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COMMITTEE ON OVERSIGHT AND  
GOVERNMENT REFORM,  
U.S. HOUSE OF REPRESENTATIVES,  
WASHINGTON, D.C.

INTERVIEW OF: KEN MEHLMAN

Wednesday, September 5, 2007

Washington, D.C.

The interview in the above matter was held at 2157  
Rayburn Lounge, commencing at 10:03 a.m.

1        Appearances:

2

3

4        For KEN MEHLMAN:

5

6        STEVEN R. ROSS

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13       For COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM:

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25       ASHLEY CALLEN, MINORITY COUNSEL

1           Ms. Amerling. Let me start by thanking you, on behalf  
2 of the Committee, for appearing today, Mr. Mehlman. My name  
3 is Kristin Amerling. I am chief counsel for the Committee on  
4 Oversight and Government Reform. And I am accompanied here  
5 today by several members of the Committee staff. Why don't  
6 we all identify ourselves here for the record?

7           Ms. Laitin. Anna Laitin, professional staff member.

8           Ms. Sachsman. I am Susanne Sachsman. I am counsel.

9           Mr. Gordon. Michael Gordon, counsel for the majority  
10 staff.

11          Mr. Leviss. David Leviss, counsel with the majority  
12 staff.

13          Mr. Rapallo. Dave Rapallo with the majority staff.

14          Mr. Barnett. I am Phil Barnett, staff director on the  
15 majority staff.

16          Ms. Safavian. And Jennifer Safavian with the Republican  
17 staff.

18          Mr. Castor. Steve Castor with the Republican staff.

19          Mr. Ausbrook. Keith Ausbrook, general counsel,  
20 Republican staff.

21          Ms. Callen. Ashley Callen of the Republican staff.

22          Ms. Amerling. And Mr. Mehlman, would you please state  
23 your full name for the record.

24          Mr. Mehlman. Kenneth Brian Mehlman.

25          Ms. Amerling. And today you are accompanied by counsel.

1           Mr. Mehlman. Steve Ross.

2           Mr. Ross. Steven Ross.

3           Ms. Amerling. Thank you. This interview of Mr. Mehlman  
4 is part of the Committee's investigation of the use of  
5 non-governmental e-mail accounts by White House officials for  
6 official business, as well as the Committee's investigation  
7 of political briefings given to Federal agencies. And the  
8 Committee's investigation of whether Federal agency officials  
9 conducted travel for the benefit of Republican political  
10 candidates for office. I want to note that the Committee  
11 also has a number of questions for Mr. Mehlman relating to  
12 the Committee's investigation of contacts between former  
13 lobbyist Jack Abramoff and the White House.

14           However, we understand from Mr. Mehlman's counsel that  
15 you are aware of a Committee document request to the White  
16 House, and that you have a preference to address questions  
17 relating to the subject matter of Mr. Abramoff after the  
18 White House has produced responsive documents. And the  
19 Committee is accommodating that request at this point based  
20 on the assumption that the production will occur within this  
21 month and that Mr. Mehlman will return to answer further  
22 questions.

23           Mr. Ross. As you and I have talked on a number of  
24 occasions, it has been our hope and desire to be able to  
25 cover all of the subject matters -- indeed the

1 Abramoff-related subject matter was the first that you had  
2 contacted us on -- in one session but that as we both spoke  
3 that it was likely that once the White House makes its  
4 production, there might well be questions, additional  
5 questions. And since we would not be able to assure  
6 ourselves that the entire subject matter could be completed  
7 before the production was made, that we had requested and you  
8 had agreed, to sort of defer questions on the Abramoff matter  
9 until after you have received the White House production.  
10 And we will be happy to arrange for either another interview  
11 session or continuation of this interview to accommodate  
12 that.

13 Ms. Amerling. Great. Let me go over the ground rules  
14 for this interview. The majority will ask questions first,  
15 and then we will alternate by subject matter with the  
16 minority. If the minority desires to ask other questions in  
17 its round beyond the subject matter that the majority  
18 addressed in the initial round, the minority is welcome to do  
19 so. An official reporter will be taking down everything that  
20 we say. So, Mr. Mehlman, you need to give verbal, audible  
21 responses. Do you understand that?

22 Mr. Mehlman. Yes.

23 Ms. Amerling. You are required to answer questions from  
24 Congress truthfully. Is there any reason why you can't  
25 answer questions truthfully today?

1           Mr. Mehlman. There is not. No.

2           Mr. Ross. Before you start, if I could just take care  
3 of one more housekeeping matter.

4           Ms. Amerling. Sure.

5           Mr. Ross. Yesterday, as counsel for Mr. Mehlman, I  
6 received a letter from the White House Counsel, expressing  
7 the view that, one, that they would have preferred to have  
8 been able to attend the interview, a matter that you and I  
9 had spoken about earlier, in order to protect whatever  
10 Presidential institutional interests might be implicated  
11 during the course of the interview. Their request had not  
12 been honored or accommodated for them to attend these  
13 interviews. They have sent me a letter asking that if there  
14 are questions that are posed that would appear to implicate  
15 Presidential privileges, that we consult with them prior to  
16 making a determination whether or not to answer those  
17 questions. I don't know whether any such questions will come  
18 up, but we will deal with them as they do.

19           As I had indicated in earlier conversations, you know,  
20 we do not view it as the responsibility of Mr. Mehlman or his  
21 private counsel to either advocate on behalf of or preserve  
22 the President's prerogatives or to be in a position to be  
23 forced into a position of, in essence, making a determination  
24 on the different claims that might be made between the  
25 Congress and the executive branch on those. I am hopeful

1 that we are able to get through today without that being  
2 implicated. If there are questions that in our view do go to  
3 the core of that privilege, we will seek to consult with them  
4 and sort of let the two branches figure out how to proceed.

5 Ms. Amerling. We understand.

6 Mr. Ross. And I had given you a copy of the letter. Do  
7 you want to make a copy a part of the record? I know you are  
8 making a transcript, even though this is an interview. That  
9 is up to you.

10 Ms. Amerling. If you would like it part of the record,  
11 we would be glad to end enter it into the record.

12 Mr. Ross. Why don't we do that.

13 Ms. Amerling. We will enter this letter into the record  
14 as Exhibit 1.

15 [Mehlman Exhibit No. 1

16 Was marked for identification.]

17 Mr. Ausbrook. Could I make a comment about the  
18 procedure that you described?

19 Ms. Amerling. Sure.

20 Mr. Ausbrook. And that is that yesterday you and I had  
21 a discussion about the procedure of this, and that procedure  
22 was that you thought you might go more than an hour on each  
23 subject, and there were two subjects you were going to cover,  
24 essentially and that to you it did not make sense to stop if  
25 you had not completed a subject. We discussed that and

1       agreed at that time that we would stop at an hour, see where  
2       you were, see if there were things that we wanted to get to,  
3       and were important for us do, and then if we wanted to  
4       proceed with our questioning after an hour we could do so.  
5       That was my understanding of it.

6               This morning you and I talked again, and you have  
7       changed your position. I had communicated that procedure, by  
8       the way, not only to our own staff, but also to counsel for  
9       Mr. Mehlman, that each side would be probably at least  
10      potentially limited to an hour. This morning in our  
11      discussion you concluded that you would want to proceed if  
12      you had to go past an hour. We discussed whether the -- what  
13      benefit there would be to us to starting after an hour, and  
14      that is, that means we don't have to wait as long to get to  
15      the subjects we want to discuss, ask questions, remember what  
16      was asked. The same policies that are implicated in the  
17      deposition rule that limits questioning by each side to  
18      60 minutes. And my understanding of our agreement this  
19      morning is now that instead of presumptively stopping at an  
20      hour, that we will stop after an hour, but if you all want to  
21      keep questioning then you will proceed to do so, which I  
22      guess is your prerogative. Is that a fair statement?

23             Ms. Amerling. It's fair that it's our understanding  
24      that we will proceed by subject matter, and that, after an  
25      hour, we would be glad to discuss with you where we are and

1 whether we have a substantial number of questions on that  
2 subject remaining, and where it makes sense to go from there.

3 I also want to note that we have had substantial  
4 communications, both with the counsel for the witness, as  
5 well as with the minority in advance of this interview,  
6 providing notice about the timing of the interview, the  
7 subject matter, making accommodations based on issues raised  
8 by the witness about scheduling and about the anticipated  
9 document production of which the witness was aware. And I  
10 think we are proceeding in a fair manner here. Minority will  
11 have ample opportunity to ask Mr. Mehlman all the questions  
12 that the minority seeks to ask Mr. Mehlman. And this is  
13 consistent with the way we have conducted interviews in the  
14 past.

15 Mr. Ausbrook. Well, it's not actually consistent with  
16 the way all interviews have been conducted. They have all  
17 been conducted differently, and there isn't a consistent  
18 practice. I want that on the record. Some of them have been  
19 by topic; some of them have been by time. And that's one of  
20 the problems that we have when we have interviews for which  
21 there are no real rules, even though we are trying to have  
22 similar rules to the rules of depositions.

23 And we certainly would like to have a serious discussion  
24 after an hour about how much longer you are going to take and  
25 a consideration of whether it is fair to us to make us wait

1 20, 30, 40 minutes longer to ask questions that were asked at  
2 that point an hour and 20, an hour and 30, an hour and  
3 40 minutes ago.

4 Ms. Amerling. Okay. Your concerns are noted.

5 Mr. Ausbrook. Thank you.

6 Ms. Amerling. Let's turn to the subject of the use of  
7 White House officials of non-governmental e-mail accounts for  
8 official business.

9 EXAMINATION

10 BY MS. AMERLING:

11 Q Can you start by briefly describing your position  
12 at the White House and the time frame when you were there?

13 A I was, from the time of the President's  
14 inauguration in 2001 until I believe it was March of 2003,  
15 the director of the Office of Political Affairs and the  
16 deputy assistant to the President.

17 Q And to whom did you report in that position?

18 A I reported to Karl Rove, who was the senior adviser  
19 to the President. And by definition, all staff reports to  
20 Andy Card, who is the chief of staff.

21 Q And what position did you serve in subsequent to  
22 that position?

23 A I became the campaign manager for the reelection  
24 campaign from March of -- and I am 90 percent sure it was  
25 March -- March of 2003 until reelection in November of 2004.

1 And then I, in January of 2005, was elected RNC Chairman for  
2 a term, which is a 2-year term, so I was Chairman from  
3 January of 2005 to January of 2007.

4 Q And where are you currently employed?

5 A I am at Akin Gump. And I became a civilian.

6 Q Now, while you served at the White House, did you  
7 have an official White House e-mail address?

8 A I did.

9 Q And what was that address?

10 A I think it was KMehlman@who.eop.gov, but if you did  
11 Kenneth\_B\_Mehlman, you probably got the same thing. Most of  
12 the e-mails, my experience, they have it both ways.

13 Q And when were you first provided this address?

14 A When you started. I mean, was it day one? If  
15 that's your question, I think there was a period between when  
16 we got in to when we started that there had been, as you know  
17 well, documented e-mail issues. The e-mail system did not  
18 start day one, but it was relatively soon after that.

19 Q And when did you first begin using this account?

20 A As soon as we got it.

21 Q And how were you able to access this account?

22 A Via my desktop computer.

23 Q And was this a computer that was provided to you by  
24 the White House?

25 A M-hm. Yes. Sorry about that.

1 Q And did the White House provide you with a  
2 BlackBerry or a laptop?

3 A The White House did not.

4 Q And while you were at the White House, did you hold  
5 an e-mail account or accounts provided to you by the RNC?

6 A I did.

7 Q And what was that e-mail account address?

8 A Well, it was KMehlman@GeorgeWBush.com.

9 Q And did you hold more than one account provided by  
10 the RNC or was it just that one?

11 A It was just that one.

12 Q And when was this account first provided to you?

13 A Sometime in that first 2- to 3-month period as well  
14 is when it was provided.

15 Q And who at the RNC provided it to you?

16 A What individual brought it over? I assume the IT  
17 person.

18 Q Do you remember who set it up?

19 A No.

20 Q Do you remember who at the RNC approved the  
21 provision of this account to you?

22 A My understanding was it was something that was  
23 discussed between the counsel at the White House and the  
24 counsel at the RNC, which would have been Tom Josefiak, who  
25 was the RNC Counsel. Ultimately, obviously, those were

1 approved by the, I assume, the chief of staff or the  
2 deputy -- at this time Deputy Chairman of the RNC, Jack  
3 Oliver probably would have ultimately approved it as the  
4 person who was in charge of the building.

5 Q And did you send e-mails from the White House using  
6 this RNC account?

7 A Sometimes.

8 Q And how were you able to access this account from  
9 inside the White House?

10 A Through a laptop and also a BlackBerry.

11 Q And was this laptop your -- was this laptop  
12 provided by the RNC?

13 A It was.

14 Q And was the BlackBerry provided by the RNC?

15 A Yes.

16 Q And when did the RNC provide each of those pieces  
17 to you?

18 A The laptop, as I recall, came before the  
19 BlackBerry. Remember in January, February of 2001,  
20 Blackberrys were not as pervasive as they are today. And we  
21 got them relatively quickly after then, but I don't remember  
22 the month that it came. I remember I was anxious for one.

23 Q January, February, 2001?

24 A Yeah. Was when the laptop came. And then the  
25 BlackBerry came sometime not long after that. But the laptop

1 was also provided by the RNC.

2 Q And could you access your RNC e-mail account from  
3 your White House computer?

4 A No. No.

5 Q And while you were at the White House, did you hold  
6 an e-mail account provided to you by the Bush-Cheney  
7 campaign?

8 A No, because there wasn't a Bush-Cheney campaign.  
9 The Bush-Cheney campaign had ended after the 2000 election.

10 Q And do you remember who at the RNC provided you  
11 with your RNC BlackBerry?

12 A You mean, what person?

13 Q Yes.

14 A Again, I am assuming it was the IT person.

15 Q Do you remember who gave you instructions on -- did  
16 you receive instructions on how to use it?

17 A I don't recall whether -- I am sure I was, but I  
18 don't recall that particular session.

19 Q And did you use the BlackBerry from within the  
20 White House?

21 A Yeah. I mean, I used it everywhere.

22 Q Did you ever communicate on your BlackBerry by  
23 using your BlackBerry PIN code instead of the e-mail account?

24 A No. Not that I recall. And I have to say if I  
25 did, it was unintentional, because I am not that good at

1 using the BlackBerry PIN code.

2 Q Did anyone ever tell you that using the BlackBerry  
3 PIN code would not leave a permanent record of communication?

4 A No.

5 Q Did you send e-mail from the White House on any  
6 other non-governmental accounts?

7 A No.

8 Q How did you get the idea to use an RNC e-mail  
9 account from within the White House?

10 A Well, there were a number of things that affected  
11 the decision to provide RNC e-mail accounts. One was the  
12 discussion that occurred between the White House Counsel's  
13 Office and previous White House Counsel, and also the RNC  
14 Counsel and colleagues within the RNC's -- within the White  
15 House Counsel's Office. Second of all, I was informed also  
16 by my -- the fact that I had worked on the Hill from 1994  
17 until 1999, and as you know, in both parties, there are  
18 people who are working on the Hill in official capacities at  
19 taxpayer expense who also have political e-mail accounts and  
20 have political cell phones, which was the issue back in the  
21 1990s because it was kind of pre-BlackBerry days. So as we  
22 were starting off, when the White House Counsel came to me  
23 and said, we think you should have RNC-provided equipment for  
24 political activity, that was consistent with the experience I  
25 had seen on both sides on the Hill.

1           Q     So your understanding is that the idea originated  
2 from the White House Counsel's Office?

3           A     My understanding was that the White House Counsel  
4 raised the concept, and certainly with me they mentioned that  
5 they were thinking about it. And it sounded like a good idea  
6 to me, and it was consistent with the experience I had known  
7 up on Capitol Hill.

8           Q     So when you were thinking about sending an  
9 e-mail --

10          A     Yes.

11          Q     -- what was the criteria you used for deciding  
12 whether to send the e-mail over your RNC account versus your  
13 White House account?

14          A     Well, obviously to the extent to which you are  
15 sending it from anywhere but your office, you are sending it  
16 over the RNC account, because we don't have BlackBerrys that  
17 are official. We have only RNC BlackBerrys. So you are  
18 sending it on what you have. But we had, early on, had a  
19 fair amount of discussion with the Counsel's Office.  
20 Obviously, we knew, as folks up here are, that you are  
21 subject to essentially, one, the Hatch Act, and not just the  
22 letter of the Hatch Act, but the spirit of it. Because the  
23 letter by definition doesn't apply to the Political Affairs  
24 Office of the White House. But the spirit of it, which is  
25 official resources for political purposes is subject to

1 significant rules and regulations. So you have to think  
2 about that. And then you also have to think about the issue  
3 of the Presidential Records Act and the rules that apply  
4 there. And so for all those reasons you are kind of thinking  
5 about both things as you made decisions.

6 Q And how often did you use your political e-mail  
7 account?

8 A Again, part of it depended on where I was. If I  
9 wasn't in the office, I would always use it, because I didn't  
10 have a BlackBerry that was official in the beginning the way  
11 we had the political.

12 Q So if you weren't in the office and you needed to  
13 communicate over e-mail about an official matter, you would  
14 use your RNC BlackBerry?

15 A That's -- yes.

16 Q And you would use your RNC e-mail account?

17 A Yes. Because the BlackBerry was RNC.

18 Q And how often were you in that situation?

19 A I mean, you know, obviously, whenever you are at  
20 home, whenever you are not in the office.

21 Q Was that frequently?

22 A Sure. You also --

23 Q Would you say that was daily?

24 A Yeah.

25 Q You mentioned that the White House Counsel raised

1 the idea of using the political accounts. Do you know who in  
2 the White House Counsel's Office raised this idea?

3 A The person I dealt with in the White House  
4 Counsel's Office was Brett Kavanaugh. But whether he  
5 internally raised it within the White House Counsel, I can't  
6 answer, because I wasn't part of those discussions. But  
7 Brett was the person that was kind of our point person in the  
8 beginning who we dealt with. And he was the person I would  
9 regularly consult with and talk with.

10 Q Was he the point person on this for all White House  
11 officials who used RNC e-mail accounts?

12 A He was the point person for a lot of the political,  
13 making sure that the political activity was done in a way  
14 that was appropriate and consistent with the rules and the  
15 laws.

16 Q And do you have any knowledge about other members  
17 of the White House Counsel's Office who were involved in this  
18 matter?

19 A No, I don't, because that was their internal  
20 discussion. I mean, obviously, he reported to Tim Flanagan  
21 and reported to Al Gonzales, and certainly talked to them  
22 about the issues, but I was not in the course of those  
23 discussions usually.

24 Q Do you know whether officials from the RNC were  
25 involved in the discussions about whether to set up RNC

1 accounts?

2 A I don't know. I don't know. I can't answer that  
3 question. I know that when I was at the RNC, our counsel  
4 would on occasion discuss things with the White House  
5 Counsel, but I can't answer what occurred in 2001. I am  
6 assuming that that conversation occurred.

7 Q You don't have any knowledge of RNC participation  
8 in that discussion?

9 A I was not part of that discussion. No, I do not.  
10 No.

11 Q Did your colleagues use RNC e-mail accounts from  
12 within the White House?

13 A All of the -- all of the -- as I recall, all of the  
14 people that worked in the OPA office, the political office,  
15 had RNC laptops and RNC BlackBerrys. There were a couple of  
16 them were junior staff that, as I recall, did not have -- and  
17 again this is a little bit fuzzy -- I remember in the  
18 beginning not everyone had BlackBerrys, and this was a source  
19 of some angst for those that did not.

20 Q And did you see your colleagues using these RNC  
21 e-mail accounts?

22 Mr. Ross. By colleagues, you mean colleagues at OPA?

23 Ms. Amerling. Colleagues at OPA, yes.

24 Mr. Mehlman. Sure?

25 BY MS. AMERLING:

1 Q Frequently?

2 A Yeah.

3 Q During your employment at the White House, did  
4 anyone ever tell you that e-mails sent and received over the  
5 RNC e-mail accounts were periodically purged?

6 A I don't recall that discussion occurring while I  
7 was at the White House.

8 Q Do you recall ever hearing that?

9 A Well, I was RNC Chairman, and certainly as chairman  
10 I knew about our policy. And when the Bush campaign was  
11 established, similarly I was consulted about what our  
12 campaign policy would be with respect to maintaining e-mails.

13 Q When did you first become aware that RNC e-mails  
14 were periodically purged?

15 A RNC e-mails? I would think probably I became aware  
16 of it probably when I was RNC Chairman. When I was with the  
17 campaign --

18 Q When you first became Chairman?

19 A Yeah.

20 Q Do you remember how you became aware of that?

21 A I believe it was a conversation with the counsel,  
22 Tom Josefiak. But as I said, when I was with the campaign we  
23 had to establish a policy, too. Tom Josefiak left the RNC  
24 and became the campaign counsel in 2003. So he might have  
25 brought that up then. I just don't recall it there, just

1 focusing on it there.

2 Q And when you had the conversation when you first  
3 became RNC Chairman --

4 A Yeah.

5 Q -- which informed you --

6 A Yeah.

7 Q -- that e-mails were periodically purged --

8 A Yeah.

9 Q -- did you follow-up with anyone at the White House  
10 to inform them of this practice?

11 A No.

12 Q Are you aware -- did you ask anybody else to follow  
13 up with the White House?

14 A No, I didn't think anything about the White House  
15 when I was with public policy.

16 Q And if you moved to the Bush campaign in spring of  
17 2003 --

18 A Yes.

19 Q -- did you learn early on in your time as campaign  
20 manager that there was a purge policy with respect to  
21 campaign e-mails?

22 A We established that policy.

23 Q You established it?

24 A Well, the campaign established it. The counsel  
25 recommended such a policy.

1 Q And why was that policy recommended?

2 A Well, it was two reasons. One is simply so that  
3 your server doesn't come crashing down or have to be  
4 outrageously huge. And second of all, it is an efficiency  
5 issue, which is that, in my experience, which I believe  
6 strongly, is that people let to let that stuff clog up and  
7 not get their work done. And he felt that was an appropriate  
8 system to have consistent with the systems he had before, and  
9 I thought it was a good way to, one, prevent the system from  
10 being all clogged up, and two, get people to do their job and  
11 not leave work on their e-mails.

12 Q So you approved this policy of periodically purging  
13 e-mails --

14 A Yeah. I mean, I recall being informed.

15 Q -- for the Bush campaign?

16 A I was campaign manager, so, by definition, all  
17 policies I am responsible for. But yeah, he told me this is  
18 the policy, and I said that was an appropriate policy.

19 Q In your discussions of this purge policy while you  
20 were at the Bush-Cheney campaign, did you discuss the issue  
21 of the fact that several White House officials communicated  
22 over Bush-Cheney accounts?

23 A We did not discuss that during the course of that,  
24 because it's my understanding that we did not -- my  
25 understanding is that the -- that those accounts were

1 maintained by the RNC, not by the campaign.

2 Q And why was counsel involved with making IT-related  
3 decisions?

4 A Well, counsel -- first of all, I involve counsel in  
5 everything. I think that's the way -- I had two counsel. I  
6 had Tom and also Ben Ginsberg, and then the people under  
7 them. So any policy you are setting up, whether it's a  
8 personnel policy, whether it's an IT policy, whether it's a  
9 record maintenance, obviously there is a campaign audit that  
10 occurs after the campaign. And so everything we did I wanted  
11 to make sure was done consistently with that approach. And  
12 obviously it worked. I think the Bush campaign is the first  
13 campaign in modern history to have not gotten fined anything  
14 for our operations in 2004. So that's something I am pretty  
15 proud of. And part of why that happened I think was that we  
16 were very obsessive about getting Tom involved in everything  
17 we did.

18 Q Now, when you were at the White House, did you ever  
19 discuss with your colleagues the preservation of e-mails?

20 A The preservation of -- no. I recall that  
21 discussion occurring via the White House Counsel's Office, so  
22 the answer is, yes, but I recall not leading that discussion,  
23 but having what I would call the experts leading that  
24 discussion.

25 Q And when did that discussion occur?

1           A     Well, relatively early in the administration we  
2     were briefed with respect to all of the policies.  And  
3     obviously when the RNC e-mails were set up, we were briefed  
4     with respect to the various policies, which included the  
5     Hatch Act and also the records maintenance rules.

6           Q     And when you say we discussed this, was there a  
7     briefing that was going on?

8           A     I recall discussions both with the White House  
9     Counsel individually, and then briefings that occurred via  
10    the White House Counsel's following those various  
11    discussions.

12          Q     And when you had the individual discussions with  
13    whom were you talking in --

14          A     Usually, typically it was Brett Kavanaugh.

15          Q     Were your colleagues aware that no permanent record  
16    was being created of e-mails sent on political accounts?

17          Mr. Ross.  Again, colleagues at OPA?

18          Ms. Amerling.  Colleagues at OPA.

19          Mr. Mehlman.  I am not sure they -- when you say were  
20    they aware --

21          Mr. Ross.  You are asking him whether -- are you asking  
22    him what somebody else was aware of or not?

23          Ms. Amerling.  Does he have any knowledge if his  
24    colleagues were aware of this?

25          Mr. Mehlman.  I am not certain whether they were aware

1 or not. I know they were briefed like we were briefed on  
2 generally these various rules, but what their particular  
3 awareness was I can't speak to.

4 BY MS. AMERLING:

5 Q So what percentage of your e-mail communications do  
6 you think -- during your time at the White House -- were --

7 A That's a good question.

8 Q -- official communications?

9 A Well, when you say official, let me just make  
10 something -- when you use the official White House  
11 who.eop.gov, when you send an e-mail, it says, do you save  
12 it, or do you opt out of saving it? So you could send a  
13 political e-mail on that official account and not save it,  
14 too. It gives you that option. And the reason it gives you  
15 that option, my understanding is, and certainly my  
16 understanding at the White House from counsel was because  
17 political e-mails there are also not subject to the  
18 Presidential Records Act. So if the question is, what  
19 percentage of e-mails, I guess you are asking, are ones that  
20 on both the official and political computer were e-mails that  
21 were political in nature, I would say --

22 Q That were official in nature.

23 A Oh, were official in nature?

24 Q Yes.

25 A This is a completely ballpark, rough estimate, so I

1 mean I am --

2 Mr. Ross. How do you define official?

3 Ms. Amerling. Concerned official business --

4 Mr. Ross. Are you excluding --

5 Ms. Amerling. -- of the government.

6 Mr. Ross. Okay. But do you exclude everything that  
7 might also be political from being official?

8 Ms. Amerling. I am interested in Mr. Mehlman's  
9 description of how he made that determination.

10 Mr. Mehlman. Let me ask you a question. If the  
11 President goes in and does a rally for a candidate for U.S.  
12 Senate, would you call that official or political? It's part  
13 of his -- that's part of his schedule. Would you say -- you  
14 would say that was --

15 BY MS. AMERLING:

16 Q Would you call that official?

17 A I would probably call that political.

18 Q Based on your understanding of what constituted  
19 political and what constituted official business, what  
20 percentage of the e-mails that you sent were official  
21 business?

22 A I would say 20 percent. But -- not but, and my --  
23 I am defining it the way I just described it to you.

24 Q Okay. And what percentage of your e-mails were  
25 sent over non-governmental accounts?

1           A     Oh, that's going to be a harder question. I bet  
2     60 percent, simply because of the time factor. You know, if  
3     you add up the time you are not in the office, you are  
4     traveling, whatever, and you add up the fact that some of the  
5     e-mails go to that e-mail account on the computer, I would  
6     bet 60, 65 percent is what I bet.

7           Mr. Ross. But these obviously are estimates.

8           Mr. Mehlman. These are total ballpark estimates.

9           Ms. Amerling. I understand.

10          Mr. Ross. Right.

11                   BY MS. AMERLING:

12          Q     Now, you talked about how with some frequency you  
13     needed to send e-mails over your RNC BlackBerry --

14          A     M-hm.

15          Q     -- with some regularity because you weren't  
16     necessarily always in the office. And that I believe you  
17     said those communications from your RNC BlackBerry included  
18     communications about official business. What steps did you  
19     take to make sure that those communications would be  
20     preserved?

21          A     Well, what you would sometimes do was you would  
22     e-mail your other account the information or sometimes you  
23     would try to save it. At the same time, we had been briefed  
24     early on that there was essentially two laws that, again,  
25     while not contradictory, had in some sense a contradictory

1       purpose to them. One, the Hatch Act and the spirit of the  
2       Hatch Act, and the other the Presidential Records Act, which  
3       we were informed had a political exception and a reelection  
4       exception to it. So we had both the desire to maintain  
5       records for purposes of history and purposes of the  
6       Presidential Records Act rules, which at the same time had  
7       two exceptions to it for a lot of the activity we did, and we  
8       had -- the reason that we had these political accounts was to  
9       make sure that we weren't using, even though the law  
10      permitted us to, official taxpayer-funded resources for  
11      political purposes. And the general rule that I recall was  
12      told to us was that if you are not certain, it is better to  
13      use the political as opposed to use the official. So we took  
14      steps to try to save it, but it was not seen as a critical  
15      imperative that we do it, partly because of the political  
16      nature of most of what we did.

17           Q     What steps did you take?

18           A     As I said, sometimes you would send an e-mail to  
19      your other account, sometimes you would print it out and try  
20      to get it saved. But we were briefed -- I recall being  
21      briefed and being told that far more important than the --  
22      that if you weren't sure, that the default position was not  
23      to use the official resources, and also given these  
24      exceptions to the Presidential Records Act.

25           Q     And were you instructed when you received these

1 instructions -- I assume that's from White House Counsel; is  
2 that correct?

3 A Yes.

4 Q When they were telling you that the default when  
5 you weren't sure was to use your political account, were part  
6 of those instructions that you didn't therefore have to  
7 preserve?

8 A Yeah.

9 Q So if there was a question or ambiguity about  
10 whether something fell in the category of political versus  
11 official and you made the determination that it was  
12 political, your understanding, your instructions were that  
13 you didn't have an obligation to --

14 A Right.

15 Q -- preserve those?

16 A That's right.

17 Q And how did you get that understanding? Was that  
18 based on a briefing from White House Counsel?

19 A Based on conversations, briefings and conversations  
20 with White House Counsel, which as I said both at the  
21 campaign, with respect to your question about the e-mail  
22 accounts, and they were very frequent. I am a lawyer, and I  
23 think that I am most comfortable operating in an environment  
24 where I often ask questions about rules and know the rules of  
25 the road.

1           Q     I want to go back to something you said about an  
2 option that you had --

3           A     Yeah.

4           Q     -- when you used your official e-mail.

5           A     Right.

6           Q     I believe you said at the end of the e-mail you  
7 could either --

8           A     I think it's when you send it. I think when you  
9 send it, it -- and I don't recall this a hundred percent.  
10 It's either when you send it or when you delete it, it says  
11 preserve for Presidential records or not. There is an  
12 opt-in, opt-out type thing as I recall.

13          Q     For every e-mail sent on your --

14          A     I think so.

15          Q     -- White House account?

16          A     That's what I remember.

17          Q     And was that system in place from the very  
18 beginning of your use of the account?

19          A     I think so.

20          Q     And was that system in place for all White House  
21 officials?

22          A     I assume. I didn't go around using other people's  
23 e-mails, but I am assuming it is. I certainly remember it on  
24 my computer.

25          Q     So if you -- was the default that it would be

1       preserved if you didn't check a box, or did you have to  
2       proactively --

3           A       I think the default was it would be preserved.  
4       That's what I remember. I believe you had to check a box for  
5       it not to be preserved.

6           Q       And what was the rationale for having that option?

7           A       That there were certain activities that occurred --  
8       there are certain activities that you -- that human beings --  
9       there are two answers. One is, our office was unique. For  
10      the average person at the White House, you know, you send an  
11      e-mail on a personal issue that doesn't need to be preserved  
12      for Presidential records. So you are saying to your friends,  
13      I will meet you for dinner later. That is not a Presidential  
14      record, doesn't preserve a Presidential record. At the  
15      political office, an additional reason for that was the fact  
16      that Presidential Records Act, as I recall, was not  
17      applicable to political and to reelection.

18           Mr. Ross. Just to clarify, you asked -- are you looking  
19      for Ken's understanding of the rationale? This is obviously  
20      not an IT system that --

21           Mr. Mehlman. Right.

22           Mr. Ross. -- that he created, but one that the White  
23      House had.

24           Ms. Amerling. Sure.

25           Mr. Ross. Okay.

1 BY MS. AMERLING:

2 Q So you mentioned briefings that you received by the  
3 White House Counsel. You think that there was a briefing  
4 early on and maybe an individual communication about --

5 A There were, I am sorry. I didn't mean to interrupt  
6 you.

7 Q -- about the use of e-mails.

8 A M-hm.

9 Q And did this briefing cover use of both White House  
10 provided e-mail accounts as well as any type of  
11 non-governmental e-mail account?

12 A I don't remember the answer to that question. I  
13 mean, I don't remember -- I don't remember enough about the  
14 briefing to tell you whether they briefed you on, you know,  
15 use of RNC e-mails.

16 Q Did you ever instruct other staff at the White  
17 House about the appropriate use of political e-mail accounts?

18 A I don't recall making that instruction. I recall  
19 that all of the instruction that I recall was done by  
20 counsel.

21 Q Now, who at the White House was responsible for  
22 determining whether a White House staff person got a  
23 BlackBerry?

24 A Well, initially -- you are talking about the  
25 official BlackBerrys?

1 Q Let's start with official BlackBerrys.

2 A I think that was a determination that was probably  
3 made -- the chief of staff's office, somebody in there made  
4 those determinations.

5 Q Do you know who?

6 A I do not know who. I do not know who.

7 Q And did that same office make the determinations  
8 about who at the White House would receive other hardware,  
9 computer hardware?

10 A They would sign off on it is my understanding.

11 Q And when you were political director at the White  
12 House --

13 A Yes.

14 Q -- did you ever ask for a political -- I mean, did  
15 you ever ask for an official BlackBerry?

16 A I don't recall asking for it, although I could  
17 have. What I recall is that I think we had -- and again this  
18 is very fuzzy -- I think we had one of those things called  
19 pagers, which are pretty useless, and which were pretty bulky  
20 and not very effective. And that's what I think -- I think  
21 they had -- you know, the White House is a very hierarchical  
22 place. And I think that among the distinctions were  
23 assistants versus deputy assistants to the President, and  
24 also various offices based on national security and all that.  
25 But again, I was not part of those discussions. What I knew

1 was we had our political BlackBerrys.

2 Q The pager you referenced was a White House pager?

3 A As I recall, yes.

4 Q And did you have one of those?

5 A I recall there was -- I recall having one, yes.

6 Q And for how long did you have that?

7 A I assume I had it all 2 years. I recall almost  
8 never, ever using it. Part of it is because I don't know how  
9 to use a pager, and equally I thought it was a fairly useless  
10 tool.

11 Q Did your colleagues within the Office of Political  
12 Affairs have pagers?

13 A I don't know the answer to that question. I am  
14 assuming -- I don't know. I don't want to speculate.

15 Q Do you know whether any other colleagues at the  
16 White House had pagers?

17 A Again, this is at the very beginning, because they  
18 moved people to BlackBerrys. I assume others did at similar  
19 levels. But it was, you know -- here is part also, once we  
20 got our RNC BlackBerrys, you know from -- you know office  
21 politics -- everybody wants them. So I tried to be very  
22 quiet about the fact that I had it. People that were not --  
23 what's it called, not special assistants or above, not  
24 commissioned officers who had BlackBerrys, I was not  
25 advertising that to anybody, because then others would want

1 it, too.

2 Q Did staff in the Office of Political Affairs ask  
3 for a BlackBerry?

4 A Did they ask for political BlackBerrys?

5 Q Did they ask for an official BlackBerry? Did  
6 anyone ever ask for an official BlackBerry?

7 A I am sure they asked for everything. And I am sure  
8 I asked for everything.

9 Q Do you recall them asking for an official  
10 BlackBerry?

11 A I do not. But I know -- again, knowing how the  
12 world is with equipment, and I am sure you have the same  
13 thing in your office, everybody wants everything all the time  
14 and constantly is pushing for it. When we got our political  
15 BlackBerrys, I was pleased that our office was able to  
16 communicate in a way that was effective.

17 Q Did you ever ask that anyone in your office be  
18 provided an official BlackBerry?

19 A I don't recall doing that, but I very well could  
20 have. And again, this is -- office equipment, as you know,  
21 is something everybody wants everything all the time.

22 Q Why wouldn't you ask for official BlackBerrys for  
23 people in your office?

24 A Well, the fact that we had political BlackBerrys,  
25 and as I recall others at their level, non-commissioned

1 officers had nothing, meant that it would in my judgment have  
2 been dumb to be greedy enough that everybody would pay  
3 attention to the fact that there are in some offices a  
4 special assistant who has no BlackBerry and you have some  
5 staff assistant who has a BlackBerry. And so I was mindful  
6 of trying to get our people as much equipment as we could,  
7 without calling attention to the fact that we were in a  
8 pretty good position relative to other people.

9 Q Now, Scott Jennings in recent testimony before the  
10 Senate Judiciary Committee said he asked for a White House  
11 official BlackBerry.

12 A Yeah.

13 Q Do you recall him asking for one?

14 A He didn't work when I was there. We were  
15 two generations apart. I was there from 2001 to 2003. I  
16 believe he arrived there in 2005. So I don't recall him  
17 asking for that.

18 Q Were you aware of any discussions, following the  
19 September 11th attacks, regarding the need to improve  
20 emergency communications among White House officials?

21 A I knew that -- I mean, yeah, there was -- I don't  
22 know the internal discussions, but, you know, in the EEOB,  
23 literally -- the only reason I knew that we had to evacuate  
24 was because I happened to be on the phone with Nick Calio,  
25 and he said we have to evacuate. And he was in the West

1 Wing, we were in the EEOB. And we walked outside, and people  
2 were running down the hall. And I went to every one of my  
3 offices and said, you need to get out, you need to get out.  
4 There was literally no system to let us know. So, God  
5 forbid, if a plane had been coming in, you know, the EEOB  
6 would have been hit and people wouldn't have known, which was  
7 amazing. So they did all kinds of things after 9/11,  
8 including putting, you know, the bullet proof windows on the  
9 other side -- on the 17th Avenue side of that building. And  
10 part of it was an emergency system in the EEOB, connected  
11 with the White House so that, you know, it wouldn't be  
12 treated like second class citizens for purposes of  
13 emergencies.

14 Q Did the White House try to ensure that White House  
15 officials had BlackBerrys as part of trying to improve  
16 emergency communications capability?

17 A I don't remember that as part of it. That's not  
18 something I remember as part of it, but I remember massively  
19 upgrading the systems.

20 Q The Bush-Cheney 2004 campaign --

21 A M-hm.

22 Q -- has told the Committee that a total of 11 White  
23 House officials held Bush-Cheney 2004 e-mail accounts while  
24 at the White House.

25 A M-hm.

1           Q     Were you involved in the decision-making process  
2     regarding which individuals would be given accounts?

3           A     I was informed. I tried not to get involved,  
4     because obviously you had people constantly asking for  
5     things. And my goal was to, you know, say no to as few  
6     people as I had to, but -- as few people as I could, but as  
7     many people as I had to.

8           Q     So who made those decisions?

9           A     Ultimately, I assume Karl Rove made it, probably in  
10    consultation with Andy Card. But my goal, both because I had  
11    to pay for it at the campaign, and I didn't want all these  
12    people e-mailing stuff, was to keep it as limited as  
13    possible. I didn't want them all having those e-mails.

14          Q     Who made the decision from the part of the  
15    campaign?

16          A     Who as to the campaign?

17          Q     M-hm.

18          A     I made it. But not for the White House. And my  
19    bias was against as many people as possible, because I also  
20    didn't want them thinking they -- I didn't want them  
21    thinking, you know, they could tell the campaign what to do,  
22    which having one of those accounts could create a  
23    misimpression that you could.

24          Q     Now we heard from the campaign. They gave us the  
25    names of six individuals who had these accounts. Dan

1 Bartlett --

2 A Right.

3 Q -- B.J. Goergen, Israel Hernandez, Susan Ralston,  
4 Karl Rove and Peter Wehner.

5 A M-hm.

6 Q Do you know who else had accounts?

7 A No. You said there were 11? I could guess -- I  
8 shouldn't.

9 Mr. Ross. Don't guess. Which are the ones -- could you  
10 go through the list again that you just read?

11 Q Dan Bartlett, B.J. Goergen, Israel Hernandez, Susan  
12 Ralston, Karl Rove and Peter Wehner.

13 A I don't remember if -- I don't remember off the top  
14 of my head.

15 Q Do you know which office in the White House would  
16 likely have been given these accounts?

17 A This would be speculating.

18 Mr. Ross. Yeah, if you don't know you don't know.

19 Mr. Mehlman. Maybe Scott McClellan or somebody, but I  
20 don't know.

21 BY MS. AMERLING:

22 Q And do you know who at the campaign would have been  
23 responsible for troubleshooting with respect to these e-mail  
24 accounts?

25 A Probably Dirk, Dirk Eyman.

1 Q Do you know how to spell that?

2 A E-y-m-a-n. A great man with the worst job in the  
3 world.

4 Q And the RNC has told the Committee 88 White House  
5 officials were provided RNC e-mail accounts.

6 A During the campaign?

7 Q No. Over a period of time.

8 A Yeah.

9 Q Not just the campaign.

10 A Right.

11 Q Were you involved in decisions about the provision  
12 of any of these accounts?

13 A I would have -- only I would have been the people  
14 at the Political Affairs Office.

15 Q When you were at the Political Affairs Office you  
16 mean?

17 A Yeah.

18 Q And how about when you were at the RNC?

19 A Again, I would have -- my bias would have been to  
20 say no to as many people as I could. But ultimately I was  
21 not -- I don't recall being -- that coming before me. And I  
22 also -- remember, at RNC, I had a chief of staff who would  
23 have handled a situation like that. But any questions on  
24 that stuff I always would have said give them less.

25 Q Do you know what the criteria were for deciding

1       whether a particular individual would be given an account?

2           A     I assume based on their need, whether they --  
3       again, I assume based on the same criteria I had to know,  
4       one, which was in the Political Affairs Office you probably  
5       ought to have one.  But beyond that, I don't think that  
6       the -- generally, there were other people that may have had a  
7       lot of political activity that they did, but as you know,  
8       from I am sure the same thing is true in this office, people  
9       always want more equipment, more things.  And my experience  
10      is the way to manage that is to discourage it, or else you  
11      end up with everybody having everything, and it's a waste of  
12      money.

13          Q     And who at the RNC was responsible for  
14      troubleshooting it when technical issues came up with the RNC  
15      accounts?

16          A     Well, Dirk came to the RNC after the campaign, but  
17      he had people that worked under him.

18          Q     Dirk Eyman?

19          A     Dirk Eyman.

20          Q     And who else worked with him?

21          A     For a while a fellow named Jeremy Anderson worked  
22      under him.  There were others who worked in that shop.

23          Q     Do you remember their names?

24          A     I do not.

25          Q     Did you ever search, while you were at the White

1 House, did you ever search your files to respond to an  
2 investigative request?

3 A No. Not that I recall. Not that I recall.

4 Q When you were Chairman of the RNC, did the RNC  
5 assist the White House in responding to requests for  
6 information from investigations?

7 A I am not certain of the answer to that question. I  
8 know that in the course of my time at the RNC, obviously  
9 there was the leak investigation that occurred, and then  
10 there was also -- there was a phone jamming case in New  
11 Hampshire. And in both cases I know that a counsel -- I know  
12 that I was concerned that our counsel make sure that we do  
13 everything we could at the RNC to make sure we retained  
14 records during the course of those investigations that were  
15 relevant and responsive to the extent to which we were  
16 required to. And I asked him to make sure that was the case,  
17 and he did. But how he did that and who he talked to, I  
18 don't know the answer to that question.

19 Q You don't recall the RNC searching RNC e-mail  
20 records to respond to investigative requests to the White  
21 House?

22 A Again, I recall having discussions with respect to  
23 both the leak investigation and the New Hampshire jamming  
24 case. Those are the two that I recall. And I think they  
25 were the two major investigations that occurred when I was

1 the chairman. And that's when I recall having the  
2 discussions to make sure we were doing everything we could  
3 from a preservation perspective and a responsive perspective,  
4 to make sure we were being responsive.

5 Q And what prompted those discussions?

6 A The fact that we were -- that there was a leak  
7 investigation. The leak investigation was obviously front  
8 page news. And as you know, Karl Rove had an RNC account.  
9 And the counsel -- my counsel briefed me, my counsel, Tom  
10 Josefiak, briefed me on the fact that we were taking these  
11 protective steps to make sure we were responsive and not  
12 doing anything in terms of losing material. I kind of recall  
13 the same thing with respect to New Hampshire, but I am less  
14 certain about that.

15 Q You don't recall this discussion involving a  
16 discussion of ensuring a response that the White House could  
17 respond to a request for information?

18 A From?

19 Q From let's take the leak investigation.

20 A Well, as I recall the RNC being focused on the RNC  
21 accounts and making sure we were being responsive that way.

22 Q And you were focused on the RNC accounts because  
23 the RNC had received requests for information directly?

24 A No, because there was -- Karl Rove's RNC account  
25 could have been seen as -- what I recall being briefed on was

1 that there was a concern that his RNC account could be  
2 responsive to questions, and therefore taking steps to ensure  
3 that his RNC -- his RNC e-mails were protected in an  
4 appropriate way.

5 Q And were those discussions -- did your discussions  
6 of this issue involve discussions with the White House?

7 A It involved my discussions with the White House  
8 Counsel -- I am sorry, excuse me, the RNC Counsel, with Tom  
9 Josefiak.

10 Q And did he have discussions with the White House  
11 Counsel?

12 A I am not certain who he talked to. I can't answer  
13 that question.

14 Q Do you know if he talked to anybody at the White  
15 House about this issue?

16 A Oh, yeah. He is an incredibly careful guy. And  
17 certainly, again, this is -- there is knowledge -- there are  
18 things you remember clearly. There are things someone told  
19 you that you know and that you can remember them telling you  
20 that you trust, and then there is the third level of  
21 knowledge, which is you think you are kind of reconstructing  
22 it a little bit. This is where I put that. I recall him  
23 having conversations. I don't remember if it was with White  
24 House Counsel, with Mr. Rove's lawyer. In the leak  
25 investigation, it was not White House Counsel, who was -- I

1 forget the guy's name, a guy at Patton Boggs. But those  
2 discussions Tom Josefiak had, I don't recall with respect to  
3 White House whether -- how much the White House was involved  
4 in the New Hampshire case. But I do recall that our e-mail,  
5 the RNC e-mail, with respect to both cases, we were very  
6 careful to preserve records.

7 Q And when did those discussions that the RNC Counsel  
8 had occur?

9 A In 2005 and 2006.

10 Q When did they start? When did they -- when were  
11 the first discussions?

12 A I don't remember the exact place that they started.  
13 I remember this was an issue --

14 Mr. Ross. Let me just, if you are going to want to get  
15 into the discussions between the RNC Counsel and Ken as RNC  
16 Chairman, I am going to want to consult with the RNC Counsel  
17 with respect to whether he thinks that there is any  
18 attorney-client question that's implicated.

19 [11:01 a.m.]

20  
21  
22  
23  
24  
25

1       RPTS JURA

2       DCMN MAYER

3           MS. AMERLING: My question was on timing discussion.

4           MR. ROSS: I don't mind. That is why I said, I just  
5 want to draw a line as to where we should stop here.

6           MS. AMERLING: I understand.

7           MR. ROSS: You can give the timing, but let's not get  
8 into the specifics.

9           MR. MEHLMAN: I recall when I was at the RNC, those  
10 discussions occurred relatively early in the process when I  
11 was there.

12                   BY MS. AMERLING:

13           Q     When you say relatively early, what do you mean?

14           A     I recall them occurring in '05, during the course  
15 of the leak investigation.

16           Q     Are you aware of any discussions that occurred  
17 prior to 2005, with respect to the issue of being responsive  
18 to the leak investigation?

19           A     At the RNC?

20           Q     Yes.

21           A     I am not aware.

22           Q     So, to your knowledge, the first discussion --

23           MR. ROSS: That is not what he said.

24           MS. AMERLING: I am asking. He can answer one way or  
25 the other.

1           Let me ask the question, okay? If you have an  
2 objection, I would will glad to hear it.

3           BY MS. AMERLING:

4           Q     My question is, to your knowledge, was '05 the  
5 first time there was communication between White House  
6 counsel or Mr. Rove's attorney and the RNC with respect to  
7 responding to the leak investigation?

8           A     And --

9           MR. ROSS: I guess my concern is, you'd asked Mr.  
10 Mehlman -- he said that he would be -- he went to the RNC in  
11 2005.

12          MR. AMERLING: Yes.

13          MR. ROSS: And then you asked a series of questions  
14 about conversations that occurred while he was chairman at  
15 the RNC.

16          MS. AMERLING: Yes.

17          MR. ROSS: Is your question now going to a different  
18 area, asking what knowledge he might have of discussions  
19 between the White House counsel and the RNC counsel prior to  
20 his becoming RNC chairman?

21          MS. AMERLING: My question is, what is his knowledge of  
22 whether there was any discussion prior to 2005 between White  
23 House counsel and the RNC on the issue of responsiveness to  
24 requests from the leak investigation.

25          MR. ROSS: So the question is, prior to his going to the

1 RNC, does he have knowledge of conversations between the  
2 White House counsel and whoever was RNC counsel at that time  
3 about preserving records?

4 MS. AMERLING: The question is, does he have knowledge  
5 that any such conversations occurred prior to 2005.

6 MR. ROSS: Okay.

7 MR. MEHLMAN: Can I ask him one thing?

8 MR. ROSS: Yeah.

9 [Discussion off the record.]

10 MR. MEHLMAN: I am not certain of the conversations  
11 involving RNC counsel before I became RNC chairman.

12 BY MS. AMERLING:

13 Q Did the RNC receive a request for documents  
14 directly from the investigator in the leak investigation?

15 MR. ROSS: Is this, what time? While he was at the RNC?

16 MS. AMERLING: We can -- I wonder if he has knowledge of  
17 any requests that --

18 MR. ROSS: I am not trying to be difficult.

19 MS. AMERLING: At any period of time. He may have  
20 knowledge, based on the fact that he was there, of something  
21 that occurred prior to when he got there. So I am asking,  
22 what is his knowledge on this issue.

23 MR. ROSS: Okay.

24 MR. MEHLMAN: Repeat it again. I apologize. I kind of  
25 forgot the question.

1 BY MS. AMERLING:

2 Q Do you have knowledge of any request that the leak  
3 investigation made directly to the RNC --

4 A I do not.

5 Q -- for response?

6 A I do not. I do not have knowledge either way with  
7 respect to that.

8 Q But when you became Chair of the RNC, you received  
9 thorough briefings from your RNC counsel about the issues,  
10 legal issues relevant to the RNC. Is that accurate?

11 A Yeah.

12 Q While you were at the Bush-Cheney campaign, were  
13 there any discussions there about the issue of preserving  
14 e-mails --

15 A Yes.

16 Q -- to respond to the leak investigation?

17 A Yes.

18 Q And can you describe those discussions?

19 A The discussions were almost -- very early in the  
20 process when the investigation began.

21 Obviously, the e-mails in question, Mr. Rove's e-mails  
22 in question and some other people's e-mails in question were  
23 e-mails that at the time were Bush-Cheney e-mails. So our  
24 counsel -- one of the counsel at the campaign sat down with a  
25 deputy to Mr. Fitzgerald and worked out a system by which

1 e-mails could be preserved that he was comfortable with and  
2 satisfactory with.

3 Q And when did that occur?

4 A I think that occurred, and this is -- again, this  
5 is murky. But I think it occurred -- it was in 2003, I  
6 think, when it occurred.

7 I mean, remember this whole thing started -- you know  
8 what? I think it was in 2003. Do you remember? I don't  
9 remember when Mr. Fitzgerald was appointed, but it was not  
10 that long after that process began.

11 Q It was after he was appointed?

12 A Oh, obviously.

13 Q And how did you know that there were e-mails in  
14 question involving Mr. Rove?

15 A I forget. Well, because they had in a public way  
16 announced that Mr. Rove's e-mails were to be preserved.

17 Q "They," meaning Fitzgerald?

18 A Mr. Fitzgerald. And I recall there was an order by  
19 Mr. Gonzalez to preserve all records and e-mails and other  
20 things relating to this. And it was done to White House  
21 staff.

22 We were not White House staff, but at the same time  
23 there is an investigation going on. We are not trying to  
24 split hairs and play games, so we explicitly -- I don't  
25 remember if we explicitly reached out, but there was

1 communication that was done to make sure that e-mails that we  
2 had access to and jurisdiction over were also complying with  
3 the rules, even though we were not subject to the -- how the  
4 government was dealing with it.

5 Q So the Bush-Cheney campaign, did they receive a  
6 direct request from Fitzgerald investigators?

7 A I don't recall. And, again, this is the third  
8 level of knowledge. We may have reached out on our own and  
9 said, How should we handle this?

10 Q Reached out to the White House, or reached out to  
11 the investigators?

12 A Investigators.

13 Q And how did you become aware that Mr. Gonzalez had  
14 issued a request?

15 A Because it was reported on the news. It was a big  
16 story.

17 Q And that is how you became aware?

18 A Mm-hmm.

19 Q And were there any discussions about the issue of  
20 preservation of Bush-Cheney e-mails, e-mails on the  
21 Bush-Cheney e-mail accounts between Bush-Cheney campaign  
22 officials and the White House?

23 A No. There were some things that we preserved for a  
24 Presidential library. But the concept of, if you are asking  
25 about the Records Act, that is not a subject that ever came

1 up.

2 Q I am asking whether the White House discussed the  
3 issue of preserving records in response to the leak  
4 investigation with the White House and the Bush-Cheney  
5 campaign --

6 A I don't know the answer. I don't recall the  
7 answer. What I recall instead was that there was discussion  
8 between our folks and folks in Mr. Fitzgerald's office.

9 Q The Bush-Cheney campaign gave the committee a memo  
10 to Bush-Cheney's staff, Bush-Cheney campaign staff regarding  
11 a 30-day deletion policy --

12 A Mm-hmm.

13 Q -- for e-mails that had been established by the  
14 campaign. This is the same policy you talked about earlier,  
15 correct?

16 A Yeah.

17 Q And were you aware of any exemption from this  
18 policy for Mr. Rove or Susan Ralston?

19 A That was the exemption that we talked about just  
20 now.

21 Q What kind of exemption?

22 A In other words, my recollection is that e-mails  
23 that could be seen as responsive to the leak investigation  
24 during the pendency of that investigation were preserved.

25 Q And for what time period were those e-mails?

1           A     Well, certainly they were preserved during the  
2     period -- the Bush-Cheney campaign ended after 2004. So they  
3     were certainly preserved during the whole time that I was  
4     there at the campaign.

5           And then, I don't know if they, after 2005, after Mr.  
6     Rove was not charged with anything and that kind of  
7     investigation ended, I am not certain then if they were  
8     deleted or how it was dealt with. I just know that when I  
9     was there and we were there, we had a system to make sure we  
10    were complying.

11          Q     Now, the RNC told committee staff that it  
12    occasionally puts holds --

13          A     Right.

14          Q     -- on its 30-day deletion policy.

15          A     For similar reasons.

16          Q     And while you were at the RNC, were there any  
17    such holds placed --

18          A     What I recall is that a similar hold was placed on  
19    Mr. Rove's e-mails. There was a -- I put a hold on some of  
20    my e-mails for a period --

21          Q     For what period did you hold your e-mails?

22          A     -- during the same leak investigation. I was  
23    not -- I -- since I had been at the White House for a month  
24    at the beginning of it, I thought that was the smarter thing  
25    to do, and --

1           Q     So -- I am sorry, you are talking about when you  
2 were RNC Chair --

3           A     When I was --

4           Q     -- you put a hold on your e-mails from when you  
5 were at the White House?

6           A     What I was saying was that any e-mails that I had,  
7 the RNC had of mine that could be relevant to the leak  
8 investigation, that they had during the period I was RNC  
9 chairman, I put a hold on. I recall them putting a hold on  
10 those, too, since I had been at the White House at the very  
11 beginning when the whole leak thing began. And I had  
12 voluntarily, as a witness, answered questions to -- not Mr.  
13 Fitzgerald, but one of his deputies. And so I thought it  
14 would also be smart, and my counsel agreed, to preserve some  
15 of my e-mails for a period as well.

16          Q     And during what period of time was the hold policy  
17 placed with respect to Mr. Rove?

18          A     I am assuming it was the same period, during the  
19 pendency of the investigation.

20          Q     So there was a hold on his e-mails from when Mr.  
21 Fitzgerald commenced his investigation throughout the  
22 whole --

23          A     Well, remember, I wasn't at RNC then. The  
24 Bush-Cheney campaign e-mail period, from the period of Mr.  
25 Gonzalez announcing his policy at the White House, we talked

1 to the investigators and came up with a similar policy, is  
2 what I recall, for the campaign.

3 Then I went to the RNC, and we had a similar policy for  
4 Mr. Rove's political e-mails there, ensuring we were  
5 complying with the investigation.

6 Q Was that policy already in place when you arrived  
7 at the RNC?

8 MR. ROSS: Excuse me.

9 [Discussion off the record.]

10 MR. ROSS: Sorry. I didn't mean to -- what was your  
11 question? I am sorry. Sorry about that.

12 MR. CASTOR: I would like to note for the record we've  
13 been here an hour and 15 minutes. Maybe it makes sense to  
14 ask the witness if he wants to stretch his legs; and it maybe  
15 makes sense for the two staffs to caucus to find out how much  
16 longer we are going to be going for this round.

17 MS. AMERLING: We probably have about 10 or 15 minutes  
18 more questions. So if you would like to stretch your legs,  
19 you are welcome to, but there would probably be a breaking  
20 point in about 10 or 15 minutes.

21 MR. ROSS: Why don't we go for the 10 minutes and see  
22 where we are?

23 BY MS. AMERLING:

24 Q Was the hold policy for Mr. Rove's e-mails in place  
25 when you arrived at the RNC?

1           A     I am not certain the answer to that question,  
2     because I am not certain of the interplay between the  
3     campaign e-mails and the RNC e-mails, in other words, how  
4     that went back and forth. I just don't know the answer to  
5     that question.

6           I know they had them in both places. I know that  
7     counsel drafted them in both places. I am not aware of all  
8     the specifics of how they did it; I just knew they were in  
9     place. And when -- what happened when the two were put in  
10    place is not something I am specifically aware of. I know,  
11    as I said, I was briefed that they were in place. And my  
12    experience with my counsel is, when he tells you it is in  
13    place, you can bank it.

14          Q     But you were briefed when you first came on --

15          A     Mm-hmm.

16          Q     -- that there was an issue relating to the  
17    preservation of Mr. Rove's e-mails?

18          A     Yes.

19          Q     And at that time, you wanted a complete  
20    understanding of what policies were in place?

21          A     I wanted to know that there was a system in place  
22    to preserve it that was appropriate to the rules. And I was  
23    told there was. I was not --

24          Q     But you don't recall how long that system had been  
25    in place, or whether that system was in place when you came

1 on?

2 A No. And the complete understanding is not  
3 something I would have wanted because, again, that is not --  
4 I think that is something that the counsel -- I trust people  
5 who -- you hire good people and they do their jobs; you don't  
6 get in the weeds.

7 Q Was there a hold policy in place for any other  
8 White House staff than Mr. Rove with respect to RNC e-mails,  
9 e-mails sent to RNC accounts?

10 A I am not aware of that answer to that question. I  
11 don't know the answer.

12 Q And you said that you placed a hold on your own  
13 e-mails?

14 A Yes.

15 Q And those e-mails were e-mails you sent as RNC  
16 Chair, not as White House political director?

17 A Right.

18 Q And were there e-mails that you placed on hold with  
19 respect to your own account as RNC Chair that were relevant  
20 to the leak investigation?

21 A That is what I recall, yes. When I say I put it  
22 on -- the counsel's policy, they thought and I agreed, should  
23 also apply to me, given the fact that I had been called as a  
24 fact witness before some of the folks investigating the leak  
25 issue.

1 Q And were those e-mails provided to the  
2 investigators?

3 A I don't know what they did with them. I know that  
4 there was active discussion between my lawyer and the  
5 investigators. But what they did with them, I don't know the  
6 answer to.

7 I know we were very careful to make sure everything we  
8 did and said was entirely consistent with what the counsel  
9 thought would be appropriate.

10 Q And which RNC counsel is responsible for making  
11 these decisions?

12 A Well, there were two people involved. One is Tom  
13 Josefiak, who was the White House counsel. I also had --  
14 Henry DePippo was a lawyer that I had that represented both  
15 me and also helped represented the Bush campaign with respect  
16 to this leak investigation issue. So he also was consulted  
17 to make sure we were consistent.

18 Q You said you had no knowledge regarding whether the  
19 RNC received a document request directly from Mr.  
20 Fitzgerald's office?

21 A I don't know the answer to that, yeah.

22 Q Did the RNC ever receive a preservation request  
23 from Mr. Fitzgerald?

24 A I don't know the answer to that.

25 Q And did the RNC ever receive a preservation request

1 from the White House?

2 A I don't know the answer to that question. I simply  
3 know that there were systems and policies put in place that  
4 were, in the view of our counsel, who's cautious and  
5 conservative, adequate.

6 Q Do you know whether the White House and RNC  
7 discussed the preservation of e-mails?

8 A I don't.

9 Q If you'd permit, our staff would like to ask a  
10 question or two to complete the round.

11 EXAMINATION

12 BY MR. BARNETT:

13 Q In our investigation, and maybe we're looking at it  
14 with hindsight, but we look and see there's a lot of e-mails  
15 sent that are missing, that were sent by people while you  
16 were at the White House. Your e-mails, there is no record of  
17 those.

18 Mr. Rove, who's obviously had a central role, they are  
19 preserved later on maybe as a result of some of these hold  
20 policies. And so in hindsight you look and say, well, those  
21 probably should have been preserved because they could have  
22 involved official records. Would you agree with that?

23 A I don't know that -- I think it depends on the  
24 specific e-mail and the context of the e-mail. And, as I  
25 said, the thing that we were dealing with, at least at the

1 beginning, which is always the most challenging time in  
2 setting up any office, was what was described to me as the  
3 kind of interplay between a desire not to have the official  
4 taxpayer funding for an office that is political in nature.

5 And so how do you deal with that with respect to  
6 equipment and all that? It is kind of a hybrid office.

7 And then also the fact that there are these exemptions  
8 to the Presidential Records Act. So we were kind of dealing  
9 with two different systems, both of which had, in some cases,  
10 contradictory or competing goals. And that was what we were  
11 trying to wrestle with.

12 Q In the case of a leak investigation, when you were  
13 at the RNC and dealing with this issue, you came to the  
14 judgment that some of those e-mails could have involved the  
15 leak. The leak investigation didn't involve political --  
16 those weren't any kind of political e-mails?

17 A They could have been. I mean, my impression -- my  
18 approach to this stuff is, be extra careful. And so as soon  
19 as Al Gonzalez announced his policy, we thought, the  
20 campaign, that we wanted to make sure we were being  
21 consistent and compliant with the policy, even though it  
22 didn't cover us. And that's why someone reached out to  
23 someone in Mr. Fitzgerald's office and they made sure we were  
24 handling it in an appropriate way.

25 And now I don't remember if it was a document request,

1 but I remember there was that outreach.

2 Q The perception that I have has been there wasn't  
3 anyone really to put the pieces -- was there anyone to put  
4 the pieces together here? That there was a lot of use of  
5 these RNC e-mail accounts from people in the RNC. They may  
6 not know how they are being used at the White House; the  
7 people at the White House, they may not know about the  
8 destruction policy and assumed they are being preserved.

9 When Susan Ralston talked to us, she said she had that  
10 assumption. You were kind of in a position to put the pieces  
11 together. Is it fair to look and say, why didn't you put the  
12 pieces together?

13 A Well, I think that my approach again was based on  
14 two things. One was my understanding of the two rules and  
15 the legal system, the regimes under the two laws, and also,  
16 my experience up here. And the hybrid nature of a lot of  
17 both parties' staffs up here was you have people that up on  
18 the Hill have political BlackBerrys, or cell phones, and  
19 official.

20 And so based on those two and based on my understanding,  
21 what I recall from counsel, my impression was that the  
22 approach that we took was one that was consistent with the  
23 law.

24 Q You I think you said like you used your RNC  
25 BlackBerry maybe 60 percent of the time, and 80 percent of

1 your e-mails were official e-mails?

2 A No. No. No. What I said is, assuming the  
3 definitions we agreed to, I am assuming 80 percent of the  
4 e-mails from both places were political, and that if you add  
5 up all the times that e-mails were used between the  
6 BlackBerry and the laptop, 60 percent were those opposed to  
7 the use of the who.eop.gov e-mail.

8 Q I see. So 60 percent of your e-mails --

9 A Were political.

10 MR. ROSS: Were on either the BlackBerry or the laptop?

11 MR. MEHLMAN: Right. And 80 percent of the overall  
12 e-mails were political in nature, including some that were on  
13 the who.eop, which I would hit "don't save," pursuant to the  
14 instructions we received about how to do that.

15 BY MS. AMERLING:

16 Q To follow up on that, the committee requested from  
17 the RNC a number of e-mails sent or received by you while you  
18 were at the White House. And the answer we got back was that  
19 none of your e-mails had been preserved, they had been  
20 destroyed.

21 A Okay.

22 Q So would you concede this was a violation of the  
23 Presidential Records Act?

24 A No, not at all. Because my understanding of the  
25 Presidential Records Act is that it doesn't apply to

1 political or to reelection activities. So it would not be a  
2 violation of the Presidential Records Act.

3 Q You said you used your RNC BlackBerry on a daily  
4 basis?

5 A Yeah.

6 Q And sometimes for official business?

7 A Right.

8 Q So since none of these e-mails that were official  
9 business were preserved, isn't this a violation of the  
10 Presidential Records Act?

11 A No. I would not agree that it is a violation for  
12 two reasons. Number one, there were certainly occasions  
13 where I would send an e-mail from my RNC e-mail and print it  
14 out and mark it for preservation, A. And, B, my  
15 understanding, again, of the Presidential Records Act is that  
16 there is a clear exemption for both political, which can  
17 include some official, and also an exemption for reelection.

18 Q Okay.

19 MS. AMERLING: I have no further questions at this  
20 point.

21 [Recess.]

22 EXAMINATION

23 BY MR. CASTOR:

24 Q Thanks for coming back.

25 A Sure.

1           Q     I do want to acknowledge your time here today. The  
2 committee's asked you to appear voluntarily to answer our  
3 questions. You have agreed to that. You have also agreed to  
4 return later in the month, as I understand it, to talk about  
5 other topics.

6           It would seem fair to me that the committee should have  
7 an interest in talking to a witness like yourself, that to  
8 sort of combine all the topics into one day. So I am a  
9 little bit wondering why we couldn't have just waited a  
10 couple weeks and had you in and minimized the disruption to  
11 your schedule and the other aspects of you living your life  
12 as not a public official?

13          A     Right.

14          Q     But, nevertheless, thanks for being here.

15                We have had some dialogue this morning about political  
16 versus official duties. Isn't it fair to say that when it  
17 comes to the President's political advisers, the  
18 determination of whether any given topic or communication is  
19 political or official is not a digital one or a zero  
20 question?

21          A     That is correct. Absolutely. And within the  
22 concept of political, obviously there are distinctions as  
23 well, which is, as you know, very much a part of the law.  
24 And so whether you are talking about fund-raising or you are  
25 talking about who pays for things, there is official, there

1 is political, and then within the political there is  
2 political-electoral and there are political issues.

3 And it is interesting, you are right, it is not a one or  
4 a zero. And one of the bases for how I thought about it was,  
5 frankly, from my experience up here.

6 Q During the previous administration there was some,  
7 I guess during the fund-raising questions that were raised  
8 with the Clinton administration, there was an opportunity for  
9 the press to reflect. And there were comments in at least  
10 the New York Times article in March of '97 that there were  
11 questions, when President Carter was in the White House,  
12 whether he had solicited campaign donations, where  
13 specifically it was in the White House.

14 The New York Times discussed that counsel for the first  
15 President Bush, C. Boyden Gray, sent a memorandum to White  
16 House staff trying to help them understand at the time, in  
17 late 1991, the best way to sort of sort these questions out.

18 And so, is it fair to say that coming into the White  
19 House in January 2001, the White House Counsel's Office and  
20 officials like yourself in the Office of Political Affairs  
21 sort of had to figure out the rules of the road?

22 A We did. And it was particularly challenging for a  
23 hybrid kind of office like the Office of Political Affairs,  
24 which obviously is a taxpayer-funded office, but at the same  
25 time is an office that whose job is political affairs. So

1       you absolutely have to spend a lot of time kind of figuring  
2       it out and figuring out the rules, which is why I spent as  
3       much time as I did talking to the folks in the Counsel's  
4       Office and trying to seek their guidance.

5               Q     And so, on one hand, if you had conducted political  
6       business on your official White House account, wouldn't you  
7       have presumed that maybe somebody from the Congress would  
8       come banging down your door alleging Hatch Act violations,  
9       that you are using official resources for political business?

10              A     Well, you know, I was not -- when the system that  
11       we set up was set up, I am not certain that we discussed  
12       Congress as the basis for it. But, rather, it was this  
13       unique hybrid office that you have. And given the fact that  
14       it is our understanding that the Presidential -- it was my  
15       understanding, at least, that the Presidential Records Act  
16       clearly said if it involves the reelection campaign and if it  
17       involves politics, then it is not subject to the Presidential  
18       Records, and that the Hatch Act doesn't apply to the  
19       political office.

20              You really have had rules that have to apply to a very  
21       hybrid kind of office. And that was what they tried to come  
22       up with, an approach to deal with it that.

23              Q     And you said you had discussions with Mr. Kavanaugh  
24       in the White House Counsel's Office. Was it your  
25       understanding that he took a good look at many of these

1 challenges?

2 A Yes.

3 Q And conferred presumably with his supervisors,  
4 whether it was Mr. Flanagan or Mr. Gonzalez, and came up with  
5 a game plan?

6 A It was. And if you would look over the years at  
7 things that people have objected to, my understanding of most  
8 of those things involves more the inappropriate use of  
9 official for political, rather than the issue of -- and  
10 taxpayer-funded for political, rather than the record issue.  
11 So I think their approach they took, consistent with my  
12 understanding of the law, was to say, how do we avoid those  
13 problems, or try to avoid them, which you never can do.

14 Q And was it the practice of your office to err on  
15 the side of an abundance of caution?

16 A Yes.

17 Q And use potentially the political machinery to  
18 conduct a communication that you believed was --

19 A That is part of why, you know, if you had to err,  
20 using political equipment or political machinery for official  
21 is -- in my understanding is -- is not in any way violating  
22 anything and is pretty hard to object to. And so that was  
23 why, if you had to make the -- if you had to err, that was  
24 the side you wanted to err on.

25 Q And is it also fair to say that if you were

1 and what were issues people saw in the broadly defined bucket  
2 of economic issues. So health care might be one; worries  
3 about trade might be one, too.

4 Q Were these types of presentations something you did  
5 on a regular basis to the Cabinet departments, on the  
6 political appointees in the Cabinet departments?

7 A Yes. Yes.

8 Q And do you remember how many -- for example, did  
9 you go to every Cabinet department?

10 A I do not recall going to every Cabinet department.

11 Q Did you do more like 10 or more like 30? Do you  
12 have a sense --

13 A Over the 2-year period?

14 Q Yeah.

15 A I don't recall the actual number, but -- let me  
16 think. I don't know that it would have been 30. That's a  
17 lot. But it would have been more than 10 I would think. But  
18 again that's conjecture.

19 Q And when you went to the Cabinet departments to  
20 talk with their political appointees --

21 A Yes.

22 Q -- did you pull together what you consider were the  
23 right slides for the particular group?

24 A Typical approach we would take would be to pull  
25 together slides to show to the White House Counsel to make

1       sure he was comfortable.

2               Q       And what were the, in your mind, the purposes of  
3 communicating this information to the political appointees?

4               A       Well, when I took the job, some previous political  
5 directors said to me, you know, it's really important to keep  
6 folks in the loop and briefed, and suggested a number of  
7 different things. But I think that the objectives are,  
8 number one, obviously to remind people that we are all one  
9 team and that we all have a common mission. It's easy,  
10 unfortunately, in Washington, whether it's up on the Hill or  
11 in an agency, for people to suddenly forget the big picture.  
12 And that was important to us, number one. Number two, a lot  
13 of these folks were folks who had worked on the first  
14 campaign. They were friends. They viewed themselves as part  
15 of a larger family. And to make them feel connected was  
16 important, particularly because of what happened on 9/11,  
17 which was, in my opinion, the President's ability -- if you  
18 look at previous administrations, the President spent more  
19 time -- you know, 41 got his picture with every schedule C.  
20 This President didn't have the time to do that. And so  
21 making people feel a link to the person they are working for  
22 I thought was an important thing to do. And third, I thought  
23 that they could do their job better, which is to accomplish  
24 the President's agenda and provide more support for the  
25 agenda if they knew where we stood with the agenda. And

1 fourth, because these are political people in many -- in all  
2 occasions, is to make sure that they had an appropriate and  
3 effective way to be politically active.

4 Q And you mentioned, before you went out to an  
5 agency, you ran the slides by the White House Counsel's  
6 Office?

7 A Yes.

8 Q And did the White House Counsel's Office approve  
9 every -- on a slide-by-slide basis?

10 A Yeah. The approach I would take, that I recall  
11 taking, was my assistant or I would take it down there and he  
12 would edit it or change it.

13 Q And if you were going to add some new information,  
14 you would bring him in the loop?

15 A That was the approach we tried to take, yeah.

16 Q And was it your understanding that the lawyers and  
17 the White House Counsel's Office had an understanding of the  
18 Hatch Act?

19 A Yeah. I mean, that's their job.

20 Q And they had the necessary tools to go out and  
21 research what was the right thing for --

22 A Well, and that's why you would show it to them, so  
23 they could be in a place to hopefully talk to the counsel of  
24 the agencies about the presentation.

25 Q Did you know that we have heard -- some of the

1 White House Counsel folks actually communicated with the U.S.  
2 Office of Special Counsel, the Hatch Act --

3 A Yeah.

4 Q -- enforcement group. And they would reach out to  
5 the U.S. Office of Special Counsel, as we have been told, to  
6 get sort of an advisory opinion, are these the types of  
7 slides --

8 A I was not aware of that, but it doesn't surprise  
9 me. I mean, the people at the White House Counsel's Office,  
10 particularly Brett, is a very, very good and cautious lawyer.

11 Q Flipping to the last page dealing with competitive  
12 House districts?

13 A M-hm.

14 Q You know, looking, for example, at the Pennsylvania  
15 seats, Pat Toomey in the Allentown area, Representative  
16 Sherwood, Melissa Hart, you know, communicating to some of  
17 the political appointees some of the relevant seats, is that  
18 an extension of helping people understand the political  
19 landscape?

20 A I think it is.

21 Q And did you ever get into the specifics in the  
22 presentation of these races?

23 A Well, I mean, looking at this presentation, this is  
24 July of 2001, I don't think in these House races we would  
25 have known. I mean, just again, I am reconstructing this,

1 but if you look at these, some of these places are not -- you  
2 know, why is for instance -- some of these are competitive  
3 because you think there is a good chance there is going to be  
4 an open seat. If we have to worry about winning the DeMint  
5 race, we got a lot of problems. And so there the question  
6 was, was DeMint going to run for something else? And that's  
7 part of what I think this appears to be to me. But certainly  
8 communicating what are likely to be the competitive races is  
9 absolutely part of our job.

10 Q Do you ever recall a discussion about the specific  
11 official acts the schedule C's could take to help a  
12 particular candidate?

13 A I don't recall a discussion of the official acts,  
14 no. I recall discussing -- and again, this would not have  
15 been -- I recall in 2002 discussing if you want to get  
16 involved, here is what you can do. And I recall discussing  
17 here are the places and the likely issues and the likely  
18 places, but that's what I recall.

19 Q So it wasn't your pattern or practice to talk to  
20 agency officials about how their official acts can benefit  
21 Republican candidates for Congress?

22 A No, I mean, the approach that we -- we are the  
23 Office of Political Affairs. Am I going to come in here to  
24 say to you, we were not engaged in politics? We were  
25 absolutely engaged in politics. That's our job, as previous

1 offices have been. And I believed our mission was to say to  
2 people, here is how you can be effective, consistent with the  
3 rules. And that's what we tried to do.

4 Q So you don't have any recollection of talking about  
5 the Chip Pickering race and the types of acts that can be  
6 done, official action in the State of Mississippi that might  
7 have an ancillary benefit to reelecting Chip Pickering?

8 A I do not recall that specifically.

9 Q In discussions with the schedule C's and the  
10 political appointees, did you ever make a recommendation that  
11 they ought to be contributing money --

12 A No.

13 Q -- to the election campaigns of competitive --

14 A Absolutely not.

15 Q In giving these sort of presentations, did you ever  
16 get a question from the audience that made you feel a little  
17 bit uncomfortable that maybe they were going over the line?

18 A I don't recall that. I mean, I recall people were  
19 anxious to be involved, and my key was to channel their  
20 energy for good and appropriate activity.

21 Q So if somebody at the Department of Justice, if you  
22 were giving a presentation, hypothetically --

23 A I don't recall a presentation at the Department of  
24 Justice.

25 Q If a schedule C staffer asked you from the

1 audience, you know, what can I do in my official capacity to  
2 help a candidate for election, do you know what you might  
3 have told that person?

4 A I would have -- again, I am speculating -- I would  
5 have said, the first thing you got to do to help that  
6 candidate is talk to your counsel and make sure that anything  
7 that you are thinking about is appropriate. And serving this  
8 President well on the issues in that district that they care  
9 about is the best thing you can do. If you want to get  
10 involved in the partisan politics in terms of the other  
11 stuff, there is a system in place in 2002 that the RNC is  
12 overseeing that starts off with counsel being involved to  
13 make sure it's appropriate.

14 Q And was it your recollection that those types of  
15 provisos were part of your --

16 A Yes. As I recall, one of the lines I used to  
17 always try to use, and I hope I used, and I think I used it  
18 as a matter of course to say was, if you have to choose  
19 between losing and in any way violating the rules, the spirit  
20 or the letter of the rules, lose. And I said that because I  
21 thought it would be dramatic for them to hear the White House  
22 political director advocate losing. But I thought it was  
23 important that they hear it, because I wanted that mind set.  
24 I wanted them to think that way.

25 Q Have you ever heard of the terminology asset

1 deployment?

2 A Yes.

3 Q What does that mean to you?

4 A It means ensuring that you get a sense of the  
5 various assets that the administration has that can help  
6 advance the President's agenda, and also could, in other  
7 cases, help advance his politics, and you would deploy them  
8 in an appropriate way.

9 Q In your tenure at the White House, were there ever  
10 asset deployment meetings?

11 A I don't recall calling them -- what we did a lot of  
12 was asset deployment. So there were many meetings where we  
13 would discuss those issues, but I don't recall a meeting -- I  
14 don't recall an "asset deployment" meeting that we called an  
15 asset deployment meeting. But we were discussing -- maybe a  
16 little bit of a semantic distinction -- we were discussing  
17 deploying assets in an appropriate way often.

18 Q So, in your tenure at the White House, there wasn't  
19 an asset deployment team of White House staffers that worked  
20 specifically on asset deployment?

21 A I don't recall a team that we called asset  
22 deployment. I viewed a lot of what our office did as being  
23 deploying assets on behalf of the administration and making  
24 sure that that was done in an appropriate way. I recall  
25 working with White House liaisons and chiefs of staff. They

1 were part of from a broadly defined asset deployment effort.  
2 But I don't recall people saying, you are on the asset  
3 deployment team. I just recall doing it.

4 Q So you don't remember if there was a team captain  
5 for the asset deployment team?

6 A I do not remember that.

7 Q To what extent did the Office of Political Affairs,  
8 during your tenure, get involved with the travel of the  
9 Cabinet Secretaries?

10 A We would certainly advise places they might  
11 consider going. And if they were doing purely partisan, a  
12 fund raiser, for instance, we would try to encourage them to  
13 think about doing them in certain places.

14 Q And is it fair to say that when a Cabinet Secretary  
15 makes a public appearance, the public appearance could be the  
16 result of the Cabinet Secretary and the agency on its own  
17 determining that --

18 A Absolutely.

19 Q -- the Cabinet Secretary wants to be out promoting  
20 one of their initiatives?

21 A Cabinet Secretary, his or her biggest goal is going  
22 to be to work with members of their committee of jurisdiction  
23 and to do events in those areas.

24 Q And so the Secretary of Transportation, for  
25 example, shows up at a lot of public events to talk about

1 bridge openings --

2 A That's a big part of their job.

3 Q -- new highway initiatives. And do you know  
4 whether the local Congressional delegations would ordinarily  
5 be looped into that type of public event?

6 A My understanding is they would typically be, but  
7 that would be up to the Cabinet Secretary.

8 Q So it wouldn't surprise you if the Secretary of  
9 Transportation was conducting a public grand opening of a  
10 bridge --

11 A I would hope that she, and previously he, would be.

12 Q And that Democrats and Republicans might --

13 A Yeah.

14 Q -- be invited to that public event?

15 A That's right.

16 Q What was your understanding of how all the  
17 different travel appearances were kept track of at the White  
18 House on the White House end of things?

19 A Well, there was -- the folks at the Cabinet  
20 Liaison's Office had a -- one, they would do a report, a  
21 weekly report. What was it called? There was a Cabinet  
22 something -- there is a name for it. I can't think of it.  
23 It was a term of art. There is a Cabinet report that goes to  
24 all the assistants to the President and deputy assistants to  
25 the President that includes what upcoming and outgoing travel

1 is. And they also had some -- had a system, too, that kept  
2 track of it. We would try, because I was -- as part of our  
3 job, we would try to certainly track it as well. My  
4 recollection is that it was never tracked particularly  
5 effectively or efficiently.

6 Q But on the whole, the Office of Political Affairs  
7 and the White House would want to understand where Cabinet  
8 Secretaries were?

9 A Absolutely. And would want to recommend where they  
10 would consider going.

11 Q So if a Member of Congress called someone at the  
12 White House complaining that he or she is not getting enough  
13 attention, the White House would be able to go sort of figure  
14 out, you know, which Cabinet Secretaries had been to their --

15 A They would be able to. That, though, I was very  
16 careful. I mean, I had worked on the Hill for a number of  
17 years. And Nick Calio and I are good friends. And you know,  
18 I would not have wanted Nick getting in the middle of  
19 politics. And so I was very careful of anything we did with  
20 respect to the Hill was stuff that we talked to Nick about.  
21 And I would regularly, you know, I think on a weekly basis go  
22 to Nick's meetings and talk about stuff, and we would try to  
23 be as coordinated as we could be.

24 Q And Mr. Calio was probably on the receiving end, or  
25 his staff, of requests from Members of Congress?

1           A     That was the hope, as opposed to us.

2           Q     Can you send us a Cabinet Secretary to talk about  
3 our Member's specific initiatives?

4           A     Right. Can I ride on Air Force One? Most common  
5 request.

6           Q     And so it's fair to say that a Cabinet Secretary  
7 might show up at a public event because a Member of Congress  
8 asked them to?

9           A     Absolutely. That was a huge part of what they did.  
10 At the same time, would we encourage them to show up at  
11 events in places that were close potentially on issues or on  
12 politics? Yes.

13          Q     And is it also fair to say if the President had a  
14 labor initiative, the White House, whether it's your office  
15 or the Office of Legislative Affairs, might reach out to the  
16 Congressional delegation and ask the Congressmen or women to  
17 attend a public event with the President, talking about the  
18 initiatives?

19          A     Yes.

20          Q     And at that event, there might be a Cabinet  
21 Secretary?

22          A     Absolutely.

23          Q     So, really, there is a very long list of reasons  
24 that a specific Cabinet Secretary would end up sharing a  
25 public event with a Member of Congress?

1           A     Yes.

2           Q     Could be because the Cabinet Secretary of the  
3 agency decided it was a good idea, part of their mission. It  
4 could be because the White House decided that that made a lot  
5 of sense. It could be because the Member of Congress  
6 requested the public event.

7           A     It could be because there was an upcoming vote on,  
8 you know, on the tax cuts, and having the Secretary of the  
9 Treasury or the OMB Director or somebody else in that area  
10 before the vote to do an editorial board made a huge  
11 difference. It could be that you had somebody who was on the  
12 Appropriations Committee of jurisdiction over funding them,  
13 and they wanted to make the appropriators happy. Always  
14 happens. It could be that. It could also be that there was  
15 a competitive race there, and they wanted to be appropriate  
16 in helping.

17           Ms. Amerling. Steve, you have gone for over an hour,  
18 and it's close to 1:00.

19           Mr. Castor. Okay. Great.

20           Ms. Amerling. Are you coming to a point where you could  
21 finish and have some lunch?

22           Mr. Castor. I would like to stop asking questions,  
23 because my hour is up. I think that's a good way to do it.  
24 I will be happy to conclude my round. Thank you. Thank you  
25 for your time.

1           Mr. Mehlman. And thank you for your time.

2           Ms. Amerling. Do you want to take a break for lunch at  
3 this point, or would you like to go into the next round?

4           Mr. Mehlman. I would like a little lunch.

5           Ms. Amerling. Let's go off the record.

6           [Recess.]

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1 [1:37 p.m.]

2 Ms. Sachsman. My name is Susanne Sachsman. I am also  
3 counsel for the committee, the majority staff.

4 Mr. Mehlman. Nice to meet you.

5 EXAMINATION

6 BY MS. SACHSMAN:

7 Q Nice to meet you, too. Right now, I would like to  
8 focus on the Office of Political Affairs' practice of giving  
9 political briefings at Federal agencies.

10 A Okay.

11 Q And you discussed this briefly with Mr. Castor.

12 A Yes.

13 Q What we have learned, many of the briefings  
14 involved PowerPoint slide shows with sections entitled, "The  
15 Political Landscape," and that discussed future elections and  
16 specific candidates for elections. And those are the kinds  
17 of briefings that I want to talk about.

18 A Okay.

19 Q So if you can think about that in that kind of  
20 context. When did the Office of Political Affairs start  
21 giving these presentations?

22 A I don't recall when the first presentation was, but  
23 I recall it being relatively early in the course of the  
24 administration. I saw a document, I think it's Exhibit 3,  
25 indicated we gave them in June of 2001, which is obviously

1       pretty early. So I recall them occurring pretty much in the  
2       -- pretty early in the beginning of the process.

3               Q       And whose idea were they?

4               A       They were a number of folks. I recall being  
5       advised by some folks who in the past had been in the  
6       political office that these kinds of things, these briefings  
7       and regular updates were very important in terms of the  
8       reasons I stated earlier in the interview. And I thought it  
9       was a good idea. Others thought it was a good idea. And I  
10      recall having conversations with folks in the counsel's  
11      office and the chief of staff's office just letting them know  
12      and getting their reaction to it.

13              Q       Who did you discuss it with in the chief of staff's  
14      office?

15              A       I recall generally having a discussion with Andy  
16      Card, and just saying, this is something that makes sense.  
17      And I generally recall him saying, you know, that he thought  
18      it was also a good idea, and both of us thinking it was  
19      important that we talk to counsel about how we structure it.

20              Q       And did you discuss with Mr. Card specifically what  
21      would be appropriate to have as part of the briefing and what  
22      would not?

23              A       I don't recall getting into that with him.

24              Q       Was he aware, to your knowledge, that you were  
25      including information about future elections in these

1 briefings?

2 A I am not aware whether he was or was not aware of  
3 that.

4 Q What about whether you know whether he was aware  
5 about including information about specific candidates?

6 A Again, I am not -- two answers to that. One, you  
7 know, the presentation I have seen here discussed -- what it  
8 appeared to discuss was likely Republican incumbents who were  
9 either going to retire or who were going to have potentially  
10 tough races based on the last election. So I am not certain  
11 that all of the briefings contained the information you are  
12 containing, but I am not certain whether he knew or did not  
13 know that.

14 Q Was that kind of information, likely Republicans  
15 who were going to have tight races --

16 A Yeah.

17 Q -- in upcoming elections, was that standard for  
18 these briefings to Federal agency officials?

19 A Again, different briefings were different, but if  
20 you are asking me, do I think today that's relevant  
21 information, the answer is yes.

22 Q I am asking, at the time that you were giving them,  
23 would that have been a commonplace thing for you to have in  
24 your briefing?

25 A That is my recollection. But, again, you know,

1 just because where a briefing to an agency begins and a  
2 briefing to some our group ends can be, you know -- I may not  
3 remember with perfection whether I gave this group this  
4 briefing or that group that briefing. I want to be careful  
5 in answering it so as not to give you false information.

6 Q But your recollection today is you gave that kind  
7 of information?

8 A Generally, I recall giving that kind of  
9 information, yes.

10 Q In these briefings to agency officials?

11 A In many of these briefings, yes.

12 Q Who did you discuss this with in White House  
13 Counsel's Office?

14 A I recall that Brett Kavanaugh would be the person I  
15 would often talk to about this. And when I did not talk to  
16 him, my assistant would send him briefings.

17 Q Who was your assistant?

18 A Kate Walters -- well, it started off as Jennifer  
19 Oschal for a very short period, and then Kate Walters. Kate  
20 Marinis Walters. She got married that summer.

21 Q I will get back later to your discussions with the  
22 counsel, but did you have discussions about giving these  
23 briefings with Karl Rove?

24 A Yeah.

25 Q And what was the content of those discussions?

1           A     I think we just generally talked about the fact  
2     that I was going -- on days that I was going to give a  
3     briefing, I may have mentioned to him I was going to give a  
4     briefing that day.

5           Q     Was he aware of what was in the content of the  
6     briefings?

7           A     I mean, certainly he didn't look through -- I don't  
8     recall him looking through briefing content, but I may  
9     generally have showed him a briefing or he may have showed me  
10    one of his briefings just because we often got each other's  
11    opinion on things.

12          Q     Do you know whether Karl Rove was aware that you  
13    were giving information about future elections or specific  
14    candidates --

15          A     I do not know that. I don't know the answer to  
16    that. Certainly, as I said, I certainly think he has looked  
17    at briefings I have done, as I have looked at briefings he  
18    has done. But whether what he specifically looked at and  
19    which one, I don't have the answer to.

20          Q     Was there anyone else who was involved in the  
21    initial decision to deliver these briefings?

22          A     Well, obviously, the most important people involved  
23    in those decisions were the relevant people at the Cabinet  
24    Agencies. So depending upon the agency, it would have been  
25    the Cabinet Secretary or the chief of staff or the White

1 House liaison or whoever the individual was. That would be  
2 the most important person.

3 Q And who gave the presentations?

4 A Different presentations were done differently.  
5 Sometimes it would be -- you would be invited to participate  
6 in a preexisting deal that the Cabinet Secretary was doing  
7 where he or she would do -- talk about their agenda and a lot  
8 of things, and you would come in as a guest. In other cases,  
9 as we saw here, the counsel would have been involved. In  
10 other cases, I or Matt Schlapp would have been involved.  
11 Matt was my deputy. In other cases, the White House liaison  
12 or the chief of staff may have spoken.

13 Q But the White House liaison and the chief of staff  
14 didn't give the kind of briefings that I am talking about,  
15 right?

16 A I don't think that they did, but I don't know that  
17 they didn't. I mean, in other words, typically if I came  
18 with them to a political briefing I would do the politics.  
19 But whether they used it on their own or kept it or asked for  
20 it, I don't recall that specifically, and they very well may  
21 have.

22 Q What was the role -- what was your role in terms of  
23 drafting the presentations?

24 A What was my role? I mean, typically what I would  
25 do is, I would identify slides that I wanted to have as part

1 of the presentation. And if they existed, then we would use  
2 them. And if they didn't exist, I would -- we would create  
3 them, and we would then have myself or my assistant, what we  
4 would always try to do is run it by counsel.

5 Q So you actually were the person who was drafting  
6 the presentation?

7 A Well, I would often have others help me draft it.  
8 I would come up with the concept, and then others would, you  
9 know, do the bar charts and all.

10 Q Who else would assist you with drafting?

11 A Sometimes my assistant would do it, sometimes  
12 Adrian Gray, who enjoys doing presentations a lot and is into  
13 the PowerPoint. Sometimes an intern that worked for me,  
14 Michael Napolitano, would help with it. Other times people  
15 who worked in the office would do it. Other times people who  
16 worked in other offices might help.

17 Q Adrian Gray wasn't in OPA, right?

18 A He was not.

19 Q He was the surrogate scheduler?

20 A He was. And he often came to the presentations.

21 Q Why would Adrian Gray come to the presentations?

22 A Because obviously one of the things that he focused  
23 a lot on was surrogate scheduling. And that was a big area  
24 that I tried to encourage. And so the extent to which you  
25 have the person who is -- you work with to do surrogate

1 scheduling there, obviously is useful to that person being  
2 able to do their job.

3 Q You said that you encouraged surrogate scheduling.  
4 Did you encourage surrogate scheduling for campaign events,  
5 political events; or for official events; or both?

6 A Both, as appropriate.

7 Q And by appropriate what do you mean?

8 A I mean that we needed -- obviously, there are  
9 two buckets here. One bucket is official, purely official.  
10 The other -- but then within the official, there are two  
11 issues. One is, who is paying for it? Taxpayers paying for  
12 it, or is the political campaign paying for it? That's issue  
13 one. But then issue two is, is the travel about if it's  
14 official, is it promoting the President's agenda? Is it  
15 highlighting a candidate that's doing things that are  
16 consistent with the President's agenda? Is it on the  
17 political side, is it a fund raiser? All of these are  
18 potential issues. So it is appropriate to make sure that the  
19 right people are paying for it and, based on the pay for  
20 that, the right things are being said.

21 Q And what would be appropriate for official travel  
22 being paid for by the agency that highlighted specific  
23 candidates?

24 A Well, I think it would depend on the rules of the  
25 agency. And each agency has different rules, so that the

1       counsel of the agency would want to work to make sure that,  
2       depending upon that agency rules, and the issue in question,  
3       what issue is being promoted. Is it promoting -- is -- if  
4       it's about education, for instance, is it highlighting  
5       Members of Congress that are very much into the No Child Left  
6       Behind law? If it's promoting the faith-based initiative,  
7       are you going to places where Members of Congress have set up  
8       faith-based councils, where you bring leaders from different  
9       communities in and talk about how the faith-based initiative  
10      can help them -- help poor folks in their communities? If  
11      it's about forest health, that was a big issue. The  
12      President had a proposal, as you may remember, to thin  
13      forests so that forest fires wouldn't have as devastating  
14      long-term effects on forests in the future. Then you might  
15      highlight a Member of Congress that supported that agenda or  
16      a local Forest Service person who had real effectiveness in  
17      utilizing such an approach to preserving the long-term health  
18      of forests. So all of those are potential examples. All of  
19      those would have different rules with respect to them, both  
20      because of the agency and with respect to the program in  
21      question. And so it would be up to the counsel of the agency  
22      to work to make sure that who went out, what they said and  
23      how it was paid for were all done according to the rules.

24           Q     You had a staff, and some of your staff did these  
25      briefings; is that correct?

1           A     I had a staff. I am trying to remember if they did  
2 agency briefings. I think I mostly did them. I and Matt  
3 Schlapp mostly did them. He did some for me, but I don't  
4 know if the other folks in the office did very many. If they  
5 did, it was de minimis. I typically did them or Matt did  
6 them.

7           Q     How did you instruct Mr. Schlapp on what would be  
8 the appropriate content for the briefings?

9           A     Well, I recall that the way we did it often was  
10 that, like me, we would run the briefing by the Counsel's  
11 Office and make sure they were comfortable. And to the  
12 extent to which the briefing had been done before in a  
13 similar agency, then, you know, make sure it was consistent  
14 with what was approved.

15          Q     You discussed sort of a four-part purpose --

16          A     Uh-huh.

17          Q     -- to the briefings with Mr. Castor, and I don't  
18 want to make you repeat it.

19          A     I might get it in the wrong order.

20          Q     Did you ever discuss that purpose with anyone?

21          A     Oh, sure.

22          Q     And who?

23          A     Well, I remember discussing it -- I mean, again,  
24 the concept of the knowledge -- who I think I would have  
25 discussed it with -- I am recreating this -- would have been

1 the counsel, probably the White House liaisons, probably the  
2 chief of staff, sometimes the Cabinet Secretary, probably Mr.  
3 Rove, probably Mr. Card. Again, I am reconstructing this. I  
4 don't recall specific -- I recall -- I don't recall specific  
5 conversations, but I am telling you who I think it would have  
6 made sense for me to have had conversations with.

7 Q I want to call your attention to what's been  
8 previously marked Exhibit 2. It's an e-mail from you to,  
9 what we have from other records, is a long distribution list.

10 A Yes.

11 Q The subject matter is regular political briefings.

12 A Right.

13 Q In the e-mail, you explain you did a briefing at  
14 HHS last week on top races, recent polls, et cetera.

15 A Yeah.

16 Q And you state, because this is a political year,  
17 regular updated information will be important and  
18 interesting.

19 A Yeah.

20 Q Why were you revamping or ramping up your political  
21 briefings to make them more regular during an election year?

22 A Well, because it was an election year, and because  
23 there were, in my judgment, appropriate and important things  
24 that folks at agencies could do to assist during the election  
25 year, and there were also inappropriate things we didn't want

1       them to do. And the goal was to encourage the former and  
2       discourage the latter.

3               Q       What was in the group of appropriate and important  
4       things you wanted to encourage them to do?

5               A       Certainly the extent to which Cabinet Secretaries  
6       and sub-Cabinet are willing to go out and participate in  
7       fundraisers is an appropriate thing to do. Certainly the  
8       extent to which -- in some cases. I think there are, some  
9       Cabinet Secretaries, as a matter of custom, don't -- the  
10      Attorney General doesn't. Secretary of State doesn't.  
11      Secretary of Defense doesn't -- first.

12              Second of all, to the extent to which we are talking  
13      about where to choose to announce public policy, the extent  
14      to which a Cabinet Secretary or sub-Cabinet would want to  
15      choose a place where there is a competitive race or a Member  
16      that cares about an issue, that's appropriate to do. And  
17      that would be an appropriate thing they could do. Third, an  
18      employee of an agency, in many cases, if he or she wanted to,  
19      could volunteer and help out in a campaign by taking time  
20      off. And we wanted to encourage that in a way that was  
21      useful to the campaign and legal and appropriate. That was  
22      something that they could do. And finally, and critically  
23      importantly, good policy is good politics. And things that  
24      they could do on issues that were likely to be important to  
25      voters that were good policy I thought would have a good

1 ancillary political benefit in many cases.

2 Q And did you discuss these four groups of  
3 appropriate important things that they could do to help out  
4 during these political briefings?

5 A Again, I am not -- I don't see a presentation in  
6 front of me. But those would be the kinds of things you  
7 would discuss, what you can do. But more broadly, giving  
8 them the lay of the land.

9 Q And what would be inappropriate?

10 A Well, I think that, again, depending on -- each  
11 program is different, but in many programs, deciding that a  
12 grant should be awarded to a particular grantee in one place  
13 versus another place, or to one applicant versus another  
14 applicant because of politics, that could be inappropriate.  
15 Not announcing the grant, awarding the grant. There are some  
16 cases where that's not appropriate based upon the underlying  
17 legislation pursuant to which the grant is provided. That  
18 could be an example of something inappropriate. Certainly I  
19 would not want to see a government employee sitting at his or  
20 her computer or his or her office sitting in an office  
21 soliciting money. That would be inappropriate. I would not  
22 want to see people in an agency encouraging their -- the  
23 solicitation of money among their colleagues. That would be  
24 something I would have a problem with. I think some young  
25 person who tries to be a hot dog and help out in the

1 campaign, quote-unquote help out, that would not be  
2 appropriate. As a guy that has managed a lot of campaigns,  
3 friendly people that want to show how important they are and  
4 helpful they are, are often a bigger problem than your  
5 opponent. And so to have a system in place that gives them a  
6 way to legally and appropriately help you out I thought was  
7 very, very, important.

8 Q And why was it important to have I guess more of  
9 these in an election year specifically?

10 A Because people -- one, obviously there is an  
11 election coming up, and so those issues become more  
12 important. Two, people are more likely to want to get  
13 involved in things. And so for both those reasons -- again,  
14 there is more good you can do in an election year, and there  
15 is more bad you can do in election year, and so to encourage  
16 the good and discourage the bad at a time when people are  
17 thinking more about politics I thought was a good and  
18 important thing to do.

19 Q You said those issues were more likely to come up.  
20 What issues are you talking about?

21 A Well, all the things we just talked about. In  
22 other words, the ability, the importance of helping out, do  
23 an event, make an announcement, participate in the campaign,  
24 all those things become more relevant in an election year  
25 than a non-election year.

1           Q     Okay. Do you recall whether you had any  
2           conversations with Karl Rove specifically about sort of  
3           ramping up these briefings to have them regularly?

4           A     I don't recall a specific conversation, but I  
5           certainly think that it would have been consistent with how I  
6           did things that I would have said to him, hey, we are going  
7           to ramp this stuff up?

8           Q     And what about Matt Schlapp?

9           A     We would have talked about it a lot, sure.

10          Q     What would you have done as I guess follow-up after  
11          sending this e-mail?

12          A     Well, I think that -- again with this e-mail you  
13          said you have a long distribution list. It looks to me like  
14          it's probably something that went to -- it went to Ed Ingle  
15          at the Cabinet Affairs, and it probably went on a BCC basis  
16          to all the different agencies. Because if you CC, then they  
17          all respond to each other and you have these awful, you know,  
18          e-mails. And Kate, my assistant at the time, would have  
19          worked on doing some scheduling. But I thought it was  
20          important to make sure that as we start these things, we  
21          frame it the right way, which is starting with, here are the  
22          rules of the game, to think about this.

23          Q     In the e-mail, you discuss that -- you state. We  
24          want to discuss targets, how people can help, our plan for  
25          coordinated activities, and most importantly, what's

1 appropriate and legal.

2 A Yes.

3 Q What did you mean when you said we want to discuss  
4 targets?

5 A We wanted to discuss the races, the places -- A,  
6 the races that are likely to be the closest; B, the races  
7 where help is most important and needed; and C, the places  
8 where different public policy issues were likely to have  
9 resonance with people, and therefore with voters.

10 Q And what would be the importance of discussing the  
11 upcoming close races with these agency officials?

12 A Well, one importance is if -- again, the inherent  
13 predisposition of a cabinet secretary is to go do fundraisers  
14 only on their committee of jurisdiction's districts. And the  
15 extent to which we can encourage a Cabinet Secretary to also  
16 do a fundraiser or make an announcement in another  
17 competitive race would be something that we would want to  
18 encourage. And that would be an example of something that's  
19 important. An individual in a race -- it is not dissimilar  
20 to what Mr. Van Hollen does with respect to Frontline, where  
21 you are trying to highlight to people here are the places  
22 where help can make the most difference. Did I get Frontline  
23 right? Isn't it Frontline?

24 Mr. Ross. Yeah.

25 BY MS. SACHSMAN:

1           Q     Why would you be briefing I guess all of the  
2           schedule C's about those targets?  What would be the  
3           importance of all of the schedule C's?

4           A     Well, I am a big believer that it is incredibly  
5           disheartening to go in and say, you know, as long as you are  
6           legal and appropriate to be in a hearing, to say below a  
7           certain level we are not going to include you in this  
8           briefing, I don't think is a right thing to do.  And schedule  
9           C's can do lots of appropriate things to help out in the  
10          campaign on their voluntary time.  They can help think about  
11          things they can do that are official and political.  And you  
12          wanted them to be part of it, too.

13                   [1:59 p.m.]

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1       RPTS JURA

2       DCMN MAYER

3                   BY MS. SACHSMAN:

4           Q       What did you mean when you said you wanted to  
5 discuss our plan for coordinated activities?

6           A       I wanted to discuss how we would work together to  
7 make sure that folks were being held -- to the extent that  
8 people had time, they were able to be helpful where it was  
9 going to be most useful, and what was appropriate and what  
10 was legal. That was all part of it.

11          Q       And EMO Office states that agency general counsels  
12 would be invited to the White House, to have meetings with  
13 White House counsel to go over the ground rules. Who are the  
14 White House counsel involved in that meeting?

15          A       I don't remember that particular meeting.  
16 Obviously, Brett Kavanaugh would have been the one, but I  
17 just don't remember the specifics.

18          Q       Do you recall whether that was the only meeting or  
19 whether there were more meetings?

20          A       I don't know the answer to that. I know there was  
21 regular coordination, but I don't remember about the meeting  
22 part of it.

23          Q       What was the content of the advice that was given  
24 by White House counsel to agency counsel?

25          A       I was not there. I don't recall being there that

1 day for that particular meeting, so I can't answer that  
2 question.

3 Q Did you ever give advice to agencies about what  
4 would or would not be appropriate activities for them to do?

5 A My advice was, talk to counsel.

6 Q Counsel at the agency, or counsel at the White  
7 House?

8 A Talk to counsel at the agency. And I also would  
9 very often alert White House counsel to make sure that they  
10 were in the loop as well.

11 Q Did you think it was important to have counsel at  
12 the agency involved in discussions about what agency  
13 officials should and should not be doing in terms of  
14 electoral --

15 A Yes.

16 Q -- issues?

17 A Yeah.

18 Q And why would that be important?

19 A Because different agencies have different rules and  
20 mandates with respect to what they can and can't do. And we  
21 would want to make sure that it was appropriate for what they  
22 wanted to do.

23 Q Is there some danger of them not being involved and  
24 consulted?

25 A Again, I think that every agency is different. And

1 I think that the key is to make sure you have a system in  
2 place, whereby either White House counsel's talking to them  
3 or their chief of staffs talk to them, or they are in  
4 briefings.

5 Q Would this kind of consultation between White House  
6 counsel and agency counsel over these ground rules be  
7 something that you thought was appropriate and important to  
8 continue on throughout the administration?

9 A I mean, I can only speak to when I was there.  
10 Again, I tend to -- I think, just by nature and by training,  
11 I am -- if the goal line is at 50, I want to be at 30. You  
12 know, I am pretty careful and I tend -- as a lawyer, I like  
13 having lawyers around who are expert in the particular area.  
14 I may tend to over-lawyer things, but that is how I do  
15 things.

16 Q You mentioned that -- well, when the White House  
17 counsel reviewed specific slide show presentations of yours,  
18 you have stated that they edited them.

19 A Mm-hmm.

20 Q Do you recall how they edited them?

21 A No. I just recall that they would -- I recall  
22 often I would go in and say, tear it apart. I wanted them  
23 edited. I wanted -- I like people paying active attention to  
24 what I am doing when I am talking, and I would have wanted  
25 them to spend real time thinking about it.

1           Q     Do you recall whether they provided you any advice  
2 about where they should be given or when they should be  
3 given?

4           A     Well, what I recall, as a matter of course what we  
5 would often do is, my assistant or I would often explain the  
6 nature of the invitation, and they would look at it and  
7 consider it in that context.

8           Q     Did they have any standard advice about where or  
9 when they should be given?

10          A     No. Because each thing was different. Each agency  
11 is different, each presentation is different.

12          Q     Do you recall any specific instance when they gave  
13 you guidance?

14          A     I don't recall -- again, this is -- you are talking  
15 about a long pretty far time ago. I don't recall specific  
16 guidance they provided. I just recall providing it to them,  
17 and them editing and making changes and all that. Which, by  
18 the way, continued.

19                When I was at the RNC, I would often -- I would send my  
20 presentations often to counsel for them to look at, too.  
21 Which was not even agency briefings, just I like lawyers to  
22 look at things.

23          Q     Did they ever give you any guidance in writing?

24          A     I don't recall. They may have. I don't recall the  
25 answer to that.

1           Q     When you were giving these briefings, would you  
2 consider that to be part of your official activities?

3           A     Yes.

4           Q     And the people who attended the briefings, would  
5 you consider that to be part of their official activities?

6           A     I think it depends on the individual and it depends  
7 on the agency and what the rules with respect to that  
8 individual were. Which is why the invitations would go out  
9 from the agency chief of staff or liaison as opposed to  
10 coming out from us.

11          Q     So there was a distinction between who sent out the  
12 invitation?

13          A     My understanding was that the way that this worked  
14 would be, we would say, we'll do a briefing; and then they  
15 figured out who they wanted to invite based on what the  
16 individuals that they were inviting, what they were able to  
17 do or not do.

18                 So the question is not who does the inviting, it is who  
19 gets invited, which the agency leadership can make the  
20 judgment about based on what's appropriate or not appropriate  
21 for them to participate in.

22          Q     Did you use a standard presentation?

23          A     I mean, I did Power -- again, it's like a speech  
24 question. You do Power Point, but -- standard is a strong  
25 word. You try to have some common theme to it so you are not

1       rewriting it every time, or else it's a bad use -- you know.  
2       But you change it based on who you are talking to, sure.

3               Q       And could you say how many sort of different  
4       briefings you gave?

5               A       I can't.

6               A       Again, part of what also you are dealing with is the  
7       fact that I also gave briefings to donors and gave briefings  
8       to, sometimes, the Hill and gave briefings to lots of  
9       different people.

10              Q       How are the briefings that you gave to agencies  
11       different than the briefings that you give to donors?

12              A       Often the information was different and what you  
13       talk about was different and what you'd emphasize is  
14       different. But, again, you can't -- when you say agencies,  
15       there were different briefings for different agencies, where  
16       things would be added and removed, and there were different  
17       briefings for donors as well based, on who you were talking  
18       to. If I was talking to donors from California, I would  
19       probably talk more about California and the political  
20       prospects out there than I would other places.

21              Q       Did the agency tell you what sort of message was  
22       appropriate for the audience that it had invited?

23              A       I think that -- and, again, I don't recall the  
24       specific agency conversations. But there would be a general  
25       discussion of what the agency's about, what we should focus

1 on. Then the White House Counsel's Office, my understanding,  
2 often talked to the agency counsel and made sure that they  
3 were comfortable with what was happening. And we would tell  
4 the agency what we were thinking about so that they could  
5 make decisions about who to invite.

6 Q When you spoke with White House counsel, do you  
7 recall them ever raising concerns?

8 A I recall them -- no. I recall them, because if --  
9 if they raised concerns, I would then say, well, then how do  
10 we change it?

11 Q I guess -- do you recall any of the concerns that  
12 they had?

13 A No. I think that the biggest thing I recall them  
14 thinking it was important for me to do was to emphasize the  
15 importance of running it by counsel within the agency. The  
16 importance of importing people to -- telling people to follow  
17 the rules. The importance of saying, you know -- the  
18 importance of being careful around grant decisions.

19 But, again, each agency is different and each employee  
20 in the agency is different. So if you just have a blanket  
21 across-the-board admonition, as a guy that doesn't work in  
22 the agency I think that is dangerous, too, because then one  
23 person at one level could be encouraged to do something that  
24 he or she is not supposed to do, whereas someone at another  
25 level is supposed to do it.

1           So the biggest thing I could say to them was, work with  
2           counsel, work with counsel, work with counsel. Because each  
3           agency is different, each subpart of the agency is different,  
4           and the individual is different based on the level that  
5           they're at.

6           Q     Did White House counsel advise you to conduct a  
7           briefing after work hours?

8           A     I am trying to remember. Briefings were often  
9           during the day, but there were briefings we did after work  
10          hours.

11          Q     I guess, did you do them after work hours for a  
12          reason, or was that just more convenient?

13          A     I can't answer whether it was more scheduling based  
14          or more counsel based. I don't know the answer to that.

15          Q     When you used your, I guess, slide show  
16          presentations, were you generally just discussing what was on  
17          the slide? Or were the slides an outline of your  
18          presentation?

19          A     You were discussing what was on the slides, but the  
20          slides are also an outline. I mean, it's a mixture. I mean,  
21          if all you do is repeat what's on the slides, people pay less  
22          attention in my experience. So you need to add some other  
23          facts that add more color to it.

24          Q     At the time that you were giving a briefing to  
25          specific agency officials, did you know whether those agency

1 officials were there on what they considered to be official  
2 business or political?

3 A Each agency is different. That is the kind of  
4 thing that, again, I don't recall specifically. But that  
5 is -- on the outer level of knowledge, that is the kind of  
6 thing that I recall, generally, is that would have been  
7 opened by someone at the agency who would have said, here's  
8 how this stuff works. Here's -- it's at noon; this is your  
9 lunch today. Or, you know, it is after work. Or, it's  
10 during the day.

11 And they would have made that kind of -- again, for me  
12 as an outsider to say, this counts as this or this counts as  
13 that, I think would have been highly inappropriate. And  
14 because different people in the agencies are under different  
15 rules, that would have been inappropriate.

16 Q If you were not at the time aware of what the rules  
17 were for the specific agency, how are you able to tailor your  
18 presentation so that it was appropriate?

19 A Because we would have discussed up front what was  
20 appropriate to talk about, A.

21 B, it would have been run by White House counsel, who  
22 would have talked to agency counsel.

23 C, before I spoke, others would have talked about that.

24 And D, in some cases they would have said to me, you  
25 know, emphasize this or don't emphasize that. So those are

1 the four different ways.

2 Q Who would have had that conversation to discuss  
3 what was appropriate beforehand? Would that have been you  
4 with the White House liaison, the chief of staff?

5 A I don't recall specifically. But sometimes it  
6 would have been Matt, sometimes it would have been me,  
7 sometimes it would have been White House counsel and their  
8 counsel.

9 Q And who at the agency would have been included in  
10 this discussion?

11 A Again, different times, different people, depending  
12 on the agency and depending on the circumstance.

13 Q Let me call your attention to the specific briefing  
14 that we have. Exhibit 4?

15 A Yes, ma'am.

16 Q And the first page has your name on it, and July  
17 12, 2001, Political Briefings?

18 A Right.

19 Q Our records show that this briefing was given to  
20 White House liaisons and chiefs of staffs from a number of  
21 different agencies at the White House, including DOJ,  
22 Treasury, Commerce, Ed, Energy, EPA, HHS, HUD, Interior,  
23 Labor, State, Department of the Defense, and more; and that  
24 it was given in the Indian Treaty Room.

25 A Mm-hmm.

1           Q     Does that assist you at all in being able to recall  
2 this specific briefing?

3           A     I mean, I did a number of briefings in the Indian  
4 Treaty Room. That makes sense to me. But the specifics of  
5 that day and -- you know, I don't have a better recollection  
6 of --

7           Q     Let's turn to the media markets --

8           A     Okay.

9           Q     -- page. You have got a page here that is entitled  
10 Key Media Markets.

11          A     Yes.

12          Q     What made these media markets key?

13          A     Well, I thought -- and, again, I think that these  
14 media markets are key in part because of the fact that they  
15 are places that were very competitive in the previous  
16 election and in part because these are the places where a lot  
17 of issues we were talking about were going to be most closely  
18 fought.

19                So elections -- again, it gets back to what we were  
20 talking about before with Mr. Castor, the uniqueness of the  
21 2000 election, which is -- that happened since 1960, 40 years  
22 ago -- was that the divisions that you had, the partisan  
23 divisions, were also the issues divisions in the country.

24                Florida was the closest State in the court because,  
25 basically, the left and the right in Florida cancel each

1 other out if you look at the demography of the State. And  
2 unlike in '76 or other close elections where you had  
3 essentially a regional candidate that took advantage of his  
4 or her regional strengths, this election was won where both  
5 politically and from an issues perspective the two sides were  
6 close. So these would be places that were very close both  
7 politically and also very close from a likely issues  
8 perspective.

9 Q These wouldn't be, I guess, the key media markets  
10 where you're likely to get the most press. It sounds like  
11 instead they are more competitive races areas?

12 A Well, it's a combination. It's a combination of  
13 factors. And to be honest with you, you look at some of  
14 these places, you know, the ability to get press is relevant  
15 to some degree. That is something you have to think about.

16 You know, one of the advantages -- and I always would  
17 tell people this -- of going to announce something in a  
18 smaller media market -- you know, if you are doing something  
19 in New York or L.A. or even Philly or Detroit, it's much  
20 harder to get attention than if you do something in another  
21 place. So it's a combination of them.

22 Q How come there are different tiers?

23 A Based on, again, the relative importance and the  
24 relative ability to -- part of that is the relative ability  
25 to cut through media. And New Mexico, Nevada, Arkansas are

1 places that is easier to cut through the media.

2 Q I guess I am still a little confused. What were  
3 these important to?

4 A Both -- and, again, we are reconstructing this, and  
5 that's important as we talk about this.

6 This is not -- I didn't just create this presentation.  
7 This is a 7-year-old presentation or 6-year-old presentation.  
8 So you are asking me today to recall what I was thinking when  
9 this was built. And my thought is, what it looks to me like  
10 is these are places that, A, are most on the razor's edge in  
11 terms of the issues we are debating and discussing in the  
12 country; and B, most on the razor's edge from a political  
13 perspective.

14 Q What was the purpose of showing this slide during  
15 this presentation?

16 A Again, reconstructing today what I think it  
17 probably was, was to say here are the places where, going to  
18 travel, you are likely to get the biggest bang for your buck  
19 in terms of media, in terms of where the President's agenda  
20 needs the most buttressing and where, frankly, we have had  
21 competitive races in the past and things are likely to be  
22 competitive in the future.

23 Q Did you ever discuss with anyone at the White  
24 House -- I guess other than White House counsel, who I assume  
25 you discussed this with -- whether to include this key media

1 market information?

2 A I don't remember if I discussed it or not.

3 Q Let's look at the next page, Competitive House  
4 Districts.

5 A Yes.

6 Q Why did you include this list of competitive races  
7 with names of candidates and districts in the briefing?

8 A Well, first of all, instead of candidates, what  
9 looks to me like what we're talking about is names of sitting  
10 Congressmen or Congresswomen. And I think that, again, this  
11 is designed to focus on a couple things. One is places that  
12 in the past have had very competitive elections. And, second  
13 of all, places where the -- places, in my experience, where  
14 there are competitive elections are places where the  
15 politician is most uncertain as to where he or she will be on  
16 issues, A. And, B, places where you can help in the future  
17 in a way that is appropriate.

18 So it has an issues element to it and a political  
19 element to it.

20 Q And what was the political element?

21 A The political element is places that -- these are  
22 places to think about for help with the fund-raiser if you  
23 need help; for places to think about in an appropriate way to  
24 make announcement and make travel, et cetera.

25 Q By making announcement, what do you mean?

1           A     By announcing, by promoting good public policy,  
2 highlighting a Member of Congress who's in the right place on  
3 a good public policy issue.

4           Q     In these specific areas?

5           A     Yeah.

6           Q     And what about, "making travel" you said?

7           A     Absolutely.

8           Q     What do you mean by that?

9           A     Going to visit in order to, A, help out a Member  
10 with respect to fund-raising. Or, B, going to visit to  
11 highlight a popular or public policy issue that is associated  
12 with that Member or associated with the President.

13          Q     You said previously that you wouldn't include this  
14 kind of future election information in all of your briefings.  
15 Can you give me an example of an audience or situation where  
16 you did not or you would not mention specific candidates?

17          A     Well, I mean, again it depends on just how much  
18 information you are talking about. Certainly, early in 2001  
19 or early in -- early in a cycle where you don't have as many  
20 races locked in, you are less likely to talk about  
21 candidates. That is one example.

22                 You know, you are speaking to an audience about  
23 issues -- if you're speaking to an audience that cares a  
24 great deal about health care, I probably wouldn't have  
25 focused on candidates as much. You want to inform the

1 audience about what's most useful and interesting to them, so  
2 you thought about that, too.

3 Q Was there any action that you wanted the recipients  
4 of the briefings to take?

5 A Depends on who the recipients were. But certainly,  
6 as I indicated, if you are talking about a number of the  
7 briefings, the goal was to find -- to find appropriate ways  
8 they could be helpful in either, A, promoting the President's  
9 agenda, or B, helping people that were political allies in  
10 their elections in appropriate and legal ways.

11 Q Did OPA have a practice of not e-mailing these  
12 briefings out to agency officials?

13 A I don't think so. I think we would often e-mail  
14 them out.

15 Well, actually here's the thing. We sometimes e-mailed  
16 them out. We were -- certainly after the famous disk  
17 incident, I was very paranoid about e-mailing presentations  
18 around.

19 Q And was there information within these briefings  
20 that was private that you would not want publicly exposed?

21 A No. But I received a call after -- the United  
22 States Senators after the famous disk incident, who were not  
23 pleased that they may have been listed on a list of people to  
24 watch because they have problems.

25 Q And the disk incident was when Karl Rove's briefing

1 was made public?

2 A Well, it was when an intern copied a copy of our  
3 presentation onto a public -- onto a computer in a hotel and  
4 left it on the hotel's drive. And somebody else copied it  
5 and took it, and it ended up in the Washington Post.

6 Q When did that occur?

7 A It occurred in the summer of -- it was like the  
8 spring of 2001. It was CNN breaking news for a while.

9 Q Were you involved in any discussions about treating  
10 Department of Justice differently than other agencies?

11 A I recall generally not doing these things at the  
12 Department of Justice, and I recall generally the people I  
13 knew at the Department of Justice and I agreeing we shouldn't  
14 do it.

15 Q And why was that?

16 A My understanding is, it's custom more than anything  
17 else. But customarily the Department of Justice hasn't been  
18 involved in these things. And I think it is good they  
19 haven't been involved in these things.

20 Q Were there any other agencies with similar  
21 restrictions that were excluded?

22 A The Defense Department was excluded from that, my  
23 understanding is. And I think we were careful about how we  
24 handled both Treasury and State. And, also, part of it is  
25 this. You wanted to make sure that the Cabinet Secretary

1 was -- wanted this to happen and was comfortable with this  
2 happening.

3 Q We have seen Department of Justice officials' sort  
4 of discussions about these. And it appears like the  
5 Department of Justice did not have someone come to the  
6 Department of Justice to give a briefing to all their  
7 schedule Cs, but that the Department of Justice White House  
8 liaisons would come to the White House and receive --

9 A Sure.

10 Q -- the same information in these kinds of  
11 briefings. For example, the Department of Justice was at  
12 your July 12, 2001, briefing that we are looking at.

13 A I don't recall the specifics, but that sounds like  
14 exactly the appropriate approach to me.

15 Q Why would that be appropriate?

16 A Because the job of the White House liaison, just as  
17 a senior level official at the agency, is to keep informed of  
18 things and know about things, and make sure that everybody  
19 else in the agency is doing things in an appropriate way.  
20 And I think, just like in a Cabinet meeting, everything is  
21 discussed in front of all the Cabinet Secretaries. It's the  
22 job of the Cabinet official in particular, the Secretary, or  
23 the General in this case, to go back and then decide which  
24 stuff -- how he or she wants to disseminate that information  
25 to the agency.

1           Q     Would it have been your decision to invite the  
2 Department of Justice officials to this kind of a briefing?

3           A     No. Again, based on what we discussed before, my  
4 sense is, it probably would have been a Cabinet affairs  
5 briefing. This was not a Ken Mehlman presentation. Well, it  
6 was. But this was a Cabinet liaison meeting that I was  
7 invited to participate in. So they would have made decisions  
8 about who to invite.

9           Q     Let's turn to travel for a couple minutes. What  
10 were the criteria used for deciding what events to suggest  
11 that an agency had traveled to?

12          A     Well, there was, one, the President's agenda.  
13 There are two different areas to travel. There is the  
14 President's agenda, which is what we spent a lot of time in  
15 2001 and early 2002 focusing on traveling to promoting No  
16 Child Left Behind, promoting the tax cuts, promoting forest  
17 health, promoting discussion of those kinds of issues. So  
18 that would be a big part of what we would spend time on.

19                And then there is also -- and so you decide that based  
20 on where audiences are that are most interested in those  
21 issues.

22                And the second thing you do is you travel to places that  
23 the races, where the need is the greatest and where the  
24 Member of Congress can use the help the most and will take  
25 advantage of the help the most.

1           Q     And would that include -- I understand. I want to  
2 focus on the traveling to the races where the need is the  
3 greatest.

4           A     Yeah.

5           Q     I understand, in part, that includes fund-raising  
6 travel?

7           A     Sure.

8           Q     But would that also include official events with  
9 candidates?

10          A     Yeah. Well, with candidates. Again, my  
11 recollection is, when you are doing official events, the  
12 official event ought to be with the sitting Member. But each  
13 agency is different.

14          Q     And --

15          A     But, yes, it would include those considerations.

16          Q     Did you ever consider as one of the factors for  
17 suggesting these official events with incumbent Members  
18 whether that travel would help the Republican incumbent get  
19 reelected?

20          A     Yes.

21          Q     And why did you think that was appropriate?

22          A     Because I think that that is a big part of what our  
23 job was. Our job was to find appropriate ways to help the  
24 President's agenda and help the President's allies. And as  
25 you know, there is -- highlighting good public policy in

1 places that would help an ally, I thought was entirely  
2 appropriate.

3 Also, our job was to look for equally appropriate ways  
4 that agency personnel could help with purely political  
5 activities, and that included things like fund-raising. And,  
6 in my judgment, doing it in a coordinated way as opposed to a  
7 haphazard way made it less likely to have legal issues, and  
8 more likely that the people who needed the help would get the  
9 help.

10 I mean, often vulnerable incumbents are vulnerable for a  
11 reason. And providing those people with help that they might  
12 not be able to get for themselves was a good and important  
13 thing to do.

14 Q You said that you worked with staff like Adrian  
15 Gray to schedule and coordinate this travel.

16 A Well, to suggest places where -- to simultaneously,  
17 A, suggest places where they might consider traveling; and B,  
18 serve as a point of reference, when you decided to do the  
19 travel, to make sure that folks in our office could be in  
20 touch with the campaigns; to make sure that, A, that the  
21 Cabinet Secretary was wanted; and B, could be useful; and C,  
22 that the Cabinet Secretary would have a decent experience.

23 I mean, this was a huge -- again, this was a big issue.  
24 In every cycle you have people, as I indicated before, who  
25 aren't necessarily equipped to be able to deal with the

1 Cabinet Secretary.

2 Q When you suggested this kind of travel, did you  
3 make a distinction whether you were -- did you make a  
4 distinction whether you were suggesting political travel or  
5 official travel?

6 A Well, the political travel part of it, sure. I  
7 mean, we looked at who needed money and where people could  
8 sell.

9 And, you know, here's the thing. If you asked the  
10 typical candidate, do you want -- they'll have 700 people in  
11 every day of the week, and the events will be all bad and  
12 everyone will be all upset. And, you know, rules get broken  
13 and stuff like that.

14 So what I wanted is a system that said, let's make sure  
15 that the rules are followed, A. And, B, let's make sure we  
16 don't have on the same day the Vice President, the First  
17 Lady, and the Secretary of Commerce all in the same media  
18 market all doing a fund-raiser because the Congressman thinks  
19 that he or she can do all those things. Because my  
20 experience is, it can't be.

21 I will also say we worked closely in this process with  
22 Mr. Davis, who was in command of the NRCC, and also with the  
23 Speaker's Office to make sure that they were part of this  
24 whole loop, to make sure everybody was comfortable.

25 So that was what it was about. It was making sure all

1 those things were happening.

2 Q Did you provide different instructions to your  
3 staff for working on fund-raisers versus working on official  
4 events?

5 A Well, yes. The key with the fund-raiser was, A,  
6 was it appropriate? Which they would -- which the Cabinet  
7 officer and his or her general counsel would make the  
8 determination with respect to; and B, can they handle from a  
9 capacity perspective. And, I mean, you know, you all have  
10 the same thing. There are people that when the President  
11 would go in and do an event, a week before it would look like  
12 it would be a very unsuccessful event and you had to figure  
13 out what to do.

14 And let me also -- the first point I made, which I  
15 wasn't -- I want to just reemphasize this. The key issue is  
16 how it's paid for, in my opinion. And that is why having  
17 counsel of the agency involved was very important and having  
18 them talk among themselves.

19 So what we would say is, here are the places where help  
20 is needed. Here are the places where fund-raising help is  
21 needed. Here are the places where issues are important. And  
22 consistent with this, then it is up to the Cabinet agency to  
23 figure out how to do it, whether to do it, how to pay for it,  
24 et cetera.

25 Q And that is the kind of thing you discussed in

1       these political briefings?

2           A     No. Political briefings are much more big picture  
3       than that. Here are the races, here are the issues in the  
4       races.

5           Two hundred people sitting at the Department of Commerce  
6       don't need to get into -- it would create a mass of people  
7       doing officious and unnecessary and annoying things in the  
8       middle of things. So you wanted to keep -- the briefings  
9       were about informing people about the issues, first; where  
10      the President stands, second; the agenda, third, and some of  
11      the key races, fourth, in many cases. Again, the key races  
12      not always being part of it.

13          What I am talking about is the travel aspect, which is,  
14      how does it work; and working with the NRCC and the Speaker  
15      to make sure that they find it to be a useful thing.

16          Q     In what kind of context would you give these  
17      suggestions? Would you meet with chiefs of staff and heads  
18      of agencies? Would you --

19          A     Different -- sometimes telephone conversations  
20      would occur. Sometimes memos that would go out from Adrian  
21      or other people. Sometimes other things. I mean, it was all  
22      different.

23          MR. ROSS: Let me just -- what is your timing like?

24          [Recess.]

25

1 BY MS. SACHSMAN:

2 Q All right. Back on the record.

3 You stated that you, when you were discussing travel,  
4 would discuss where help was needed?

5 A Yeah.

6 Q How did you determine where help was needed? Did  
7 OPA have its own list?

8 A Usually working with the NRCC. Again, it would  
9 have been unproductive for the NRCC to have one set of focus  
10 areas and the administration to have another one. And I  
11 viewed what we were doing as being complementary to the  
12 Speaker going in and people like that.

13 Q And this would be a list by the NRCC of vulnerable  
14 Republican incumbents?

15 A Vulnerable, and battleground races, and States and  
16 places where they agreed the most help was needed and where  
17 the most help would be effectively used.

18 Q You mentioned that at times you would reach out to  
19 agency officials about travel by memo and by a memo from  
20 Adrian Gray?

21 A Or by just generally, here are some -- I recall,  
22 and I don't -- here are some priorities, here are some areas.  
23 Here are places where your help could be useful.

24 Q In those instances when you reached out by memo, do  
25 you recall if that was to specific agencies or if there was a

1 general memo that went out to a lot of agencies?

2 A No. What I recall is it was usually specific  
3 agencies.

4 Q What specific agencies?

5 A The ones that are appropriate to be having those  
6 kind of discussions with, A; and B, where that -- you know,  
7 sending the Secretary of Agriculture to Detroit probably  
8 makes less sense than the Secretary of Agriculture going to  
9 South Dakota. That kind of thing.

10 Q Specifically, though, I am asking about the memos.  
11 Would you send the memos to a large set of Cabinet agencies  
12 or just to --

13 A Different times.

14 Q -- certain ones?

15 A Again, stepping back. This is the third -- I have  
16 not seen a memo and I don't remember a specific memo. But  
17 what I think -- what I recall generally would have been, you  
18 send something out that talks about the -- to appropriate  
19 agencies, prior areas, A. And, B, sometimes when there are  
20 specific requests for the Cabinet Secretary, you send a memo  
21 that describes the specific request from a particular Member  
22 or district.

23 Q Okay.

24 MS. SACHSMAN: I want to mark this as Exhibit 5.

25 [Mehlman Exhibit No. 5

1                                   Was marked for identification.]

2                   BY MS. SACHSMAN:

3           Q       Exhibit 5 is not a memo that involves you, but I  
4           want to show you the memo from 2006, just to see if what you  
5           were doing was similar, or different in some ways, to get a  
6           little context.

7           MR. ROSS:  This is one of the differences between an  
8           interview and a deposition.  If you would hand us a document  
9           in a deposition starting out by saying, This doesn't involve  
10          you, this would be the point that I would object.

11          MR. MEHLMAN:  But you are not objecting.

12          MR. CASTOR:  I'll listen to the question about why a  
13          memo described as not involving Ken Mehlman is a proper  
14          subject for questioning.

15          MS. SACHSMAN:  Sure.

16          MR. CASTOR:  And just for the record, I would say that  
17          I've sat through a number of depositions and nondeposition  
18          depositions, as we have come to call those transcribed  
19          interviews, and I've still been able to not figure out the  
20          difference, so --

21          MS. SACHSMAN:  Why don't I just ask the question, and we  
22          can move on so we don't waste any more time?

23          MR. MEHLMAN:  Okay.

24                   BY MS. SACHSMAN:

25          Q       This is a memo from October 17 of 2006, from Sara

1 Taylor, who obviously was the head of OPA after you?

2 A Mm-hmm.

3 Q And Mindy McLaughlin who was the surrogate  
4 scheduler after Adrian Gray?

5 A Two after both of us.

6 Q Okay. Who was in between?

7 A I don't know who the surrogate scheduler was.

8 Q Okay. And this was sent to Doug Simon, who is the  
9 White House liaison for ONDCP, and we've seen similar memos  
10 like these sent out in 2006. This memo discusses -- sort of  
11 has a list of suggested events and their status.

12 Is this the kind of memo that you are talking about  
13 Adrian Gray sending out?

14 A I don't recall the specifics of what our memos look  
15 like. So I think this memo looks to me, my opinion is, like  
16 an appropriate memo with respect to official activities, but  
17 I don't recall what our specific memos looked like.

18 MR. ROSS: Is that appropriate or inappropriate?

19 MR. MEHLMAN: Appropriate.

20 MR. ROSS: But, again, I am going to object to sort of  
21 questioning on this memo.

22 This is something the committee has tried to make some  
23 press on. If you are asking about the format, which is a  
24 listing of dates and events to ask whether that helps refresh  
25 any recollection of memos Ken might have done, that is one

1 thing. If you are going to ask him about a memo regarding  
2 Director Walters' travel in 2006, I don't see what the basis  
3 of it would be at the point.

4 MS. SACHSMAN: I am done asking questions. That's all I  
5 was trying to use it for.

6 MR. ROSS: Okay.

7 BY MS. SACHSMAN:

8 Q You briefly discussed sort of that you did -- and  
9 correct me if I am wrong, paraphrasing you -- numerous sort  
10 of asset deployment activities when you were the head of OPA,  
11 but that you didn't recall there being specific asset  
12 deployment meetings. Is that correct?

13 A Right.

14 Q What kinds of asset deployment activities were you  
15 doing?

16 A Well, helping to figure out good places for members  
17 of the Cabinet and sub-Cabinet to go is an example of that,  
18 as far as I'm concerned. Figuring out where the President  
19 and Vice President should travel for political events is an  
20 example of that, both political events to help candidates and  
21 also political events to promote the agenda. Deciding which  
22 members of the -- which -- working with the NRCC to decide  
23 which House candidates ought to be invited to get footage at  
24 the White House, you know, in the -- for campaign ads in the  
25 Rose Garden. Where they walk along the portico is an example

1 of all those, for example.

2 Q Did you do asset deployment activities that  
3 specifically involved Federal agency officials?

4 A Sure. The Cabinet Secretaries.

5 Q And I guess, when you describe asset deployment  
6 activities, did you consider, I guess, the Cabinet  
7 Secretaries to be assets in that?

8 A Yeah. As is the President.

9 I mean, the point is, they are all -- they are all  
10 assets of the administration on behalf of potentially the  
11 education agenda, on behalf of the tax cut agenda, on behalf  
12 of the forest health agenda, on behalf of helping elect  
13 Republican allies. And the key is to intelligently and  
14 legally and appropriately and strategically figure out who  
15 goes where so that you don't have seven people in one place  
16 not following the rules.

17 Q And you had mentioned previously that part of what  
18 you discussed with these White House liaisons at these  
19 briefings was where to make announcements, coordinating  
20 making announcements. Is that correct?

21 A In some cases.

22 Q Why would you involve yourself in coordinating  
23 where to make announcements?

24 A Well, I don't know that I coordinated where to make  
25 announcements. I think what we tried to do is suggest places

1 where either the issues agenda was particularly likely to  
2 resonate with people or there were likely to be competitive  
3 races where allies supported particular issues, and then for  
4 the consideration of the relevant official in the Cabinet.

5 Q Did you suggest to White House liaisons or to  
6 agency heads that announcements be made in conjunction with  
7 incumbent Republicans who were vulnerable?

8 A It depends on who the incumbent Republican was. It  
9 depends on what the issue was. It depends on what the  
10 announcement was.

11 Q Would there have been instances, though, when you  
12 would have done that?

13 A Where we would have said -- announced "X" because  
14 they are vulnerable -- I mean, again I think what we tried to  
15 do was give them as much information as we could about where  
16 issues and where elected officials cared about certain  
17 issues, for them to help, ideally, make prioritization when  
18 they could decide what to announce.

19 Q And was one of the factors in that decision-making  
20 where people were in tight races?

21 A In some cases.

22 Q And why would that have been an appropriate factor?

23 A Because that was a big part of our job.

24 Our job is to figure out where are appropriate and  
25 strategic ways that members of the administration can help

1 advance the President's agenda or help elect allies of the  
2 President. And by our being in a coordinating approach to  
3 some of this and suggesting an approach to some of it, I  
4 thought it was important to avoid, one, legal mistakes, and  
5 two, a waste of resources and time.

6 Q Did you seek advice from White House counsel about  
7 whether it was appropriate for OPA to involve itself in  
8 travel?

9 A Yeah.

10 Q In this way?

11 A Yeah.

12 Q And who did you speak to at White House counsel?

13 A I recall speaking to Brett Kavanaugh about many  
14 aspects of our mission.

15 Q And what was --

16 A And also -- - I didn't mean to interrupt you. I'm  
17 sorry.

18 And similarly, counsel would talk to other counsel at  
19 the agencies as we did our presentations and talked about  
20 things people could do to be helpful.

21 Q And what was the advice that White House counsel  
22 gave to you in terms of what you could suggest in terms of  
23 travel?

24 A Again, each presentation was different. But often  
25 part of my discussion would be: Here's what you can do to be

1 helpful. And they would tell me what you can say, what you  
2 can't say, how you can say it, et cetera.

3 Q So would you discuss with White House counsel every  
4 time before you went out to have a conversation with an  
5 agency head? Or are you talking specifically about  
6 discussing with them before you did the political  
7 presentation?

8 A No. Often what I would do is, before I went and  
9 did the presentations, I would often -- as a matter of  
10 course, I tried to always -- I hope we did it most of the  
11 time -- show it to counsel and make sure they were  
12 comfortable with both the substance of the presentation and  
13 what I planned to say in addition to the presentation.

14 Similarly, they were very much informed about the --  
15 about the activities we were engaged in. And I encouraged  
16 everyone on the staff, whatever they were working on, to make  
17 sure that they ran it by White House counsel.

18 Q What about the subject matter of suggesting where  
19 agency heads should make grant announcements? Did you run  
20 that by White House counsel?

21 MR. ROSS: First of all, I think if you go back in the  
22 record, what you had said before were just "announcements."  
23 You have now inserted the word "grant," which I don't think  
24 you had used before.

25 You may want to separate the questions, because there

1 are lots of announcements that people make that are not grant  
2 related.

3 MS. SACHSMAN: Sure.

4 BY MS. SACHSMAN:

5 Q Did you discuss with White House counsel the  
6 suggestions to agency heads about making announcements?

7 A We discussed all the different -- back to the  
8 knowledge thing. We are reconstructing from 6 years ago.  
9 What I recall is discussing with the White House counsel  
10 nearly all aspects of what I was doing as political director,  
11 what I was discussing with people. And so the answer to that  
12 question, I recall, would have been "yes."

13 Q Do you recall any guidance that they gave you about  
14 suggesting announcements?

15 A I recall that each agency is different and each  
16 program is different. And so that was the approach that we  
17 tried to take. There wasn't a one-size-fits-all, do it this  
18 way. Instead, it was: Be very cautious, be very careful,  
19 constantly talk to the counsel of your agency and make sure  
20 what you are doing is appropriate to the unique circumstance  
21 you find yourself in -- unique circumstance either because of  
22 who you are, where you work, what the agency is, what the  
23 program or question is you are trying to promote, or whether  
24 you are trying to promote a particular candidate.

25 Q And when you made these suggestions about where to

1 make announcements, did you make suggestions about where to  
2 make -- what kind of announcements were you talking about?

3 A Different kinds of announcements. Sometimes it  
4 involved public policy. Sometimes it involved helping to  
5 highlight that a particular candidate is -- or particular  
6 officeholder, excuse me, is good on an issue.

7 And other times it involved other issues.

8 Q Did it ever involve grant announcements?

9 A I don't recall specifically a grant announcement  
10 effort. But I certainly think that it would have been  
11 entirely appropriate if it had. And I wouldn't be surprised  
12 if it had.

13 Q Do you recall what guidance you received, if any,  
14 about coordinating activities with ONDCP specifically?

15 A I don't recall anything with respect to that either  
16 way.

17 MS. SACHSMAN: With that, I think I am done with this  
18 round.

19 MR. MEHLMAN: Thank you for your time.

20 MS. SACHSMAN: Thank you very much.

21 BY MR. CASTOR.

22 Q I wanted to go back a little bit and perhaps  
23 unconfiate something that has been, in my view, conflated?

24 A All right.

25 Q And walk through the distinction between the

1 official business of the agency, the decision-making that  
2 occurs in the various Federal buildings around Washington and  
3 out in the country, and what the Office of Political Affairs  
4 then does with that information once an official governmental  
5 action has been implemented, announced, an intention to  
6 announce, that sort of thing.

7           Isn't it fair to say that the Office of Political  
8 Affairs will monitor the goings on of the Federal agencies?

9           A     Of a number of the Federal agencies, yes.

10          Q     And to the extent there might be an opportunity  
11 after an official governmental decision has been made, if  
12 there is an opportunity for the Office of Political Affairs  
13 to draw attention to that decision, do press on that  
14 decision; that, in effect, is the time when OPA would get in  
15 the mix, so to speak, with announcements and public events?

16          A     That's right. That's right. I also think at the  
17 same time we were a place that decision-makers could come,  
18 particularly decision-makers in the White House policy shop,  
19 to ask what we thought the likely constituencies would be --  
20 what the reactions of those constituencies would be with  
21 respect to public policies we took.

22          And I was particularly, as political director, focused  
23 on making sure our office was an open door to people in both  
24 parties. And if you look -- you talk to some of the folks in  
25 Washington that lead some of the unions, if you look at some

1 of the African-American and Hispanic groups around town, we  
2 were a place that folks, whether you were Democrats or  
3 Republicans, liberals or conservatives, could come, get a  
4 fair hearing, be treated with respect, and a very open-door  
5 policy. And I am very proud of that, and I think that served  
6 policy makers well, and it served the President well.

7 Q And is it fair to say that the type of politicking  
8 was more of a politicking with a small "P", reaching out to  
9 understand the interests of the constituencies?

10 A Yes, it was. Although there was politicking, with  
11 a big "P", that we tried to work with people to make sure  
12 that it was done in an appropriate way. But it was mostly  
13 politicking with a small "p", what I think we are talking  
14 about here.

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1       RPTS JOHNSON

2       DCMN BURRELL

3       [2:56 p.m.]

4           Q     And you know, I look at the distinction perhaps  
5     being -- and maybe you can agree or disagree -- that when you  
6     get into advocating for the election or defeat of a specific  
7     candidate, that's a different type of --

8           A     No question.

9           Q     -- politicking than understanding where different  
10    viewpoints are that the President might need to consider when  
11    implementing his policies?

12          A     No question. And both can be done appropriately by  
13    administration officials. But there are different rules with  
14    respect to both. And making sure people understand those  
15    rules and are accordingly following the rules is critically  
16    important.

17          Q     In terms of a grant announcement --

18          A     Yes.

19          Q     -- once a decision has been made inside an agency  
20    to make a grant, whether a press operation is carried out,  
21    whether that might include a public event or not is something  
22    that might come into play at the agency's press shop?

23          A     Yes.

24          Q     And perhaps the agency's press shop or their White  
25    House liaison might loop in the Office of Political Affairs?

1 A Yeah.

2 Q Is that fair to say?

3 A Yes. I would define that as the small P politics  
4 you were describing.

5 Q Whereas the distinction of the Office of Political  
6 Affairs getting involved on the front end of a grant  
7 decision --

8 A Yes.

9 Q -- on the basis of helping elect a specific  
10 candidate is something that wouldn't ordinarily, if ever,  
11 happen?

12 A I think that is right.

13 Q And when you get into the political presentation  
14 with some of the lists of potentially some of the seats that  
15 might be in play, that information is communicated to the  
16 agencies as more of a larger --

17 A Yes.

18 Q -- political landscape --

19 A Absolutely.

20 Q -- type of discussion?

21 A No question.

22 Q Not for the purposes of helping agency officials  
23 understand where grants ought to be made to?

24 A Right. That's correct.

25 Q These presentations where you talk about the

1 political landscape, the bigger picture to the President's  
2 people essentially, providing that information also helps  
3 these political appointees understand and identify even areas  
4 of the country where they may do appropriate and legal duties  
5 in conjunction with their job?

6 A No question.

7 Q And that is important, too?

8 A Absolutely. Very important.

9 Q You know, for example, the President in 2001-2002  
10 did a lot of travel back and forth to Pennsylvania?

11 A Yes.

12 Q And so there are States that are identified as  
13 target regions for the President to spend a lot of his time  
14 and focus on?

15 A There are. And in some cases, in many cases, if  
16 you stop and you think about Pennsylvania, for instance, they  
17 are at most small P politics, but truly issue related. Think  
18 about it. In the '02 cycle you did not have a competitive --  
19 particularly competitive Governor's race in Pennsylvania.  
20 You did not have a Senate race in Pennsylvania that was  
21 occurring. What you did have, though, that was not even  
22 small P politics, was one, you had a mayor, John Street, who  
23 was a huge proponent of one of the biggest initiatives the  
24 President had, which was the faith-based initiative. You had  
25 in Philadelphia a long history of school reform. And so

1       there was an amenability to that issue, which the President  
2       wanted to talk about. You had a State where the economy was  
3       changing in a significant way and that was hit by the  
4       recession, so the President could talk about the economic  
5       plan, which was a focus. You had a State that had a number  
6       of environmental kind of high-tech programs. I mean if you  
7       remember, we announced our energy initiative at a place on  
8       the Susquehanna River where they were particularly effective  
9       at using the hydro power to drive new power.

10               So think about it, we just talked about energy,  
11       faith-based, education, and economics all being issues that  
12       in Pennsylvania we could promote to audiences that cared  
13       about it, which gets back to my point earlier that what you  
14       had in this unique window from 2000 to 2004 was a weird  
15       confluence between where the top issues were most focused and  
16       the most competitive politically, because you essentially had  
17       in 2000 an equally divided country that was not based on  
18       regions, but was rather instead based on the issues.

19               Q       And is it fair to say communicating the type of  
20       information that you just talked about to some of the  
21       political appointees at the agencies would help them  
22       understand that, hey, if we have an initiative in the  
23       Philadelphia region, and it is in line with something that  
24       Mayor Street's doing, maybe that's an opportunity --

25               A       No question.

1 Q -- to do some press on it?

2 A And an opportunity to promote that stuff and make  
3 that stuff work. And it is based on the notion that in  
4 Washington -- you know, a lot of people are so Washington  
5 focused. If you want the faith-based initiative to work, it  
6 doesn't matter -- obviously, there is communities that matter  
7 in Washington. But where does it matter most? Philadelphia,  
8 Detroit, San Francisco, whatever the city is, and finding  
9 places where there is a susceptibility and amenability to it  
10 helps folks involved in that initiative do their job better,  
11 improve more people's lives, et cetera.

12 Q And I think it's also fair to say that, you know,  
13 ordinarily someone at a schedule C type of level might not  
14 appreciate that there are going to be times when the  
15 interests of John Street, mayor of Philadelphia, and the  
16 interests of the President of the United States are the same.

17 A Very often. Particularly in that case, and in  
18 other cases, too.

19 Q And so it's helpful for those folks to  
20 understand --

21 A No question.

22 Q -- the greater political landscape.

23 A No question.

24 Q And that was in fact part of what the purpose of  
25 your regular -- hopefully regular communications was with

1       some of the agency folks.

2           A     No question.

3           Q     The personnel and staffing of the political  
4 appointees throughout the executive branch, what role did OPA  
5 play while you were there in 2001, 2002?

6           A     Several different roles. One role we played was to  
7 help find people that could serve in the administration.  
8 Remember, we are one of the only offices that is regionally  
9 based. We are unique in our relationships with Governors,  
10 with Senators, with mayors, with State senators, et cetera.  
11 So we have an ability, simply because of our network, to find  
12 the best people that you might not be able to find if you  
13 don't have the regional focus and you are focused in  
14 Washington. That's one aspect.

15           Aspect two is looking at potential political hires and  
16 signing off on them, making sure that from a background  
17 perspective these are people who support the President's  
18 agenda and are supportive of the President. That was  
19 critically important.

20           Third, this is a President that cares terribly about --  
21 and I care terribly about -- diversity. And particularly the  
22 need to find the most talented women and Hispanics and  
23 African Americans was also a big part of it. And if you stop  
24 and think about it, this was the most diverse Cabinet in the  
25 history of the United States. I am very proud of that. And

1 I think we played a small part in the sub-Cabinet part of  
2 helping find people who could help make sure our  
3 administration looked like America.

4 Q And I think it is even fair to say that there are  
5 some Democrats in the Cabinet, Secretary Mineta --

6 A Absolutely.

7 Q -- and others. Director Tenet.

8 A Absolutely. And in the sub-Cabinet level as well.  
9 And we are better because of that. And that is an example of  
10 I thought where we could add real value.

11 Q In going through the ranks of political appointees,  
12 it did make sense from time to time, whether a specific  
13 appointee was up for reappointment to a specific slot --

14 A Oh, yeah.

15 Q -- it would make sense, would it not, to conduct  
16 that very same analysis --

17 A Yes.

18 Q -- with the types of appointees that weren't  
19 already in a position? And if there was a specific  
20 individual that was, you know, on record for being, you know,  
21 a highly partisan Democrat that was not overtly supportive of  
22 the President, that type of political appointee that was  
23 appointed from the previous administration might not be an  
24 ideal fit?

25 A No question.

1 Q So that's fair to say?

2 A No question.

3 Q And it was part of the ordinary process to make  
4 those types of checks and analysis on the folks that were in  
5 these types of positions?

6 A Absolutely.

7 Q And is it fair to say that, you know, if someone  
8 was a self-identified as a Democrat, a Clinton supporter,  
9 that you know, in fact when it was their time if they had a  
10 term position, if that term was up they might logically be  
11 not reappointed?

12 A Yes.

13 Q Is that fair to say? Okay. We talked a little bit  
14 about the White House coffees --

15 A Yes.

16 Q -- and the Lincoln bedroom opportunities in the  
17 previous administration. Were there any other sort of  
18 fund-raising initiatives that maybe had been employed  
19 previously that the President, maybe the Office of Political  
20 Affairs folks, maybe the RNC folks decided that we want to be  
21 very careful not to do?

22 A Well, I mean the biggest was the activity on not  
23 only Federal property -- I mean we would do an event in the  
24 summer for some of the larger donors of the RNC. The  
25 President won't do it on his ranch. There is a neighboring

1 ranch you can rent for events, which is where we do it. And  
2 so he is very cognizant of the need to not even get close to  
3 the line on that, and frankly not have his personal space  
4 invaded by folks for fund-raising purposes. And so there  
5 were a number of -- there was real care given on that issue  
6 and on those issues.

7 Q There was a gentleman named Johnny Chung?

8 A Yes.

9 Q And at one point Mr. Chung was -- had a delegation  
10 that he was interested in bringing to the White House. And  
11 he had announced to the DNC folks that he was interested in a  
12 White House tour, a meeting with Hillary Clinton, the first  
13 lady at the time. Johnny Chung wanted and told the DNC that  
14 he wanted a lunch at the White House mess.

15 A M-hm.

16 Q Johnny Chung told the DNC folks that he also wanted  
17 admission to the taping of one of President Clinton's radio  
18 addresses. And as it turned out, you know, in large part  
19 those different requests were denied. Mr. Chung was -- and  
20 this is all part of an L.A. Times article July 27th, 1997 --  
21 Mr. Chung had some back and forth with the DNC folks, with  
22 some of the First Lady's folks, and as it turned out he  
23 decided to make a contribution of \$50,000.

24 A Yeah.

25 Q He allegedly handed that check to one of the First

1 Lady's staffers --

2 A M-hm.

3 Q -- and subsequent to that handoff of the check a  
4 tour was arranged of the White House. There was an  
5 opportunity for him and his delegation to enjoy the White  
6 House mess.

7 A M-hm.

8 Q They had a one-on-one meeting with the First Lady.  
9 And to go 4 for 4, as they did, they had an opportunity to  
10 join the radio address audience.

11 A M-hm.

12 Q Were you familiar with that story?

13 A I am not familiar with the story, but I can tell  
14 you that he would have been 0 for 4 from this  
15 administration's perspective. We were incredibly careful to  
16 make sure, one, contributions from foreign nationals were not  
17 permitted. Two, my understanding is that in the mess no  
18 foreign nationals can eat. So that's an issue. The thought  
19 of an audience with the First Lady for any political  
20 purposes -- I mean she did fund-raisers, but the thought of a  
21 small audience with her at the White House is -- I won't tell  
22 you where I would be working if I had suggested that, but  
23 Nome, Alaska may be too close. And the radio addresses we  
24 did not have audiences like that for. So I would just tell  
25 you that would not have happened.

1           Q     So to the best of your recollection you don't  
2 recall a contributor being afforded the opportunity to sit in  
3 on a radio address for a contribution?

4           A     Absolutely. Not in a million years. And I will  
5 tell you also that we were particularly -- I mean no one  
6 could raise money or -- every contributor we had a check  
7 system to make sure there was no criminal activity, that they  
8 weren't foreign nationals, et cetera, and were very careful  
9 to make sure in fact that the leadership -- leadership in the  
10 campaign, political leadership and other leadership was  
11 consistent with all the rules. So in addition to not wanting  
12 to be at White House coffees, not wanting the Lincoln  
13 bedroom, we were very cognizant of not wanting foreign  
14 nationals to be raising money or deriving benefits from the  
15 White House or the campaign.

16          Q     Is it also fair to say that there is a legal  
17 component to that analysis as well as --

18          A     Yes.

19          Q     -- an optical component?

20          A     Both. Both were very important.

21          Q     So there might be a decision that hey, this may be  
22 legal, but we don't want to go there because --

23          A     President Reagan, 41st President, President  
24 Clinton, all had I think regularly entertained donors in the  
25 White House and had donor events in the White House. And we

1 did not.

2 Q Mr. Chung also, I would be remiss if I didn't add,  
3 he had a very interesting statement that he told the L.A.  
4 Times. He said, "I see the White House as like a subway.  
5 You have to put in coins to open the gates." That was sort  
6 of the way he saw it.

7 A Yes.

8 Q And to the best of your recollection, do you know  
9 if any of those types of theories were employed --

10 A I certainly hope not.

11 Q I want to just point out this Exhibit 5 that the  
12 committee showed you over the objection of your counsel.  
13 When we initially received this document from ONDCP, we also  
14 asked them, hey, guys, do you have any similar types of lists  
15 that the Drug Czar may have done with other elected  
16 officials? And as it turns out, they have another memo that  
17 they produced, written by a gentleman named Evan McLaughlin  
18 over at ONDCP, that is twice as long and includes events that  
19 the Drug Czar did with John Street talking about fentanyl in  
20 Philadelphia. And so I did want to just enhance the record a  
21 little bit and let you know that a lot of these -- and the  
22 same, by the way, happened with the Department of  
23 Transportation and the Department of Commerce. We reached  
24 out to them and we said, you know, we know the committee has  
25 asked you for events that may have been done with

1       Republicans, but surely the Secretary, Secretary of Commerce  
2       in one example did public events with Democrats, too. And as  
3       it turned out, they were happy to provide a list. And you  
4       know, it is not surprising that the list of public events  
5       with Democrats wasn't as large --

6             A     Right.

7             Q     -- as it was with Republicans, but indeed it was a  
8       list that was substantial enough, more than one or two types  
9       of folks. And so what I wanted to lead into is a lot of the  
10      discussions we have had about the surrogate scheduling  
11      office --

12            A     M-hm.

13            Q     -- and these event lists seem to me not  
14      necessarily -- I mean they are called memos and they are  
15      called suggested events --

16            A     M-hm.

17            Q     -- but isn't it fair to say that, you know, rather  
18      than a memo suggesting event participation, you know, these  
19      types of documents may have just been lists of public events  
20      that the Cabinet Secretaries, the Drug Czar did with elected  
21      officials?

22            Mr. Ross. Again, people can characterize this 2006  
23      document. It is a document that was created long after Ken  
24      left the White House. I don't see how he has any basis to  
25      really comment on that. You know, he has indicated that they

1 did not really have -- during his tenure they didn't have  
2 contact with the Drug Czar on travel. And so I don't see  
3 where he really --

4 A That I recall.

5 Mr. Ross. -- that he recalls, that he has a basis to  
6 really further characterize other than the document speaking  
7 for itself.

8 BY MR. CASTOR:

9 Q Do you have a recollection of whether the Office of  
10 Political Affairs, the surrogate scheduling operation kept  
11 track of where the Cabinet members were going, public  
12 event-wise?

13 A I think that there was an attempt to do that, as I  
14 recall, and as I mentioned earlier, I think that often that  
15 was -- there was an attempt to keep track of it, but at least  
16 at that time the prime tracker was the Cabinet Affairs  
17 Office. And we kind of piggybacked on their information.  
18 But as I recall at the time, the process of tracking was not  
19 very good and the system of tracking was not very good.

20 Q And did yourself or anyone else in your office have  
21 a responsibility for keeping track of this type of --

22 A Well, not in my office, but certainly as the  
23 surrogate scheduler, Adrian Gray tried to keep track of this  
24 stuff.

25 Q But nobody in the Office of Political Affairs was

1 sort of the person in charge of tracking?

2 A There was not a person in charge of tracking, but a  
3 regional director would have been certainly encouraged to  
4 keep track of who has been to his or her region and districts  
5 in his or her region.

6 Q The starting time for the political  
7 presentations --

8 A Uh-huh.

9 Q -- after your tenure at the White House, there was  
10 some e-mail traffic that indicated that White House Counsel  
11 said that it was better to do these at 5 p.m. Just do you  
12 have any recollection of anyone instructing your office  
13 whether this was good to do at lunch or after lunch?

14 A Again at different times, they occurred at  
15 different times. I just remember as a matter of course  
16 talking to counsel and we would follow their leads. They may  
17 have said that on some occasions, but we tried to work with  
18 them to make sure they were comfortable when we were doing it  
19 and what we were doing.

20 Q But it wouldn't surprise you to learn the White  
21 House Counsel told some folks later on in the Office of  
22 Political Affairs that 5 o'clock is a good time to have  
23 these?

24 A It would not surprise me either way.

25 Q The information communicated to the agency

1 officials via the political briefings, is it fair to say that  
2 when you gave these presentations for the large part of the  
3 presentation it was you providing information to the agency  
4 officials?

5 A Yes.

6 Q It was not a roundtable discussion?

7 A Right. We would often do questions and answers at  
8 the end, but it was almost never a roundtable, it was almost  
9 always a presentation.

10 Q And so there wasn't a -- it wasn't ordinary and  
11 customary for the Director of the Office of Political Affairs  
12 or your deputy to engage in these types of political  
13 briefings with the agency officials and have a back and forth  
14 about the types of official acts that they may go away and  
15 pursue?

16 A It was not customary and ordinary for that.

17 Q So the information was communicated to the agency  
18 folks, and they would go away and continue with their  
19 official business focus?

20 A They would. And they sometimes did questions, but  
21 remember, one of the most important things that was  
22 ordinarily and customarily told of them was talk to your  
23 counsel and follow the rules.

24 Q Talk to their counsel, follow the rules, but not  
25 necessarily call the Office of Political Affairs at the White

1 House before you do an official act?

2 A No. No. Again, we were certainly -- before an  
3 official act, no, not at all. Before an announcement of an  
4 official act, the distinction you made earlier, we were a  
5 resource for them to be able to help with respect to  
6 announcements. But we were not a -- we were not -- it was  
7 not at all required. It was if we could be helpful, we tried  
8 to be.

9 Q So the Office of Political Affairs wasn't involved  
10 in the decision-making process for grants and other official  
11 acts --

12 A We were not.

13 Q -- of the agencies?

14 A We were not.

15 Q Is it also fair to say that the Office of Political  
16 Affairs wasn't involved in the decision about whether to  
17 characterize --

18 A That's correct.

19 Q -- a grant as an official act or a campaign  
20 initiative?

21 A That's correct. That would be the job of the  
22 Cabinet Secretary's office, including their counsel.

23 Q And if a Cabinet Secretary was traveling at a  
24 public event to announce a policy initiative or a grant and  
25 then later on in the evening at a fund-raiser there was

1 always a distinction that the official policy-related reasons  
2 for the trip were separate and apart from the campaign, the  
3 raising money --

4 A That's correct.

5 Q -- the advocacy for the election or defeat of a  
6 candidate?

7 A That's correct.

8 Q And again, just to reiterate, the decisions that  
9 were made by the agencies at the agency level on location at  
10 the agencies were not made by folks in the White House Office  
11 of Political Affairs?

12 A Correct.

13 Q You might be helpful in explaining the political  
14 landscape, explaining to the schedule C's the President's  
15 initiatives, giving that background information, but at the  
16 end of that presentation you go back to the White House, they  
17 go about their official business, and the Office of Political  
18 Affairs doesn't have a seat at the table --

19 A Right.

20 Q -- at the various agencies?

21 A That's right.

22 Mr. Ausbrook. If you don't mind, I just have a couple  
23 of quick questions.

24 Mr. Mehlman. Sure.

25

1 BY MR. AUSBROOK:

2 Q Goes back to the e-mail question actually, and  
3 something I neglected to ask. Are you familiar with the mail  
4 to or letter "D" problems in the Office of the Vice President  
5 during the Clinton administration? Or e-mail problems in  
6 collecting and storing e-mails?

7 A No.

8 Q GAO issued a reported in late '99 or 2000, sometime  
9 around then, reflected that the Office of Vice President Gore  
10 had lost thousands of e-mails because of a technical problem.  
11 You are not familiar with that?

12 A No.

13 Q But the disappearance of thousands of e-mails from  
14 the Vice President's office, that would in your judgment be a  
15 problem with the Presidential Records Act as well?

16 A Potentially, absolutely.

17 Mr. Ausbrook. Okay. That's all I want to ask.

18 Ms. Amerling. I have just a handful of follow-up  
19 questions. So I think we could avoid musical chairs. I will  
20 try to speak up and ask them.

21 Mr. Mehlman. No worries.

22 BY MS. AMERLING:

23 Q With respect to the RNC e-mails matter, you talked  
24 a little bit earlier about how you received advice on the use  
25 of e-mail accounts from White House Counsel --

1 A M-hm.

2 Q -- for a briefing or briefings?

3 A Yeah.

4 Q And also through individual conversations?

5 A M-hm.

6 Q Can you describe what advice you got specifically  
7 on the presidential act -- Presidential Records Act  
8 requirements as to preservation of e-mails?

9 A Is this something --

10 Mr. Ross. In terms of the specifics, and we talked  
11 about this before, of the specific counsel's advice, the  
12 White House Counsel's office has asked us to preserve that in  
13 terms of whether they would claim an attorney-client  
14 privilege or not.

15 Ms. Amerling. Let me ask this a little bit differently.  
16 I am going to show you an exhibit, a document we will call  
17 Exhibit 6. It's a staff memo provided to us from the White  
18 House.

19 [Mehlman Exhibit No. 6  
20 was marked for identification.]

21 BY MS. AMERLING:

22 Q I will direct your attention to the first page  
23 after the cover page, page A-9. This says, "Federal law and  
24 EOP policy require the preservation of electronic  
25 communications that relate to official business and that are

1 sent or received by EOP staff. As a result, you must only  
2 use the authorized e-mail system for all official electronic  
3 communications." Is that consistent, Mr. Mehlman, with your  
4 understanding of the recordkeeping requirements that you were  
5 obligated to follow?

6 A Well, this is consistent with my understanding of  
7 part of the recordkeeping rules that apply to us.

8 Q And that's consistent with what you recall was the  
9 advice that you were given --

10 A No.

11 Q -- by White House Counsel?

12 A No. I am not -- I don't want to get into the  
13 advice I was given.

14 Mr. Ross. We are happy -- I am happy to go back and  
15 raise with White House Counsel your request to have Mr.  
16 Mehlman describe what specific advice he received from the  
17 White House Counsel on this. But I feel the need to do that  
18 before we really get into the specifics of any advice.

19 Ms. Amerling. All right.

20 BY MS. AMERLING:

21 Q Well, is what I just read to you from this manual  
22 consistent with your understanding of your  
23 responsibilities --

24 A Part of it.

25 Q -- on recordkeeping while you were at the White

1 House?

2 A Part of it. It is my understanding of part of  
3 my -- part of our responsibilities. Again, our challenge was  
4 we were a hybrid office, a hybrid office that had two issues  
5 we had to comply with. One was not using -- and on the next  
6 page you see personal usage. There is some of that. But  
7 more broadly, not using official -- here we are, taxpayers  
8 are funding us yet we are a political office. And so there  
9 was a balance. And if you -- you had to walk a line between  
10 one, on the one hand using official resources for political  
11 purposes, even though we are the political office, and on the  
12 other hand you had the Presidential Records Act, which my  
13 understanding was had exemptions for political and involving  
14 reelection. So this characterizes my understanding of  
15 generally how some of our work was, but not all of our work  
16 by any means. Because of this hybrid nature, and because we  
17 were walking a fine line, a tightrope to avoid doing this  
18 that was wrong or that that was wrong, my understanding, my  
19 recollection is that if you had to err, you erred on the side  
20 of not using taxpayer resources for political activity.

21 Q Let's turn to the last page of this document. It's  
22 page G-29.

23 A M-hm.

24 Q It says in the second paragraph, "Finally, if you  
25 happen to receive an e-mail on a personal e-mail account that

1 otherwise qualifies as a presidential record --"

2 A Right.

3 Q -- "it is your duty to ensure that it is preserved  
4 and filed as such by printing it out and saving it or by  
5 forwarding it to your White House e-mail account."

6 A Right.

7 Q Is that instruction consistent with your  
8 understanding --

9 A Yes.

10 Q -- of your obligations --

11 A It is.

12 Q -- to preserve records --

13 A It is. And the key definition is --

14 Q -- while at the White House?

15 A I didn't mean to interrupt you, I am sorry. The  
16 answer is yes. And the key is what otherwise qualifies as a  
17 presidential record? And that is the question that we were  
18 constantly forced to wrestle with, and that we are in this  
19 position of either having to worry about violating official  
20 taxpayer resources for political activity versus dealing with  
21 the Records Act, and where there are two clear exemptions.  
22 And because I think part of those exemptions, our view was  
23 the better way to handle it, if you are not certain, is to  
24 avoid using taxpayer resources for official activity. And  
25 frankly, if you think about it, that's consistent with the

1 experience up here of how things are done, A, and B, if you  
2 stop and you think about over the last 20 years, people who  
3 have in government service had problems, very often it has  
4 been the use of official taxpayer dollars, resources,  
5 equipment, personnel, et cetera, for political purposes. And  
6 at the State level, at the Federal level there are Members of  
7 the Congress and Senate who have had these issues. And so  
8 there was a very clear care about that that we had.

9 Q So is it fair to say that it was your understanding  
10 that when you sent or received an e-mail that was official in  
11 nature, regardless of whether it was on a White House  
12 computer, RNC account, or other type of non-governmental  
13 e-mail account, that you had obligations to preserve that  
14 record under the Presidential Records Act?

15 A I think the key question is whether it qualifies as  
16 a presidential record.

17 Q But it was your understanding that you had  
18 obligations, if it did qualify as a presidential record, to  
19 make sure that those records were preserved?

20 A To the extent to which it qualified as a  
21 presidential record, which my understanding had an exemption  
22 in it for both political and also for campaign-related.

23 Q And you have said a number of times today that it  
24 was your tendency, it was your nature to take great pains to  
25 make sure you understood what legal requirements --

1           A     It was.

2           Q     -- applied to your conduct?

3           A     Yes.

4           Q     And what legal requirements applied to the conduct  
5 of staff for whom you were responsible?

6           A     Correct.

7           Q     And it is fair to say, is it, that you would have  
8 had that same approach with respect to understanding the  
9 legal requirements that you were expected to comply with with  
10 respect to records preservation?

11          A     Yes. But again, that's true, at the same time we  
12 were dealing with essentially two laws that are at some level  
13 at tensions. The tension between official taxpayer dollars  
14 being used to subsidize what is partisan politics on the one  
15 hand versus the Presidential Records Act. And given if you  
16 look at the law, if you look at penalties associated with the  
17 law, if you look at where the scandals have been, if you look  
18 at all of that, and if you look at the two exemptions in the  
19 Presidential Records Act for political and for campaign, you  
20 have to balance all those things out. And my understanding  
21 today, and then, of the approach to take is that the duty is  
22 stronger with respect to the presidential -- avoiding  
23 taxpayer dollars for political than the other.

24          Q     I am not clear on how the two laws that you are  
25 talking about are in tension.

1           A     Well, on the one hand if you are -- go ahead. I am  
2     sorry. I didn't mean to interrupt you.

3           Q     If you happen to be using equipment provided by a  
4     political entity when you receive or send an official  
5     communication, aren't you able to both meet the requirements  
6     of the Presidential Records Act with respect to preserving  
7     that communication and also complying with the requirements  
8     about use of official resources?

9           A     Physically, yes. But the question you have to ask  
10    yourself is, is what I am doing in nature political, in which  
11    case the Records Act does not apply, and the burden is more  
12    on the not using taxpayer dollars for political activity.

13          Q     Well, if you determine it doesn't apply then how  
14    are the two in tension?

15          A     Well, that's the question. You have to determine  
16    whether it applies in each particular case. And that's the  
17    issue that I think we were dealing with.

18          Q     But it is fair to say you tried to obtain a very  
19    clear understanding of what your obligations were with  
20    respect to recordkeeping purposes?

21          A     It is fair to say I tried to obtain an  
22    understanding of what our obligations were in an area where I  
23    felt like and still feel like there is tremendous tension in  
24    a hybrid office, and informed by my experience on the Hill,  
25    and my experience as a lawyer in looking at where there have

1       been mistakes that have been made before that are  
2       overwhelmingly, in my opinion, if you look historically, have  
3       been on the side of using taxpayer dollars for political  
4       activity.

5               Q       And I believe that you said that you received or  
6       sent e-mails over your RNC account and RNC BlackBerry that  
7       were official in nature?

8               A       I recall doing that in some -- well, I recall doing  
9       in some cases, when I determined that there were e-mails that  
10      qualified as a presidential record, e-mailing it to my  
11      official account or putting it in a place to be saved. I  
12      recalled doing that on occasion.

13              Q       And so given your understanding of the requirements  
14      under the Presidential Records Act and your experiences as a  
15      member of the White House staff in the use of RNC e-mail  
16      accounts, when you approved deletion policies at the  
17      Bush-Cheney campaign and then when you moved over to the RNC,  
18      didn't you have concerns that those policies would result in  
19      the deletion of official White House records?

20              A       I did not because of three things. Number one, my  
21      own experience at the White House with respect to how these  
22      two rules applied. Number one. Number two, the fact that  
23      individuals at the White House have ways to save things  
24      should they decide that it is -- qualifies as a presidential  
25      record. That's the second basis. And number three, the duty

1 is on the individual, not on some other individual.

2 Q I don't understand that third reason.

3 A The duty does not -- the duty does not apply to  
4 AOL. The duty applies to the individual that works at the  
5 White House. The duty does not apply -- it is not the job --  
6 if in fact something qualified as a presidential record that  
7 ought to be preserved, the duty doesn't go to the RNC  
8 Chairman or the Bush-Cheney campaign manager, it goes to the  
9 person that works at the White House, who has a number of  
10 ways he or she can save it if they in fact believe that it  
11 qualifies as a presidential record.

12 Q And as a person who had formerly worked at the  
13 White House, who had an understanding of the obligations on  
14 White House staff, you didn't feel --

15 A No, because I felt that --

16 Q -- compelled to alert them about the process?

17 A I believe that I have been able to follow the rules  
18 in an appropriate way. I had no notion of what the deletion  
19 policy was or was not. I wasn't counting on the RNC's system  
20 to save e-mails for me at all. When I felt like it was  
21 appropriate for me to send it to the system I did, based on  
22 my understanding. So it was entirely consistent, when I was  
23 the chairman of the committee or the Bush-Cheney campaign  
24 manager to believe that similarly people could do it as they  
25 believe was appropriate given that duty.

1 Q And you believe you complied with --

2 A Absolutely.

3 Q -- the recordkeeping requirements --

4 A I do.

5 Q -- with respect to the official e-mails you  
6 received and sent over your RNC account because you forwarded  
7 those e-mails to your official account?

8 A I believe that when appropriate that's what I did.

9 Q Do you believe that you did that with respect to  
10 every official e-mail that you sent or received on your RNC  
11 account?

12 A I don't know the answer to that question. Again, I  
13 certainly would have strived to do it for official e-mails  
14 that are subject to the presidential recordkeeping  
15 requirement. Did I not on some occasions? Perhaps. I don't  
16 know the answer to that question.

17 Q Do you know whether your staff did that with every  
18 official e-mail that they sent or received?

19 A I don't know. I thought it was important that  
20 everyone get briefed, which they did. And then it was up to  
21 the individual to follow the rules, consistent with their  
22 duty and the briefing that they had.

23 Q Did you have any concern that people might get  
24 sloppy with the practice of forwarding each e-mail from their  
25 RNC account to their official account?

1           A     I did not spend -- I spent a lot of time trying to  
2 figure out what our approach was, trying to make sure people  
3 understood it. I did not beyond that spend massive amounts  
4 of time focused on this particular duty. I was focused on  
5 all the duties we had. And the one I was most worried about,  
6 quite honestly, was the things that the previous -- past  
7 previously people had gotten in lots of trouble for.

8           Q     You also mentioned earlier that when you were with  
9 the Bush-Cheney campaign there was an e-mail preservation  
10 policy that was put in place with respect to the leak  
11 investigation?

12          A     M-hm.

13          Q     Did the Bush-Cheney campaign discuss that  
14 preservation policy with the White House?

15          A     That's not something I worked out. My counsel  
16 worked that out with the White House, and also another  
17 counsel talked to Mr. Fitzgerald's campaign. So I can't tell  
18 you who he may or may not have talked to.

19          Q     But you believe that your counsel did talk to --

20          A     I can't answer. Because I had been a fact witness  
21 to appear before the special prosecutor, and because I often  
22 was asked about this on television, which you may remember, I  
23 thought it was very important that I not -- that I focus  
24 entirely on information I had in the public and that was  
25 publicly out there. And so I intentionally said to people I

1 trusted, who were incredibly cautious people, and smart  
2 people, and conservative when it comes to the law, I want a  
3 system that is entirely appropriate. And I have confidence  
4 that they kept it, so I did not get into the specifics.  
5 Because I thought it would be inappropriate for and could  
6 create a false impression in terms of the system of justice  
7 here.

8 Q Okay. I have a couple of follow-up questions on  
9 the briefings issue.

10 A Okay.

11 Mr. Ausbrook. Do you mind if I ask one follow-up  
12 question to something you asked since it's on the subject?

13 Ms. Amerling. Sure.

14 Mr. Ausbrook. It won't take me long.

15 BY MR. AUSBROOK:

16 Q The Bush-Cheney preservation policy for the  
17 Fitzgerald investigation --

18 A M-hm.

19 Q -- the reason that those e-mails were preserved was  
20 not -- had nothing to do with Presidential Record Act issues?

21 A No.

22 Q It had to do with the fact that individuals who had  
23 sent e-mails to the Bush-Cheney campaign were witnesses or --

24 A Right.

25 Q -- in the investigation?

1 A Were subject to being investigated.

2 Q So nobody had any sense that the reason that you  
3 need to look at these was because --

4 A No.

5 Q -- they might have been sent --

6 A No, no, no.

7 Q -- improperly to the Bush-Cheney campaign?

8 A This is because of the fact that we had -- Al  
9 Gonzales had set up at the White House a system to preserve  
10 records. And since some of the people that were being  
11 investigated had our e-mails, too, I wanted to make sure that  
12 we were also complying.

13 Mr. Ausbrook. Okay. That's all.

14 BY MS. AMERLING:

15 Q Was Mr. Rove aware that you were suggesting travel  
16 to agency officials?

17 A I think he was.

18 Q And why do you think that?

19 A Because I think that generally that was something  
20 we had generally had conversations about.

21 Q Do you recall any of those conversations?

22 A Not with specificity. But we talked about, and  
23 certainly he knew what we -- he knew what we were doing in  
24 the office and approved of it. When I say approved of it, I  
25 mean was comfortable with it. But I didn't say here is what

1 we are showing them here. Here is what we are showing them  
2 here. But certainly he was someone who absolutely, as I  
3 recall, knew we were doing it and was comfortable with it, as  
4 were others.

5 Q And was Mr. Rove aware that you were making  
6 suggestions about announcements to agency officials?

7 A Yeah, I think so.

8 Q For the same reasons you just described with  
9 respect to my first question?

10 A I think so.

11 Q What about Mr. Card? Was he aware that you were  
12 making suggestions on travel to agency officials?

13 A I think so. I recall at some point a meeting that  
14 we had with -- that both Mr. Card and I were invited to speak  
15 at. So -- and again, that is a very murky kind of  
16 recollection, but I recall him being at one of those where we  
17 were both at. I think he stayed when I spoke.

18 Q You are talking about a meeting where --

19 A One of the meetings, yeah. So I think he was, but  
20 I can't -- I can't for sure say he was. Mr. Rove I believe  
21 strongly was, but again I can't say for sure there either.

22 Q Do you believe that Mr. Card was aware that you  
23 were making suggestions about announcements to agency  
24 officials?

25 A Using his definition, Mr. Castor's definition of

1 announcements, yes, I believe that's the case. But that's my  
2 own belief. That's not based upon something he told me.

3 Q What was your understanding of whether the Hatch  
4 Act applied to your activities?

5 A My understanding was the Hatch Act does not apply  
6 to my activities.

7 Q Not at all?

8 A My understanding was that -- again, if the Hatch  
9 Act applied -- there are certain things that the law  
10 prohibits you from doing on a government property. You don't  
11 want to use government resources for political activity, but  
12 the Hatch Act doesn't apply to that. This is the tension I  
13 was getting at earlier. What we did was consistent, my  
14 understanding is, with the Hatch Act. At the same time,  
15 there are a lot of rules that constrain what you do, which  
16 makes the job both, frankly, challenging. And that's -- and  
17 I am confident we were consistent with the Hatch Act.

18 Ms. Amerling. I don't have any further questions.

19 Mr. Castor. I just have one follow-up.

20 BY MS. CASTOR:

21 Q If you get an official e-mail on your RNC  
22 BlackBerry, you know, about the President's travel or the  
23 President's decision-making on a policy initiative, it is  
24 going to be -- if it comes from another person at the White  
25 House, it's going to be in the EOP system to begin with.

1           A     Yes, it will.

2           Q     So if we are going to meet the unhappy result of  
3     having a communication, you know, escape and not be part of  
4     the legacy of the President, it requires two people to be on  
5     RNC e-mail accounts, doesn't it?

6           A     It does.

7           Q     So you know, for the most part is it fair to say if  
8     you are on your RNC BlackBerry with another person in the  
9     Office of Political Affairs on their RNC BlackBerry after  
10    hours, isn't it fair to say that the vast majority of the  
11    communications you are having are political in nature?

12          A     That would be -- I think that's true. And I think  
13    the vast majority of communications, as I indicated before,  
14    that we have in the Office of Political Affairs are political  
15    in nature. The vast majority.

16          Q     Or personal in nature. If you were heading off  
17    with the President in the morning and someone, one of the  
18    folks you were traveling with in your department, you might  
19    exchange some BlackBerry messages --

20          A     Absolutely.

21          Q     -- that wouldn't be part of the Presidential  
22    Records Act?

23          A     Absolutely right. Absolutely right.

24          Q     So it is fair to say that, you know, although both  
25    people, you know, at the White House, both White House

1        staffers are supposed to keep their e-mails and, you know, if  
2        you inadvertently, you know, failed to remember to forward it  
3        to your EOP account and you failed to print it out and put it  
4        in your files, it is very likely that if it was official  
5        business there is another EOP e-mail --

6            A     I think that's right.

7            Q     -- that captured it?

8            A     I think that's right.

9            Q     And the one other thing I would just point out is  
10        whether it's political in nature or official or  
11        policy-related, you know, isn't as easy as a yes or no --

12          A     Right.

13          Q     -- one or zero?

14          A     It isn't. And that is why my understanding, based  
15        on my understanding of the rules, based upon my experience up  
16        here, and based on the last 20 years of political scandal,  
17        was if you weren't sure, the better place to make a mistake  
18        was not on the official side, but on the political side.

19          Q     And it is fair to say because it isn't as easy as  
20        yes or no, one or zero, that there could be Democrats on  
21        Capitol Hill staff that disagree?

22          A     There could.

23          Q     And that is fairly -- that is a fairly likely  
24        result?

25          A     Absolutely.

1           Mr. Castor. I think that is it. Do you have anything?

2           Ms. Amerling. Thank you.

3                   BY MR. LEVISS:

4           Q     Just one question on this. From your understanding  
5 of the Hatch Act --

6           A     Yeah.

7           Q     -- did you have do any official business as the  
8 Director of Political Affairs?

9           A     I didn't have to, no.

10          Q     You could do all political, however you define  
11 political?

12          A     Well, I couldn't however I define political. I  
13 couldn't do fund-raising. I couldn't make telephone calls  
14 out of the White House to solicit money. I wouldn't have  
15 done that.

16          Q     Okay. But political campaign-related work?

17          A     Campaign one could if one wanted to. I tried to do  
18 more than that, but you could have, yeah.

19          Q     Okay. Did that apply to the entire Office of  
20 Political Affairs in your view?

21          A     If one wanted to, one could have -- one legally  
22 could have, in the Office of Political Affairs, focused  
23 entirely on simply promoting, helping with the President's  
24 allies. That would have been, in my opinion, been a less  
25 effective Office of Political Affairs.

1 Q And that would be consistent with the Hatch Act?

2 A That is my understanding.

3 Q Okay. Thanks.

4 Ms. Amerling. Thank you very much for being with us  
5 today.

6 Mr. Mehlman. Thank you for everyone's time today.

7 [Whereupon, at 3:50 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

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I have read the foregoing \_\_\_\_ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

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Witness Name