.[63] White House residence phone records indicate that a call was placed to the number of Dickey's father at 10:06 p.m.[64] Dickey stated that, shortly thereafter, she called the Arkansas Governor's Mansion and talked to Roger Perry, she believes, at approximately 10:30 p.m. Eastern time.[65] Dickey explained that she was friendly

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[60] Id. at 3.

[61] Patterson 302, 11/17/95, at 1.

[62] H. Dickey 302, 2/9/96, at 1.

[63] Id. at 2.

[64] 95-7.

[65] H. Dickey 302, 2/9/96, at 3. That call is not reflected on the White House residence phone records. The call may have been made from a phone in the White House not part of the White House residence. (Fanning recalls Dickey making a call from the Usher's Office soon after he had notified her. Fanning 302, 5/21/96, at 1.) No long-distance phone records are available

with members of the security staff in the Governor's mansion, including Perry, from her time babysitting Chelsea Clinton in Arkansas.[66]

Ms. Dickey's diary entry for July 20 (which she says were written within a few days) states in relevant part:

> I went up and ate dessert with Bill [the President]. He was supposed to do Larry King Live and I told him to do well. I watched LKL and about 10:30 John [Fanning] came up and told me they had found Vince Foster's body and that he'd killed himself. I waited for the punchline and lost it. I called Mom and Dad and went in to see Bill . . . . He told me to wait for Mom and come over to Lisa's. We went to Lisa's and everyone was there. Vincent's angry. Brugh's confused. Laura & Lisa were crying. Webb's not accepting it, and Sharon & Sheila are being really strong. There was no way this could have been real. . . . I can't imagine that it could ever get that bad. I love you, Vince.[67]

John Fanning confirmed that he notified Dickey of Foster's death shortly after 10:00 p.m. and said that she immediately became hysterical, started crying, and ran downstairs.[68] The report of interview states that "Fanning firmly believes he was the first to inform Dickey of the news of Foster's death because of her extreme reaction to the news."[69]

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from non-residence White House phones.

[66] H. Dickey 302, 2/9/96, at 3.

[67] 348-8.

[68] Fanning 302, 5/21/96, at 2. The Dickeys had lived next door to the Fosters in Little Rock when Helen was young. Dickey 302, 10/31/94, at 1.

[69] Fanning 302, 5/21/96, at 2.

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III. Were documents removed or was a note found and/or removed from Foster's office before the search on July 22?

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At 6:34 p.m. that day, Cliff Sloan entered the office to replace trash that had been removed on the

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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night of the 20th by the cleaning crew.[74] According to records and testimony, the office remained locked from 10:32 p.m. on July 21, when the new lock was installed, until 1:15 p.m. on July 22, when the Secret Service unlocked the office for the search to begin.[75]

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

A. Sealing the Office

There are two aspects to the story regarding the failure of White House officials to seal Foster's office on the night of the 20th. The first -- and more important for our purposes -- concerns a reported request by Officer Cheryl Braun of the Park Police to David Watkins. The second relates to discussions in the White House among David Gergen, Mack McLarty, Vernon Jordan, Mark Gearan, and perhaps Bill Burton and/or Bernard Nussbaum.

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[74] 211-151; Sloan Deposition 7/7/95, at 119. The trash was retrieved from the cleaning crew later on the night of the 20th by Sylvia Mathews, then a Special Assistant to Assistant to the President for Economic Policy Robert Rubin. The trash was then stored overnight in the office of Roy Neel, then Deputy Chief of Staff. The handling of the trash on the night of the 20th is discussed in more detail below.

[75] 211-150 and 211-151. Secret Service ASAC Flynn stated that he had the only keys to the lock. Flynn 302, 4/5/94, at 3.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

1. **Braun-Watkins**

Braun and Watkins were both present at the Foster house in Georgetown when the Foster family was notified of Foster's death at around 10:00 p.m. Braun testified that as she was leaving the Foster house around 11:00 p.m., she asked David Watkins to ensure that Foster's office was sealed. In her Senate deposition on July 23, 1994, she stated that she had asked Watkins to "seal off the White House office" and "he said that he would have that done."[76] According to a report of an interview with Mr. Fiske's office on August 3, 1994, Braun stated that she "asked Watkins if he would insure that Foster's office at the White House be secured and sealed off until the police had time to look for a suicide note. Sergeant Braun stated that she could not recall Watkins' response but it was in the affirmative, with words to the effect he would insure that it was taken care of."[77]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure [78] although she stated that she intended only that Foster's office be locked, not that it be guarded or sealed with evidence tape.[79]

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[76] Braun Deposition, 7/23/94, at 107-108. Braun further stated that "[i]f I was to do it again, I would have tried to get ahold of an official from the Secret Service to insure that it was done." Id. at 109.

[77] Braun 302, 8/2/94, at 1.

[78] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[79] Senate Hearing, 7/20/95, at 54-56. She has further stated that she did not say anything to Watkins to the effect of "please ensure that no one enter the office." Id. at 54.

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He has gone further and stated that "I think that had I been asked that, I would have recalled it."[81]

There is additional evidence that may be relevant in assessing the Braun-Watkins difference in testimony.

* Braun and Rolla prepared reports on the night of the 20th when they returned to headquarters. Their reports make no mention of the request to Watkins.[82] Nor is there any other Park Police report or note that mentions the request to Watkins.[83]

* The report of Braun's first interview, which was conducted by Mr. Fiske's office, does not indicate that she asked Watkins to seal the office. The report simply states: "[A]t some point, President Clinton and his Secret Service escort

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80 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

81 Watkins Deposition, 7/11/95, at 42.

82 105-77 to 105-81; 105-107 to 105-111.

83 See 105-1 to 105-390 (Park Police production).

arrived at the residence, [and] there were so many people present, attempting to console and help, that she and Officer Rolla decided that they could accomplish nothing further that night regarding their investigation and left."[84]

* Officer Rolla said he did not hear Braun's request to Watkins, although he has stated (in more recent interviews) that Braun mentioned the request to him later in the evening.[85] Braun, on the other hand, does not recall discussing it with Rolla.[86]

* Detective Markland, in his initial statement to Mr. Fiske's office, stated that "he determined that the

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[84] Braun 302, 4/28/94, at 4.

[85] Rolla 302, 2/7/95, at 6.

[86] Braun Deposition, 6/19/95, at 88.

[87]

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investigators working the night before hadn't made this request" to seal the office.[88]

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2. **White House Discussions**

There were discussions that evening among certain White House officials and advisers about securing Foster's office. In particular, several persons recall a discussion in the kitchen in the White House residence. President Clinton, Mack McLarty, Counselor David Gergen, and private attorney Vernon Jordan returned there from the Fosters at 12:05 a.m., according to Secret Service records.[90] (The Counsel's suite was re-locked and re-alarmed for the night by Officer O'Neill of the Secret Service at 11:41 p.m.[91])

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[88] Markland 302, 4/14/94, at 1.

[89] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[90] 337-155.

[91] 211-48.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

A report of David Gergen's statement to the OIC states:

> Gergen recalls discussing with McLarty the necessity for the sealing of Foster's office. Gergen understood McLarty felt the sealing was necessary in order to preserve the office for appropriate law enforcement authorities. Gergen called Gearan that night and told Gearan that McLarty wanted Foster's office sealed. Gergen remained on the line while Gearan checked with someone else and then reported back to Gergen that the office had already been sealed. . . . Gergen did not know that night that Foster's office had already been entered and searched. Gergen learned [that] a few days later.[93]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Gearan believes he checked with Bill Burton to determine whether the office was locked.[95] (Again, the Counsel's suite <u>was</u> locked and alarmed at that point, although nothing had been done to secure or seal Foster's office within that suite.)

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[92] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[93] Gergen 302, 10/21/94, at 4. Vernon Jordan recalls that, while they were at the kitchen in the White House, Gergen called someone to ensure that the office was sealed. Jordan 302, 1/5/95, at 3.

[94] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[95] <u>Id.</u> at 19; <u>see also</u> Gearan Deposition, 7/6/95, at 51.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

> At that point, Bill [Burton] said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10 pm. I don't remember who told Bernie, but he went up and locked the office. . . .[98]

Major Hines of the Park Police stated that he had talked to Burton the night of the 20th and mentioned to him that the Park Police would need to go into the office and that the office should be secured. Hines does not recall whether or how Burton acknowledged his statement.[99]

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96 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

97 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

98 33-620.

99 Hines Deposition, 6/21/95, at 28. In his first interview with Mr. Fiske's office, where Hines described his conversations with the White House on the 20th and 21st, he mentioned the conversation with Burton, but did not mention that he had made any request to secure the office. Rather, according to the interview report, Hines said that he simply told Burton on the 20th that the Park Police would be available to brief White House officials on the morning of the 21st. Hines 302, 5/17/94, at 2.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[redacted][100] Nussbaum further stated, according to a report of interview, that "nobody considered Foster's office a crime scene and they never gave any thought to securing Foster's office" on the night of the 20th. He also stated that he believes he locked up the Counsel's suite when he left the Counsel's suite that evening.[101]

FOIA(b)7 - (D)

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100 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

101 Nussbaum 302, 6/8/95, at 10. Records reflect that Officer O'Neill, not Nussbaum, re-alarmed the suite at 11:41 p.m. 211-48.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)7 - (D)

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FOIA(b)7 - (D)

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FOIA(b)7 - (D)

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)7 - (D)

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

1. Discussion at Foster House

At the conclusion of the Larry King Show, President Clinton was notified of Foster's death by Mack McLarty.[107] The President then called Mrs. Clinton, who was in Little Rock. (White House residence phone records reflect a call at 10:10 p.m. for 3.2 minutes to the Rodham house in Little Rock.[108]) The President departed for the Foster residence in Georgetown at 10:40 p.m., arrived there at 10:51 p.m., and left the Fosters at 11:55 p.m., according to Secret Service movement logs.[109] (Phone records show another 26.6 minute call from the White House residence to the Rodham house at 12:18 a.m.[110])

The responsibility for notifying the Foster family of the death had fallen to officers Cheryl Braun and John Rolla of the

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[106] FOIA(b)7 - (D)

[107] The Ushers' Logs reflect that the President went to the second floor with Mr. McLarty and two unidentified staff at 10:00 p.m. 336-857. The Secret Service movement log shows the time as 10:02 p.m. 337-154.

[108] 95-7.

[109] 337-155.

[110] 95-8.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Park Police. David Watkins managed to contact Rolla and Braun before they went to the Fosters; Rolla and Braun then drove to Watkins' house and took him to the Foster house.[111] According to a report Rolla prepared later that night, they arrived at the Foster house at approximately 10:00 p.m.[112]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

According to pager records, a short while later, at 10:34 p.m., David Watkins paged Patsy Thomasson.[114] Thomasson was at Sequoia Restaurant in Washington. Watkins and Thomasson stated that when Thomasson returned the call, he informed her of the death and asked her to go to the White House to look into Foster's White House office for a note. The phone call and Thomasson's activities in response to the call will be described in detail below.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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111 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure Officer Rolla's report of the notification simply states: "Mrs. Foster nor other relatives or friends were able to provide any insight as to why Vincent Foster would take his life." USPP Report by Rolla, 8/5/93, at 2.

112 USPP Report by Rolla, 7/21/93, at 2.

113 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

114 210-2654.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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117 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

William Kennedy and Livingstone went to Fairfax Hospital to confirm the identity of Foster's body.[120]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

The President had arrived at the Fosters at 10:51 p.m. Most witnesses state that the President was at the Fosters when the Kennedys and Livingstone arrived.[122] If so, then the Kennedys

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[119] See 211-38, 211-1098.

[120] Kennedy and Livingstone viewed the body through a window in the basement of the hospital but were not allowed into the same room as the body, according to the Fairfax Police Officer who accompanied them. Tipton 302, 2/15/95, at 2. Hospital security logs reflect that Kennedy and Livingstone completed viewing the body at 10:30 p.m. at Fairfax Hospital. 108-13. (Livingstone's typewritten chronology, which he prepared on July 21, reflects that they viewed the body at 9:45 p.m. 33-1772.) Officer Tipton provided evidence potentially relevant to Kennedy's state of mind that night. Tipton recalls that Kennedy became "extremely upset" and started cursing; Tipton also recalls that Kennedy was crying and that he [Tipton] provided Kennedy with tissues. Tipton 302, 2/15/95, at 2. Tipton said that as they were leaving the area of the body, Kennedy punched a locker in the area around the morgue. Id.

[121] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[122] B. Kennedy 302, 5/6/94, at 7; G. Kennedy 302, 12/7/94, at 3; Livingstone 302, 5/12/94, at 3; Livingstone Deposition, 7/10/95, at 57 ("The President had just arrived.").

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and Livingstone must have arrived after 10:51 p.m.[123] Moreover, the first call reflected on records of Gail Kennedy's car phone occurred at 11:08 p.m. (a call to the White House).[124] Assuming the phone was used on the way to the Fosters, which Gail Kennedy specifically recalls,[125] the phone records suggest that they arrived at the Fosters after 11:08 p.m.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

2. The White House

The offices of the Counsel and the Deputy Counsel are located in a suite of offices on the second floor of the West Wing. There is a reception area in the Counsel's suite; as of July 1993, three secretarial assistants (Tripp, Pond, and Gorham) and an intern (Castleton) sat in that area. The only way to enter or exit any of the offices in the Counsel's suite is through a door that connects the reception area of the Counsel's suite with the hallway on the second floor of the West Wing. Therefore, in 1993, to gain access to the office of the Counsel (Bernard Nussbaum) or the Deputy Counsel (Vincent Foster), the

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[123] 337-155.

[124] 66-19.

[125] G. Kennedy 302, 12/1/94, at 2.

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entrant had to walk through the outer reception area of the Counsel's suite.

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

The door to the Counsel's suite has a lock. In addition, an alarm system protects the Counsel's suite of offices. The alarm is located in the office of the Deputy Counsel. As of July 20, 1993, the alarm generally was activated each night as the last person left and deactivated the following morning as the first person arrived. In addition, during the course of the evening, the alarm generally would be deactivated and then reactivated by a Secret Service uniformed officer, accompanied by cleaning personnel.[126]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[126] To activate the alarm, a number of steps are followed. First, the individual leaving the Counsel's suite flips a switch located in the Deputy Counsel's office. Second, this individual calls the Secret Service White House Control Center to inform them that he or she has activated the alarm and is leaving the Counsel's suite. Third, the Secret Service officer in the Control Center enters the individual's name in a computer system that monitors the White House alarms. Fourth, when the departing individual opens the door to leave the Counsel's suite, the alarm is sounded in the Control Center. Fifth, the Secret Service officer in the Control Center resets the alarm so that if anyone opens the door to the Counsel's suite the alarm will go off and the Control Center will be alerted. See generally Cheatham 302, 3/8/95, at 1-4; Martin 302, 4/29/94, at 4-5.

[127] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Alarm records indicate that Tom Castleton was the last member of the Counsel's staff to leave the suite on July 20, 1993. At 8:04 p.m., he flipped the switch in Foster's office and called the Control Center.[128]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

After the alarm to the Counsel's suite was activated in the Secret Service Control Center at 9:14 p.m., there is no record of an entry to the suite until 10:42 p.m. when Henry O'Neill, a uniformed officer with the Secret Service, opened the door and deactivated the alarm. According to the alarm records, the suite was open until 11:41 p.m. when O'Neill reactivated the alarm.[130]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[128] 211-34. No one in the Control Center actually reset the alarm until 9:14 p.m. The Counsel's suite was therefore unalarmed for an hour and 10 minutes.

[129] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[130] 211-37.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

a. **Thomasson**

According to Secret Service gate records, Thomasson left the White House on July 20 at 7:49 p.m.[131]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

According to pager records, she received a page from David Watkins at 10:34 p.m. The page said "Please page David Watkins with your location number."[133] Thomasson stated that, during her subsequent conversation with Watkins, who was at the Foster house, Watkins asked Thomasson to go to the White House and to look in Foster's office for a suicide note.[134]

Watkins confirms this account. The report of his initial interview of August 5, 1993, states:

> Watkins was in the company of some United States Park Police investigators and he learned from them that there was not a suicide note recovered at the scene when Foster's body was found. Watkins stated that during discussions with individuals at the Foster home, it was brought up that there could possibly be a suicide note located within Foster's office at the West Wing of the White House. In order to determine if in fact there was such a note at Foster's office, Watkins called Patsy Thomasson (a White House employee) and

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[131] 211-1106.

[132] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[133] 210-2654.

[134] Thomasson 302, 8/3/93, at 1. Thomasson has consistently described her conversation with Watkins since her first interview with the FBI on August 3, 1993.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

requested that she return to the White House and determine if there was a note found in Foster's office.[135]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure According to Secret Service gate records, Thomasson entered the White House compound at 10:49 p.m.[137]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[135] Watkins 302, 8/5/93, at 1.

[136] Lyda Holt Samuel was with Thomasson at dinner. According to a report of interview, Samuel stated:

> Thomasson was paged, and she went to make a telephone call in response. . . . When Thomasson returned to the group after making the call, she was sobbing. . . . Thomasson advised the group that Vincent Foster had apparently committed suicide. . . . [T]hey flagged down a cab for a trip to the White House.

Samuel 302, 12/7/94, at 2.

[137] 211-1098. According to alarm records, Thomasson opened Watkins' office in the West Wing at 10:48 p.m., 211-106, but the gate records reflect that she entered the compound at 10:49 p.m. One of the records appears to be slightly inaccurate by a few minutes.

[138]

[139]

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(Thomasson also stated that Nussbaum and Williams were never in Foster's office at the same time.[143]) FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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143 Thomasson Deposition, 7/11/95, at 59.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Pager records reveal that Thomasson paged Watkins twice, once at 11:36 p.m. and again at 11:59 p.m. The first page said "456-7052 call patsy"; the second page said "456-7052 please call re Vince's office Patsy Lee."[146] When they talked, according to Watkins Thomasson told him that she had not found a note in Foster's office.[147]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[144] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[146] 210-2687; 210-2693. The number 456-7052 was Patsy Thomasson's direct number in the White House, according to the 1993 White House directory.

[147] See Watkins 302, 8/5/93, at 1;

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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In her August 31, 1994, OIC interview, she stated that she

> pulled it out from under the desk, and I opened it -- no note. Put it back. . . . I opened the briefcase, but there wasn't anything sticking in the top of the briefcase that would be easy to recognize as a note. There were a lot of folders, file folders, in there, but I didn't look through all those file folders, because it you're going to leave a note, in my mind, he would have left it in a place that would be easy to find.[150]

[151] In her Senate deposition, Thomasson stated that "I would not say that I even really thumbed through the papers that were there in the briefcase."[152]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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148 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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150 Thomasson Interview, 8/31/94, at 32.

151 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

152 Thomasson Deposition, 7/11/95, at 94.

153 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

b. Nussbaum

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Nussbaum was interviewed the next day -- July 21, 1993 -- by Park Police Captain Hume and Detective Markland. The USPP report states that Nussbaum indicated that, the night before, "he went through Foster's office with Patsy Thomasson and Maggie Williams. Nussbaum stated that they conducted a brief, quick search to see if Foster may have left a suicide note on his desk. This search

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lasted from 2200 to 2400 hours. Nussbaum stated that no documents were removed from the office."[158]

Nussbaum was next interviewed about the night of the 20th on May 13, 1994, by Mr. Fiske's office. The report of the interview states as follows:

> It occurred to him that it would be a good idea to look for a note. At approximately 10:00 p.m., he went up to his office, entered Foster's office and saw Patsy Thomasson sitting at Foster's desk. Maggie Williams was sitting on the couch crying. Nussbaum stood by Foster's desk and looked at the top of the desk. Thomasson opened a few drawers. They were looking at surfaces. They were looking for something noticeable; not a briefcase and not into anything very deeply. Maggie Williams was "a basketcase." She was not looking for anything.
>
> Nussbaum estimates that he was there approximately ten minutes and all three individuals left at the same time. They did not take anything with them. They had not found anything which, on its face, helped to explain Foster's death.[159]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[158] Nussbaum USPP Report, 7/21/93, at 1 (emphasis added). The 2200-2400 appears to have been a mistake in recording by Markland; records show that the office was open for only an hour. Moreover, the report itself indicates that Nussbaum referred to a "brief, quick search," which appears inconsistent with a two-hour period.

[159] Nussbaum 302, 5/13/94, at 7 (emphasis added).

[160] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

c. **Williams**

Maggie Williams stated that she learned of Foster's death from Mrs. Clinton who at the time was in Arkansas. (Phone records show a call from the Rodham residence in Little Rock to Maggie Williams' home in Washington at 10:13 p.m. for 16 minutes.[166]) According to Mrs. Clinton and Williams, in their conversation, Mrs. Clinton did not ask Williams to go to the White House or to perform any task.[167]

According to Williams and her Staff Director Evelyn Lieberman, Williams then called Lieberman. Williams informed Lieberman of Foster's death and said she wanted to go to the White House. Lieberman picked Williams up, and they drove together to the White House. When they arrived, they went to the

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[166] 65-9.

[167] H. Clinton Interview, 6/12/94, at 17; Williams 302, 5/25/94, at 3.

second floor of the West Wing to the First Lady's office. (As explained above, the entrance to the First Lady's office is located next to the entrance to the Counsel's suite of offices.) Lieberman stated that she sat at the reception desk in the First Lady's office during the evening.[168]

Williams was first interviewed about events of the 20th on August 3, 1993, by the FBI. (She did not bring an attorney to the interview.) The report states:

> Williams' primary purpose for traveling to the White House was that she did not have the First Lady's schedule for July 21, 1993 and she did not know if any of the scheduled events would need to be cancelled. Williams arrived at the White House at approximately 11:00 p.m. at which time she went to the Press Office and spoke to several individuals there. She then went to the second floor where she observed that several of the cleaning people were standing in a hall. Williams then went to Vincent Foster's office where she observed that Patsy Thomasson was in the office and was sitting at Foster's desk. Thomasson conducted a cursory search of the items on Foster's desk which included picking up and looking through some papers which were located on the desk. Thomasson stated that she had hoped to find a note or something which would give comfort to Lisa Foster, Vincent Foster's widow. Williams remained in Foster's office for approximately ten minutes and then Williams departed Foster's office. During the time that Williams was there she did not see Thomasson find a note on Foster's desk. Thomasson remained in Foster's office after Williams left.[169]

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[168] Lieberman Interview, 7/26/94, at 8-20.

[169] Williams 302, 8/3/93, at 1.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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Williams took an FBI polygraph examination on September 16, 1994, and answered the following two questions:

> Q. Did you remove any documents from the office of Vince Foster during the evening after his death?
>
> A. No.
>
> Q. Did you remove any documents from the Chief Counsel's suite during the night or early morning hours after Vince Foster's death?
>
> A. No.

The report states: "It is the opinion of this examiner that Ms. Williams was truthful when responding to the above listed questions. These results were confirmed during an independent review by the FBI Laboratory."[172]

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[170] Thomasson said Nussbaum and Williams were never in Foster's office at the same time. Thomasson Deposition, 7/11/95, at 59.

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[172] FBI Polygraph Report of Margaret Williams, 9/16/94, at 3-4.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 63

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In responding to questions on this subject, Williams has attempted to recall whether she may have carried something into Foster's office that she was still carrying when she left. Williams stated that at some point that night she went to Mark Gearan's office on the first floor of the West Wing to obtain a copy of the press release about Foster's death.[174] Williams also says she also may have gone to her own office on the second floor of the West Wing at some point to obtain a copy of the First Lady's schedule for the following day.[175] But she does not believe she was carrying either of these items, or anything

[173] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[174] Williams 302, 5/25/94, at 4.

[175] Id. at 19; Williams Deposition, 7/7/95, at 194.

FOIA # none (URTS 16315) DocId: 70105248 Page 64

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

else, when she went into Foster's office.

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d. O'Neill

Officer Henry O'Neill has been employed as a uniformed Secret Service officer since 1977. At the time of Foster's death, he had been assigned since 1991 as an escort officer on the 10:30 p.m. through 7:00 a.m. shift. His primary responsibility as an escort officer was to accompany General Services Administration cleaning crews to offices in the White House West Wing when the crews cleaned the offices and removed trash. O'Neill collected burn bags, which contained sensitive or classified waste.[177]

According to alarm records, on July 20, Officer O'Neill entered the Counsel's suite of offices at 10:42 p.m. and re-set the alarm at 11:41 p.m.[178] He was performing his regular duties in the West Wing, accompanying two cleaning women as they picked up trash in the West Wing offices.

The most important element of Officer O'Neill's testimony is that he observed Margaret Williams leaving the Counsel's suite of

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177 O'Neill 302, 4/28/94, at 1.

178 211-37.

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FOIA # none (URTS 16315) DocId: 70105248 Page 65

offices carrying what appeared to be documents.[179] Because of the obvious significance of O'Neill's statements on this issue, we will describe them in some detail.

At the outset, it is important to understand the thrust of the O'Neill testimony. In sum, O'Neill has said that, while initially in Counsel's suite to collect the burn bags, he saw two women enter the Counsel's suite with Nussbaum. He left the suite and later returned. When he returned and entered the suite, he saw a woman sitting behind Foster's desk. He left again and later, while in the hallway outside the suite, saw Maggie Williams and another woman. Maggie Williams was leaving the Counsel's office with folders or files of some sort and took them into her office.

In certain interviews, O'Neill has revealed confusion about the identities of the women other than Maggie Williams who were in and around the Counsel's suite at various points. In his Senate deposition in 1995, he also revealed some confusion about whether Williams might have been carrying something in addition to what appeared to be folders or documents.

i. <u>April 28, 1994, Interview</u>

The report of O'Neill's first interview states:

> [after entering the suite], he turned to see a man whom he did not recognize, Margaret "Maggie" Williams, of Hillary Clinton's staff, and another woman whom he thinks was Patsy Thomasson. . . . He and the cleaning

[179] 211-37, 211-48.

> crew stepped out of the suite into the hall and he asked the man who was a part of this group "what seems to be the problem?" He said that this man introduced himself as a White House staffer in charge of legislative affairs . . . and now knows that this man was Howard Paster. This man then advised Officer O'Neill "something terrible has happened -- Vince Foster has taken his own life." This man, Nussbaum, and the two women went into Nussbaum's office. Shortly after this encounter, the second woman (not Maggie Williams) introduced herself to him. He said that, while he is not entirely certain, he believes that she said her name was Patsy Thomasson. She also told him Maggie Williams' name and that Williams was a staffer for Hillary Clinton.[180]

A few minutes later, according to the report, O'Neill re-entered the suite and

> he saw a third woman sitting behind Vincent Foster's desk in a chair going through papers on his desk looking for something. He said that this woman was alone in Vincent Foster's office when he saw her. He advised that he did not recognize this woman and added that it was not Maggie Williams nor was it the woman he met and thought to be Patsy Thomasson.[181]

In this interview, O'Neill described this third woman as a white female, approximately 5'6" to 5'8", slender to medium build, dark brown or black hair, light complexion in her mid-40's. He separately described Patsy Thomasson in that interview as a white female, 5'5"-5'6", slender to medium build, brown with some gray hair, medium complexion with blemished appearance 40-45 years old.

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[180] O'Neill 302, 4/28/94, at 2.

[181] Id. at 3.

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According to the report, O'Neill further stated that:

> At one point, about 30 minutes after he saw the woman behind Foster's desk, while he was standing in the hallway outside the entrance to the suite, he observed Patsy Thomasson and Maggie Williams walking out of the suite and turn toward the office of the First Lady next door to the suite. He said that while Patsy Thomasson's hands were empty, Maggie Williams was carrying a significant quantity of "office stuff." Officer O'Neill said that she had her arms full of papers, folders, and perhaps accordion files, and other office related paper products. He advised that he watched Maggie Williams walk into her (Williams) office with these items. He then saw her exit her office almost immediately with nothing in her hands and re-enter the Counsel suite. Patsy Thomasson did not go into Williams' office with her but went elsewhere down the hall. Officer O'Neill advised that after perhaps forty to forty-five minutes, but less than one hour, he observed Bernard Nussbaum, Maggie Williams, and the woman he thought to be Patsy Thomasson exit the suite. Bernard Nussbaum went down the staircase. He said that at that point the woman he thinks to have been Patsy Thomasson asked him to lock up the suite which he did. He then rode down the elevator with her and Maggie Williams to the ground level and watched them exit the West Wing.[182]

According to the report of that first interview, O'Neill also stated that when continuing his security rounds later that night on the ground floor of the West Wing,

> he again saw the woman that he had previously seen sitting behind Vince Foster's desk in his office. He said that he saw this woman standing in the doorway of an office suite that is now occupied by Harold Ickes but was then occupied by David Watkins and another staffer. He said that he remembers this because he had not seen this woman when she entered the Nussbaum/Foster suite but had first seen her seated behind Foster's desk and that she was now standing in the doorway to an office two levels below Foster's office. . . . He said that this woman was crying and

[182] Id. at 4 (emphasis added).

appeared to be looking for someone up and down the hallway . . . .

ii. June 8, 1994, Interview

According to the report of a June 8, 1994, interview, O'Neill stated with respect to the woman behind Foster's desk that he was "100 percent sure this woman was not Patsy Thomasson."[183] He further said that he did not see Patsy Thomasson in Foster's office on the night of the 20th.[184]

iii. June 9, 1994, Interview

On June 9, 1994, a day after that interview, O'Neill called Mr. Fiske's office and said that he had obtained and reviewed photographs after the interview on June 8. According to a report of that call, O'Neill stated that he "now believes it was possible that Patsy Thomasson was the woman sitting behind the desk."[185] He also stated that after reviewing photographs of Susan Thomases, he believes she may have been the woman who introduced herself to him in the 2nd floor west wing hallway during the late evening hours of July 20, 1993. Travel, phone, and pager records (as well as testimony), however, reveal that Thomases was in New York that night.[186]

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[183] O'Neill 302, 6/8/94, at 2 (emphasis added).

[184] Id. at 3.

[185] O'Neill 302, 6/9/94, at 1.

[186] For example, Williams received a page at 12:15 a.m. saying "pls call Susan Thomases at 212-772-6019." 210-2660.

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iv. June 15, 1994 Interview

On this date, O'Neill was shown photographs by the investigating agents. He identified photographs of Bernard Nussbaum, Howard Paster, and Margaret Williams. He was unable to identify Patsy Thomasson. The report indicates that "while he is still not certain as to the identity of the woman he saw sitting in a chair behind Vincent Foster's desk, he believes it is possible that Patsy Thomasson was that woman."[187]

The report also states:

> O'Neill further volunteered that he saw a woman in the White House [on June 15, 1994], who was identified to him as being Susan Thomases. O'Neill said, as he had in a previous conversation with SA McElhaney, that he believes it is possible that Susan Thomases is the woman he saw in the second floor hallway of the west wing on July 20, 1993, who introduced herself to him.[188]

v. July 20, 1994, Interview

O'Neill was interviewed on July 20, 1994, by Mr. Fiske's office "to clarify, resolve and finalize questions and issues that have arisen as a result of the information he provided during prior interviews."[189] The report of the interview contains the following summary of information.

After walking into Counsel's suite initially, O'Neill saw Nussbaum enter with two other people, he believes women.

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[187] O'Neill 302, 6/15/94, at 2.

[188] Id.

[189] O'Neill 302, 7/20/94, at 1.

(O'Neill was unsure of the identities of the two women with Nussbaum.[190]) O'Neill exited the suite and walked down the hall and then walked back into the Counsel's suite. At this time, he saw Howard Paster (then Director of Legislative Affairs) in the hall, and Paster told him of Foster's death. O'Neill was unable to state whether Paster actually entered the suite.[191]

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

> O'Neill stated that initially he was unable to identify this woman [behind Foster's desk] but now feels fairly certain that she is identical to Patsy Thomasson, a White House staff person. He stated that back in July of 1993, he did not make any effort to identify these people. After having been interviewed by the Independent Counsel's office, he did review photographs available to him of all White House staffers and now feels fairly certain that it was Patsy Thomasson who he observed behind Foster's desk that evening.
>
> O'Neill stated that after leaving the Chief Counsel's suite of offices, he can't recall where he went but he did not remain close to or in view of the entrance to the Chief Counsel's suite of offices. He returned to that area approximately 10 or 15 minutes later (approximately 11:30 p.m.) and was standing in the hall near the entrance when he observed Mr. Nussbaum exit the Chief Counsel suite and leave the second floor. He can't say for sure but he believes Mr. Nussbaum took the stairway down. As Mr. Nussbaum was leaving, the same woman that he saw earlier in the

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[190] O'Neill 302, 7/20/94, at 2.

[191] Id. at 3. Paster stated that he does not recall actually entering the Counsel's suite that evening. Paster 302, 5/13/94, at 3.

> evening, who he now believes may be Susan Thomases, was standing in the area, either in the hallway or by the entrance way to the Chief Counsel's office.[192]
>
> * * *
>
> At this point in time, a woman who he recognized as Maggie Williams . . . walked out of the Chief Counsel's office space into the hall. . . . Ms. Williams was carrying some files and folders in her arms. He estimated that the files and folders in her arms were three to five inches in height. As best he recalls, Maggie Williams remarked to the other woman words to the effect that she was just going to put these in her office and then walked past him and the doorway to the First Lady's office, stopping at the doorway to her own office.[193]

O'Neill recalls that Williams put the materials in her office and then exited empty-handed, at which time she and the other woman went to the elevator.[194]

Later that night, O'Neill saw Patsy Thomasson standing in the doorway to David Watkins' office. O'Neill recalls that she was visibly upset and distraught.[195]

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

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[192] O'Neill 302, 7/20/94, at 4-5.

[193] Id.

[194] Id. at 5.

[195] Id.

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O'Neill was asked why he never reported the information about Williams to his superiors or to law enforcement before April 1994. According to the report of interview, he stated that "until he was approached by investigators from the Independent Counsel's office in late April 1994, he had never been asked any questions or discussed his observations and conversations on the night of July 20-21, 1993 with anyone. He stated that he wasn't quite sure of the significance of these observations and was not about to volunteer it to anyone."[196]

vi. August 9, 1994, Interview

In an interview on August 9, 1994, O'Neill was shown a photospread that included a photograph of Susan Thomases. He picked out her photograph and, according to the report, stated that "he is fairly certain that Thomases is the woman who was with and left with Maggie Williams from the second floor" on July 20, 1993.[197]

According to the report, O'Neill further stated, when asked whether he might be confused about dates and nights, that he specifically recalls the Paster conversation regarding Foster's death occurring the same night that he saw Williams carrying items out of the Counsel's suite.

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[196] Id. O'Neill's delay in providing information could be used to attempt to undermine his credibility and/or memory. Cf., e.g., Summary of Conclusions, Minority Views of the Special Committee 11-12, 14 (June 17, 1996).

[197] O'Neill 302, 8/9/94, at 2.

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viii. Senate Deposition June 23, 1995

In the Senate deposition, O'Neill testified consistently with the thrust of his earlier testimony, except that he did not reveal any of his earlier confusion regarding the identity of

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various persons he saw on the night of the 20th. (For example, the name of Susan Thomases did not arise at all in his Senate deposition.) However, near the conclusion of his examination by Democratic Counsel Neal Kravitz, O'Neill equivocated on what Maggie Williams was carrying from the Counsel's suite:

Q: You just glanced at what she was carrying?

A: Exactly. In fact, she may have even been carrying a box. I can't remember. She had her hands down in front of her. I remember that, and she was carrying something in front of her. I think I remember folders as I saw her approach in my direction, and it was like folders. But I can't remember if there was a box on top of them, like a cardboard box that is used for files also. I can't remember that.

Q: Do you have some picture in your mind of a box?

A: Kind of like, yeah.

Q: How big is that box in the picture in your mind?

A: Like a hat box, a small hat box. I don't know.

Q: Was the box open?

A: No. I said files originally. I said 3 to 5 inches, and it seemed -- I mean, I know that it was a bundle. I told you that. It was something that was of some weight. That's basically how I would like to continue to state it. I don't want to dream up a box. This is getting confusing now because I can't remember if I saw her -- I know I remember seeing her carrying something in her arms.

Q: That looked heavy?

A: Yeah.

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Q: You're not sure whether it was folders or a box or maybe both?

A: Right.

Q: Is it possible that there were folders inside of a box?

A: I can't remember.

Q: Do you want to take a break?

A: Yeah.

* * *

Q: . . . [D]o you know whether it was that you saw her carrying out of the White House counsel's office suite, whether it was a folder or a box or both, do you know where that stuff came from?

A: No, sir.

Q: For all you know, Maggie Williams took into the White House counsel's office suite exactly what she brought out?

A: No, I don't know.

* * *

Q: You don't know where those things came from?

A: That's true.[200]

ix. Senate Hearing July 26, 1995

In the Senate hearing, Mr. Ben-Veniste first raised questions -- apparently based on the number of interviews O'Neill

[200] O'Neill Deposition, 6/23/95, at 175-177.

said he had undergone with Mr. Fiske's office -- whether O'Neill had been entirely consistent in his previous statements:

> Q: There was nothing different between the first time you told it, the second time you told it and the third time you told it?
>
> A: Only that I didn't realize the names of the people.
>
> Q: You didn't know the names of the people?
>
> A: I didn't know -- originally Patsy Thomasson or Evelyn Lieberman. I did know Maggie Williams and I knew Mr. Nussbaum.[201]

Later, Senator Kerry focused on the answer O'Neill provided at his Senate deposition regarding the box:

> A: That's true, I said there may have been a box on top.
>
> Q: Did you say I can't remember?
>
> A: Well, it was 4-1/2 hours after I had been sitting there testifying, sir. I was a little bit weary.
>
> Q: Well, if you couldn't remember then, how can you remember today, two years later?
>
> A: Well, I know I can remember. I said I saw her carrying these things in her arms.
>
> Q: Didn't you say I can't remember?
>
> A: Can't remember whether or not she had a box on top.

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[201] Senate Hearing, 7/26/95, at 33.

Q: Well, isn't that pretty important, whether it was a box or folders?

A: Sure it is.[202]

e. **Other Evidence re: Williams-O'Neill**

Several other pieces of evidence are relevant to the O'Neill-Williams discrepancy.

First, Nussbaum and Thomasson testified that they did not see Williams take anything out of the office.

Second, Evelyn Lieberman stated that she sat at a desk in the First Lady's office next to the Counsel's suite on the night of the 20th after arriving at the White House with Maggie Williams.[203] Lieberman says she did not see Williams carrying a box or pile of papers or folders that evening. She also did not see Williams going into her [Williams'] office that evening.[204]

Third, Terri Cobey is a cleaning lady who was on duty that night. She recalls a black female and a white female walking on at least two occasions between the Counsel's office and the First Lady's office. According to the report of interview, "[s]he was unable to state whether either of these women were carrying any type of paper or documents or files while they were walking

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[202] Id. at 87-88.

[203] Lieberman believes it is "possible" that she went into the Counsel's suite at some point that evening. However, she stated, "I don't think I did." Lieberman Interview, 7/26/94, at 29.

[204] Lieberman 302, 6/13/94, at 3-4.

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between the two offices."[205]

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Fourth, O'Neill stated in the Senate hearing that Williams "smiled at" him when introduced to him in the hall.[207] This statement could be used in attempt to discredit O'Neill's recollection: Others describe Williams as sobbing.[208]

Finally, phone records could be used to suggest a reason for Williams' trip to the White House that night. Records show a call from the Rodham residence in Arkansas to Williams' home at 10:13 p.m. for 16 minutes and a call from Williams' house to the Rodham residence at 12:56 a.m. for 11 minutes.[209] Records show a call from Williams' home to Susan Thomases' residence in New York at 1:10 a.m. for 14 minutes.[210] In addition, records show a call from the Rodham residence to Thomases' residence at 11:19

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[205] Cobey 302, 8/5/94, at 2.

[206]

[207] Senate Hearing, 7/26/95, at 118.

[208] See, e.g., Nussbaum 302, 5/13/94, at 7 ("Maggie Williams was a basketcase. She was not looking for anything."); Cobey Deposition, 7/14/94, at 37 (believes the black lady was crying when she saw her).

[209] 65-9.

[210] 55-8.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 79

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p.m. for 20 minutes.[211] Furthermore, Williams received a page at 12:15 a.m. asking her to "pls call Susan Thomases at 212-772-6019."[212] Ms. Williams, Ms. Thomases, and Mrs. Clinton testified, however, that they recall no conversations about documents or Foster's office that evening.

Mrs. Clinton testified about the evening of the 20th: "I was not thinking about documents at all. I mean, that is something that I don't think crossed my mind at all. Having heard that my friend was dead, I don't think that's what I was thinking about."[213] She further stated that she does not recall talking to Williams or Thomases about Foster's documents or office on the 20th.[214]

In addition to calling Williams and Thomases on the night of the 20th, Mrs. Clinton placed a call to the home of Harry Thomason in California at 10:03 p.m.[215]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[211] 65-9.

[212] 210-2660.

[213] H. Clinton Interview, 7/22/95, at 22.

[214] Id. at 19-20.

[215] 65-9.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Telephone records also show a 10-minute call from the Rodham residence to telephone number (202) 628-7087 at 10:41 p.m. on the 20th. After much publicity concerning the inability of the telephone company to identify this telephone number, Mrs. Clinton submitted, in December 1995, a sworn affidavit to the Senate Committee stating that she did not remember calling that number on the 20th.[217] The White House advised that the telephone number was "an unlisted trunk line that rang on the White House switchboard. . . . The number was installed as a bypass to the main White House switch, so that calls could be made from the White House in the event the main switch failed. The number was also used as a means to get through to the White House when the switchboard was overloaded, and may have been provided to certain individuals for that purpose."[218] The White House reported that Bill Burton remembered receiving a call from Mrs. Clinton on the night of July 20.[219]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[217] Affidavit of Hillary Rodham Clinton, 12/7/95.

[218] Letter from Jane Sherburne to Michael Chertoff and Richard Ben-Veniste, December 7, 1995.

[219] Id.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Burton gave similar testimony in the Senate after the revelation about the White House telephone number.[221] Burton said that he and Mrs. Clinton talked about (1) notification of people in Arkansas about Foster's death, (2) details that the Park Police had provided about the death, and (3) the topic of depression as a disease.[222]

Ms. Thomases stated that in her conversation with Mrs. Clinton, "[t]here was no discussion of documents and was not that kind of conversation. . . . [i]n spite of what you may think."[223] Thomases did not recall any conversation with Williams that night.[224]

Williams says the subject of Foster's office and Foster's documents simply did not arise that night in conversations with Thomases or Mrs. Clinton. Williams has recalled both the fact and the general substance of her calls with Mrs. Clinton that

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221 Senate Hearing, 12/13/95, at 42.

222 Id. at 50-57.

223 Thomases Interview, 9/9/94, at 32.

224 Thomases Deposition, 7/17/95, at 60; Senate Hearing, 11/2/95, at 71-72.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

evening and, according to Williams, the subject of Foster's office or documents did not arise.[225] Williams has not been able to recall any conversation with Thomases that evening.[226]

D. **The Trash from Foster's Office**

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

> I then asked the three of them [Bill, Dee Dee, and David] if anyone had made sure that the trash had not been dumped in Vince's office. At that point, Bill [Burton] said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10pm. I don't remember who told Bernie, but he went up and locked the office.
>
> * * *
>
> I said, I guess we should make sure that the trash had not been dumped, and Bill agreed. I asked the cleaning ladies on the first floor and they said they had already dumped the trash. So I asked them where it

225 Senate Hearing, 11/2/95, at 76-80.

226 See Senate Hearing 11/2/95, at 16.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

> was and they took me up to the second floor.[229]

Mathews then retrieved Foster's trash and stored the trash in Deputy Chief of Staff Roy Neel's office that night.[230]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure According to Secret Service records, Sloan placed the bag in Foster's office at 6:34 p.m.[232] According to notes of Michael Spafford, the Foster family attorney who attended the search on the 22nd, the trash was reviewed during the search.[233]

Later on the evening of the 20th, Mathews also made efforts to determine whether Foster's burn bag had been emptied. She retrieved the commingled burn bag for all West Wing burn bag material from Officer O'Neill before Gene Sperling (then Deputy Assistant to the President for Economic Policy) advised her that she probably should not be examining sensitive and confidential burn bag material.[234]

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229 33-620.

230 Neel 302, 5/25/94, at 3 ("When Neel arrived at his office the following morning . . . he found an opaque plastic bag of trash which had been tied up in the middle of his desk.").

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232 211-151.

233 296-21.

234 Sperling 302, 12/20/94, at 7.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 84

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

By contrast, Nussbaum does not recall any conversations about the burn bag with Mathews; he recalls discussing only the trash with her.[236]

As it turns out, although Foster apparently did have a burn bag in his office,[237] The burn bag from Foster's office thus remained in his office and, indeed, was reviewed by Nussbaum on the 22nd during the search, as is reflected by Spafford's notes of the search.[239]

E. Betsy Pond enters Foster's office on the morning of July 21

On the morning of July 21, alarm records show that Nussbaum's secretary Betsy Pond opened the Counsel's suite at 7:01 a.m.[240] As noted above, Foster's office was not yet posted or secured at that time.

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236 Nussbaum Deposition, 7/12/95, at 54.

237 See Gorham 302, 3/16/95, at 7.

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239 296-21;

240 211-42.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Pond testified that, before anyone else arrived in the suite, she entered Foster's office to look around and straighten up.[241]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Pond has denied saying this to Tripp.[243]

the OIC requested Pond to submit to a polygraph examination. Pond was asked the following questions and gave the following answers during the examination:

Q: Did anyone direct you to search Vince Foster's office the morning after his death?

A: No.

Q: Did you remove anything from Vince Foster's office on July 21, 1993?

A: No.

Q: Do you know if any documents were removed from Vince Foster's office before the official search?

A: No.

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[241] See Pond USPP Report, 7/22/93, at 2 ("She went into his office and squashed the papers together that were on his desk."); Nussbaum informed the Park Police on July 21, 1993, that "he learned that from 0700-0715 hours one of the secretaries had entered Foster's office and 'piled papers' on his desk top 'to make it neat.'" Nussbaum USPP Report, 7/21/93, at 1.

[242]

[243] Pond 302, 4/13/95, at 2-3.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure
FOIA # none (URTS 16315) DocId: 70105248 Page 86

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Q: To your knowledge was that note first found on July 26?

A: Yes.

Q: Do you have any knowledge of any other suicide note being found?

A: No.

Q: Did you tell anyone you searched Vince Foster's office for a suicide note?

A: No.[244]

Pond was found "not deceptive" by the examiner.[245]

F. Craig Livingstone's Activities on July 21

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[244] FBI Polygraph Report of Betsy Pond, 5/31/94, at 7-8.

[245] Id. at 8.

[246] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Abbott stated that after he assumed his post,[247] he heard the elevator door near his post. The elevator in question stops on three floors: the ground floor where Abbott was located, the first floor, and the second floor. Abbott saw two men getting off the elevator: Craig Livingstone and another man unknown to Abbott.[248]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[247] Abbott initially identified the time as 6:45-7:00 a.m. Abbott 302, 4/18/94, at 2.

Abbott 302, 10/12/94, at 2.

[248] Abbott was shown 212 photographs of male White House employees and identified Livingstone as the man with the briefcase. He could not identify the other man. Abbott 302, 6/22/94, at 4.

[249]

[250] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure According to a report of his interview, Martin stated that

> as he was escorting USPP officers either in or out of the west wing, Officer Abbott approached. . . . Abbott spoke to him in a low confidential voice relating to him that earlier that morning (approximately 6:30-7:00 a.m.) he had seen Craig Livingstone and another man (identity unknown) on the ground floor of the White House west wing having just got off the elevator . . . . Abbott said that he saw these two men carrying a briefcase and some boxes."[252]

Martin believes that Abbott provided this information in the presence of Park Police investigators.[253]

Park Police Detective Markland stated that he was escorted by Martin that morning when he arrived at the White House[254] to obtain access to Foster's office.[255] Markland recalls Abbott telling him that he had seen Livingstone with a box of documents earlier that morning.[256]

Later that day, Markland questioned Livingstone. According to Markland, Livingstone stated that he had not been in Foster's

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[251] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[252] Martin 302, 4/29/94, at 3;

[253] Martin 302, 4/29/94, at 3.

[254] Markland arrived at the White House at 11:05 a.m., according to Secret Service records. 211-149 to 211-150.

[255] Markland 302, 4/15/94, at 1.

[256] Markland 302, 7/11/94, at 1.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 89

[redacted]

office or carrying documents from Foster's office although he could have been carrying documents.[257] Markland said that Livingstone did not appear surprised or concerned by the questioning.[258]

Gate records show that Livingstone entered the White House at 8:06 a.m. on July 21.[259] Livingstone stated that he was not in the White House before 8:06 a.m.; rather, he went early that morning to the Foster house. According to the report of his interview, Livingstone stated that "[b]y coming there [the Foster house] early he hoped to assure that any members of the media who were present gave appropriate understanding and consideration to the Foster family."[260] Livingstone then left the Fosters and went to the White House.[261] Livingstone caused a typewritten

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[257] [redacted] Markland 302, 7/11/94, at 2. Markland wrote the statement "Livingstone said he was not in office today" in his notes. 105-347; see Markland 302, 7/11/94, at 1; Markland 302, 4/21/95, at 4. Markland did not produce a report recounting the information provided by Abbott.

[258] Markland 302, 7/11/94, at 3; [redacted]

[259] 211-1076.

[260] Livingstone 302, 5/12/94, at 4. Livingstone initially stated that there were a few press types at the Foster house that morning, id., [redacted]

[261] David Leavy of the White House press office recalls Livingstone calling him from the Fosters that morning. Leavy 302, 8/3/94, at 2. Webb Hubbell recalls a conversation on the night of the 20th to the effect that Livingstone should go to the Foster house on the morning of the 21st for press control. Hubbell 302, 7/18/94, at 2. Bruce Lindsey vaguely recalls

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

report of his activities on July 20-21, 1993, to be created on July 21 by Kelli McClure, an employee in the Office of Management and Administration. According to Livingstone, the document was created to assist press personnel in compiling a chronology of activities in the aftermath of the Foster death.[262] The report is consistent with Livingstone's statement that he went to the Fosters that morning: "I drove by the house at 6:30 a.m. and stayed until 8:00 a.m. There was no press activity."[263]

Livingstone denied removing or carrying documents from the Counsel's suite (or transporting any documents that had been in Foster's office) out of the West Wing on the morning of July 21.[264] Soon after he arrived at the White House, he went to the Counsel's suite.[265]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Livingstone mentioning on the 21st that he had been at the Fosters that morning. Lindsey 302, 6/22/94, at 4.

[262] An FBI review of computer backup records confirmed that the document was created by Kelli McClure on the 21st; moreover, McClure recalls typing the document that day. McClure 302, 7/13/94, at 2. The report was found in the files of various White House press personnel, including Director of Communications Mark Gearan. Gearan 302, 7/11/94, at 1.

[263] 33-1773.

[264] Livingstone has stated that he was quite upset by Foster's death; that statement is supported by a message he received from a friend Mike Jones at 12:35 p.m. on the 21st saying "he got your call at 2 a.m. he was calling to make sure you're ok." 210-3187.

[265] Livingstone 302, 5/12/94, at 4; Gorham 302, 4/19/94, at 9 ("Bill Kennedy and Craig Livingstone dropped by. . . . [Livingstone] looked emotionally upset.").

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[266] He stated:

> I'm the person that stores personnel files, and the only kind of document retrieval or storage that I would be doing would be regarding those types of documents. And I don't believe that morning anybody was working on personnel stuff; therefore, I don't believe that I moved any kind of personnel files, and I have no specific recollection of moving anything else, either.[267]

With respect to the Abbott-Livingstone incident, note that Abbott's testimony alone does not establish conclusively: where Livingstone had been in the West Wing before Abbott saw him exiting the elevator; where Livingstone went after he subsequently exited the West Wing onto West Executive Drive; the identity of the other man with whom Abbott saw Livingstone; whether Livingstone was engaged in a joint task with the other man (as opposed to the possibility that the other man simply happened to be on the elevator with Livingstone); the contents of any documents in Livingstone's briefcase or in the box or boxes the other man was carrying; or whether any such documents had been in Foster's office at the time of his death.

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[266] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[267] Livingstone Deposition, 7/10/95, at 82.

IV. The Procedure for Searching Foster's Office

On the morning of July 21, the Park Police activities with respect to the White House proceeded on two tracks. First, two high-level officials (Chief Robert Langston and Major Robert Hines) informed the White House of the Park Police's findings regarding Foster's death and its investigative needs. The briefing occurred in a meeting in David Watkins' office in the West Wing of the White House at about 11:00 a.m.[268] Present in addition to Chief Langston and Major Hines were Nussbaum, Kennedy, Livingstone, Stephanopoulos, Watkins, Burton, Hubbell, and Jim Hamilton, an attorney at Swidler & Berlin representing the Foster family. The Park Police said that all indications were that the death was a suicide. The Park Police also indicated, however, that they would need access to Foster's office.[269] Nussbaum said that the Justice Department should coordinate this step.[270]

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[268] Livingstone's chronology reflects that the meeting occurred at 11:00 a.m. 33-1773. Hines and Langston had been scheduled to arrive at 10:35 a.m. 318-30; 336-431; 336-505. It is unclear what time they actually arrived at the White House.

[269] Langston & Hines 302, 5/17/94, at 2.

[270] Id.; [redacted] Jim Hamilton's notes of the meeting say "Bernie to call Phil Heymann." Hamilton 302, 10/23/96, at 5.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure Two DOJ attorneys -- David Margolis and Roger Adams -- went to the White House that afternoon to meet with Nussbaum. They arrived at 4:40 p.m., according to a Secret Service record.[272]

Meanwhile, two investigators from the Park Police -- Captain Hume and Detective Markland -- had taken over the investigation of the death from Officers Rolla and Braun.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure They arrived at the White House at 11:05 a.m. and waited in a Secret Service office.[274] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure At some point, Hume contacted the FBI, and Agents Danna, Condon, and Salter met

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271 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

272 211-150.

273 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

274 211-149 to 211-150.

275 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Hume and Markland at the White House and waited with them for the DOJ attorneys to arrive.[276]

A. White House Meeting on July 21: An Agreement Reached?

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

At some point that afternoon, the other investigators (Danna, Condon, and Salter from the FBI; Hume and Markland from the Park Police; and Flynn from the Secret Service) were present at a meeting among the White House and Justice Department lawyers concerning interviews of White House employees.[278] It is unclear from the testimony whether all of the FBI and Park Police investigators were present for discussions among White House and Justice Department lawyers concerning the search of Foster's office.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[276] See Salter 302, 4/20/94, at 1; Condon 302, 4/20/94, at 1.

[277]

[278] Salter 302, 4/20/94, at 1; Salter 302, 5/11/95, at 2;

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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Nussbaum acknowledged that the meeting included discussion of a procedure in which investigators would view the first page of each document in Foster's office.[283] Nussbaum maintained, however, that he did not agree to that procedure: "I said to them I would consider it. It was a serious option. I had to think about it. I said I would consider it and seriously

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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283 Senate Hearing, 8/9/95, at 40.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

consider it, but I never agreed to it."[284]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Margolis and Adams contradict the accounts of Nussbaum and Neuwirth. They maintain that Nussbaum agreed on the 21st to a

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[284] Senate Hearing, 8/9/95, at 40.

[285]

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[287] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

procedure for reviewing materials in Foster's office that would allow investigators to review at least a portion of each document.

Margolis says that when he was dispatched to the White House, Heymann told him that "he had reached a tentative agreement with Mr. Nussbaum that [Adams and Margolis] were to go through at least the first page or two of each document in order to determine whether they were relevant to our investigation."[290] Margolis says Heymann told him that "he believed he'd had an agreement in principle with Bernie Nussbaum to do it that way, so I should go finalize it and then begin the search process."[291] Margolis says investigators planned to look for "either a suicide note or something that could be characterized as a suicide note, or some other bright-line item which would indicate a reason for Mr. Foster to take his life, such as an extortion letter or anything like that, or anything else that jumped out at us that would indicate a reason for taking his life."[292]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[290] Senate Hearing, 8/10/95, at 178.

[291] Id. at 179.

[292] Id.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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294 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Adams testified that the review would be "very, very summary."[297] In the Senate, he said that investigators would review only the title page and possibly the first page of every document.[298] In his own notes concerning the meeting, which were written after the Foster note was discovered on July 26th, Adams wrote that the Justice Department attorneys "would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or the FBI."[299] He testified, however, that "it was our understanding that there would be a joint review."[300] Adams said that he, like Margolis, recalled the anecdote about Neuwirth's unsuccessful attempt to summarize the understanding.[301]

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296 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

297 Senate Hearing, 7/27/95, at 96.

298 Id.

299 70-132.

300 Senate Hearing, 7/27/95, at 96.

301 Id.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

According to a report of interview, Supervisory Special Agent John Danna of the FBI said that "[t]he procedure agreed to was that Margolis and Adams would review the documents in Foster's office with Nussbaum."[302] Danna testified in a Senate deposition that he prepared a teletype on July 22 for the Director of the FBI concerning the meeting.[303] A final version of the teletype, dated July 23, 1993, includes this account:

> An initial meeting was held with White House Counsel Bernard Nussbaum at which time it was agreed that the victim's office, which is located adjacent to Mr. Nussbaum's, would continue to be sealed by the U.S. Secret Service (USSS) until 10:00 a.m. on 7/22/93, <u>at which time Margolis and Adams would conduct a preliminary examination of documents located within the office</u>. The purpose of this examination is to identify and segregate any privileged documents between the President and the White House Counsel's office. Subsequent, to this examination, the USPP and WFMO investigative team will review all pertinent documents in an effort to gather evidence in this matter.[304]

Special Agent Salter of the FBI testified that after the meeting on the 21st, he did not expect the Justice Department lawyers to review the documents in Foster's office. When asked about the role of the lawyers, Salter said, "my impression was that they would not have a role in actually conducting the review

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[302] Danna 302, 4/25/94, at 2.

[303] Danna Deposition, 6/28/95, at 50-55.

[304] FBI teletype, 175B-WF-187743-1 (July 23, 1993).

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

of the items in the office."[305] When he learned of Adams' testimony about an agreement with Nussbaum, Salter said, "I wasn't aware of the role that had been agreed on for the Department of Justice lawyers."[306]

B. **Morning Meeting on July 22: A Broken Promise?**

Margolis and Adams arrived at the White House at 9:56 a.m. on the 22nd to proceed with interviews of White House employees and the search of Foster's office.[307] When they met with Nussbaum, however, Margolis and Adams say that Nussbaum changed the search procedure that was agreed to on the 21st.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Margolis also says that Nussbaum told him and Adams on the morning of the 22nd that "there's been a change of plans." Under

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305 Adams Deposition, 6/30/95, at 54.

306 Senate Hearing, 7/27/95, at 132.

307 366-165; 366-542.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

the new plan, Nussbaum would look at the materials in Foster's office "because of their sensitivity, executive privilege, attorney/client privilege issues, national security issues, sensitivity issues."[310] If the materials met Nussbaum's standards, and the investigators wanted to see them, then Nussbaum would make them available.[311]

Margolis testified that he then called Heymann, who also opposed the new Nussbaum plan. According to Margolis, Heymann then spoke with Nussbaum on the telephone.[312] After the conversation, according to Margolis, Nussbaum said that he would think about the arguments and make a final decision. Margolis and Adams went downstairs to wait.[313]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[310] Senate, 8/10/95, at 182-83.

[311] Id.

[312] Id.

[313] Id. at 186.

[314] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure "[315] Heymann says that Nussbaum said he would talk to some other people and call Heymann back.[316]

Heymann testified that he did not believe law enforcement officials could have obtained a search warrant or even issued grand jury subpoenas for materials in Foster's office.[317] But he says he was worried about the "credibility of the institutions of the Department of Justice and the White House."[318] He testified that he wanted a procedure that respected both "the investigators' need to satisfy themselves that they were getting whatever information they ought to have, and the White House's need for protection of confidentiality of documents."[319]

Cynthia Monaco, a special assistant to Heymann, recorded her observations of the telephone call between Heymann and Nussbaum

[315] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[316] Senate Hearing, 8/2/95, at 47.

[317] Senate Hearing, 8/2/95, at 65. Heymann's conclusion on this issue, of course, is debatable. The OIC has issued grand jury subpoenas for all documents in Foster's office at the time of his death, and has gained access to virtually all of those documents.

[318] Senate Hearing, 8/2/95, at 68.

[319] Id.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure. The notes, which Monaco said were dictated in July 1993,[320] stated:

> Phil was on the phone with Bernie Nussbaum and he said: "You are messing this up very badly. I think you are making a terrible mistake." And what I took it to mean, in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents.[321]

Nussbaum testified that when he met with Margolis and Adams on the morning of the 21st, he informed them of the procedure he planned to use for the search of Foster's office:

> We'll walk in together, and I will go through the files. You'll all come in with me. You will see what I'm looking at. I will describe to you what I'm looking at. I will describe to you what I'm looking at in some general terms, but I will do the looking. I may show you the first page of something or the title of something, but we'll see as it goes along and obviously if I find a suicide note or extortion note, I'll give it to you.[322]

Nussbaum said that Margolis and Adams "weren't happy."[323] He testified to "a vague recollection" that somebody mentioned the procedure in which investigators would review the first page of each document.[324] Nussbaum says that he has no recollection

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[320] Monaco Deposition, 7/6/95, at 26-27.

[321] 70-149.

[322] Nussbaum Deposition, 7/12/95 at 171.

[323] Id.

[324] Id.

of a telephone conversation with Heymann that morning.[325] He has consistently maintained that there was no agreement to a particular procedure on the 21st, and that he did not break an agreement on the morning of the 22nd.

V. Events between the Meeting on the 21st and the Search on the 22nd

Nussbaum's adoption of a procedure whereby investigators did not examine documents in Foster's office, and the possibility that Nussbaum reneged on an agreement reached with investigators on the 21st, led to questions about why Nussbaum limited access of investigators to materials in the office. We have examined two principal areas: (1) telephone conversations among Nussbaum, Hillary Clinton, Susan Thomases, and Margaret Williams prior to the search of Foster's office, and (2) conversations among Nussbaum, McLarty, Jack Quinn (then Chief of Staff to the Vice President), Burton, Lindsey and Neuwirth on the morning of July 22.

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

Analyses of telephone conversations has been aided by telephone records, which were produced periodically to the OIC (and to the Senate) during the course of the investigation. Home telephone records for Williams and the Rodham residence in Arkansas were produced in late 1994. White House pager records

[325] Id. at 171-74.

were produced to the OIC in June 1995. Thomases produced phone records in July 1995 and December 1995. As a result, all of the records were not available when some witnesses were questioned at earlier stages of the investigation. Some witnesses were recalled by the Senate and/or the grand jury to answer questions about phone tolls that were produced at later stages.

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

July 21

5:00 p.m. (approximate)	Meeting among Nussbaum, Neuwirth, Sloan, Margolis, Adams, and perhaps others
7:45 p.m.	12-minute call from Rodham residence in Little Rock to Bruce Lindsey's office[326]
9:11 p.m.	Thomases exits White House compound (entry at 2:51 p.m.)[327]
9:23 p.m.	2-minute call from Thomases' cellular phone to Maggie Williams' home residence[328]
11:00 p.m.	1-minute call charged to Thomases' calling card from Thomases' guest house in Washington to Rodham residence[329]

[326] 65-009.

[327] 211-926.

[328] 387-160.

[329] 387-151.

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July 22

7:43 a.m.	Nussbaum arrives White House compound[330]
7:44 a.m.	7-minute call from Maggie Williams' residence to Rodham residence[331]
7:57 a.m.	3-minute call from Rodham residence to Thomases' guest house in Washington[332]
8:01 a.m.	Page for Nussbaum: "pls call Susan Thomases at 202-659-8787"[333]
8:25 a.m.	4-minute call, charged to Thomases' calling card, from Thomases' guest house in Washington to Rodham residence[334]
9:00 a.m.	message for Maggie Williams at White House from Thomases: "call when you get in the office"[335]

The sequence of telephone calls -- particularly those on the morning of the 22nd -- prompted inquiry by the Senate [redacted] into whether Williams, Hillary Clinton, and Thomases attempted to persuade Nussbaum to keep investigators from viewing materials in Foster's office, and, if so, why.

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330 211-908.

331 55-008.

332 65-010.

333 210-2648.

334 387-151.

335 210-3437.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

1. July 21: Evening Discussions

We start with Susan Thomases. She was in the White House on the afternoon of the 21st during the time when Margolis and Adams say they met with Nussbaum and reached an agreement to review the materials in Foster's office on the 22nd. White House records show that she entered the compound at 2:51 p.m. and exited at 9:11 p.m.[336] We are advised by the Secret Service that the records do not necessarily reflect all entries and exits, so it is possible that Thomases exited and reentered the White House between 2:51 p.m. and 9:11 p.m.

Thomases says that she was at the White House on the afternoon and evening of the 21st to visit with friends concerning Foster's death. She talked with the President and "some of the young people" who worked for Mrs. Clinton.[337] Thomases first testified that she did not know for sure whether she saw Maggie Williams on the 21st; she later said that she did see Williams that day.[339]

Thomases said that she recalled a conversation with Williams on the 21st: "[T]he conversation on the 21st was about emotions,

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[336] 211-984; 211-926.

[337] Thomases Interview, 9/9/94, at 40-43.

[338] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[339] Thomases Interview, 9/9/94, at 43;

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but she did mention in that initial conversation I had with her, as I recollect it, that she had gone into Vince's office and had found -- had seen, not found but seen Patsy Thomasson there, and Patsy was there to look for a note."[340]

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She testified that the possibility of an investigation "just wasn't on my radar screen" on the 21st.[343]

Thomases says she has "no specific recollection" of speaking with Mrs. Clinton on the 21st.[344] In light of the toll record showing a 1-minute call to the Rodham residence at 11:00 p.m., Thomases testified, "I have reason to believe that sometime late in the day before I went to bed, I tried to reach her. I don't know whether I was successful."[345] In a Senate deposition, Thomases was asked whether she could be "certain under oath" that she did not discuss with Mrs. Clinton concerns relating to the

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340 Senate Hearing, 8/8/95, at 111.

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342 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

343 Thomases Interview, 9/9/94, at 42.

344 Thomases Deposition, 7/17/95, at 69.

345 Id.

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examination of the contents of Foster's office on the 21st. Thomases replied, "I can't swear unequivocally because I don't have any memory about any -- about the fact that I did have a conversation or what the conversation was about."[346]

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346 Id. at 101.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA # none (URTS 16315) DocId: 70105248 Page 111

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 112

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2. July 22: Telephone Traffic

The pattern of telephone traffic on Thursday morning raised questions about whether there was a relationship between the calls and the search of Foster's office. These questions were

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352 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

in the Senate, Neuwirth said that Thomases and Mrs. Clinton "may have" been concerned;

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Second, in the Senate, Neuwirth said simply that he understood that Thomases and Mrs. Clinton may have been concerned without specifying where Nussbaum gained the information;

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In addition, Neuwirth testified in the Senate that he was "not sure" whether the conversation took place before the search of Foster's office: "I think it may have been, but I'm not positive."[355]

Each of the participants has been questioned extensively about the telephone calls.

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355 Neuwirth Deposition, 7/10/95, at 111.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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In a deposition conducted by the Senate Whitewater Committee, Thomases again said, "I have no recollection of talking to Mrs. Clinton about the contents of Vince Foster's office."[360] In the public hearing on August 8, 1995, Thomases said that she firmly believed that she had no such conversation with Mrs. Clinton:

Mr. Chertoff. Did you talk to Hillary Clinton about the documents in Mr. Foster's office?

Ms. Thomases. I don't remember ever having a conversation with Hillary Clinton during the period after Vince Foster's death about the documents in Vince Foster's office.[361]

* * *

Mr. Chertoff. Is it not correct that you had a conversation with Mrs. Clinton during the period of July 21 to July 22nd in which she expressed

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360 Thomases Deposition, 7/17/95, at 83.

361 Senate Hearing, 8/8/95, at 69.

concerns about the way in which the documents in Mr. Foster's office was being handled?

Ms. Thomases. She never talked about documents in any of the conversations with her that I had during that period.

Mr. Chertoff. Did she talk about the office?

Ms. Thomases. She did not discuss the office.

Mr. Chertoff. And you are absolutely firm that that didn't happen.

Ms. Thomases. I'm absolutely firm that had she discussed documents with me at this time, I would have noticed it. It would have been a memorable thing for her to have mentioned because we were talking about emotions, children, religion, feelings, friendship; and had she brought up documents, it would have been so distinct I believe I would have remembered it.[362]

Thomases consistently has testified that she did have a conversation with Nussbaum on the 22nd in which Nussbaum described the procedure he planned to use for the review of Foster's office. Thomases says that Nussbaum, not she, raised the topic of conversation. She first testified about this conversation in an interview with the OIC on September 9, 1994:

Q Did you have a discussion with [Nussbaum] at any time about what documents or categories of documents were in Vince Foster's office at the time of his death?

A Yes.

Q When did you have that conversation with Bernie Nussbaum?

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[362] Id. at 179-80.

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A I don't know specifically but within two days of Vincent's death.

Q And was this conversation on the telephone or in person?

A On the telephone.

Q And can you tell us with as much precision as possible what took place during that conversation?

A Bernie told me that -- he's the one who told me about the investigation. He told me that there was going to be this investigation; that they, you know, were going to come and go through the papers; that he was going to do it, so that he was going to organize the papers so that they would know all the files there.

And then he was going to distribute the files after he told them, each file and category of file; that he was going to give some of the files to Jim Hamilton, Vince's family's personal files, and he was going to give some of the files to -- I don't know that he gave a person -- some of the files with the intention of maybe giving them to Bob Barnett and other files that were files that he was going to retain in his office because it was ongoing business of the counsel's office, and he told me about this scheme and how he was going to handle the search of Vince's office.

Q Did he ask for your advice?

A Not really. I mean, he mostly just talked about what his intention was.

Q Did he call you?

A Yes.

Q Do you know the purpose for his call?

A Bernie and I talked to each other almost every day for a while.

Q Was he looking for a reaction from you, do you know, as to whether this was a good idea? Did you get that sense?

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A That's a little extreme. He was bouncing it off -- he was bouncing it off me, knowing that if I thought it was a terrible idea, I would have screamed, "Bernie, that just is a bad idea."

Q Do you know if this conversation took place before the meeting in Vince Foster's office, when the Park Police and Justice Department and the FBI were present?

A It was before. I know that.

Q Did he tell you during that conversation that he was not going to allow the investigators to see the documents but that he was just generally going to describe the documents to them?

A It was not that -- with specificity, but he implied that he was not going to let them see all the documents, because he was going to give some of them to Jim Hamilton and set some of them aside for Bob Barnett.

Q Did you have any response when he said that?

A No.

Q Did you tell him that that was either a good idea or a bad idea?

A I don't remember.

Q Did he tell you why he was not going to let the investigators see the documents?

A No, not that I recollect.

Q During that conversation, did he express any concern about any specific document or category of documents that were in Vince Foster's office?

A Restate your question, because I want to make sure that I answer it properly.

Q What are you confused about?

A I'm confused about -- I mean, he was very sensitive to the fact that there were certain personal papers that Vince Foster might have had and that those papers properly should go to Lisa and possibly the children,

and he was sensitive about that. He also was sensitive about the fact that Hillary's attorney should probably have some papers that were Hillary's.

Q Did he mention any of the papers with specificity, other than just discussing a general category of Hillary's personal papers?

A He just talked about a general category of Hillary's personal papers.

Q At any time did he mention the Whitewater documents -

A No.

Q - during this telephone conversation?

A No, there was nothing so specific.

Q Did you speak to Bernie Nussbaum once or more that once on this day that the search took place?

A I don't recollect.

Q Do you recall any -

A And I'm not sure -- you say on the day that the search took place. To this day, to this day I am not absolutely certain of the date on which this search took place.

Q I see.

A I was trying to recreate it. I mean, when we were talking, I was trying to recreate it. I'm not sure I can say with specificity which day the search took place.

Q <u>But you know that you spoke to Bernie Nussbaum before the search took place?</u>

A <u>Yes. I know I talked to him before the search took place.</u>

Q Okay. And do you also know that -

A He talked to me about it as a prospective system that he was going to use.

Q And you also know that this conversation occurred two days after Vince Foster's death?

A Within two days.[363]

Thomases gave similar testimony in a Senate deposition about a conversation with Bernie Nussbaum before the search of Foster's office on the 22nd:

Q What do you recall about that conversation?

A With respect to documents?

Q With respect to Mr. Foster's office.

A Well, Bernie talked about how he was going to make sure that the privileged documents of the presidency were treated appropriately, that he was going to give all of Vince's personal papers to Lisa's lawyer and to the Foster estate lawyer, and that he was going to have David Kendall come take control of the personal papers of the President and Hillary Clinton.

Q Do you recall anything else?

A Essentially, no.

* * *

Q You described how Mr. Nussbaum had stated to you that he would treat the documents in Mr. Foster's office.

A How he planned to.

Q It's your clear impression that it had not occurred yet, that he was describing a future event?

A Yes.

Q Do you recall whether or not he stated that anyone else would be present in Mr. Foster's office during his review of the contents?

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[363] Thomases Interview, 9/9/94, at 54-59.

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A Well, he said to me that there were some law enforcement people, the Park people would be there and some of the law enforcement people would be there, that Lisa Foster's lawyer was going to be there, that the Clinton's personal lawyer was going to be there and I don't know who else he said.

Q By "the Clintons' personal lawyer," who did you understand Mr. Nussbaum to be referring to?

A David Kendall.[364]

* * *

Q Did you express any view about how Mr. Nussbaum or others should review the contents of Mr. Foster's office, the documents and other things?

A Excuse me, could you just repeat the question?

Q Sure. Referring now to the conversation with Mr. Nussbaum that we've been describing, did you express any view about how the contents of Mr. Foster's office should be reviewed?

A I think that what I -- recollection is that I just said that it sounded like he had thought it through pretty carefully and I wished him good luck.

Q Why did you wish him good luck?

A This is a very stressful event, and it was so close on the heels of it, and they had been working so closely together, that I just felt it would be very emotionally charged for him.

Q Did Mr. Nussbaum state in this telephone conversation whether or not anyone had disagreed with his approach to this?

A He gave no indication that anyone had disagreed with his approach.

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[364] Thomases later corrected her testimony to say that as of July 1993, Bob Barnett of Williams & Connolly represented the Clintons. Kendall assumed the representation later in 1993. Senate Hearing, 8/8/95, at 96.

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Q Did he indicate one way or another whether anyone had disagreed with this approach? For example, did he say this is the way everyone thinks we should do it?

A He gave me no other comments from any other person that I can recollect.

Q Do you recall anything else about this conversation you've been describing with Mr. Nussbaum?

A No.[365]

Thomases again testified about the Nussbaum conversation in the public Senate hearing on August 8, 1995:

Mr. Chertoff. Did you have conversations with Mr. Nussbaum on July 21st or July 22nd, 1993 after Mr. Foster's death?

Ms. Thomases. Yes. I had a conversation with Bernie Nussbaum.

Mr. Chertoff. One? Or more than one?

Ms. Thomases. Only one I specifically recollect.

Mr. Chertoff. Were you trying to reach him that day?

Ms. Thomases. Apparently.

Mr. Chertoff. Did you page him in the morning at around 8:00 o'clock?

Ms. Thomases. There is a record that I paged him. While I do not recollect paging him. I know I wanted to talk to him.

Mr. Chertoff. Where were you at the time?

Ms. Thomases. Where was I?

Mr. Chertoff. Yes.

Ms. Thomases. When I paged him?

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[365] Thomases Deposition, 7/17/95, at 72-79.

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Mr. Chertoff. Yes.

Ms. Thomases. I was at the place that I usually stay when I come to Washington and stay overnight.

Mr. Chertoff. Where were you when you talked to him?

Ms. Thomases. I think I must have been in my office.

Mr. Chertoff. In Washington?

Ms. Thomases. In Washington.

Mr. Chertoff. Did you use a cell phone to talk to him?

Ms. Thomases. I don't believe I used the cell phone.

Mr. Chertoff. You used the regular land-line office phone?

Ms. Thomases. I think I -- I used the land-line office phone.

Mr. Chertoff. Tell us what the conversation was concerning the handling of a review of records in Mr. Foster's office.

Ms. Thomases. I was not looking for Bernie to talk -- Bernie Nussbaum to talk about the review of documents in Vince Foster's office. I was really trying to reach him to talk about how he was feeling and how he was doing. I had known that he and Vince had grown to be very good friends and that it was a very difficult thing for him to have lost his trusted deputy at this particular time. I was really calling to check in with my friend to see how he was doing.

Mr. Chertoff. And what did he say about the documents?

Ms. Thomases. He obviously was very focused on the documents at that time, where I was not, and he proceeded to tell me not to worry, that he had a plan, that he was going to take care of him. He was kind of, as I said in my deposition, he was sort of venting. He seemed to have a very clear sense that he was on top of it; he was going to handle it; he was going to give Vince's documents to Lisa's

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lawyer, and that he was going to give the Clintons' documents to the Clinton's lawyers, and that he was going to protect all the Presidential papers.

Mr. Chertoff. Well what did you say?

Ms. Thomases. I said, sounds good to me.

Mr. Chertoff. That's it?

Ms. Thomases. Essentially. I mean, I told him, I said I felt bad that he was under so much pressure; that I hoped to be able to talk to him when he got back from the funeral. We talked a little bit about why I didn't think that it would be wise for me to go to the funeral and I asked him to convey my condolences to Lisa.

Mr. Chertoff. I want to get back to the documents, though. He brought up the subject of the documents?

Ms. Thomases. Yes, he did.

Mr. Chertoff. Just spontaneously?

Ms. Thomases. Yeah.

Mr. Chertoff. Did you know there were documents that were in the office that were personal to the Clintons?

Ms. Thomases. I think I did.

Mr. Chertoff. And is that what he focused on?

Ms. Thomases. I didn't focus on anything.

Mr. Chertoff. No. Is that what "he" focused on?

Ms. Thomases. No. He was describing that he was going to give Vince's personal papers to Lisa's lawyers and the lawyers for the Foster estate; that he was going to take the Clintons' papers and transfer them to the Clintons' personal lawyer; but that the bulk of the papers were going to be about work in the White House and that he was going to have to reassign them.

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Mr. Chertoff. Did he say he was going to take documents up to the residence?

Ms. Thomases. He did not.

Mr. Chertoff. Now when he brought up the subject of the documents, you have testified you were calling basically just to express personal sympathy; right?

Ms. Thomases. That's right.

Mr. Chertoff. And when he brought up the documents, did you say to him, in substance, Bernie, why don't you just put the documents aside; I don't want to talk about the documents?

Ms. Thomases. That was not the nature of my relationship with Bernie.

Mr. Chertoff. So he got into the subject of the documents and you listened, right?

Ms. Thomases. That's right.

Mr. Chertoff. And did you indicate in any way whatsoever any view about the course that he was preparing to take?

Ms. Thomases. I indicated that it made sense to me. He had clearly thought long and hard about it and he seemed to feel very sure of the course that he was taking. And I was not predisposed to disagree with him. I don't know that -- if I thought he was doing something terrible I might have raised an objection, but it all sounded very well thought out to me.

* * *

Mr. Chertoff. Did you express in any way a view that in any way there should be a limitation placed upon the ability of law enforcement people to look at documents in the office?

Ms. Thomases. No.

Mr. Chertoff. You expressed no such opinion?

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Ms. Thomases. No, I did not.

Mr. Chertoff. Well, we have evidence in the record that Mr. Nussbaum expressed to Mr. Neuwirth that you had the view in substance -- I am not saying it is a quote -- that the police should not have unfettered access to the papers in Mr. Foster's office. Is it your testimony that you never expressed any view like that to Mr. Nussbaum?

Ms. Thomases. Yes, it is.[366]

In light of testimony from Nussbaum that Thomases told him that "people [were] concerned" about the procedure that Nussbaum planned to use for the search of Foster's office, Thomases was asked in her Senate deposition about conversations with people other than Nussbaum about the search:

Q If I'm understanding Mr. Nussbaum's testimony correctly, it was at least his impression that you had heard from someone other than himself concerns about the search. Had you ever discussed the search with anyone or the review of the contents in Mr. Nussbaum's office with anyone prior to discussing it with Mr. Nussbaum, and I said Mr. Nussbaum's office and I meant Mr. Foster's office.

A I have no recollection of discussing a procedure for reviewing the documents in Vince Foster's office. I don't remember discussing it with anyone.

Q Let's not focus generally on the procedure because that may be too limiting in my question. Had you discussed in any way with anyone prior to discussing it with Mr. Nussbaum any concerns at all about the contents or documents in Mr. Foster's office, including without limitation, any concerns about privacy for the Foster family or anything like that?

A I don't really have a sense of that. I think there was a certain -- I don't remember having that discussion.

[366] Senate Hearing, 8/8/95, at 62-68.

I really was not talking to a lot of different people, so I don't know -- I don't know whether -- I don't believe that these concerns were really in my head. I mean, I think I was pleased to hear that Bernie was being so sensitive to the privacy of the Foster family, but I don't recall --

Q You don't recall expressing any concerns?

A I don't recall expressing any concerns.

Q And you don't recall anyone expressing any concerns to you?

A No.[367]

At the time of Thomases' Senate deposition and her first public appearance before the Senate in August 1995, the Committee did not have the records showing the 7:57 a.m. call from the Rodham residence to Thomases. In that appearance, Thomases [redacted] testified that she thought she had spoken to Mrs. Clinton on July 22 earlier than 7:12 p.m. (which was the time of a telephone toll record then available to the Committee):

The Chairman. Thereafter [after July 20], when was the next time that you recall having called Mrs. Clinton or having gotten a call from her?

Ms. Thomases. I think I spoke to her briefly on the 22nd.

The Chairman. On the 22nd?

Ms. Thomases. On the 22nd.

The Chairman. Do you have any idea what time that was? Would that be the call of 7:12 or 7:13, the call to the Rodham Arkansas residence? Would that refresh your recollection?

[367] Thomases Deposition, 7/17/95, at 96-97.

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Ms. Thomases. No, I don't think that was the call, Senator. I think I spoke to her earlier in the day that day, but I can't tell you exactly when I spoke to her, and if you want, I can tell you what I recollect speaking to her about.

The Chairman. Yeah, I'd appreciate that.

Ms. Thomases. I spoke to her about, as I had spoke [sic] to Maggie and I was looking for Bruce to talk to him, about the likelihood that I would not end up coming to a funeral, and I think I -- she and I talked about it.

The Chairman. One last question, do you recall any other, subsequent phone calls that you initiated to her or that the First Lady initiated to you after that call on the 22nd?

Ms. Thomases. No, I don't think I spoke to her -

The Chairman. Obviously, I'm talking about that period.

Ms. Thomases. After that call, I really don't think I spoke to her until the following week.[368]

The Senate Committee subsequently obtained the telephone records showing the 7:44 a.m. call from the Williams residence to the Rodham residence and the 7:57 a.m. call from the Rodham residence to Thomases' bed and breakfast in Washington. When asked about those records by the Senate in November 1995, Thomases adhered to her prior testimony that she did not pass along anything to Nussbaum about the standard that he should apply in connection with the Park Police request to review

[368] Senate Hearing, 8/8/95, at 205-06.

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information in Foster' office. She referred the Committee to her earlier testimony on August 8:

Ms. Thomases. Chairman D'Amato, I originally brought up the fact that Mrs. Clinton had called me the morning of the 22nd in an interchange with you during my testimony. It is on page 205 of my testimony. Because I brought up the fact of that call to you before you got the records from -- I didn't know the exact time, but I brought that fact up when I testified before you in August starting on page 205. I made it clear to you at the time that nothing in that conversation, even though I didn't remember all the details, the tone of that conversation had nothing to do with documents.[369]

* * *

Mr. Chertoff. Are you telling us that your reference to a conversation on the 22nd where you talked to Mrs. Clinton about the likelihood you were not going to come to the funeral, are you telling us that's the call that occurred before 7:00 in the morning Arkansas time when Mrs. Clinton called you?

Ms. Thomases. I said that I think would be [sic] -- because I had made up my mind over the night that I wasn't going to go and that it was likely that I told her in the morning.

Mr. Chertoff. Didn't you testify at the hearings over the summer that you didn't make up your mind until the next day?

Mr. Thomases. No. That was the 22nd.

Mr. Chertoff. Didn't you testify at the hearings that it wasn't until the day of the 22nd that you made up your mind you weren't going to go to the funeral?

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[369] Id. at 42-43.

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Ms. Thomases. I don't remember. I probably discussed the problem with her because I was very sensitive to it.

Mr. Chertoff. Did you discuss it with her in a call that took less than three minutes?

Ms. Thomases. I might have.

Mr. Chertoff. Did you then immediately hang up the phone and pick up the phone to call Bernie Nussbaum?

Ms. Thomases. I know you think there is a relationship between those two calls.

Mr. Chertoff. It is pretty obvious.

Ms. Thomases. I know you think so. I wanted to get in touch with Bernie because I was going into my office and going into a meeting. I hadn't talked to Bernie yet. You have to put it into this context. I don't remember making that call, but I want to put it in a context where I think it was. I had not yet talked to Bernie who was my very close friend. His deputy, Vince Foster, had shot himself. I wanted to know how Bernie was doing because he had been working with Vince day in and day out and he had been feeling very good about how things were going and then his deputy goes out and kills himself. I was worried about my friend Bernie, and I was just about to go into a very, very busy day in my work, and I wanted to make sure that I got to talk to Bernie that day since I had not been lucky enough to speak to him the day before.

* * *

Senator Bennett. If I may, because the time is gone, could you focus in the response on that three-minute conversation and tell us exactly what your memory is of that conversation? Did she, in fact, call you and then you took that three minutes solely to tell her you weren't coming to the funeral?

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Ms. Thomases. No. She called me. I don't remember the details of the conversation. But since I had seen her husband the day before and I have to speculate that she asked me how I found him, what I talked to him about and asked if I were coming with him to the funeral, which was his intent that I fly with them to Little Rock the following day. And it was at that point that I believed that I first raised with her the possibility that I didn't feel well enough to go to Little Rock, and I told her that I would get back to someone before the end of the day and confirm that decision.

Senator Bennett. So I'm absolutely sure, and I apologize, Mr. Chairman, but I thought I heard from your comment you are speculating that that's what the conversation was?

Ms. Thomases. That's exactly what I am saying. I have no recollection of the specifics of the conversation, except that I think, that it was about my decision making process. Because I had -

Senator Bennett. You have no recollection as to why you immediately paged Bernie Nussbaum after the hanging up from that?

Ms. Thomases. No. I think I told you already, I told Mr. Chertoff that I think I reached out to him because I hadn't spoken to him. I was about to leave where I was staying to go to my office, and I knew that I was going to have a long morning of conference calls so that I would not be available to have a conversation with Bernie. And I went to -- I also know that I had an important luncheon meeting that day. I also knew that I had to be back in New York for a 5:30 meeting that afternoon.[370]

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[370] Senate Hearing, 11/2/95, at 56-58.

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After the hearing on November 2, 1995, the Senate Committee and the OIC received the telephone record for the 4-minute call at 8:25 a.m. on July 22 from Thomases' bed and breakfast in Washington to the Rodham residence in Little Rock. That record prompted the Committee and the OIC to call Thomases for additional testimony. Thomases again testified that she did not believe she talked to Mrs. Clinton about the search of Foster's office before it occurred:

Mr. Chertoff. Did you have a discussion with the First Lady about that subject [the handling of Vincent Foster's documents, that is to say, the documents that were in Vincent Foster's office at the time of his death]?

Ms. Thomases. I do not ever remember discussing the documents with the First Lady.

Mr. Chertoff. When you say you don't remember, are you unprepared to simply tell us you never had a discussion like that?

Ms. Thomases. I'm saying that at the time proximate to Vince Foster's death I do not believe I had a conversation with Hillary Clinton about any documents.[371]

* * *

Mr. Chertoff. Now, let me take you back even a few days earlier, to the 22nd. We have previously established that you received a call from the First Lady shortly before 8:00 o'clock your time, our time in Washington, on that day, which was the day in which Bernie Nussbaum told the Department of Justice they would not be allowed to look at the documents. That was about a four-minute telephone call. Since your last testimony, we have received

[371] Senate Hearing, 12/18/95, at 45-46.

additional phone records, which indicated that you put a return call back to the First Lady at approximately 8:25 a.m., after you had made at least an effort to reach Mr. Nussbaum at 8:01. Now, does that refresh your memory about your conversations with the First Lady that morning?

Ms. Thomases. I told you originally that I remember having a conversation with the First Lady. I only remember having one contact with her that morning, and I don't know that -- the record shows that I called her, and I may have called her in response to a call that she put in to me that I did not specifically receive.

Mr. Chertoff. Well, the first call, the one that went in to you, we've established previously was a three or four-minute telephone call, and this was into your hotel. Do you have any doubt in your mind now that you actually talked to her at that period of time?

Ms. Thomases. I don't doubt that I talked to her that morning. But I have a doubt about responding to her call to me. I believe I called her, probably called her back.

Mr. Chertoff. She calls you. You have a three-minute conversation.

Ms. Thomases. She has a three-minute conversation with the hotel. It's not a hotel. It's a bed and breakfast.

Mr. Chertoff. And it's got maybe less than a dozen rooms, would you agree?

Ms. Thomases. Yes.

Mr. Chertoff. And you believe that she spent three minutes on the phone with the hotel clerk?

Ms. Thomases. I don't know who she spent time, or whether she talked to them, or whether it took the hotel clerk that long to find out that I wasn't perhaps available.

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The Chairman. Let me ask you, Mrs. Thomases. Where were you when you called Bernie Nussbaum?

Ms. Thomases. In my room.

The Chairman. Well, one minute after Mrs. Clinton calls your room, one minute after that three minute conversation is called, is recorded, it's recorded that you called Bernie Nussbaum. Are you saying now that you were in your room, you didn't receive the call, the hotel operator did, and exactly a minute later, you reached out and called Mr. Nussbaum?

Ms. Thomases. I'm telling you that I remember one call with Mrs. Clinton.

The Chairman. No, you were going further. You were saying -- you were suggesting to this committee that the telephone call was received by the hotel. You just said just now that you were in your room. You said that you called Mr. Nussbaum. Let me suggest to you that any reasonable interpretation -- any reasonable interpretation, when you look at the records -- 7:55, 7:57 to 8:00 a.m., the Rodham residence, call from the Rodham residence to Susan Thomases' hotel. One minute thereafter, Susan Thomases' call to Bernie Nussbaum on his pager.

Now let me ask you something. If you said that you were in your hotel room, and you called Bernie Nussbaum from there, <u>are you suggesting that the minute before, or three minutes before, that the hotel had received the call, you didn't get the call, but you just -- right after you hung up, or right after someone hung up on Mrs. Clinton -- called Bernie Nussbaum?</u> That's not believable. It's not credible. And for a distinguished person like yourself, an attorney, to come here and suggest it, it even adds more to the increduality of it. It's just not right. You don't want to really say that, do you? Do you want to stick to that?

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Ms. Thomases. Yes.[372]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[372] Senate Hearing, 12/18/95, at 84-87.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

b. **Bernard Nussbaum**

Nussbaum testified that Thomases raised the topic of the search of Foster's office in a conversation they had on or about July 22. Nussbaum said that Thomases told him that other people were concerned about the procedure used to search Foster's office.

The following excerpts of testimony show that Nussbaum has been unclear whether he discussed the search of Foster's office with Thomases before the search, after the search, or at both times. As noted, Thomases testified that Nussbaum told her about the search before it took place. Sloan told the OIC that he recalls Nussbaum speaking with Thomases on the telephone about the search shortly after it concluded.[374]

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[373] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[374] Sloan 302, 7/7/94, at 2.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 143

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Nuss FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure e deposition:

Q What was the conversation on the 22nd with Susan Thomases?

A 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 were on the 22nd, which you'll get to, I presume. Was everything okay, what was going on, and I said I am having discussions with people.

See, I remember this conversation before the search, but it could have been after the search. That's one of my problems.

But I remember saying Susan, I've been talking to people in the White House, how the search would be conducted. I will determine what the right procedure is or I have determined what the right procedure is and I followed it, depending on if that conversation took place before or after the search. We're going to follow the procedure that I think is right, and that's the way -- that's what I'm going to do, and that's the

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kind -- I think -- what I'm determining is the proper way to act with respect to this matter.

Q How long was the conversation?

A A few minutes, not very long.

Q Did she tell you how she had heard there were discussions concerning the manner in which the review would occur?

A The search would occur.

Q The search would occur.

A No -- she didn't say how. She just said she had heard.

Q And what else did she say in the conversation?

A That's all I remember, that she heard there were discussions or that there were -- she might have even said disagreements, that she'd heard that and what was going on.

Q Did you ask her where she heard that?

A No, I didn't ask her where she heard that. (Pause)

Q Did you feel comfortable talking about this issue with her?

A Yes.

Q Did you feel it was her business?

A Yes. She's a friend. She's a friend of mine. She's a friend of a lot of people in the White House, including the President and the First Lady. She's an advisor. This was a decision that had to be made as to how the search was going to be conducted, and I felt comfortable discussing it with her.

Q Do you know whether anybody had asked her to give advice regarding how the search would be conducted?

A I don't know anybody who gave her advice.

Q Did you hear whether anybody had asked her to give that kind of advice?

A No.

Q Did she mention the First Lady in the telephone call?

A I don't recall her mentioning the First Lady in the telephone call.

Q Did she say that the First Lady was concerned about giving the law enforcement people unfettered access to the documents?

A No.

Q Did she say that anybody was concerned about giving law enforcement people unfettered access to the documents?

A She said people are concerned about whether I was using the correct procedure or whether the procedure was -- people were concerned or disagreeing, something like that, whether a correct procedure was being followed, whether I was using the correct procedure, whether it was proper to give people access to the office at all, something like that. But I said Susan -- she wasn't in the White House -- at least I didn't know she was in the White House -- I said I'm having discussion with various people. As far as the White House is concerned, I will make a decision as to how this is going to be conducted. It's going to be done the right way. It will balance out the various interests. It's going to be done that way I think it should be done.

Q Did she say people were concerned about giving unfettered access to the law enforcement people to the documents?

Mr. Pedowitz: Those words?

Mr. Chertoff: 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. There was 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 interest. There was no fear of documents or people looking at any particular

document, but there was that sense -- but in any event, I would deal with the issue and I told her I would deal with the issue, and I would make a decision as to what to do.

Mr. Chertoff: Who did you understand the people were that she was referring to when she said people were concerned?

A I didn't have any understanding.

Q You had no impression?

A No, I had no impression because she has contact with various people in the White House.

Q Was it your impression that when she made this -- when you had this discussion with her, that the people she was talking about that had expressed some kind of concern were the President or the First Lady?

A She didn't say that the President or the First Lady had that kind of concern.

Q Was it your impression she was referring to the President or the First Lady?

A No, it wasn't my impression that she was referring to the President or the First Lady specifically. It wouldn't surprise me. I mean, Susan talks to a lot of people. She has access to the President and the First Lady. The President and First Lady were removed from this thing. They weren't involved -- I had no discussions with the President or the First Lady about this, and it wouldn't surprise me that the President or the First Lady would have had a discussion with her with respect to this issue.

And indeed, I think the President or the First Lady, who are able people, would also wish a proper procedure to be followed with appropriate protection of institutional -- of the interests that I talked about and the privileges that I talked about and the privacy interest that I talked about. So it's not as if I thought it's impossible she talked to the President or First Lady, she was expressing a concern that people in the White House were expressing on that day, July 22nd.

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Q Wasn't it your impression that when she talked to you about people having a concern, that she was talking about, and conveying to you, that it was the First Lady who had a concern about it?

A No, that was not my specific impression, although it's quite possible that the First Lady did have a concern about it. I don't know. I didn't talk to the First Lady. It was not my specific impression that she was conveying a concern of the First Lady.[376]

* * *

Q In that call you had with Susan Thomases on that day, did you have a similar discussion about whether the law enforcement people should be allowed into the room?

A She just -- as I testified earlier -- I testified to that conversation -- she didn't -- I don't remember her specifically saying that. She might have. I don't know. I just remember her expressing the sort of same kind of thing as McLarty, what are you doing? What's going on? What are you doing and why are you doing it that way? Now, that's what I remember her saying, and I responded to her in the same way I responded, as I just did, to McLarty and ultimately to Quinn and to the others. This is what I'm doing, and this is the reason I'm doing it. I'm trying to balance out different, conflicting interests, and this is the right way to do it, to go in with these people and to do it that way.[377]

* * *

Q <u>And did it surprise you that Susan Thomases would give you the benefit of her views on this issue?</u>

A It would not surprise me, but <u>she really didn't give me the benefit of her views. All she asked me was what's going on? What was I planning to do? What were my reasons? And she didn't suggest I should do anything else</u>, but if she did -- it wouldn't surprise me, to answer your specific question, that she would give me the benefit of any views she had.

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[376] Nussbaum Deposition, 7/12/95, at 139-46.

[377] <u>Id.</u> at 186-87.

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Q It did not surprise you that she knew about the fact that these issues were being considered?

A No, it would not surprise me. She was in close touch with the White House on a frequent basis and indeed was in the west wing a fair amount of time. If you were in the west wing, you would know what's going on.[378]

When he was shown a record that he was paged to call Susan Thomases at 8:01 a.m. on the July 22, Nussbaum said he was still not positive that he talked to Thomases before the search of Foster's office:

Q . . . 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 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?

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[378] Nussbaum Deposition, 7/13/95, at 92.

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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 the meeting with Margolis and Adams on that day or after meeting with them on that day.[379]

In a Senate deposition, Nussbaum was confronted with Neuwirth's Senate testimony that he understood from Nussbaum that "Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office." Nussbaum testified:

> I remember what -- I don't remember what I said to Mr. Neuwirth, if I said anything to Mr. Neuwirth. I don't remember a conversation with Mr. Neuwirth after this conversation that I had with Susan Thomases. I'm telling you that she did not mention in this conversation -- I don't have any memory of Susan Thomases mentioning the First Lady to me in this conversation. I do remember her saying what I said, that people were concerned.
>
> Now, is it possible that I extrapolated after that conversation and said something to Neuwirth along those lines? I guess it's possible that I did that. I'm not saying -- if Neuwirth has testified or says that, I have no memory of that.[380]

In his public testimony, Nussbaum said that he assumed what the First Lady's view would be about the search of Foster's office, but that he did not learn her view from Thomases:

> 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

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[379] Nussbaum Deposition, 7/12/95, at 155-56 (emphasis added).

[380] Nussbaum Deposition, 7/12/95, at 146.

Thomases did not discuss the First Lady's view with me, but I should say I assumed 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.[381]

c. **Maggie Williams**

Maggie Williams has not testified to any conversation with Mrs. Clinton about the search of Foster's office before July 22. In an interview with the OIC on October 28, 1994, however, Williams allowed for the possibility that such a conversation may have occurred:

Q. Did you speak to the First Lady about any issue regarding the search prior to the time that the search took place?

A. I don't remember speaking to her about it, although, like in the aftermath and since people have been discussing it, I may have discussed it with her, but I don't remember. I know that I was on the phone with her, back and forth, for any number of issues. One, she had an event on Thursday at the Children's Hospital. And so, I mean, I can't say specifically if we did, but I can't say specifically that we did not.

Q. Do you recall any discussion with the First Lady about documents that may have been in Vince Foster's office?

A. No. Uh-uh. Uh-uh.

Q. And you don't recall specifically one way or another whether you discussed with the First Lady the process that would or could be followed in the search?

A. Yeah. I don't remember a specific conversation. I'm hesitant to say there was no discussion, because it seems to me everybody was kind of discussing it. So I,

[381] Senate Hearing, 8/9/95, at 17.

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you know, I don't remember specifically, but I know that I had talked to her back and forth on any number of issues, and we may have. I just don't think of it as uppermost on my mind.[382]

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In a Senate deposition on July 7, 1995, Williams again allowed for the possibility that she might have discussed the subject with Mrs. Clinton:

Q. Did you talk to Mrs. Clinton about the fact that there were investigators who were going to be looking into Mr. Foster's office?

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[382] Williams Interview, 10/28/94, at 6-7.

[383] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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A. No, I don't remember talking to her about it.

Q. On either of the conversations that day?

A. No. Those were -- on Wednesday, those were the main topics I discussed. I don't remember talking -- it was peripheral to me. They were coming; they weren't coming. It was peripheral to me. I mean, you know, at this point looking in his office, all of that stuff was so irrelevant to me. And did I hear it -- I do remember -- I do remember hearing something about privilege, and only because this is a White House that takes on every philosophical discussion, and I mean philosophical discussion.

I mean, you know how has this affected over time, da, da, da, da, that's just how it is. So it was not majorly relevant to me, and I heard it, but it was like peripheral to me. And I'm sure people were discussing it because people were always discussing it.

Q. In your conversations with Mrs. Clinton, did this subject of privilege or the subject of Mr. Foster's office come up on Wednesday, July 21st?

A. I don't remember it coming up. But I don't -- I don't remember it coming up. <u>If it came up, it wouldn't surprise me. But I don't remember it coming up.</u>

Q. <u>So you just don't remember one way or the other?</u>

A. <u>Yeah, I just don't</u>.[384]

After Williams' testimony in July 1995, the Senate Committee obtained telephone records showing the 7:44 a.m. call from the Williams residence to the Rodham residence on July 22. Williams testified that she did not remember whether she made the call, with whom she spoke, or the substance of the conversation:

Sen. Mack. The new records that we have indicated that you placed a call to Mrs. Clinton on -

[384] Williams Deposition, 7/7/95, at 72-73.

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Ms. Williams. I called the Rodham residence at 7:44 a.m. on the 21st.

Sen. Mack. Which is 6:44 a.m. Arkansas time?

Ms. Williams. Yes.

Senator Mack. Is it kind of common for you to call the residence that early in the morning?

Ms. Williams. Well, when she's not in Arkansas, I do speak to her very early in the morning before she starts her day. She had an event that day at 10:00 so it would not be unusual for me to call early. I don't even know if I spoke to her. In fact, at 7:44 a.m., since it was the Rodham residence, there were other people there so I don't know if I spoke, in fact, to her, but I did call.

Senator Mack. Which is a call at the time of the hearing you did not remember making?

Ms. Williams. No, I didn't remember it.

Senator Mack. . . . Now what we have are two phone calls, one that goes from you to the Rodham residence, and I will say from my perspective, I believe that that was a call that you had with the First Lady, who after your call, then called Ms. Thomases. And when Ms. Thomases hung up the phone one minute later, she paged Bernie Nussbaum. But you don't recall anything about the conversation that you had with the residence that morning? You don't know who it was to, you don't know what it was about?

Ms. Williams. If I was calling the residence, it is likely that I was trying to reach Mrs. Clinton. If it was 6:44 in Arkansas, there's a possibility that she was not up. I don't remember who I talked to, but I don't find it unusual that the Chief of Staff to the First Lady might want to call her early in the morning for a number of reasons. One she had an event that day; two, one of her good friends had just died and I was concerned

about her. I knew I only had so much time to catch her before she started her day.

Senator Mack. Yeah, but it seems to me -

Ms. Williams. I don't find it unusual -

Senator Mack. It seems to me that was a very unusual situation. It's not something that happens every day, that a dear friend has died. It would seem to me that you would remember that call to the First Lady, at least as to whether you got it or whether you didn't.

Ms. Williams. What I thought were the significant calls, the calls that I remember, I told you about, and actually for the most part, the calls that I remember are pretty much consistent with the phone record. Did I remember every single call? No, I did not. Do I believe that the record is accurate in reflecting other calls that I made? I do. But I would challenge each of you to remember every single call you make every single day.

Senator Mack. I think that's a valid point, I mean I really do. But let me suggest, the difference about what is going on here is that -- this is not me saying to you off the top of my head, what about some phone calls July 22. You have spent, I would assume, a considerable amount of time on going though records to determine in fact what calls were made and what calls weren't made, so this is --

Ms. Williams. Well, the amount of time that I spent, I got the records at the same time that you got the records of my personal phone calls. The record, as I said, is fairly consistent with most of all the calls I made, save two or three that the record adds to. I don't dispute for a moment that I made those calls.

Senator Mack. But you don't remember anything about that phone call?

Ms. Williams. No, I don't. I make quite a few phone calls during the day, and I talk to the First Lady

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quite a bit. I don't remember every phone call I have with her.[385]

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[385] Senate Hearing, 11/2/95, at 19-23.

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d. Hillary Rodham Clinton

Mrs. Clinton has testified that she does not recall discussing the search of Foster's office with Thomases or Williams on the morning of the 22nd. The interview of Mrs. Clinton by Mr. Fiske addressed the subject without reference to telephone records:

> Q. Did you ever express any concern to anyone about the Park Police having direct access to documents in Mr. Foster's office?
>
> A. You know, I don't remember what I expressed concern about, but I'm sure I expressed a lot of concerns to a lot of people about what was to me an overwhelmingly awful experience. And I don't remember what I said about anything. But I don't remember saying anything about the Park Police to anybody that I remember now.
>
> Q. But the specific question was whether you ever expressed any concern about the Park Police seeing the documents that were in Mr. Foster's office.
>
> A. No, not that I remember, no.[387]

On July 22, 1995, Mrs. Clinton was questioned regarding records from the morning of July 22, 1993, which showed the 7:44 a.m. call from Williams' home to the Rodham residence, the 7:57 a.m. call from the Rodham residence to Thomases' bed and breakfast, and the 8:01 a.m. page from Thomases to Nussbaum:

> Q The phone records also show that there was a 7-minute conversation with Maggie Williams the following morning on July 22nd, early in the morning, at 7:44 a.m., eastern time. Do you know what that was about?
>
> A I do not recall.

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[387] H. Clinton Interview, 6/12/94, at 21-22.

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Q Do you recall that conversation at all?

A I do not recall the conversation.

Q And how about a phone conversation on that morning also? It would have been at 7:57 eastern time, 6:57 in Little Rock, or in Arkansas. The phone records show a conversation with Susan Thomases at her phone number in Washington. She was in Washington on that occasion. This was on the morning of July 22nd. And the record also shows that three minutes after the conclusion of that phone conversation, Ms. Thomases paged Bernie Nussbaum. Do you know what that conversation with Ms. Thomases was about?

A I do not recall.

Q Do you remember talking to Ms. Thomases on the morning of July 22nd?

A You know. I've tried to think who I talked with and when I talked to people, because I know that that's of some interest. But I just don't recall who I talked with. I don't think I slept for many nights. And I just don't recall. I was very, very upset and very distraught, and I don't recall who I talked with or what I talked about.

Q Does my focusing on either of these conversations, the one with Ms. Williams and the one with Ms. Thomases on the morning of the 22nd of July, change in any way your answer to the general question I asked you earlier about discussing documents in Mr. Foster's office with anyone?

A I don't recall any such conversations.

Q And do you recall any conversations with Ms. Williams or Ms. Thomases, prior to it occurring, about the July 22nd search and the procedures for that search of Mr. Foster's office?

A I don't have any recollection of that.[388]

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[388] H. Clinton Interview, 7/22/95, at 26-28.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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B. More Discussions at the White House

Nussbaum says that on the morning of the 22nd, he discussed the upcoming search of Foster's office with Neuwirth, Burton, McLarty, Quinn, and Lindsey.[390] Nussbaum's testimony is not clear about when or how many times he spoke with these people about the search procedure. Some witnesses testified about a meeting among Nussbaum, Burton, Quinn, Neuwirth, and Lindsey in the late morning. There is testimony that discussions among these people took place in the late morning or early afternoon on the 22nd. There is no testimony that Nussbaum spoke about the search of Foster's office with anyone at the White House before 10 a.m., when Margolis and Adams arrived at the White House. There are some conversations between Nussbaum and others, however, for which the evidence does not establish a time.

Nussbaum testified that Burton, in particular, raised questions about the procedure that Nussbaum proposed. Nussbaum also said that Quinn "thought it was a mistake for me to let any law enforcement people go into Foster's office."[391] Nussbaum says, however, that he was going to make the decision, and "I told them we're going to do it my way."[392]

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[390] Nussbaum 302, 5/13/94 at 10;

[391] Nussbaum Deposition, 7/12/95, at 179-83.

[392] Id. at 183.

FOIA # none (URTS 16315) DocId: 70105248 Page 162

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Neuwirth, Burton, McLarty, Quinn, and Lindsey all have said that they had some involvement in discussions about Foster's office.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Burton testified in a Senate deposition that on the morning of the 22nd, he discussed with Nussbaum the procedure for searching Foster's office. According to Burton, "[t]he discussion was about how the search would be conducted and how the White House would assert and protect the various privileges that might be unveiled by such a process."[394] Burton testified that "at some point during the morning," he had a conversation with McLarty, and that "Jack Quinn of the Vice President's staff was also brought in at some point to offer his input."[395] Burton said he was "fairly confident" that Neuwirth and Sloan

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393 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

394 Burton Deposition, 7/5/95, at 81.

395 Id. at 82.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

also were involved in discussions about the search.[396] In response to the question when these discussions took place, Burton said, "Morning, approaching the noon hour and possibly going into the early afternoon."[397]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

A telephone message slip from McLarty to Burton on July 22 at 9:45 a.m. says, "talk to him re: Jack Quinn (they met)."[401]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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396 Id.

397 Id.

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399 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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401 442F-661.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Although Nussbaum did not list Maggie Williams as a participant in these discussions, she told Mr. Fiske's office that she may have attended a meeting where a conversation took place between McLarty and Nussbaum about the search of Foster's office.[406] Williams later testified that "I don't remember a specific conversation, but I have a feeling that either I was standing around in the conversation or sitting around in a

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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406 Williams 302, 5/25/94, at 6.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

conversation about it, but I remember executive privilege as being part of that discussion."[407]

A report of interview of Nussbaum from July 1994 says that Nussbaum "speculated that perhaps Bill Burton had spoken with [Mrs. Clinton]."[408]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

C. **Who was Susan Thomases Calling?**

Telephone records show that on the morning of the 22nd, while Nussbaum likely was discussing the search of Foster's office with others at the White House, several calls were placed

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[407] Williams Interview, 10/28/94, at 5.

[408] Nussbaum 302, 7/8/94, at 5.

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[410]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

from Thomases' telephone and her secretary's phone to the White House. Those calls are as follows:

10:48 a.m.	3-minute call from Thomases' secretary's extension at Willkie Farr in Washington to Chief of Staff's office. (456-6797)[411]
11:04 a.m.	6-minute call from Thomases' extension at Willkie Farr to First Lady's office. (456-6266)
11:11 a.m.	3-minute call from Thomases' extension at Willkie Farr to Chief of Staff's office. (456-6797)
11:16 a.m.	1-minute call from Thomases' extension at Willkie Farr to Chief of Staff's office. (456-6797)
11:37 a.m.	11-minute call from Thomases' extension at Willkie Farr to First Lady's office. (456-6266)
11:50 a.m.	4-minute call from Thomases' extension at Willkie Farr to First Lady's office. (456-6266)[412]

Thomases testified that none of these calls related to the search of Foster's office. She testified that in the calls to the Chief of Staff's office, she intended to reach McLarty, but was unsuccessful.[413] She explained that "I was reaching out for Mack and I was anxious to speak to him because he had a very special relationship with Vince, and I wanted to talk to him.

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[411] 303-004.

[412] 303-011.

[413] Senate Hearing, 8/8/95, at 113, 201; Senate Hearing 11/2/95, at 88, 95, 103, 127-28.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

And unfortunately I do not believe that I was able, nor can I remember, that I was able to reach him that day.[414] Thomases testified that she had "no idea" that Nussbaum was meeting with others in McLarty's office about the search of Foster's office, and "I did not call to interrupt or reach anybody in a meeting that I didn't even know existed."[415]

She testified that she does not recall who she was trying to reach at the First Lady's office or who she spoke with during the calls. She said that the telephone number 456-6266 is a central number that she used to reach a variety of persons at the White House complex, particularly in the First Lady's office.[416] Thomases testified that if she were trying to reach Maggie Williams, she usually would call a direct line assigned to Williams rather than the general number for the First Lady's office.[417]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[414] Senate Hearing, 11/2/95, at 95.

[415] Senate Hearing, 8/8/95, at 107.

[416] Senate Hearing, 11/2/95, at 128.

[417] Id. at 90, 128.

[418] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

When pressed for a specific answer as to whom she spoke with after calling the First Lady's office on July 22, Thomases said that she could not remember:

> Ms. Thomases. With respect to Maggie, I do remember having two substantial conversations with Maggie on the 21st and the 22nd, but I also -- but I used to call her, or usually called her on her direct line. The 6266 is not her direct line. I might have been trying to reach some of the other people, whether successfully or unsuccessfully, at that 6266 -- through that 6266 number.[420]
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> * * *
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> Ms. Thomases. I can imagine myself talking to Maggie at length. Maggie was very upset by Vince's death, and I thought of her often on the 22nd. I could have called and talked to her. I could have called and talked to Evelyn [Lieberman] to find out how she was doing. Any of those things could have caused me to call that 6266 number. But I wasn't calling Maggie Williams about any papers.[421]
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> * * *
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> Ms. Thomases. I testified before that I talked to Maggie Williams's office, and I said at that time while I remember talking to Maggie, while I thought I remembered talking to Maggie that day, I didn't necessarily talk to her because usually

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419 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

420 Senate Hearing, 8/8/95, at 102.

421 Id. at 108.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

I don't call Maggie at that number. That is the First Lady's central number, and when I used to call Maggie, I would call her on her direct line. It is not her direct line.

Senator Bennett. So you think this six-minute conversation was with a member of her staff?

Ms. Thomases. Yes, or I may have asked them to transfer me to someone else in that office.[422]

* * *

Ms. Thomases. I had a very tight schedule that day, and I had approximately, and I say approximately, an hour to make the calls I wanted to make in between meetings. I had meetings in the morning and I had a luncheon meeting that I had to go to. And then I had to fly directly back to New York so that I could be there for a late afternoon meeting. So if I made a lot of calls in that hour, it was because that was the hour I had to make calls. And I can't tell you exactly who I reached. I was just trying to touch base with all of the people who worked for the First Lady who I had known, some of whom -

Chairman D'Amato. I ask who all the people are, and when that was done at the previous hearing, you weren't able to tell us.

Ms. Thomases. Well, some of whom I subsequently learned were not in Washington that day and I probably learned that on that day. That doesn't mean I didn't try to reach them.[423]

* * *

Sen. Kerry. Do you recall the purpose of the use of that time? Do you know what you were setting out to do at that point in time when you said

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[422] Senate Hearing, 11/2/95, at 90.

[423] Id. at 98.

I've got try to fit these calls into that period? Do you know what was on your mind then?

Ms. Thomases. These were people who I felt I wanted to touch base with before I went back to New York, and it was the only block of time I had to do that. And they were people who I had not spoken to since they had learned that Vince Foster had died, who I thought wanted to know how they were doing.

Sen. Kerry. So this was a series of different people?

Ms. Thomases. Yes.

Sen. Kerry. You remember that specifically?

Ms. Thomases. No, I don't remember that specifically. I just know what my style is in terms of reaching out, and most of them, I am sure, were the various younger people who worked with us in Little Rock, who I wanted to make sure that they were okay.

Sen. Kerry. Well, were these younger people working in the Chief of Staff's office and the First Lady's office?

Ms. Thomases. No, many of them were working, if not directly in the First Lady's office, in that area there, in the Old Executive Office Building, where the easiest way to reach them has often been by calling the First Lady's office and getting your call transferred.

Sen. Kerry. So those calls would have been the calls to the First Lady's office, that's the number used, the generic number; correct, to the First Lady's office?

Ms. Thomases. Yes. That is sort of the kind of central number of the First Lady's office. That office is not where the First Lady sits.

Sen. Kerry. Those were the calls then you're saying that took place for six minutes at 11:04 and for - excuse me, for 11 minutes at 11:47 and four minutes at 11:50; is that correct?

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Ms. Thomases. I said I have no specific recollection of who I spoke to. I could have spoken to some of the young people and I also could have been on hold. I just know that that was the time I spent making calls before I had to go to a lunch meeting.

Sen. Kerry. And you have no memory at all of who you might have spoken to for 11 minutes that morning?

Ms. Thomases. No, I don't.

Sen. Kerry. Now, within the span of, I guess, about 12 minutes you had another four-minute call. You have no memory of what prompted you to call back 12 minutes later?

Ms. Thomases. No. As I said, I don't know that I was calling to speak to anyone. I wasn't calling necessarily to speak to any particular person. I may have called back in attempt to reach some other person, because, as I said, that was a convenient number to use. And I'm not saying that I didn't speak to Maggie Williams. I could have spoken to her, but I have -- my first recollection is that I had a conversation with her, I -

Sen. Kerry. I think your testimony was previously that you believe you did speak to her.

Ms. Thomases. Yeah, but I think that the conversation that I thought I had with her may in fact have taken place, you know, at 1:00 in the morning and not, you know, at some other time. But I don't know exactly when I spoke to her on the 22nd, although I do remember having a conversation with her that day.[424]

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[424] Id. at 102-03.

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Maggie Williams testified before the Senate Committee that she remembered only one conversation with Thomases on the 22nd -- an instance where Thomases came by her office and discussed whether Foster's family would receive insurance money in the case of a suicide.[427] In a colloquy with Senator Mack, she resisted the notion that the series of telephone calls from Thomases to the First Lady's office on the morning of the 22nd were part of "something sinister":

> Ms. Williams. First of all, as I look at Mrs. Thomases's record, I see that she's called 456-6266, which is the First Lady's office, which is the general office number. Do you have -- because I have not seen them; we turned over everything that I had -- do you have message slips for each of these calls asking for me? Or are we simply going by the Susan Thomases records? My direct number -- if Susan -- excuse me. Pardon me. Could I continue? Excuse me.
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> If Susan Thomases wanted to call me on any -- and reach me, and I'm just going to look through here. I do see that she called 456-7194, which is my direct line, which is also Evelyn Lieberman's phone and also additionally on another phone in my office

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427 Senate Hearing, 7/26/95, at 185-87.

which is my direct line, so if she wanted to reach me, that would be the most direct way to do it. . . .

So while, you know, I submit to you that the call 7194, which is my direct line, either I picked it up or Evelyn picked it up; I'll bite. I picked it up if it was 7194 and I was at my desk. But unless you can show me the message pads that say 6266 and have my name on every one of them or if these were just tries or other people in the office that she might know that she was trying to talk to -- I mean, it is very possible in looking for me, Susan talked to everybody in that entire office.

And while I cannot speak to how her calls to Mack McLarty or Bernie Nussbaum fit in, I would encourage you not to be so certain that there is something sinister going on here. I would encourage you. You don't believe it; you weren't there. I'm sorry you don't believe it. It would make life a lot easier if you did, but everything that happened was not some big plot. As I look back on it, now I wish there really was, because then it would be worth being here, but his is -- I mean these calls, this list, does not -- I mean does not suggest to me what it apparently suggests to you.

Sen. Mack. Ms. Williams, let me tell you why there is the focus on this. It's because you have told us that there was no contact with Susan Thomases, other than that meeting.

Ms. Williams. That is not what I told you. I said to my recollection, what I remember, that is what -- what I said in my deposition and today, the only thing I remember was Susan Thomases coming to my office, and I believe that your counsel asked me that question three or four times, and each time I said what I remember.

Now, if Susan called me, if I talked to her that day -- do I say it is impossible? Do I say it is unlikely, given that Susan and I speak on the phone a lot, even prior to this

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thing? Well, it's possible, but I am saying that I am still not convinced that there is a plot going on here simply because you have all these calls to me from her, and also the fact that I don't even know if these calls were even directed toward me.[428]

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[428] Senate Hearing, 7/26/95, at 233-34.

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Evelyn Lieberman, mentioned by Thomases as a possible recipient of calls to 456-6266, was asked whether she had any

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conversations with Thomases on the 22nd. She answered, "I don't remember. I wouldn't remember."[430] Lieberman testified that she did not recall Thomases reaching her in the First Lady's office that day, but she hypothesized that she and Thomases "could have had phone conversations, and [Thomases] could have had phone conversations with other people in the office."[431] Lieberman said that Thomases had regular contact with three or four people in the First Lady's office: Williams, Lieberman, Melanne Verveer, and Lisa Caputo.[432]

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VI. The Search

After his discussions with others at the White House, Nussbaum implemented his decision to conduct the search of Foster's office in the presence of investigators and Justice Department lawyers, but without showing each document to the others in the office. Neither Nussbaum nor Margolis called back

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430 Senate Hearing, 7/26/95, at 187.

431 Id. at 250-51.

432 Id. at 254-55.

433 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Heymann. Margolis and Adams decided to stay for the search. The search began at approximately 1:15 p.m.[434]

According to Secret Service logs, the following persons were present in Foster's office during the search: Nussbaum, Neuwirth, Sloan, Burton, Spafford, Margolis, Adams, Hume, Markland, Salter, Condon, Imbordino, and Flynn.[435] During the review of Foster's office, Nussbaum sat behind Foster's desk and reviewed the files. Neuwirth, Sloan, and Burton stood behind Nussbaum. The investigators, Justice Department lawyers, and Spafford, an attorney for the Foster family, were located elsewhere in the room, facing the desk.[436]

Nussbaum described generally the files for the investigators. The descriptions were neither precise nor complete. He then made three groups or "piles" of files. According to Nussbaum, Neuwirth, and Sloan, the three groups were these: (1) files that investigators wanted to see; (2) documents that were personal papers of Foster, which Nussbaum intended to turn over to Spafford; and (3) "miscellaneous documents" that Nussbaum placed in another pile or left in the file cabinets.[437]

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[434] 211-150; 211-151.

[435] Flynn 302, 4/5/94, at 4; 211-151.

[436] Flynn 302, 4/5/94, at 4.

[437] For a description of the search process,

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Senate Hearing (Adams), 7/27/95, at 103; Senate Hearing (Margolis), 8/10/95, at 190-91, 194-95.

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Margolis and Adams remember a fourth pile: Clinton family documents.[438]

Margolis testified that he agreed with Nussbaum that the Foster personal papers should go to Spafford. He says that he suggested to Nussbaum that he keep the official files and the Clintons' personal files segregated temporarily to answer questions. Margolis said Nussbaum replied that he would think about it, but that he probably would not keep custody of the personal files.[439] The search concluded at approximately 2:49 p.m., at which time the Secret Service discontinued security on the door to Foster's office.[440] Flynn left the keys to the office with Nussbaum.[441]

Heymann testified that when he learned about how the search of Foster's office had been conducted, he was furious. He said that he called Nussbaum on the evening of the 22nd and complained. Heymann said that he asked, "Bernie, are you hiding something? Is there some terrible secret here that you're hiding?" Heymann testified that Nussbaum replied, "No, there's nothing like that. I give you my word on that, Phil. There's

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[438] Margolis 302, 6/8/94, at 3; Senate Hearing, 8/10/95, at 194-95.

[439] Senate Hearing, 8/10/95, at 190-98.

[440] 211-150; 211-151.

[441] Flynn 302, 4/5/94, at 4.

nothing like that."[442] Nussbaum testified that he does not recall this conversation.[443]

VII. Handling of Foster's Documents After Search

A. Overview

No one created a complete index of the documents that were in Foster's office at the time of the search on July 22.[444] During the search, Sloan and Spafford took handwritten notes, and Markland wrote a couple of minor notations in his notebook.[445] These notes include some information about the materials and documents in the office, but they are not complete indices of the documents.

Nussbaum did not preserve or copy the documents that were in the office on July 22. Rather, as best can be reconstructed from the evidence known to the OIC (assuming truthful testimony), documents from Foster's office were handled in one of five ways in the hours and days after the search.

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[442] Heymann Deposition, 7/21/95, at 92.

[443] Nussbaum Deposition, 7/13/95, at 473.

[444] Deborah Gorham, Foster's secretary, stated that she maintained indices of subject matter files kept in the outer office of the Counsel's suite. She also maintained an index (which she did not update as regularly) of some, but not all, of the files in Foster's office. (That index was used after Foster's death by Tom Castleton when he created his index. Castleton 302, 6/9/94, at 2.) Gorham also stated that she kept a duplicate index in the drawers in Foster's office, but she did not see those duplicates after Foster's death. Gorham 302, 3/17/95, at 3-11.

[445] 33-1225; 296-014; 105-265.

First, Associate Counsel Cliff Sloan took possession of all documents, such as phone messages, that investigators said during the search they wanted to review.[446] Those documents were reviewed by the Park Police on July 30.[447]

Second, [redacted].[448]

Third, many of Foster's White House work files remained in the office. On Monday, July 26, Steve Neuwirth indexed the files that were in Foster's office.[449] This Neuwirth index lists files, but not the documents in the files.[450] These files remained in the office until November 1993, when they were boxed and moved to the Old Executive Office Building by Thomas Castleton.[451]

Fourth, [redacted] Spafford, at the conclusion of the July 22 search, a stack of Foster personal documents was placed into a box,[452] and Spafford took the box

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[446] [redacted] Sloan 302, 5/11/94, at 12.

[447] 105-203.

[448] [redacted]

[449] See, e.g., Nussbaum Deposition, 7/12/95, at 232-33, 275.

[450] 33-13.

[451] [redacted] Castleton Deposition, 6/27/95, at 153-54.

[452] [redacted] Spafford 302, 5/24/94, at 3; [redacted].

from the White House when he left that day.[453] Spafford created an index of the files he took on July 22 from Foster's office.[454] According to Spafford and a letter produced to the OIC, Spafford's law firm, Swidler & Berlin, received on July 26 a second box of personal items that had been in Foster's office.[455] (On July 27, Spafford returned to Nussbaum a file entitled "Clinton Memos" along with a cover letter saying that the file was "placed inadvertently in a box of personal items that I removed from Mr. Foster's office at your request last week."[456])

Fifth, Clinton personal documents were taken to the White House residence on July 22 and later taken to Williams & Connolly on July 27.[457] An index of those documents was prepared by Williams & Connolly after July 27.[458] According to Barnett, the index is complete, and after the documents came to Williams &

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[453] Spafford 302, 5/24/94, at 3; Spafford Deposition, 7/11/95, at 107.

[454] 296-007.

[455] Spafford 302, 5/24/94, at 3; 210-2618.

[456] AK-002.

[457] One of the files that was in the box is entitled "Whitewater Development." None of the other files that was in the box refers or relates to Madison Guaranty Savings & Loan.

[458] 325-21.

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Connolly, no documents were destroyed, removed, or returned to the White House before or after the completion of the index.[459]

In short, three indices of Foster's office files were prepared shortly after his death. The indices do not reflect all files that were in Foster's office at the time of his death -- for example, the travel office file is not listed on any of the indices. Moreover, the Neuwirth index does not list each document; it merely lists files.

The White House's failure to catalogue, preserve, or copy Foster's documents, combined with the manner in which the documents were distributed after the July 22 search, has made it difficult, if not impossible, to establish what documents were or were not in Foster's office during the July 22 search, or at the time the office was sealed on July 21 -- much less at the time of Foster's death on July 20.[460] That uncertainty has raised questions about the manner in which the documents were handled in the hours and days following the search. The most serious questions concern the handling of the Clinton personal documents that were stored in the White House residence for five days before they were taken to Williams & Connolly.

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[459] Barnett 302, 5/6/94, at 1-2;

[460] Because the office was not sealed on the night of the 20th and people entered the office that night, it was impossible even as of July 21, 1993, to create a definitive index of documents that were in Foster's office at the time of his death.

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B. **Collecting Clinton Personal Documents**

After the conclusion of the search on the 22nd, Maggie Williams came to Foster's office to collect what she and Nussbaum identified as personal files of the Clintons. With the assistance of Tom Castleton, an intern in the Counsel's suite, Williams brought these files to the third floor of the residence and placed them in a closet in an office used by Mrs. Clinton. Secretaries Gorham and Tripp have testified that they remember this occurrence.

The search concluded at about 2:49 p.m.[461] The penultimate entry in Sloan's notes from the search says "get Maggie -- go thru office -- get HRC, WJC stuff."[462] Sloan said that he has no personal knowledge whether Williams was contacted or retrieved documents from the office.[463]

At 3:05 p.m., Williams received a telephone message from Burton asking her to "please call" telephone number 456-6797, the Chief of Staff's office.[464] Burton, who was present at the search of Foster's office, testified that he does not remember

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[461] 211-150; 211-151.

[462] 33-1239.

[463] Senate Hearing, 7/26/95, at 86.

[464] 210-3428.

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why he called Williams.[465] Williams testified that she does not recall receiving a message from Burton at that time.[466]

Sloan told Mr. Fiske's office in July 1994 that he remembered a telephone conversation between Nussbaum and Thomases after the completion of the search. According to the report of interview, Sloan said that at one point while Sloan and Nussbaum were in Foster's office, Nussbaum was on the telephone with Thomases relating the procedure that had been followed during the search of the office.[467]

At 3:08 p.m., there was a ten-minute call from Thomases' cellular telephone to the central number for the First Lady's Office (456-6266).

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At 3:25 p.m., Williams received a message from Neuwirth asking her to call him at extension 2632, which is the number for the Counsel's suite.[470] Williams testified that she does not

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[465] Senate Hearing, 12/13/95, at 76.

[466] Senate Hearing, 7/26/95, at 165-66.

[467] Sloan 302, 7/7/94, at 2.

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[469]

[470] 210-3427

remember talking to Neuwirth that afternoon.[471] Neuwirth testified that he does not have a recollection of calling Williams that afternoon, but said that Williams was "one of the people I spoke to a lot."[472] When asked whether it is possible that he called Williams that afternoon about documents in Foster's office, Neuwirth said, "I really don't think so."[473]

Williams testified that in the afternoon, she received a call from Nussbaum about the personal files of the Clintons that were in Foster's office:

> Q. Can you tell us approximately when on July 22nd, Thursday, that took place and what Bernie Nussbaum asked you to do?
>
> A. I was in my office, the Old Executive Office Building, and I got a call from Bernie saying that he was dispersing the files in Vince's office to lawyers. He was dividing up Vince's work or something, and that he had personal files and he wanted me to get them to Bob Barnett, the personal lawyer at Williams and Connolly.
>
> Q. Do you recall approximately what time that was that he called you?
>
> A. I want to say that it was late afternoon, 3:00 or 4:00. It seems that it was late afternoon.[474]

Williams testified that after Nussbaum called her at the OEOB, but before she went to the West Wing to collect the Clinton personal files, she told Barnett that she would have some files

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[471] Williams Deposition, 7/7/95, at 111.

[472] Neuwirth Deposition, 7/10/95, at 159.

[473] Id.

[474] Williams Interview, 10/24/94, at 9-10.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

for Williams & Connolly to pick up that day.[475] At that time, Williams says, she had a sense that Barnett already knew the files would be coming, because he did not question her about the files.[476]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[475] Senate Hearing, 7/26/95, at 180.

[476] Williams Interview, 10/24/94, at 22.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Williams says that Nussbaum told her that she should arrange for the Clinton personal files to be sent to Barnett. Nussbaum, on the other hand, testified that he told Williams to check with the Clintons to see what they wanted to do with the personal files (although Nussbaum claims that he was "99 percent sure" that the Clintons would want the files to go to Barnett).[479]

Telephone records show a 10-minute call at 5:13 p.m. on July 22 from Thomases' law office in New York to the central number at the First Lady's office.[480] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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478 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

479 Nussbaum Deposition, 7/12/95, at 260.

480 387-002.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

481 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

C. **The Clinton Personal Files Go to the Residence**

Williams testified that after the Clinton personal files were identified in Foster's office, they were placed in a box. She said she cannot recall where the box came from or who put the files in the box. As noted, Williams says that she called Barnett at Williams & Connolly after Nussbaum notified her of the documents. Williams testified that after she gathered the documents in Foster's office with Nussbaum, she decided not to send the files to Williams and Connolly on the 22nd:

> Vince's funeral was the following day, the Friday, I guess, and I was going to have to -- I was deciding whether or not to go to Vince's funeral. I didn't know if I could deal or take it. But I kind of in my mind made up that I was going to take it.
>
> I also was kind of worn out by the day, and a couple of calls, and I thought, it's getting to be around 5 o'clock or so, I haven't called Williams and Connolly to say, "Come pick it up," but at the point that I call them to say pick it up, it'll be another 10 or 15 minutes before they come, and I just really want to go home.
>
> So I called Williams and Connolly. Either I talked to Bob or I talked to Sylvia, his person, I don't remember which. . . . And I said, "It's getting late. I have these files, you know, I'm

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

just going to put them up here. Don't come and get them. I'll send them -- I'll call you to come and get them later."[483]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[483] Williams Interview 10/28/94, at 20-21.

[484] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Barnett produced to the OIC his telephone logs for July 20 to 27, 1993.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

485 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

486 Barnett's telephone logs show that he had two contacts with Williams on July 21 (the day before the search of Foster's office). 325-150, 151, 153. In addition, Williams' message slips show that Barnett attempted to reach her by telephone at 8:18 a.m. and 9:05 a.m. on July 21. 210-3451; 210-3450.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In addition, notes taken by an attorney at the White House Counsel's office of an interview with Barnett in the summer of 1994 state: "no incoming messages > [after] 3:30 on 7/22."[487]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

According to a report of interview, Barnett told the OIC that on the 21st he had general conversations with Williams about the death of Foster and about Barnett assuming the Clintons' personal legal work. Barnett 302, 12/12/95, at 5. Williams testified that on the 21st, she did not speak to Barnett about documents in Foster's office. Williams Deposition, 7/7/95, at 75, 81.

[487] 543-229.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In light of Williams' testimony that she may have talked to Barnett's secretary, Sylvia Faison, about the documents from Foster's office,

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Williams testified that after she talked to Barnett's office for the second time on the 22nd, "I pretty much decided I was going to take them over the residence. So then I thought I should call Hillary and find out where she would like them put in the residence."[490] Williams explained that because the files

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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490 Williams Interview, 10/24/94, at 22.

were personal and Nussbaum was moving the files out of Foster's office, she thought they should go to the residence.[491] Williams gave this explanation for why she called Mrs. Clinton:

> Well, because, one I knew the President was going to be going to the funeral the next day, right. So there would be no one really kind of in the house, so, you know, I didn't know if I should just bring them up and put them in their small kitchen. Sometimes they leave things out in the dining area.
>
> I mean, so -- and once again, in my head, I'm thinking personal files, I'm thinking their tax stuff, their -- you know, it's not just the kind of stuff like you would leave on the coffee table. So I said, you know, my mind was, "I'm going to take these to the residence, let me call Hillary and ask her where."[492]

In her interview with the OIC, Williams gave this summary of her telephone call with Mrs. Clinton:

> A Well, it was pretty quick. For some reason I just remember it being pretty quick and me saying something like, "I'm not going to get these over to Williams and Connolly" or "I have the personal files. Bernie gave me the personal files and I was supposed to get them over to Barnett. I'm probably not going to do that today. I'm going to take them to the residence. Where do you want them?" You know.
>
> Q And what did she say?
>
> A She said, "I think Carolyn has a closet up on the third floor that you could use to store them. You should call Carolyn."[493]

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[491] Id. at 22-23.

[492] Id. at 24-25.

[493] Id. at 25.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Williams said she then called Carolyn Huber, and Huber said that Williams should put the documents on the third floor of the residence in a closet where Huber "stored stuff." Williams arranged to meet Huber and gain entry to the closet.[494] (According to subsequent testimony, this closet is located in Room 323 of the White House residence, which has been referred to by several witnesses as "Mrs. Clinton's office" or "the computer room").

Mrs. Clinton testified that she told Williams to talk to Huber:

> [O]n Thursday, in the early evening, Maggie Williams called me and said she had documents that had been given to her that were personal and legal documents of the President's and mine that had been in Vince's office. And she, I believe by the time she called me, had spoken with our attorney and he had said something like, you know, you should transfer those documents to us to keep safe, but I can't pick them up because he couldn't pick them up. So, Maggie was asking me if I knew of any safe place to keep the documents, and I told her to talk to Carolyn Huber.[495]

Huber testified that Williams contacted her between 4:00 and 6:00 p.m. on the 22nd. Huber said Williams told her that Mrs. Clinton had asked Williams to call Huber and arrange for a box to be stored in a closet on the third floor of the residence. Huber testified that she asked Williams to call her when she was ready

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[494] Id. at 25-26.

[495] H. Clinton Interview, 7/22/95, at 24.

to move the box, and Huber agreed to meet Williams at the elevator that goes to the residence of the White House.[496]

Williams testified that after she spoke with Huber, she arranged for an intern, Tom Castleton, to carry a box of Clinton personal documents to the residence.[497] Williams said that she and Castleton met Huber on the ground floor of the residence, "[a]nd we went up on the elevator to the third floor. Either I had the key or Carolyn came and undid the -- unlocked the door [to the closet]."[498] Williams testified that the box was placed in the closet, and then Williams locked the closet.[499] Williams said that Huber gave her the key to the closet: "I know that I had the key and I remember I used to have a plastic key chain that I would keep on my wrist, and I remember putting that key on my key chain."[500]

Huber testified that she met Williams and Castleton at the elevator and escorted them to the closet. White House logs show that they entered the residence at 7:25 p.m. and remained until 7:32 p.m.[501] She said that Castleton carried a "banker's box."

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[496] Senate Hearing, 8/3/95, at 14-15.

[497] Williams Interview, 10/28/94, at 29.

[498] Id. at 30-31.

[499] Id. at 32-33.

[500] Id. at 33.

[501] 336-849.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Huber said she retrieved the key to the closet from a desk drawer where it was stored. When the threesome arrived on the third floor, Huber said that the box was placed in the closet along with other similar boxes that already were in the closet. Contrary to Williams' testimony, Huber did not say that Williams kept the key to the closet: "I locked the door, put the key back in the drawer and we went downstairs."[502]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Gorham testified that Nussbaum and Williams asked her to describe for them files in Foster's office that related to personal and financial matters of the Clintons. Gorham testified that she did not see Williams and Nussbaum packing documents.

Gorham said that Williams and Nussbaum later asked for assistance in moving boxes from Foster's office. Gorham says she asked Castleton to assist. She testified that she saw Castleton carry out two boxes, accompanied by Williams.[504]

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[502] Senate Hearing, 8/3/95, at 16-17.

[503] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[504] Gorham Deposition, 6/23/95, at 140-42.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Castleton was interviewed by Mr. Fiske's office about his role in carrying documents from Foster's office to the residence, FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure in a Senate deposition, and in a public Senate hearing. Castleton has testified consistently that he carried a box or boxes of documents to the residence with Maggie Williams on July 22, 1993.

In his most recent testimony, Castleton said that he does not have a clear recollection as to who asked him to help carry a box, and he does not remember whether he picked up the box in Williams' office or the First Lady's office. He said it is "possible" that he picked up the box in Foster's office or the White House counsel's suite, but his best recollection is that he picked it up outside the suite.[505]

Castleton has given several statements regarding what he was told about the documents that he carried to the residence and who told him about the reason for the movement of the documents. These are significant, because Castleton's last statement is that Williams told him the documents were transferred to the residence so that Mrs. Clinton or President Clinton could review them.

A report of interview from June 9, 1994, contains the following discussion:

> Mr. CASTLETON said that MAGGIE WILLIAMS or someone else told him later that same day that the box contained personal documents belonging to the CLINTON's that had been held in VINCENT FOSTER's office. CASTLETON does

[505] Senate Hearing, 8/3/95, at 7-9.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

> not know exactly what was in the box nor does he recall MAGGIE WILLIAMS or anyone else advising him as to how, by whom, or when the material in the box was moved from FOSTER's office to HILLARY CLINTON's office. CASTLETON advised that he cannot even be certain who told him that the documents belonged to the CLINTON's and had previously been in FOSTER's office.[506]

A report of interview from September 15, 1994, reflects that Castleton recalled that someone told him that the Clintons would review the documents that he carried to the residence. He limited the possibility to three persons, including Williams:

> One person, whose identity CASTLETON cannot recall, told CASTLETON that the box contained files which involved personal issues pertaining to the CLINTONs. This person did not say to CASTLETON, as has been reported in a Newsweek magazine article, that the files would be reviewed by the CLINTONs' personal attorney. CASTLETON was told by this person that HILLARY RODHAM CLINTON, and possibly President BILL CLINTON, would review the materials and make a determination what had to be done with them. CASTLETON cannot recall the identity of this person, but he is able to eliminate a number of people as having been the person who made this remark to him. The person was not BERNARD NUSSBAUM because he was not present. The person could have been BETSY POND, LINDA TRIPP or possibly MAGGIE WILLIAMS but was probably not DEBORAH GORHAM.[507]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[506] Castleton 302, 6/9/94, at 2 (emphasis added).

[507] Castleton 302, 9/15/94, at 6 (emphasis added).

[508] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA # none (URTS 16315) DocId: 70105248 Page 206

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In his Senate deposition on June 27, 1995, Castleton stated that Williams was either the person, or one of multiple persons, who told him about the purpose of taking the documents to the residence:

Q Up to this point, had you been told by Ms. Williams what you were going to do?

A I believe yes.

Q What did she tell you?

A If I can back up one second.

Q Uh-huh.

A I don't know if Ms. Williams was the individual who told me what I was supposed to do, but at that point we had spoken. So, if she had -- I don't know whether she was the person who originally told me about moving the boxes or whether she just further clarified once we picked them up.

Q And what did she tell you?

A She told me that we were taking the boxes into the residence.

Q And did she say where in the residence?

510 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

A No.

Q Did she say why you were taking them?

A Yes.

Q What was her statement?

A She said that the President or the First Lady had to review the contents of the boxes to determine what was in them.

Q Did she say the President or the First Lady or did she say the President and the First Lady?

A I don't recall.

Q But she clearly referred to both the President and the First Lady in that phrase?

A I don't remember specifically how she referred to the first family, but my sense was that they were both included in that universe.

Q What did she tell you about what in particular needed to be reviewed?

A I think -- my understanding at that point was that they did not know what was in these files and needed to determine whether there was something of a personal nature or not.

Q Where did you get that understanding from?

A From the conversation that I had with Ms. Williams. I don't know specifically what the phrasing was or the specifics of what she said. But that was my understanding.

Q Did she tell you where the boxes came from, box or boxes came from?

A Prior to being in the office where we picked them up? No.

Q After you were in the office where you picked them up, did she tell you where the boxes had originated?

A Where the -

FOIA # none (URTS 16315) DocId: 70105248 Page 208

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Q Where the contents of the boxes had originated.

A She said that they had been in Vince Foster's office.

Q She said this to you when you were in this conversation on your way up to the residence?

A Right.[511]

Finally, Castleton testified in the Senate hearing on August 3, 1995, that he was told by Williams that the box was going to the residence because the contents needed to be reviewed by the First Lady.[512]

Mr. Chertoff. Let me ask you, Mr. Castleton, on the way up to the residence, after you had picked up the box -- you're walking up with Maggie Williams, you're on your way up to the residence. During this period of time, what were you told by Maggie Williams about why the box was being taken up to the residence?

Mr. Castleton. I was told that the contents of the box needed to be reviewed.

Mr. Chertoff. Reviewed by whom?

Mr. Castleton. By the First Lady.

Mr. Chertoff. And this is something that Margaret Williams told you as you were walking up?

Mr. Castleton. As we were walking from the place where I originally picked up the boxes to the residence.[513]

In response to further questioning, Castleton stated that "my understanding was that they contained documents of a personal and

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[511] Castleton Deposition, 6/27/95, at 139-41.

[512] Id. at 13-14.

[513] Senate Hearing, 8/3/95, at 13-14.

financial nature that pertained to the First Family and they needed to be reviewed because there was unfamiliarity with what exactly was in those files."[514]

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

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

A Why would I tell an intern that?

Q That's not an answer.

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

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

A It's -- I don't remember. I don't remember having a conversation with Tom Castleton other than, you know, we're going to the residence. He had to know where we were going. That was the amount of that conversation as far as I -

Q As far as you can remember?

A Yeah. As far as I can remember.

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

A No.

Q No?

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

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[514] Id. at 25-26.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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

A No, she did not.

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

A I don't recall her saying that to me.[515]

Williams testified in a public Senate hearing about her conversation with Castleton:

Mr. Chertoff. Did you tell him that the reason the documents had to go to the residence was so the President or the First Lady could review their contents?

Ms. Williams. No, I do not recall saying that to Tom Castleton.

Mr. Chertoff. When you say you don't recall it, are you telling us affirmatively that you did not say it, or are you just saying you don't have a recollection one way or the other?

Ms. Williams. Well, I would like to say affirmatively I did not say it because I can't imagine why I would have that discussion with an intern about the files going to the President and the First Lady. I know that I told him we were going to the residence because I figured he needed to know where he was going, but I can't imagine that I said more than that. So I do not recall having that discussion with him.

[515] Williams Deposition, 7/7/95, at 141-42.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

There is a discrepancy in the testimony of various witnesses on the question whether Castleton carried one or two boxes to the White House residence on July 22. The number of boxes is important because representatives of Williams and Connolly say they picked up only one box from the White House on July 27.

516 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

1. **Castleton**

In the interview of June 9, 1994, Castleton said that he carried one box and two nightgowns to the residence.

In the interview of September 15, 1994, Castleton said that he carried one box with two nightgowns draped over it.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In a Senate deposition on June 27, 1995, Castleton said that when he walked into the office, he "picked up a box or possibly two boxes. I don't recall exactly how many."[518]

In the Senate public hearing on August 3, 1995, Castleton said that "my best recollection is there was one. It may have been two."[519]

2. **Nussbaum**

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

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517 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

518 Castleton Deposition, 6/27/95, at 132.

519 Senate Hearing, 8/3/95, at 25.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

A report of interview of Nussbaum dated July 8, 1994, says, "Either he himself or he asked CLIFF SLOAN to call MAGGIE WILLIAMS into the office to take files pertaining to the First Family matters. Both WILLIAMS and NUSSBAUM looked at the files and packed them up in a box."[521]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

520 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

521 Nussbaum 302, 7/8/94, at 5.

522 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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

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

In the Senate public hearing on August 9, 1995, Nussbaum testified:

> I don't recall any particular file that she picked up. I recall her looking to see if there were any additional personal files. I don't remember if she spotted any additional personal files. In any case, this was fairly brief. I don't remember how long it was, but she was there a little while, and then we collected the files that I had pointed out, and they were put in a box, and ultimately taken to the residence.[523]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

3. Gorham

A report of interview of Gorham dated April 19 and 26, 1994, says that Williams took files from a drawer in Foster's office, and "[i]t was packed up in two boxes with the help of TOM

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[523] Senate Hearing, 8/9/95, at 146.

[524] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

CASTLETON."[525] (As noted, Gorham believed this incident occurred the week of July 26.)

A report of interview of Gorham dated March 17, 1995, says that Gorham was present in Foster's office with Williams and Nussbaum when they reviewed Clinton personal files. According to the report, Nussbaum called Gorham into the office and said that the box or boxes there needed to be taken out. The report says that "GORHAM does not now recall if there were one or two such boxes."[526]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In a Senate deposition on June 23, 1995, Gorham continued to say that there were two boxes removed from Foster's office:

> Q Now, you said that you asked Mr. Castleton to help Ms. Williams. Why were you helping Ms. Williams? Were they going to her office?
>
> A I don't know where they were going, but she was taking them.

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[525] Gorham 302, 4/19 & 26/94, at 15.

[526] Gorham 302, 3/17/95, at 3.

[527] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Q They were going with her?

A They were going with her, yes.

Q Did Mr. Castleton literally get right up and go help at that time?

A When I asked him to, yes.

Q So I take it he had to go into Mr. Foster's office to do that?

A That's correct.

Q And when he came back out, was he carrying one or two boxes?

A Two.

Q Stacked one on top of the other?

A That's correct.[528]

In a public Senate hearing on August 1, 1995, Gorham was asked about the movement of a box or boxes from the White House counsel's suite by Castleton.

Sen. Bennett. Was the box bigger than this or smaller than this or do you have any recollection?

Ms. Gorham. I don't recall the exact size, but I believe that any normal man could carry two boxes of that size. And it's certainly similar to the type of boxes that we -- at the present time in the White House that we kept reams of paper in.

Sen. Bennett. So we're now -- there were two boxes?

Ms. Gorham. Yes, sir, I recall two boxes.[529]

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[528] Gorham Deposition, 6/23/95, at 140-42.

[529] Senate Hearing, 8/1/95, at 136.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

4. Tripp

Tripp was asked in the Senate hearing on August 1, 1995, what she recalled about Castleton carrying a box or boxes from Foster's office:

Mr. Chertoff. Were you around the day that Maggie Williams, the chief of staff to the First Lady, and Mr. Castleton took a box or boxes out of Mr. Foster's office?

Ms. Tripp. I recall Tom Castleton removing a box.

Mr. Chertoff. And what do you recall about the circumstances of that?

Ms. Tripp. My recollection is that the box or boxes were placed in front of Deb Gorham's desk. My next recollection is that Tom Castleton was physically carrying a box out of the suite.[530]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[530] Senate Hearing, 8/1/95, at 21.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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

As reflected by Tripp's testimony, the question of how many boxes is complicated by the fact that boxes of documents were also taken to Swidler & Berlin, the Foster family attorneys. First, Michael Spafford took a box of documents from Foster's office on July 22. Spafford says that after investigators left Foster's office, with the assistance of Sloan, he placed personal documents of Foster's into a box. Spafford says that when he finished that process, he took the box and left the White

531 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

House.[532] Moreover, the following week, more personal items of Foster were sent to Swidler & Berlin in a box.[533]

F. **The Box Seen by the Plumber**

On February 23, 1996, the OIC interviewed Gary Williams, who is the Plumbing Foreman at The White House. According to the report, Williams said that on August 25, 1993, he entered the closet in Room 323 (Mrs. Clinton's office). This is the closet where the box or boxes of documents from Foster's office was taken on July 22, 1993.

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

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

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[532] Spafford Deposition, 7/11/95, at 92-95;

[533] 210-2618.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

According to the report, Williams said that he entered the closet again on November 2, 1993. He said that he moved boxes out of the closet again to do his work. According to the report, Williams said he believes that the boxes were the same boxes that he moved out on August 25, 1993. The report reflects that Williams said he remembers seeing Foster's name on a lid at least once, and he may have seen it on both occasions.[534]

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G. **A Returned Renovation File?**

We have investigated whether the documents in the box or boxes taken to the White House residence on July 22 were reviewed by anyone before they were delivered to Williams & Connolly on July 27 and, if so, whether any documents were removed.

As discussed, Tom Castleton testified that he was told that the documents were going to be reviewed by the Clintons or Mrs. Clinton. Moreover, in testimony now partially retracted,

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534 G. Williams 302, 2/23/96.

535 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Nussbaum testified about the return to Foster's office of a file that was removed from the office by Nussbaum and Williams on July 22. Nussbaum said that this file concerned the renovation of the White House residence. If a file were returned to Foster's office from the personal residence, that would imply that the Clinton personal files were reviewed by someone after they left Foster's office. Mrs. Clinton and Williams have testified that they did not review the personal files before they were sent to Williams & Connolly and therefore did not remove any such documents.

1. **Nussbaum's Testimony**

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In his Senate deposition testimony concerning the movement of Clinton personal files to the residence, Nussbaum again suggested that a file concerning the White House residence was

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returned to the counsel's office after it was packed up with the Clinton personal papers and moved out of Foster's office. After his attorney interrupted the deposition, however, Nussbaum said that he was not certain whether the returned file had originated in Foster's office:

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

A We sent over -- we did check to see whether we were sending over personal records as opposed to White House counsel records. And we made an effort to send over solely personal records. And actually, one record was sent over and returned.

Q Which record was that?

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

Q Who returned it?

A I think Ms. Williams returned it.

Q When did she return it?

A Sometime thereafter.

Q When thereafter?

A Within a matter of days.

Q Before the documents went to Williams & Connolly?

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

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

A No, I'm not quite sure Ms. Williams returned the document. I believe Ms. Williams returned the document. A residence file was returned. There was a file that was returned because we were making an effort to send over solely personal documents which had been

used -- yes -- which were in the White House counsel's office because there was an official purpose.

That purpose was now over. Vince Foster was dead. We weren't going to be using those files now so we sent over the personal records to the Clintons and their personal attorneys.

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

A No.

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

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

MR. PEDOWITZ: Can we take a break for a minute?

MR. CHERTOFF: Can I hear the answer to the question?

THE WITNESS: And consequently the documents should remain in the White House counsel's office.

BY MR. CHERTOFF:

Q Can you remember any other discussion with Ms. Williams concerning this occasion when she returned the document?

MR. PEDOWITZ: I really would like to talk to my client for a moment and he'll answer the question.

(Witness conferred with counsel.)

BY MR. CHERTOFF:

Q You've had an opportunity to consult with counsel?

A 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'm not certain I even had this

discussion with Ms. Williams. I'm not positive. It's either Ms. Williams or Mr. Neuwirth I had a discussion with.

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

BY MR. CHERTOFF:

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

A Yes.

Q And it's very hard to confuse Mr. Neuwirth and Ms. Williams physically, isn't it?

A Of course, but they're both -- 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 had been working with Mr. Foster concerning matters of the residence and he was working with Ms. Williams who was involved in matters concerning the residence. And one of them said that file should remain in the White House counsel's office.

Q Who brought the file -

A So why is that so strange, that it's hard to confuse Mr. Neuwirth and -- Ms. Williams and Mr. Neuwirth?

Q Who brought the file back?

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

Q Where did they bring it back from?

A I don't know because I wasn't there when the file was brought back, and I'm not sure it was brought back from the residence or from Ms. Williams'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.

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

Q It was originally a Foster file; right?

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

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

A I'm not 100 percent positive of that. It may have originated in Mr. Foster's office and gone out and was returned or it may have been in Ms. Williams' office and was put into Mr. Foster's office, but it was a residence file. There was a discussion as to whether this is a personal file that should go to the Clintons and their new personal attorneys and it 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 could continue to work on that matter.[537]

When Nussbaum testified in the Senate hearing, he said that the returned file may not have come from Foster's office:

Sen. 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.

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[537] Nussbaum Deposition, 7/13/95, at 406-412.

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Sen. 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 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.

Sen. Bond. So the file just came back to you out of thin air?

Mr. Nussbaum. Well, somebody -- my best memory is Steve [Neuwirth], who was working on these issues with Foster -- somebody at that 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.

Sen. Bond. Was it your understanding that that file had been in Mr. Foster's office, had left, and was 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.

Sen. Bond. But you do know that the files did go to the Clinton residence?

Mr. Nussbaum. That's correct.

Sen. 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.

Sen. Bond. Somebody made a judgment to send it back.

Mr. Nussbaum. Absolutely. And somebody must have looked at it, made a judgment. If it was that -- I

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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.[538]

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[538] Senate Hearing, 8/9/95, at 185-87.

[539] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA # none (URTS 16315) DocId: 70105248 Page 232

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2. Williams' Testimony

Williams testified in an OIC interview that she remembered discussing with Nussbaum whether a renovation file was an office file or a Clinton personal file, but she said she did not remember returning it to Nussbaum:

A . . . I asked about the renovation file. I asked Bernie about it, the house, the private quarters renovation file.

Q What did you ask him?

A I said, either, "Is that file in here with the personal ones?" or whatever.

Q And what did he say?

A He said, "That belongs to the office, the counsel's office. That's something we're working on." But I thought since it was, you know, in their house, but, you know -- so I was just trying to think of stuff that was happening.

* * *

Q Was there a time that you returned a document or documents to the counsel's office or to Bernie Nussbaum, indicating that they didn't belong with the personal papers?

A I don't remember that, but I wouldn't have done that on my own, I think.

Q Do you remember somebody telling you to do that?

A No. I'm just trying to think how I would decide that it wasn't -- shouldn't have been in -- I don't remember returning anything to Bernie. I do remember the discussion about a renovation file.

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Q Now, you indicated that occurred on July 22nd?

A Yeah. Right.

Q Was that renovation file already in the pile to be transferred or did you see the renovation file?

A No. I remember asking about it. I don't remember necessarily seeing it in the pile. I didn't look through the pile that was there. I mean, the only thing that I can remember, in terms of specifically, you know, a file that was marked, you know, that I would remember it, would be the one I picked up, the tax related file. I remember that they said "President," whatever. Everything else I didn't even pay any attention to.

Q You don't recall anything else about a document being returned to the counsel's office by you?

A I don't recall. A document?

Q Or a file.

A I don't recall.[541]

In a subsequent Senate deposition, Williams again mentioned a discussion with Nussbaum about renovation files that she says occurred while she and Nussbaum were sorting out the Clinton personal files (including a personal file on taxes) in Foster's office. Williams suggested that the renovation file was sorted out from the Clinton personal papers before the personal papers were removed from Foster's office:

Q And did you say, Bernie, I found something marked "taxes"; what should I do with it?

A I put it on the stack of files. I put it on the stack of files.

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[541] Williams Interview, 10/28/94, at 16-17, 37-38.

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Q And then what happened?

A I may -- I remember having a discussion with him about the renovation files. And I said should I take the renovation files, and he said no, that has to do with the White House counsel's office. So I remember that was the only discussion, and then I remember either leaving to get a box or leaving because I took a few more calls. . . .[542]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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542 Senate Deposition, 7/7/95, at 95-96.

543 Id. at 18.

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545 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[redacted] [548] During the OIC investigation, the White House counsel produced a redwell that contained materials relating to the renovation of the residence. The redwell was marked with a note saying that the materials came from Neuwirth.[549] [redacted] Thus, the White House production suggests that the yellow envelope described by Neuwirth contained both the file and the binder.

A file labeled "Renovation/Oval Office and Executive Residence" was among those listed on the index prepared by Neuwirth on July 26 of files located in Foster's office on that date.[550] [redacted] the index are credited, therefore, the index suggests that the renovation file was not removed on July 22 and returned after July 26. The evidence does allow for at least two other possibilities: (a) the file

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547 [redacted]

548 [redacted]

549 210-3552.

550 33-15.

FOIA # none (URTS 16315) DocId: 70105248 Page 236

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remained in Foster's office until Neuwirth created the index or (b) the file was removed from Foster's office on July 22 and returned before Neuwirth created the index.

The renovation binder, on the other hand, was not listed on Neuwirth's index of July 26.[551]

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The last page of Neuwirth's index contains one entry for the bookcase in Foster's office: "MedMalpractice materials." There are several books and binders that have been identified by the White House as having been in the bookcase in Foster's office but that were not listed on Neuwirth's index.[553]

Because there is no inventory of materials in Foster's office at the time of the July 22 search by Nussbaum, it is also uncertain whether the binder was in Foster's office on July 22. One entry in Sloan's notes reads: "residence" "renovations."[554] Sloan says he does not know whether his notes refer to a binder

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[551] 33-13 to 33-18.

[552] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[553] When Foster's office was finally cleaned out in late 1993, Tom Castleton prepared an index identifying the location of particular binders and files. 33-31 to 33-35. These include binders labelled "National Performance Review," "Supreme Court Candidates," "Court of Appeals Profiles," and "District Court Profiles" and books such as "President Clinton's Economic Plan" and "NARA Act Book." See Castleton Index, 33-34 and 33-35.

[554] 200024 (quotations in original).

labeled "VWF Residence Renovation 1993."[555] We have not located any other file folder or binder that corresponds to Sloan's notes. The evidence thus leaves open the possibility that the renovation binder was moved from Foster's office to the residence on July 22 and then returned to Foster's office -- perhaps in the yellow envelope -- after July 26.

4. **The Yellow Envelope**

After Neuwirth's testimony, the OIC obtained from the White House a photocopy of the yellow envelope. Miriam Nemetz of the White House Counsel's Office advised that she discarded the original envelope in March 1995 in the course of assembling material that had been in Foster's office at the time of his death for the OIC to review. Nemetz explained that she did not know that Neuwirth had received the renovation file and binder in the yellow envelope or that the envelope had independent evidentiary significance.[556]

The photocopy of the yellow envelope bears two labels. The standard address label is torn off, and neither the addressee nor the sender is legible.[557] The second label reads as follows:

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[555] Sloan 302, 4/15/96, at 2-3.

[556] Nemetz 302, 6/11/96, at 2-4. According to notes produced by the White House, Steve Neuwirth told Jane Sherburne and Sheila Cheston of the White House Counsel's Office in July 1994 that he received these files in the yellow envelope. Nemetz said she was unaware of that entry in the notes when she discarded the envelope in 1995.

[557] AA-6.

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UPS SHIPPER NO.
NY 134-658
G ID# HC

According to Anthony Adkinson, Manager, Loss Prevention Department, United Parcel Service, UPS shipping number 134-658 is assigned to the National Council of Jewish Women, an organization located in New York.[558] Stephanie Steinberg of the National Council of Jewish Women was interviewed by telephone on May 9, 1996, about the meaning of the phrase "G ID# HC" on the shipping label. Ms. Steinberg advised that the label appears to be incomplete, because the third line of the label should begin with the abbreviation for package, i.e., "PKG." She said that the initials at the end of the line, i.e., "HC" generally are those of the person to whom the package is addressed.[559]

The NCJW confirmed that it had corresponded with Hillary Clinton during 1992 and 1993, but could not locate a record of a UPS shipment to Mrs. Clinton that would correspond to the label produced by the White House. Ms. Steinberg advised, however, that certain months in 1992 and 1993 were missing from the UPS invoice files maintained by NCJW.[560]

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[558] Memorandum from Coy Copeland to John D. Bates, 4/3/96.

[559] Steinberg 302, 5/9/96, at 1.

[560] Steinberg 302, 5/9/96.

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5. **Fingerprint Analysis**

The original renovation files were analyzed for fingerprints by the FBI laboratory. The laboratory examined 366 items and found 334 fingerprints or palm prints. None of the prints matched those of President Clinton, Mrs. Clinton, Margaret Williams, or Susan Thomases.[563]

6. **The File Returned by Swidler & Berlin**

With respect to the question of a "returned" file -- as distinct to the question of the handling of the renovation file -- Barnett testified that his firm did not return any documents to the White House after his firm received a box of Foster documents.[564] However, Swidler & Berlin, the firm representing the Foster family, did return a file to Nussbaum. On July 27, Michael Spafford returned to Nussbaum a file entitled "Clinton Memos" along with a cover letter saying that the file was "placed

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563 FBI report, File No. 29-D-LR-35063, Lab No. E-2700 (July 15, 1996). The FBI laboratory does not have President Clinton's palm prints for comparison.

564 Barnett 302, 5/6/94, at 1-2.

inadvertently in a box of personal items that I removed from Mr. Foster's office at your request last week."[565]

VIII. The Foster Funeral: Discussions of Documents

Foster's funeral was held in Arkansas on Friday, July 23, 1993. The President and the First Lady, along with many members of the White House staff, attended the funeral. The President flew to Arkansas from Washington on the morning of the 23rd.[566] Mrs. Clinton already was in Little Rock.[567] The Clintons flew from Little Rock to Washington late in the evening on the 23rd and arrived at the White House at 12:11 a.m. on the 24th.[568]

Nussbaum, Williams, Barnett, and Neuwirth also attended the funeral. Nussbaum testified that he talked to Barnett about the Clinton personal documents in Foster's office during the trip to Arkansas:

> Q When you saw Mr. Barnett, did you have a conversation with him about the documents?
>
> A Yes.
>
> Q What was the conversation?
>
> A I said to Bob on Air Force 1 that we're transferring the Clinton personal files out of Foster's office in view of Foster's death, that I believed the personal files should go to the Clintons and their personal lawyers. I assumed that the Clintons would probably be

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[565] AK-002.

[566] 337-161.

[567] 337-144.

[568] 337-161.

sending it to him, and I wanted him to be aware of that fact.

I didn't know for sure, but I was like 99 percent sure, and also, what did he think of the idea of him getting the files, and he said he thought it was a good idea for him to get the personal files, and that's what the Clintons decided.

Q So he indicated to you he didn't know what the Clintons' decision would be?

A That's my memory. My memory is that there was no decision at that point that they would go to him, although we were all acting on the assumption that they would go to him, and they did go to him.

Q He didn't tell you on this flight on the 23rd that he had any conversations with anybody about anybody taking possession of the files?

A That's correct. I don't remember him telling me about any such conversations.[569]

Williams testified in an interview with the OIC that she, too, had a conversation with Barnett on the 23rd about the documents that Williams had moved from Foster's office to the residence:

Q Did there come a time when you spoke to Bob Barnett about the documents?

A I'm sure I did, I mean, because we -- we were waiting after the funeral in this airport coffee shop.

Q Bob Barnett was there, too?

A Mm-hmm.

Q He went to the funeral?

A Yeah. Mm-hmm.

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[569] Nussbaum Deposition, 7/12/95, at 270-71.

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Q And do you remember a discussion that you had with him about the documents?

A Something about, you know, getting the files when he got back or I -- I mean I don't exactly know the conversation, it was -- whatever it was, it was probably offhand, because we weren't really having a huge conversation, but my feeling was, you know, I had talked to him the other day about delivering the files to him, didn't get them there, because, you know, I kind of sloughed off a little bit.

And he was there and I probably just said, you know, "I'll get those files to you." And I'm sure Bob said, "Well, whenever you get them to us will be fine," or something.

Q Was this a short conversation on Friday, July 23rd?

A The day of the funeral, yeah.

Q Did you have any conversations with anybody else that you can recall on Friday, July 23rd, about these documents.

A No.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

In a Senate deposition on July 10, 1995, Neuwirth recounted his conversation with Barnett. When asked whether Barnett said that he had spoken with anyone with regard to the movement of documents to Williams & Connolly, Neuwirth added, "I think he had indicated that he had spoken to Maggie Williams."[571]

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IX. The Weekend

Over the weekend of July 24 and 25, 1993, the Clintons were in Washington. On the morning of Saturday the 24th, the President spent some time in the Oval Office and attended a Boys Nation ceremony. Mrs. Clinton was in the residence.[573] The

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570 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

571 Neuwirth Deposition, 7/10/95, at 163.

572 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

573 337-164; 337-145.

President returned to the residence at 2:15 p.m.[574] At 4:09 p.m., the Clintons moved to the family theatre. At 5:56 p.m., they returned to the residence.[575] At 8:22 p.m., they left the White House for the Hotel Washington, where they remained until 10:37 p.m.[576]

On the morning of Sunday, July 25, the President went to the Robert Trent Jones golf club, returning to the residence at 3:40 p.m.[577] Mrs. Clinton remained in the residence for the entire day.[578]

At 2:06 p.m. on Sunday, July 25, Williams entered the White House compound.[579] Records show that she turned off the alarm in the First Lady's West Wing office at 2:27 p.m., and turned it on at 2:32 p.m.[580] At 2:36 p.m., according to Secret Service logs, Williams entered the residence of the White House and went to the second floor. Once on the second floor, a visitor has access to both the second and third floors, and no further record is kept of the visitor's location. The logs reflect that

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[574] 337-163.

[575] Id.

[576] Id.

[577] 337-167.

[578] 337-146.

[579] 211-517.

[580] 211-098.

Williams exited the residence at 2:50 p.m. and exited the White House compound at 3:30 p.m.[581]

Williams was questioned about this visit to the residence in a Senate hearing on December 11, 1995, and she said that she recalled no contact with Mrs. Clinton on July 25th:

Mr. Chertoff. According to the entry log, you were in the residence at the White House between 2:36 in the afternoon, leaving at 2:50 in the afternoon. What were you doing in the residence for 14 minutes on that Sunday?

Ms. Williams. I don't recall what I was doing, but because I am often at the residence and often on the White House complex during the weekend, Saturday and Sunday, I don't recall, but it doesn't strike me as highly unusual. As I said in my deposition, I did not recall being there. I don't think that I was there, but it doesn't strike me as extraordinary that I was there.

Mr. Chertoff. Well, it's the only period of time that weekend that you were in the residence. Can you tell us what errand you had that took 14 minutes to complete?

Ms. Williams. I do not know what I was doing. I could have been picking something up. I could have been dropping something off. I don't know what I was doing.

Mr. Chertoff. Well, that's the question. Is there something you recall picking up or dropping off during that 14 minutes?

Ms. Williams. No. As I said, it would not be extraordinary for me to come into the White House or into the residence during the weekend, something I had forgotten, I don't know, but it would not be extraordinary. I'm in and out of there quite a bit.

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[581] 336-853; 211-516.

FOIA # none (URTS 16315) DocId: 70105248 Page 246

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Mr. Chertoff. Did you see Mrs. Clinton?

Ms. Williams. I don't recall seeing her, but it wouldn't have been extraordinary for me to have seen her.

Mr. Chertoff. It wouldn't have been extraordinary for you to have seen her on that Sunday. Is that your testimony?

Ms. Williams. My testimony is that I don't recall seeing her, but it would not have been extraordinary.

Mr. Chertoff. Well, your testimony over the summer, and I'm reading from page 144 of your deposition, was, at line 7, "did you have contact with the President or the First Lady on Saturday or Sunday?"

Answer: No, I don't think so.

Question: No?

Answer: No, I don't think so.

Question: No communication of any sort?

Answer: Not that I can recall. I don't recall.

Are you now altering that to tell us that it's possible that you had contact with her during that 14-minute period on that Sunday?

Ms. Williams. I don't believe that there's any alteration in my testimony. I don't recall. What I said is that it would not have been extraordinary for me to see her.[582]

Williams testified in an interview with the OIC that after July 22, when she placed the box of documents in the closet in Room 323, she did not go into the closet until July 27, when the

[582] Senate Hearing, 12/11/95, at 7.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

box was transferred to Williams & Connolly. She also said that she had no knowledge of anyone going into the closet between July 22nd and July 27th.[583]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[583] Williams Interview, 10/28/94, at 36.

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

584 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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Mrs. Clinton previously testified in July 1995 that she did not see or review the documents from Foster's office that were stored in the residence before they were turned over to Williams & Connolly on the 27th.[586]

The FBI laboratory conducted fingerprint analysis on all of the documents that were identified by Williams & Connolly as the those obtained from the White House on July 27. The laboratory

585 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

586 H. Clinton Interview, 7/22/95, at 28.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

tested 2,581 items and found 1,721 fingerprints or palm prints. None of the prints matched those of President Clinton, Mrs. Clinton, Margaret Williams, or Susan Thomases.[587] Four fingerprints of Webster Hubbell were found on three documents. Those documents were (1) a page headed "Proposed Presidential Retreat Properties" dated December 7, 1992,[588] (2) a facsimile cover sheet from Ron Maxwell to Hubbell dated November 13, 1992,[589] and (3) a page headed "WILLIAM AND HILLARY CLINTON STATEMENT OF FINANCIAL CONDITION," which was dated December 31, 1991, and which bore a facsimile transmission line dated December 10, 1992.[590]

Telephone records show that three calls were placed from Thomases' weekend residence in Rhode Island to Williams' home telephone number on July 24 and 25, 1993.[591] Each call lasted one or two minutes.

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Telephone records also show one

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[587] FBI report, File No. 29D-LR-35063, Lab No. E-2700 (July 16 & 17, 1996).

[588] DEK016182.

[589] DEK016217.

[590] DEK011825.

[591] 387-167.

[592] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

call from Thomases' residence to the home number of the First Lady's scheduler, Patty Solis, on the weekend of July 24-25.[593] Thomases testified that she does not recall talking to Solis that weekend.[594]

X. The Transfer of Documents to Williams & Connolly

A. Monday, July 26, 1993

On Monday, July 26, the Clinton personal documents remained in the residence. Also on the 26th, Steve Neuwirth inventoried Foster's office and discovered a torn-up writing or note in Foster's briefcase. Telephone records show communication among several of the persons discussed above on the 26th.

Barnett's telephone logs show that he communicated with Thomases and Williams (at her home) on the 26th.[595] Barnett told the OIC and the grand jury that he talked about Foster's death with Thomases on the 26th, and that he recalls no discussion of the files in Foster's office.[596]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[593] 387-167.

[594] Id. at 71.

[595] 325-156.

[596] Barnett 302, 12/12/95, at 5;

[597] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Thomases produced a message slip reflecting that she received a telephone call from Barnett at her New York office on the 26th.[598] A telephone log for Thomases also shows an incoming call from Barnett. That log does not reflect that the call was returned.[599] Thomases testified in a Senate hearing that she did not remember this call from Barnett.[600] Thomases said that she does not believe that she returned Barnett's call or spoke to him on the 26th.[601]

Thomases produced telephone records showing that a 3-minute call was placed at 5:24 p.m. on the 26th from Thomases' cellular telephone to the White House number of the scheduler for Mrs. Clinton, Patty Solis (456-2468). Thomases testified in a Senate hearing that she could not remember that call. She said that she did not remember calling Ms. Solis on the 26th to set up an appointment to see Mrs. Clinton on the 27th:

Ms. Thomases. I called, yes, there's a call that I made to Patty Solis' office.

Mr. Chertoff. Patty Solis is the scheduler for the First Lady?

Ms. Thomases. Yes.

Mr. Chertoff. You made that call at 5:24?

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[598] 387-126.

[599] 387-226.

[600] Senate Hearing, 12/18/95, at 23.

[601] Id. at 24.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Ms. Thomases. Apparently.

Mr. Chertoff. What was the purpose of the call?

Ms. Thomases. I don't remember.

Mr. Chertoff. Is that the person you call when you want to make an appointment to see the First Lady?

Ms. Thomases. I call her about scheduling matters, and sometimes about when I want to see the First Lady.

Mr. Chertoff. Well, what scheduling matters do you call Ms. Solis about other than the First Lady's?

Ms. Thomases. I call her about the First Lady's scheduling matters, but not always just about seeing the First Lady.

Mr. Chertoff. Well, what other kinds of things do you call her about?

Ms. Thomases. Just to talk about general scheduling issues for the First Lady.

* * *

Mr. Chertoff. Now did you call her on this Monday in order to set up an appointment to see the First Lady?

Ms. Thomases. Not that I remember.

Mr. Chertoff. It's your testimony then that this call, as of this call, you did not have a plan to see the First Lady the next day, Tuesday, when you were in Washington?

Ms. Thomases. As of this call, I did not have such a plan, or I don't remember having such a plan.

Mr. Chertoff. You don't remember having such a plan?

Ms. Thomases. I don't remember having such a plan.

Mr. Chertoff. Do you remember having some other reason to call Ms. Solis?

Ms. Thomases. I call Ms. Solis regularly.

Mr. Chertoff. On this day, did you have some other reason? This is again the week after Vincent Foster's death. Did you have some other reason to call Ms. Solis apart from trying to set up an appointment to see the First Lady?

Ms. Thomases. As I told you, I don't remember why I called Ms. Solis that day.[602]

Solis testified that she did not recall any conversation with Thomases on the 26th.[603]

B. Tuesday, July 27, 1993

On Tuesday, July 27, Barnett arranged for an employee of Williams & Connolly, I.P. Barlow, to pick up a box of documents from the closet in the residence of the White House. The 27th also is the day when the White House disclosed to the Attorney General and the Park Police the note discovered in Foster's briefcase on the 26th.

Nussbaum showed Mrs. Clinton the note on the 26th,[604] and Thomases now acknowledges that she learned about the Foster note on July 26 from Nussbaum. (Nussbaum does not recall telling Thomases of the note that day.[605]) In her first sworn testimony on that question, however, she said that she learned of the note

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[602] Senate Hearing, 12/18/95, at 27-29.

[603] Solis Deposition, 2/9/96, at 34-35.

[604] See Nussbaum Deposition, 7/12/95, at 295.

[605] Senate Hearing, 8/9/95, at 19.

from the media, and did not discuss it with Nussbaum until long after it was found:

Q How did you find out that that torn-up note was found?

A I probably found out from CNN.

Q Did you ever talk to Bernie Nussbaum about the discovery of the note?

A Only in the context of his raising whether his decision to hold it had been a wise decision.

Q And when you say "decision to hold it," what do you mean?

A To show to the President and the First Lady.

Q Prior to showing it to the Park Police?

A Yeah, but that's after, long after the fact, not at the time. I didn't have a discussion with him anywhere approximate to that.[606]

In her Senate deposition, Thomases changed her testimony:

Q Let me ask you about the discovery of Mr. Foster's handwritten note on the 26th of July. When did you learn about that?

A Sometime around that time.

Q Do you know how you learned about it?

A The first person who told me about it was Bernie Nussbaum.

Q At the time that Mr. Nussbaum told you about that, do you know whether or not he had turned over the note to law enforcement authorities?

A I don't know specifically whether he had turned it over to law enforcement authorities yet.

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[606] Thomases Interview, 9/9/94, at 74.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Q What do you recollect about your conversation with Mr. Nussbaum concerning the note?

A He told me that the note had been found. He told me that there was no factual surprises in the note. There's no information that gave any special clue to Vince Foster's emotional state, and he said that he wanted to show it to the President. I thought it was before turning it over to the press, to tell you the truth, not law enforcement people.

Q Was it your impression, in your conversation with Mr. Nussbaum, that he had not yet shown the note to the President?

A That was my distinct impression.[607]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[607] Thomases Deposition, 7/17/95, at 119-21.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

One lingering question is whether Thomases visited Mrs. Clinton at the White House on the 27th, and if so, what was

608 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

discussed by them. As noted, Thomases testified that as of the 26th, she planned to travel to Washington on the 27th. Phone records show that a call was placed from Thomases' cellular phone to Mrs. Clinton's scheduler, Solis, on the 26th. But Thomases testified that as of the 26th, she had no plans to see the First Lady.

Telephone logs from Thomases' New York office reflect that she received a call on the 27th from Solis with the following message: "HRC wants to see you today."[609] The record reflects that the call was returned. Telephone records show that a call was placed from Thomases' extension at her Washington law office to Solis' number at 11:33 a.m.[610] Another telephone message produced by Thomases' Washington law office shows that "Evelyn" left a message for Thomases at 1:30 p.m., saying "Please call Hillary."[611] Solis testified in a Senate hearing that she believes Evelyn Lieberman placed that call to Thomases.[612] Solis testified in a Senate deposition that she does not recall placing a call to, or receiving a call from, Thomases on the 27th.[613]

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[609] 387-227.

[610] 387-208.

[611] 387-230.

[612] Senate Hearing, 5/14/96, at 63.

[613] Solis Deposition, 2/9/96, at 36, 103-04;

FOIA # none (URTS 16315) DocId: 70105248 Page 259

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

White House records show that Thomases, Williams, Barnett, Hubbell and Mrs. Clinton all were in the White House residence on the 27th. The following is a summary of their times in the residence:

	Enter	Exit
Mrs. Clinton	All day	
Williams	10:31 a.m. 1:35 p.m. 3:20 p.m.	12:05 p.m. 2:25 p.m. 4:43 p.m.
Thomases	3:08 p.m. (5:27 p.m.)	4:31 p.m. 8:19 p.m.[614]
Barnett	3:03 p.m.	4:30 p.m.
Hubbell	6:29 p.m.	8:19 p.m.[615]

Ushers logs show that Barnett and Thomases left the residence together at 4:30 p.m.[616] Secret Service records show that

[614] Secret Service logs show that Thomases entered the residence a second time at 8:19 p.m. No exit time is listed for that visit. Other evidence indicates that the log is inaccurate, and that 8:19 p.m. is actually the exit time. First, Secret Service gate records show that Thomases exited the entire White House compound at 8:20 p.m. The same records show that Hubbell left the compound with Thomases at 8:20 p.m. 211-160. The F-1 Secret Service logs show that Hubbell left the residence at 8:19 p.m. These records suggest that Thomases, too, left the residence at 8:19 p.m. with Hubbell. In addition, telephone toll records show that calls placed from the White House residence at 5:27 p.m. and 5:29 p.m. on the 27th were charged to Thomases' personal calling card. 387-149. Those records suggest that Thomases was in the residence at 5:27 p.m.

[615] 336-855.

[616] 336-864.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Hubbell and Thomases left the White House compound together at 8:20 p.m.[617]

In light of the discovery of the Foster note on the July 26 and the transfer to Williams & Connolly of Foster's documents on July 27, Thomases was questioned extensively in the Senate [redacted] about her visit to the White House on the 27th. One part of the Senate hearing began with questions about the message to Thomases from Solis that "HRC wants to see you today":

Mr. Chertoff. You spoke to Mrs. Clinton?

Ms. Thomases. I don't remember speaking to Mrs. Clinton at any time on the 27th. It's, I just don't remember.

Mr. Chertoff. Did you return the call?

Ms. Thomases. I don't remember. I returned the call. Obviously the call was returned to Patty Solis. It could have been returned by me, or it could have been returned by my assistant.

* * *

Mr. Chertoff. My question to you is, bearing that in mind and bearing in mind that the call was returned, what did the First Lady want to see you about?

Ms. Thomases. I have no idea.

Mr. Chertoff. Did you see her?

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[617] 211-160.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Ms. Thomases. I honestly do not remember seeing her.

* * *

Mr. Chertoff. Now then you came to the White House and according to the records we have, you arrived there at around 3:00 o'clock.
Do you remember coming to the White House?

Ms. Thomases. No.

Mr. Chertoff. You come up to the second floor of the residence, remember that?

Ms. Thomases. No.

Mr. Chertoff. I'm going to put this up here. It's the next one, the next document. Right up there it says -- you have a copy in front of you -- it says July 27, 1993, up to the second floor 3:08 p.m., down at 4:31 p.m. And then up to the second floor at 8:19 p.m. and we've previously established that you leave the White House at approximately 8:20 p.m. What were you doing up on the second floor for an hour and a half?

Ms. Thomases. I don't remember.

Mr. Chertoff. So this is within a week after Vincent Foster dies. You get a call from the First Lady that morning saying, a call to you in New York, not to your Washington office, to your New York office, that says the First Lady wants to see you today.

You get on a plane, you come down. Maybe you were on a plane on your way down, and in fact you show up at the White House and you spend an hour and a half at the residence.

Did you see the First Lady?

Ms. Thomases. I don't really remember seeing the First Lady that day.

Mr. Chertoff. Did you see her that week?

Ms. Thomases. I don't remember seeing her that week.

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Mr. Chertoff. Did you -- I'm sorry, I don't mean to cut you off.

Ms. Thomases. I would have liked to have seen her, but I don't have any recollection of having seen her.

Mr. Chertoff. Did you have a discussion with her about insurance matters concerning the Foster family?

Ms. Thomases. I know at some point I did. I just don't remember specifically having a conversation with her that day.

* * *

Mr. Chertoff. You had not seen, you had been down at the White House the week before, correct?

Ms. Thomases. Correct.

Mr. Chertoff. You had not seen Mrs. Clinton there because she was in Little Rock, right?

Ms. Thomases. Correct.

Mr. Chertoff. You did not go to the funeral, correct?

Ms. Thomases. Yes.

Mr. Chertoff. So that this would have been the first occasion you saw Mrs. Clinton since her friend passed away. Is it your testimony you don't recall that?

Ms. Thomases. I don't recall it. I know it's not credible to you, but I truly don't -[618]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[618] Senate Hearing, 12/18/95, at 39-43.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Thomases

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

subsequently testified in a Senate hearing that she recalls a meeting with Hubbell and Mrs. Clinton shortly after Foster's death, although she cannot recall the exact date. She testified that "[w]e just talked about the tragedy of Vince's death and we talked about how sad it was, and I remember the first time that the three of us were together, we talked a little bit about some good times that we had had together in old times before Bill Clinton was elected President, and in the days in which I used to see them."[623] She testified that does not remember discussing the subject of Foster's note.[624]

Hubbell received a message from Mrs. Clinton at 2:30 p.m. on the 27th before he went to the White House.[625]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

According to a report of an interview of David Margolis, Margolis showed the note to Hubbell on the morning of July 28, and Hubbell

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[623] Senate Hearing, 5/14/96, at 30-31.

[624] Id. at 31.

[625] 50-9633.

[626] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

"gasped when he saw it."[628] The report recounts that Margolis said Hubbell was very "shaken," and that "it was apparent to Margolis that Hubbell was previously unaware of the contents of the note."[629]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[628] Margolis 302, 2/8/95, at 5.

[629] Id.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Barnett, Williams and Thomases were all in the residence between about 3:20 p.m. and 4:30 p.m. During that time, Barnett arranged for an assistant from Williams & Connolly to pick up a box of documents from the closet in Room 323. Barnett and Williams have testified to different versions of how that occurred.

Williams testified that Barnett was in the White House to visit Mrs. Clinton, and Williams just happened to see him. According to Williams, Barnett suggested that he take the documents to Williams & Connolly. Williams says that she unlocked the closet for Barnett, and Barnett summoned an assistant from the law firm to move a box of documents to the firm:

A Bob Barnett was in the residence, seeing Hillary about something. I don't know what it was. And I came up to the residence, and Bob said, you know, "We ought to get those files over to Williams and Connolly," and so he said, "I'll call somebody right now." And then he called somebody from his office to come over and get them.

Q Why did you go to the residence at that time?

A Oh. I don't know.

Q An unrelated reason?

A Yeah. I don't know. I'm in and out of there. Yeah.

630 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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Q Up until the time that you, I guess, bumped into Bob Barnett in the residence, had you given any thought to the transfer of the documents that week?

A I think I had completely forgotten about them, quite frankly.

* * *

Q Can you tell us how the transfer took place on July 27th?

A Bob Barnett called someone from his office, and I think that I probably called someone in my office to get his information so that he could get in, the security information, you know, all that kind of stuff. And the guy came over -- it seems like maybe 15 minutes or whatever later -- and I was still in the residence, on the second -- you know, I just, I guess, continued to visit with Bob Barnett.

And he came or I went to get him, took him up to the third floor. I still had the key on my wrist. I opened the door, said, "This is my box." He -- either he brought some tape with him -- maybe he must have brought some tape with him, because he taped the box shut.[631]

In her Senate deposition, Williams testified that Barnett and Mrs. Clinton were together while they waited for Barnett's assistant to arrive from Williams & Connolly:

Q How long did it take this person to get cleared through?

A Maybe a half hour or so.

Q <u>Did you wait there with Mr. Barnett while that happened?</u>

A Yeah. I may have -- well, probably in and out. I may have gone to do something and come back in. <u>They were having a conversation, Mrs. Clinton and Mr. Barnett. But I had the key.</u>

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[631] Williams Interview, 10/28/94, at 37-39.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Q The key to the closet?

A Right.

Q So Mrs. Clinton and Mr. Barnett were waiting in the residence for about a half an hour while this person came from Williams & Connolly; right?

A Yeah. I'd say it was about half an hour.

Q And then this person came in; right?

A Uh-huh.

Q And then what happened?

A I got on the elevator with him. I had them -- I called somebody to get him cleared. He came to the usher's office, which is where guests go. The ushers called up to the residence. I picked up the phone; they said the guy was there. I went and got him, took him up to the third floor, opened the closet and told them that was the box.

Q And where was Mr. Barnett and the First Lady at this time?

A They were still down on the second floor.[632]

In a Senate hearing on December 11, 1995, Barnett said that he went to the residence on the 27th for the specific purpose of picking up the Clinton personal documents. He said that he arranged to pick up the documents when he spoke with Ms. Williams "at some point during that time of days."[633]

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[632] Williams Deposition, 7/7/95, at 144-47.

[633] Senate Hearing, 12/11/95, at 10-11.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Barnett and Williams testified together in the hearing on December 11, 1995, and Barnett disagreed about the circumstances of their meeting on the 27th:

Mr. Chertoff. Now, when you came -- Mr. Barnett, when you came into the White House and whoever let you in, whoever admitted you, where did you go?

Mr. Barnett. I first went up to, I believe, Mr. Chertoff, the second floor, and I waited for a period of time, and then I went to the third floor, and we carried out the transfer of documents.

Mr. Chertoff. Let's take it step by step, Mr. Barnett. Why did you go to the second floor?

Mr. Barnett. That's where I was escorted and told to wait is my best recollection.

Mr. Chertoff. Who were you waiting for?

Mr. Barnett. I was waiting for Maggie Williams.

Mr. Chertoff. In fact, you met -- Ms. Williams came up and met you there?

Mr. Barnett. That's my best recollection.

Mr. Chertoff. Did you speak to the First Lady during the period of time you were waiting?

Mr. Barnett. I have absolutely no recollection of seeing the First Lady or speaking with the First Lady on that day. I cannot rule it out. It's 2-1/2 years later, but I have no recollection of seeing her on that day, Mr. Chertoff.

Mr. Chertoff. Ms. Williams, do you remember specifically seeing Mr. Barnett with the First Lady when you bumped into them?

Ms. Williams. "Bumped" is not my word, but I remember seeing Mr. Barnett with the First Lady. That's my recollection.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Mr. Chertoff. And the First Lady was there when Mr. Barnett said let's go get the documents.

Ms. Williams. I believe so.

Mr. Chertoff. And Mr. Barnett, your recollection is you don't have any such recollection.

Ms. Williams. That's my best recollection, Mr. Chertoff.[634]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[634] Id. at 12-13.

[635] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

I.P. Barlow of Williams & Connolly testified in a Senate hearing that he went to the White House to pick up a box on the 27th. The records show that he was in the residence from 4:38 p.m. to 4:42 p.m.[637] Barlow said that he was escorted to the third floor, where he met Williams. Barlow said that Williams opened a locked closet and showed him the box. Barlow then taped the box and brought it to Williams & Connolly.[638]

C. **The Thomases Memory Problem**

In light of the testimony given by Thomases, the quality of her memory has become an issue. On April 8, 1996, the Wall Street Journal reported that Thomases suffers from multiple sclerosis (MS), and that memory loss is a symptom of MS that afflicts 40% to 60% of sufferers. The article quoted Thomases as

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636 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

637 336-855.

638 Senate Hearing, 12/11/95, at 27-28.

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

saying, "I have experienced memory problems, and I have been told it is a common occurrence with MS, but I can't say my not remembering phone calls on that occasion was because of MS."[639]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

639 Wall Street Journal, April 8, 1996, at A1.

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641 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA # none (URTS 16315) DocId: 70105248 Page 276

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA # none (URTS 16315) DocId: 70105248 Page 278

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FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Thomases' attorneys, Benito Romano and Andy Levander, left a message at the OIC. On the next day, they related to the OIC that [redacted] Thomases wanted to make sure that "one small thing" was not misunderstood by the OIC. [redacted]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Romano and Levander said Thomases wants no misapprehension about one thing: In the past few months, she has been winding down her legal practice because of her medical condition. She has ceased actively practicing law. [redacted]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure [redacted] Romano said it is very difficult for a professional to come to grips with the disease and its effect on her ability to practice law.

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644 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Romano said that key people at Willkie Farr know that Thomases is winding up her practice. He said it will become public at some point. He said she is a proud person and does not want this to be generally known at this time. [redacted] But there are close friends who still do not know, and she is considering how to tell people about this decision.

Romano said that Thomases has had physical examinations, including MRIs, which confirm deterioration of her condition. He explained that sometimes the cognitive effect of MS is minor, and sometimes it is greater, as with Thomases. Romano said that he would produce medical reports to the OIC if requested, although he would like them treated as grand jury information.

Romano said Thomases' memory problem is with retrieval. He said there is "a hole" on July 27, 1993. He said that is consistent with memory problems associated with MS. [redacted]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Romano was asked when Thomases made her decision. He said within the last month. When asked if this is a temporary decision, pending completion of the Whitewater investigation, Romano said, no, it is permanent. Romano said he could be more specific on her status with the firm if necessary. He said she is a partner at the firm and will be a partner for the immediate future. How this will play out is not clear. Time is required to wind down her practice. She is not actively practicing law. Stress does exacerbate the illness, but this is not a temporary leave of absence due to the investigation.

XI. The Foster Note

A. Discovery

On Monday, July 26, in what was aptly described in The Washington Post as a "chapter out of John Le Carre,"[645] Associate Counsel Steve Neuwirth discovered a torn note in Foster's briefcase. Neuwirth discovered the note as he concluded his inventory of the remaining documents in Foster's office.[646]

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[645] Devroy & Isikoff, Handling of Foster Case Is Defended, The Washington Post, July 30, 1993, at A1.

[646] The note stated:

> I made mistakes from ignorance, inexperience and overwork
> I did not knowingly violate any law or standard of conduct
> No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the travel office. There was no intent to benefit any individual or specific group
> The FBI lied in their report to the AG
> The press is covering up the illegal benefits they received from the travel staff

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The White House gave the note to the Park Police on Tuesday, July 27. The White House confirmed the existence of the note to the press on July 28. The contents of the note were not disclosed, however, until the August 10 joint press conference conducted by the Park Police and DOJ.[647]

On July 29, Neuwirth was first interviewed by the Park Police about the discovery of the note. He stated that

> he was in the process of gathering and packing Mr. Foster's personal effects for delivery to the family when he turned the briefcase sideways in order to fit it into a box without causing damage to a photograph of the President with Mr. Foster's daughter, Laura. When

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> The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation
> The Ushers Office plotted to have excessive costs incurred, taking advantage of Kaki and HRC
> The public will never believe the innocence of the Clintons and their loyal [*] staff
> The WSJ editors lie without consequence
> I was not meant for the job or the spotlight of public life in Washington. Here ruining people is considered sport

Fiske Report, 6/30/94, at Tab 5. Note that the word "loyal" may be "legal."

[647] Fingerprint and handwriting examinations have been performed on the note. The FBI lab identified one palm print of value on the note and identified it as Nussbaum's print. See Nussbaum Deposition, 7/12/95, at 284. (Nussbaum handled the note at various points, including when Neuwirth first showed it to him, when he stored it that night, and when he showed it to Lieutenant Megby.)

Three separate handwriting analyses have been performed -- one by the Capitol Police and two by the FBI lab -- comparing the note to three different sets of samples of known handwriting of Vince Foster. Each of the three analyses concluded that the handwriting was Foster's handwriting. See, e.g. Fiske Report at Tab 1 (Lab Report of June 17, 1994); United States Capitol Police Report, USPP 30502-93, 7/29/93, at 2.

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he did this some torn yellow paper scraps fell out of the briefcase and he noticed handwriting on them. He then retrieved a number of other scraps from the bottom of the case and took them to the table in Mr. Nussbaum's office where he assembled the document.[648]

On July 30, Neuwirth again was interviewed, this time by the FBI. He explained that Nussbaum had asked him on Friday while in Arkansas to conduct a review of the work files in Foster's office and to take any remaining personal items to Foster's attorney. Neuwirth stated that he began the review at about 10:00 a.m. on July 26. He then essentially repeated what he had told the Park Police about discovery of the note.[649]

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When Nussbaum turned the note over to the Lieutenant Megby of the Park Police at 9:15 p.m. on July 27, Nussbaum stated, according to Lieutenant Megby's report, that he had directed Neuwirth to "take a detailed inventory of the files and materials" in Foster's office. "In a briefcase, known to be in the office and thought to be empty, he [Neuwirth] found the torn pieces of a handwritten page. The scraps were dumped and taken

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[648] Neuwirth USPP Report, 7/29/93, at 2.

[649] Neuwirth 302, 7/30/93, at 1.

[650] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

to Mr. Nussbaum's office where they were assembled and Mr. Nussbaum was notified."[651]

According to the report of Nussbaum's interview with the FBI on July 30, Neuwirth told Nussbaum "that as he was packing items of Foster's personal property in a box, he discovered the scraps of paper in the bottom of Foster's briefcase. Neuwirth had been in the process of placing the briefcase in a box when he tipped the briefcase over on its side and several of the scraps of paper fell out. Neuwirth then discovered the rest of the scraps of paper located at the bottom of the briefcase."[652]

As a result of Neuwirth's discovery of the note in a briefcase that had been in Foster's office on July 22 and had been reviewed by Nussbaum during the search that day, various questions have been raised: Was the note in the briefcase on July 22? Did Nussbaum or anyone other than Foster see the note before Neuwirth discovered it?[653] Separate questions have been

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[651] Nussbaum USPP Report, 7/27/93, at 1.

[652] Nussbaum 302, 7/30/93, at 2.

[653] There is a small, missing piece towards the bottom of the note. It is unclear when or how the piece came to be missing. Neuwirth does not recall a missing piece. Neuwirth Deposition, 7/10/95, at 191. On the other hand, Nussbaum does. Nussbaum Deposition 7/12/95, at 282. A number of possibilities exist. The piece may have been lost when the note was torn and/or put into the briefcase. It may have been lost when Neuwirth was picking the pieces out of the briefcase. It may have been lost on the various occasions on the 26th and 27th when Nussbaum was showing the note to persons, such as Lisa Foster.

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raised about why it took White House officials until approximately 6:30 p.m. on July 27 to inform law enforcement of the note's existence.

These very questions, of course, were the focus of the July-August 1993 FBI investigation conducted at the direction of the Department of Justice. The FBI and DOJ concluded that there was insufficient evidence to prosecute any person for obstruction of justice. Our investigation has discovered some new evidence on the note issue -- the most important being Michael Spafford's testimony -- although the thrust of the testimony provided to the OIC [redacted] has been consistent with that provided to the FBI in 1993.

B. **Handling of Briefcase before Discovery of Note**

Because Neuwirth found the note in Foster's briefcase, and the note was not found during the search on July 22, we have investigated whether the note was in the briefcase on July 22. We therefore will describe in some detail the statements of those who observed the briefcase in Foster's office between July 20 and July 26.

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[redacted] There is even a possibility that the piece may have been lost after the note was turned over to law enforcement. Megby's report, for example, does not mention a missing piece. It states simply that "Mr. Nussbaum had before him on the table small pieces of yellow lined paper which he was assembling into a whole page. The assembled pieces revealed a note." The whereabouts of the missing piece, and when and how it came to be missing, are unsolved questions.

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As described in detail above, Patsy Thomasson testified that she saw the briefcase on the night of July 20 and that it appeared to be filled with documents. No other witness has acknowledged seeing or handling Foster's briefcase before the search on the 22nd.

Many of the 13 persons present at the search on the 22nd (including Nussbaum) recall Nussbaum removing documents from Foster's briefcase and describing their contents to the assembled group. Two persons -- Markland and Hume of the Park Police -- specifically recall Nussbaum looking into the briefcase after he had removed the documents from the briefcase.

Nussbaum was interviewed by the Park Police on Thursday, July 29, 1993, and again by the FBI on Friday, July 30, 1993. In the Park Police interview, Nussbaum described his recollection of the search of the briefcase on July 22. The report states:

> Mr. Nussbaum stated it was his recollection that he removed materials from the briefcase, which remained on the floor, and placed them on the desk in front of them. He then went through the materials. He inferred that because of this he had missed the small scraps of paper that obviously remained in the bottom of the briefcase.[654]

Nussbaum also recalled that he later moved the briefcase back to the wall behind him.[655]

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[654] Nussbaum USPP Report, 7/29/93, at 1.

[655] Id.

A report of Nussbaum's interview with the FBI on July 30 states:

> During the inventory, Nussbaum removed the files and papers from Vincent Foster's briefcase and reviewed those items. After the contents of the briefcase were removed he picked up the briefcase and placed it against the wall behind Foster's desk.[656]

Neuwirth, according to the report of his 1993 FBI interview,

> speculated that the pieces of paper may have been stuck down in a corner of the briefcase and therefore not seen during the July 22, 1993, inventory of Foster's office . . . . [He] confirmed that the briefcase from which the scraps were recovered was the same briefcase which Bernard Nussbaum reviewed during the inventory of Vincent Foster's office on July 22, 1993.[657]

The report of Neuwirth's 1994 statement to Mr. Fiske's office states:

> he [Neuwirth] is not sure if he was in Foster's office on July 22 when the contents of Foster's briefcase were removed and described. It is his "understanding" that "something" was taken out of the briefcase during the search. He said that it was sitting on the floor behind Foster's desk but that he has no recollection of the briefcase or specifically its interior, being shown to those present.[658]

The FBI report of Cliff Sloan's July 30, 1993, interview states: "Sloan believed that all the items were taken out of the

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[656] Nussbaum 302, 7/30/93, at 1; [redacted] Sparrord's notes also reflect that Travel Office documents were in the briefcase. 296-16.

[657] Neuwirth 302, 7/30/93, at 1.

[658] Neuwirth 302, 5/13/94, at 7; [redacted]

FOIA # none (URTS 16315) DocId: 70105248 Page 287

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briefcase however he did not examine the empty briefcase at that time."[659] Sloan wrote notes to himself after that FBI interview. His notes state:

> They questioned me extensively about the briefcase. I explained that Bernie had taken some files out. I was not sure whether they were in file folders or not. The briefcase was relatively thin and was not bulging. I cannot remember whether I looked into the briefcase or not, but I think I recall thinking it was empty, because I thought it was a personal effect which could have been sent to Jim Hamilton.[660]

Burton, according to the report of his July 30, 1993, interview with the FBI,

> recalled that Foster's briefcase was emptied by Bernard Nussbaum and the contents, which consisted of files and papers, were reviewed by Nussbaum. Burton stated that after Nussbaum removed the papers and files, he observed the briefcase to be empty <u>with the exception of several paperclips and a single post-it paper located in the bottom of the briefcase</u>.[661]

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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[659] Sloan 302, 7/30/93, at 1.

[660] AE-3; FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[661] Burton 302, 7/30/93, at 1.

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The two FBI agents at the search, Agents Salter and Condon, prepared a report after the discovery of the note that included their recollections of the search. This report, dated August 5, 1993, states:

> During the inventory, Bernard Nussbaum removed the contents of a leather, satchel type briefcase which had been on the floor adjacent to the desk. The briefcase was identified as belonging to Vincent Foster. The items which were in the briefcase (papers and files) were removed and reviewed by Nussbaum. After those items were reviewed they were not placed back in the briefcase but they remained on top of the desk. Nussbaum then picked up the briefcase and placed the briefcase against the back wall of the office. At the time Nussbaum placed the briefcase against the back wall of the office it appeared as though the briefcase was empty. At no time did the undersigned agents [Salter and Condon] observe the inside of the briefcase.[663]

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Captain Hume of the Park Police also wrote a report on the search:

> At one point, Nussbaum pulled some papers out of a leather valise/briefcase that was sitting on the floor behind the desk. He put them on the desk and went through them. He then looked in the valise/briefcase again, but did not take anything out of it. A little

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663 FBI Report by Salter and Condon, File # WMFO 175B-WF-187743, 8/5/93, at 1-2.

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FOIA # none (URTS 16315) DocId: 70105248 Page 289

> later he moved the valise/briefcase away from the desk and placed it on the floor adjacent to the exterior wall directly behind him and the desk.[665]

In addition, the FBI interviewed Hume on August 2, 1993. The report of the interview states:

> Hume advised that during the inventory Bernard Nussbaum removed documents from a briefcase which was in the office and identified as belonging to Foster. Hume believed that when these items which consisted of files and papers had been taken out of the briefcase it was believed that the briefcase was empty. After Bernard Nussbaum reviewed the items which were in the briefcase, Hume recalled that Nussbaum picked up the briefcase looked in it and indicated that the briefcase was empty. Hume recalled that a short while later during the inventory, Nussbaum picked up the briefcase again and at that time moved it against the back wall of Foster's office. Hume advised the interviewing agent that at no time was he able to see the bottom portion inside the briefcase.[666]

Detective Markland of the Park Police, in his report of the interview of Nussbaum that occurred on July 29, 1993, wrote:

> I informed Mr. Nussbaum that I was seated on the small couch directly across him and facing him and that I had a clear view of the briefcase when he removed its contents, also that after the contents were removed I could see that he spread open the briefcase and visually inspected it as if to confirm that it was, indeed, empty. Mr. Nussbaum did not recall doing what I described.[667]

The FBI report of an interview with Markland on August 2, 1993, states: "After those items had been removed, Markland observed

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[665] USPP Report by Hume, "Review of Documents from Vincent Foster's Office," 8/4/93, at 2 (emphasis added). 105-143.

[666] Hume 302, 8/2/93, at 1 (emphasis added).

[667] Nussbaum USPP Report, 7/29/93, at 2 (emphasis added).

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Nussbaum pick up the briefcase, open the top of the briefcase, look inside it and declared that it was empty."[668]

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David Margolis, according to a report of his 1993 interview with the FBI,

> recalled that at one point during the inventory, items were removed from a briefcase in Foster's office and that the items were reviewed by Bernard Nussbaum. Margolis believed the items to be papers and files. After reviewing these items, Nussbaum picked up the briefcase which was apparently empty at that time and placed it against the back wall of Foster's office. Margolis was not able to observe if there were any other items remaining in the bottom of the briefcase.[671]

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[668] Markland 302, 8/2/93, at 1 (emphasis added).

[669] FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

[670]

[671] Margolis 302, 8/3/93, at 1;

[672]

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According to a report of his 1993 statement to the FBI, Roger Adams:

> recalled that at one point during the inventory Nussbaum located a briefcase somewhere behind Vincent Foster's desk. Adams recalled that there was some conversation concerning whether or not Foster carried that briefcase with him to and from work on a daily basis. Nussbaum removed those items from the briefcase, those items consisting primarily of papers and files and reviewed those items. Adams stated that from his vantage point he was not able to observe whether there were any items remaining in the bottom of the briefcase after the papers and files had been removed by Nussbaum.[673]

Adams stated that he could not recall whether Nussbaum looked into the briefcase after removing items from it.[674]

The two Secret Service agents at the search added little. The report of Secret Service Agent Flynn's 1993 interview states: "Flynn could not recall any details of this portion of the inventory but was aware that items were removed from the briefcase and he did not recall any items being put back into the briefcase. Flynn could not recall any other details regarding that portion of the inventory."[675] Secret Service Agent Imbordino, according to the report of his FBI interview, "advised that he could not provide specific information regarding the

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[673] Adams 302, 8/3/93, at 1.

[674] Adams 302, 6/8/94, at 3;

[675] Flynn 302, 8/3/93, at 1.

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portion of the inventory during which Vincent Foster's briefcase was handled."[676]

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There are two relevant pieces of testimony regarding the handling of the briefcase <u>after</u> the conclusion of the search on the 22nd.

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[676] Imbordino 302, 8/2/93, at 1.

[677] Spafford's notes also reflect that the briefcase was searched and that its contents included Travel Office documents. 296-16.

[678]

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FOIA # none (URTS 16315) DocId: 70105248 Page 293

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Spafford was not interviewed by the FBI as part of its 1993 investigation, but his partner Jim Hamilton was interviewed by the FBI by phone on August 3, 1993. At that time, Hamilton knew of Spafford's recollection of the Sloan-Nussbaum conversation,[681] but he did not tell the FBI about it. When Spafford was interviewed by Mr. Fiske's office by phone on May 24, 1994, he did not provide this information to the FBI agent interviewing him.[682]

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Nussbaum and Sloan have been questioned about the incident. Nussbaum stated that he does not recall any conversation with anyone on July 22, 1993, regarding scraps of paper in Foster's

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679 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

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681 See Spafford Deposition, 7/11/95, at 115.

682 See Spafford 302, 5/24/94, at 2-3.

683 FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

briefcase. He says he neither engaged in nor overheard such a conversation. Nussbaum believes he would definitely recall such a conversation had it occurred. Nussbaum further believes that Sloan would recall because Sloan has a very good memory.[684]

Sloan similarly stated:

> As I understand Mr. Spafford's account he says that I picked up Mr. Foster's briefcase, held it open by the handles and remarked to Mr. Nussbaum that there appeared to be scraps of paper in the bottom of the briefcase. All I can say about that . . . is that to my recollection that did not happen. By that I mean I have no recollection of anything remotely like that incident, and I think that I would recall if it had happened. Mr. Spafford and I have an honest difference in recollection on this point, and I think he is mistaken. My consistent recollection on this subject has been, and continues to be, that I learned of the scraps of paper for the first time the night of Tuesday, July 27th, 1993.[685]

The second piece of relevant testimony regarding the post-search handling of the briefcase comes from Deborah Gorham, Foster's secretary. On August 3, 1993, she was interviewed by the FBI. The report of interview states:

> Gorham advised that on July 26, 1993, she was assigned to assist Stephen Neuwirth in the review of items in Foster's office. Gorham recalled that at one point, Foster's briefcase was "in the way" so she picked it up and placed it with a group of personal items which were to be returned to the Foster family. Gorham stated that it [sic] her practice never to look in another's individuals [sic] briefcase but that as she picked it up she was aware that it was empty with the exception of what she believed to be some yellow "post-it" notes. Gorham was not certain that these were "post-it" notes

[684] Nussbaum 302, 7/14/95, at 1.

[685] Senate Hearing, 8/3/95, at 67 (emphasis added).

> but she stated that whatever it was in the bottom of the briefcase was generally of the size and color of a "post-it" note. Gorham stated that the items she saw in the bottom of the briefcase may have been yellow post-it notes or it may have been pieces from a sheet of yellow paper.[686]

Gorham also stated in later interviews that she saw a single gold folder and a single white sheet of paper in the briefcase in addition to the yellow item.[687]

C. **Disclosure of Note to Law Enforcement**

The note was not disclosed to law enforcement until the evening of July 27 when Nussbaum informed Attorney General Janet Reno. The Attorney General told Nussbaum to turn it over to the Park Police, and Nussbaum complied.[688] We have investigated the reason for the approximately 27-hour delay before the Attorney General, and then the Park Police, were notified of the note.

The testimony of five White House officials who were involved in discussions on the night of the 26th and the morning of the 27th about the note -- Nussbaum, Neuwirth, McLarty, Burton, and Gergen -- has been essentially consistent about the reasons for the delay. First, they say they wanted to research whether any privileges applied to the note or portions thereof. (According to Jim Hamilton, who had a conversation with some of

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[686] Gorham 302, 8/3/93, at 1-2 (emphasis added).

[687] Gorham 302, 4/19/94, at 13;

[688] Nussbaum 302, 7/30/93, at 2-3.

the White House officials on the 27th, there was discussion of possible redaction of the note.[689]) Second, they wanted to show the note to Mrs. Foster, who at the time was in Arkansas. Third, they wanted to notify the President, who was in Chicago on the 26th, of the note before it was disclosed to law enforcement.[690]

Nussbaum testified that Burton raised questions whether there were attorney-client privileges applicable to the note, whether there were "privacy issues," and whether there would be an obstruction of justice issue if the note were not turned over to law enforcement.[691] Neuwirth conducted research on the night of the 26th, but concluded that no privileges applied.[692] Lisa Foster was shown the note at about 6:00 p.m. on the 27th.[693] Nussbaum discussed the note with President Clinton at around the

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[689] Hamilton 302, 10/23/95, at 12.

[690] See Nussbaum 302, 7/30/93, at 2; Nussbaum 302, 5/13/94, at 14; Neuwirth 302, 7/30/93, at 2; [redacted] Gergen 302, 7/30/93, at 1-2; Gergen 302, 10/21/94, at 6-8; McLarty 302, 7/30/93, at 1; [redacted] Burton 302, 7/30/93, at 1-2; [redacted]

[691] Nussbaum Deposition, 7/12/95, at 303.

[692] The note does not record any attorney-client communications. Parts of the note (e.g., "the FBI lied in their report to the AG") arguably constitute Foster's mental impressions, conclusions, or opinions. See Fed. R. Civ. P. 26(b)(3). They almost certainly were not written in anticipation of litigation, although they may have been written in anticipation of congressional hearings. In other contexts, the White House has claimed to the OIC that such material is protected work product.

[693] She entered the White House at 5:56 p.m., according to entry records. 336-351.

same time. According to Nussbaum, the President appeared already to be aware of the note's contents.[694]

Nussbaum showed Mrs. Clinton the note on the 26th, in Nussbaum's office and in the presence of Burton and Neuwirth, shortly after Neuwirth showed it to Nussbaum.[695] In their initial interviews with the FBI in 1993, neither Nussbaum, Burton, nor Neuwirth mentioned this incident. The reports of their interviews do not indicate whether they were asked to list all persons who had seen the note after its discovery. According to an official, albeit incomplete, log of Presidential calls maintained at the White House, the President and Mrs. Clinton had a 10-minute phone conversation at 5:57 p.m. on the 26th -- shortly after Mrs. Clinton was shown the note and shortly before she departed the West Wing for the residence.[696]

After Nussbaum disclosed the note to the Attorney General, the Park Police was contacted, and Lieutenant Megby came to the White House and took custody of the note.[697]

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[694] Nussbaum Deposition, 7/12/95, at 317.

[695] See Nussbaum Deposition, 7/12/95, at 295.

[696] 442F-2514.

[697] Megby 302, 8/2/93, at 1.

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MEMORANDUM

TO: Independent Counsel Kenneth W. Starr
OIC Attorneys

FROM: Steven M. Colloton
Brett M. Kavanaugh

DATE: August 7, 1996

This memorandum sets forth the elements of the criminal statutes potentially applicable to the evidence gathered during this Office's investigation into whether any individual or entity obstructed justice, made false statements, or committed any other federal crime with respect to activities occurring in the aftermath of the July 20, 1993, death of former Deputy Counsel to the President Vincent W. Foster, Jr. In particular, the memorandum describes the elements of those statutes applicable to destruction or concealment of documents and to false statements.

Beginning at page 9, this memorandum also identifies certain factual circumstances for consideration under these statutes.

I. The Law

A. Destruction or concealment of documents

The statutes most directly relevant to destruction or concealment of documents are two obstruction statutes in Title 18: Section 1503 and 1505.

1. Section 1503

Section 1503 applies, in relevant part, to

> [w]hoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.

As interpreted by the courts, the elements of a Section 1503 prosecution under this clause are as follows:

(1) there was a pending judicial proceeding, which may include a grand jury proceeding;

(2) the defendant knew of the pending proceeding;

(3) the defendant committed an act that obstructed the pending proceeding or had the natural and probable consequence of obstructing the pending proceeding (e.g., document destruction, false statements); and

(4) the defendant intended to obstruct the pending proceeding.[1]

The DOJ Grand Jury Manual lists examples of conduct that has been held to fall within Section 1503's ambit. The examples include destroying, altering, or concealing subpoenaed documents; false testimony; false denials of knowledge or memory or evasive answers; and submitting false or misleading information to the grand jury. DOJ, Federal Grand Jury Practice 509-511 (1993).

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[1] See DOJ, Federal Grand Jury Practice 511-514 (1993); Devitt & Blackmar, Federal Jury Practice and Instructions § 41.03 (1990).

2. Section 1505

Section 1505 applies, in relevant part, to:

> [w]hoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

Despite the similarities in language, Section 1505 differs from Section 1503 in two respects.

First, Section 1505 applies to pending congressional and agency proceedings, not to pending judicial or grand jury proceedings. But "for an investigation to be considered a proceeding, it must be more than a mere police investigation." United States v. Kelley, 36 F.3d 1118, 1127 (D.C. Cir. 1994). Therefore, FBI and police investigations are not proceedings. Id.

Second, under the D.C. Circuit's decision in United States v. Poindexter, 951 F.2d 369 (D.C. Cir. 1991), Section 1505 requires that the defendant corrupt another person, that is, use efforts to influence another person to knowingly violate a legal duty -- as opposed to violating some legal duty of one's own. See also United States v. Weinberger, 1992 WL 294877, at *2 (D.D.C. 1992). Therefore, as interpreted in Poindexter, Section 1505 is dramatically narrower in scope than Section 1503 and

applies here only if a defendant caused another person to conceal or destroy documents or to provide false testimony to investigators.

B. False Statements

There are several statutes potentially applicable to false statements. Common and central to all of the applicable statutes are the two main requirements of proof for imposing criminal liability for false statements: (a) the defendant's statement was false; and (b) the defendant knew or believed the statement was false when he or she made it.

As noted above, Section 1503, the general obstruction statute, applies to false testimony in a judicial or grand jury proceeding. In addition, Sections 1001, 1621, and 1623 of Title 18 apply under varying circumstances to false statements or testimony.

1. Section 1001

Section 1001 applies, in relevant part, to

> [w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations . . . .

The relevant elements of a Section 1001 prosecution are:

(1) the person made a false statement or concealed a fact which he had a legal duty to disclose;

(2) the false statement or act of concealing was within the jurisdiction of a department or

agency of the United States;

(3) the statement or concealed fact was material; and

(4) the statement or act of concealing was made with knowledge that the statement was false or that a fact was being concealed.[2]

Section 1001 applies to statements made to executive branch agencies or departments. Therefore, statements to this Office, Mr. Fiske's Office, the FBI, or the Park Police -- all of which are executive agencies or departments -- should be covered by Section 1001. Section 1001 does not apply, however, to false statements to Congress, the courts, or the grand jury. See Hubbard v. United States, 115 S. Ct. 1754, 1765 (1995).

The D.C. Circuit has not decided whether the "exculpatory no" doctrine applies under Section 1001. United States v. White, 887 F.2d 267, 273 (1989). Under that judicially created doctrine, a person cannot be prosecuted under Section 1001 for answering "no" in response to a question from an investigative agency where a yes answer would have been incriminating. Id.

2. Section 1621

Section 1621, the general perjury statute, states in relevant part that:

> [w]hoever . . . having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States

[2] See Devitt & Blackmar, Federal Grand Jury Practice and Instructions § 37.03 (1990).

> authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . . is guilty of perjury . . . .

The relevant elements of a prosecution under Section 1621 are as follows:

(1) the person testified under oath in a competent tribunal in which a law of the United States authorizes an oath to be administered;

(2) the person made a false statement, and either two witnesses or one witness and independent corroborating evidence attest to its falsity;

(3) the false statement was material; and

(4) the statement was made willfully with knowledge of its falsity.[3]

Section 1621 thus covers sworn statements to Congress and the grand jury.

The two-witness rule is an important limitation on prosecutions under Section 1621. That rule states that "the uncorroborated oath of one witness is not sufficient to establish the falsity of the testimony of the accused as set forth in the indictment as perjury." Hammer v. United States, 271 U.S. 620,

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[3] See Devitt & Blackmar, Federal Jury Practice and Instructions 575 (1990); United States v. Debrow, 346 U.S. 374, 376 (1953); United States v. Haldeman, 559 F.2d 31, 97-98 (D.C. Cir. 1976).

626 (1926). As the Supreme Court later explained: "Since equally honest witnesses may well have differing recollections of the same event, we cannot reject as wholly unreasonable the notion that a conviction for perjury ought not to rest entirely upon an oath against an oath." United States v. Weiler, 323 U.S. 606, 608 (1945). Section 1621 does not apply, therefore, to a one-on-one discrepancy in testimony -- at least in the absence of independent corroborating evidence.

3. Section 1623

Section 1623(a) applies, in relevant part, to:

> [w]hoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration . . . .

The relevant elements of a Section 1623 prosecution are as follows:

(1) the person was under oath before a court or grand jury or ancillary to such a proceeding;

(2) the person made a false statement;

(3) the false statement was material; and

(4) the statement was made with knowledge of its falsity.[4]

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[4] Devitt & Blackmar, Federal Jury Practice and Instructions § 43.05 (1990); United States v. Sampol, 636 F.2d 621, 652-53 (D.C. Cir. 1980).

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

Section 1623 thus governs sworn statements to the grand jury, but not to Congress. Unlike Section 1621, Section 1623(e) specifically states that "[i]t shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence." Therefore, the two-witness rule does not apply, and one-on-one discrepancies in testimony can be prosecuted under Section 1623.

4. False Statements Summary

The following chart summarizes the statutes potentially applicable to various statements.

	Statute				
Statement	1001	1621	1623	1503	1505
Unsworn to USPP	Yes	No	No	No	No
Unsworn to FBI	Yes	No	No	No	No
Unsworn to Fiske/Starr	Yes	No	No	Yes(?)	No
Unsworn to Congress	No	No	No	No	No
Sworn to Fiske/Starr	Yes	Yes(?)	No(?)	Yes(?)	No
Sworn to Congress	No	Yes	No	No	No
Sworn before Grand Jury	No	Yes	Yes	Yes	No

There are no unsworn statements to Congress at issue in this investigation. Therefore, as the chart shows, all possible false

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statements in this investigation are covered under at least one of the statutes listed. And, as noted above, common and central to all of the applicable statutes are the two main requirements of proof for imposing criminal liability for false statements: (a) the defendant's statement was false and (b) the defendant knew or believed the statement was false when he or she made it.

II. The Facts

We have identified the following areas for consideration as to whether any of them is a basis for charging criminal false statements, perjury, or obstruction of justice. Where testimony is at issue, the precise wording of statements is critical. The statements are not reproduced in this memorandum, but the relevant pages from the separate memorandum are referenced. This memorandum provides only a list of areas for consideration; it assumes that you have read the separate memorandum for context.

As you can see from the separate memorandum, there are numerous areas in which witnesses have given inconsistent testimony. The areas of testimony identified in this memorandum are those in which we believe the evidence warrants serious consideration, or those that have received such public attention that we believe consideration is appropriate. If, upon reading the memorandum, you believe that other areas warrant serious consideration, this list may be supplemented.

Under each heading, we have listed first the most important statements or evidence. Thereafter, we have listed other

noteworthy evidence; the bullets usually are organized to present potentially inculpatory evidence, followed by potentially exculpatory evidence.

FOIA(b)6
FOIA(b)7 - (C)
FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)6
FOIA(b)7 - (C)
FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)6
FOIA(b)7 - (C)
FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)6

FOIA(b)7 - (C)

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)6
FOIA(b)7 - (C)
FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)6
FOIA(b)7 - (C)
FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure

FOIA(b)6
FOIA(b)7 - (C)
FOIA(b)3 - Rule 6(e), Federal Rules of Criminal Procedure