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Bernard Nussbaum

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August 24, 2000

SUBMITTED UNDER SEAL

United States Court of Appeals  
For the District of Columbia Circuit

FILED AUG 30 2000

Special Division

Mark J. Langer  
Clerk  
United States Court of Appeals  
District of Columbia Circuit  
Washington, DC 20001-2866

Re: In re: Madison Guaranty Savings & Loan  
Association, Division No. 94-1  
(In re: William David Watkins and  
In re: Hillary Rodham Clinton)

Dear Mr. Langer:

By letter dated June 30, 2000, you advised me that the Court had entered an order authorizing me to examine portions of the Final Report of the Office of the Independent Counsel in the above matter. Your letter states that I have the right to submit comments or factual information for possible inclusion in an appendix to the Report. Having examined those pages of the Report that the Court made available to me, I would like to express my strong disagreement with two footnotes which together suggest that I may have attempted to conceal Deputy White House Counsel Vincent Foster's Travel Office documents from investigators. Any such suggestion is wholly unwarranted: contemporaneous notes establish that I disclosed the existence of those documents to various investigators from the time that I first became aware of them.

Thus, first, in a footnote on page 94 of the Report, the OIC cites page 55 of the transcript of my July 16, 1996 grand jury testimony for the following proposition: "During the

Mark J. Langer  
August 24, 2000  
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search of Foster's office following his death, White House Counsel Bernard Nussbaum recovered a file regarding the Travel Office that he claimed he did not give to investigators because it related to an 'ongoing matter.'" While I do not have access to the transcript of my grand jury testimony, the record should be clear that: I did nothing to conceal the existence of Mr. Foster's Travel Office file from the investigators; and the reason that I did not provide the file to the investigators at the time of the search of Mr. Foster's office was not because it related to an ongoing matter, but because no investigator asked for it. (The reason that I personally kept the file after the search was that it related to an ongoing matter that I intended to work on.)

Assistant White House Counsel Clifford Sloan and Michael Spafford, an attorney representing the Foster family, were present during my search of Mr. Foster's office. The investigators who were there included representatives of the Park Police, Federal Bureau of Investigation and Secret Service. As I testified before the grand jury, during the course of the search, I removed Mr. Foster's Travel Office file from his brief bag and identified it as such to the assembled group. That I expressly referred to the Travel Office is corroborated by contemporaneous notes separately made by each of Mr. Sloan and Mr. Spafford. Copies of the relevant pages of those notes are annexed hereto as Exhibits A (Sloan) and B (Spafford); see Spafford Senate Dep., 7/11/95, at 62 ("White House Travel Office management, that's either rule or work, but I remember the Travel Office coming up, some document relating to the Travel Office.") (Exhibit C hereto). While the investigators asked to review certain of the Foster office documents that I identified during the search, Mr. Spafford has confirmed that they made no such request for the Travel Office file. Spafford Senate Tr., 7/27/95, at 528 (Exhibit D hereto); see also Spafford Senate Dep., 7/11/95, at 130-31 (Exhibit C hereto).

Second, in a footnote on page 95 of the Report, the OIC cites page 59 of my grand jury testimony for the following proposition: "Nussbaum says he did not produce the file to the GAO because it was 'classic privileged work product material.'" The Report then indicates that Nancy Kingsbury, who headed the GAO's Travel Office investigation, testified before the grand jury that the GAO was "never told this." Any testimony by Ms. Kingsbury to the effect that the GAO was not told that Mr. Foster had had Travel Office documents in his office is contradicted by the GAO's own notes.

On September 24, 1993 -- well before the GAO's May 1994 Travel Office report -- I was interviewed by the GAO with respect to the Travel Office matter. The GAO's notes of that interview expressly state:

Mr. Foster's office contained confidential and privileged information. It also contained materials regarding the travel office which Mr. Nussbaum did not describe. (Emphasis added.)

A typewritten copy of those notes (taken from an attachment to an October 7, 1994 letter from Congressman William F. Clinger, et al., to Congressman John Conyers, Jr.) is annexed hereto as Exhibit E.

Mark J. Langer  
August 24, 2000  
Page 3

Ms. Kingsbury, the principal author of the GAO's Travel Office report, has long sought to deny the fact that I advised the GAO about Mr. Foster's Travel Office file. Accordingly, back in 1994, she saw fit to annotate the above GAO interview notes about the Travel Office "materials" as follows:

As we were drafting the report, we double-checked the support for this sentence. None of the other GAO participants recall this being raised in the discussion. The writer said that the material referred to was the GAO letter described in the following paragraph.\*

-- Exhibit E.

But Ms. Kingsbury's attempt to explain away the plain meaning of the GAO notes is unavailing.

While there was a copy of the "GAO letter" in Mr. Foster's Travel Office file, the GAO notes refer to "materials" -- in the plural. Did the unidentified "writer" of the GAO notes say that I referred to "a letter," but that he or she recorded that as "materials"? Did the writer say that I stated that the only thing in Mr. Foster's Travel Office file was a letter, but that he or she decided to leave that information out of the notes, and instead to write that I "did not describe" the materials? Neither of those theories makes sense. The only natural reading of the GAO interview notes is that I told the GAO -- just as I told the investigators during the search of Mr. Foster's office -- that Mr. Foster had had Travel Office documents in his office.

\* \* \*

Although the OIC Report does not directly state that I acted improperly with respect to Mr. Foster's Travel Office file, the two footnotes may lead a reader to question whether I attempted to conceal its existence from investigators. I did not do that, and the contemporaneous notes of Messrs. Sloan, Spafford and the GAO, as well as Mr. Spafford's Senate deposition and hearing testimony, all belie any such notion. Accordingly, I ask that this letter be included in an appendix to the Report.

Respectfully yours,



BWN:sas  
Enclosures

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\* The "GAO letter" is an anonymous letter about the Travel Office sent to the GAO in 1988.

# Exhibit A

④ Magellan - Keen -

2000370

- Expedition - memoranda -
- files re: historical sp & fr
- Distributors - exec. records - crypto - gfr -
- Work - records - assys to be given in fr
- WHTC - Magellan -
- Study of the document
- Pr. copy -
- Accepted copy -
- Trans. in phy / Trans. in sp -
- WH files - how to get with files -
- Image meets / ing copy -
- new re : publ. cc - hand copy -
- msgs before there were files -
- Study -

# Exhibit B

another white pad of notes on WH issues (eg, use of military plans, cabinet retreat, ~~the~~ volunteers, etc

yellow pad of notes re transition

a dictaphone ← M: have someone listen to it; very soon

③ briefcase ← Q: dithe carry briefcase all the time?

blue file of memos  
copies of newspaper articles not @ him  
4/8 letter in Hillary  
NW note

notebook of notes of meetings, GC issues

BN: no; used as file folder

→ Man calendar ← M: look

minutes

notes on expenditures, gifts, memos on GC issues

log of correspondence receipts for travel

letter to Ron from Del  
copies of newspaper articles (nothing plus to VF)  
Art newspaper art of VF (1/2)  
Art photo (picture of staff when announced)  
13 articles, first art on opt(s)

note pad w/ NW notes re GC issues  
WH travel etc report rule  
standards of ethical conduct  
memo on Clinton Pub library  
memo re gifts (ethics)  
correspondence re transition  
memos re WH functions, inaugural docs & legal ops (OLC)

summary letter to be forwarded for (included resume) NW list of people from transition

④ 3/1/32 Klawer

M: look  
from to see if from O/H Hcs

memos re potential applicant  
phone messages: 1/25, 1/26, 1/22, 1/27  
stationery  
NW note from staff



# Exhibit C

**DEPOSITION OF MICHAEL L. SPAFFORD  
IN RE: S. RES. 120**

**TUESDAY, JULY 11, 1995**

**U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
Washington, DC.**

Deposition of MICHAEL L. SPAFFORD, called for examination pursuant to notice of deposition, at 5:45 p.m. in Room 640-A of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

**EVERETT C. JOHNSON, JR., Esq.**  
Majority Deputy Special Counsel  
**RICHARD BEN-VENISTE, Esq.**  
Minority Special Counsel  
**NEAL E. KRAVITZ, Esq.**  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

**JAMES HAMILTON, Esq.**  
Swidler & Berlin, Chartered  
3000 K Street, NW  
Suite 300  
Washington, DC 20007  
On behalf of the Deponent.

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12 off th  
13 the re  
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15 the at  
16 the S  
17 Whir  
18  
19 Reso  
20 and  
21 matt  
22

1 tod  
2 Fos  
3 July  
4  
5 thi  
6 to  
7  
8 tir  
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14 di  
15 re  
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17 c  
18 d  
19 n  
20  
21 r  
22 c

1 A When Mr. Nussbaum finished with the  
 2 drawer, he reached back and got the briefcase, which  
 3 was a black briefcase with what do you call those,  
 4 handles on the sides, put it up on the desk, took the  
 5 files out, put them on the desk, put the briefcase  
 6 back, and then Mr. Margolis, at that point, asked  
 7 him, and that's reflected to the right, a brief  
 8 question.

9 Did he carry briefcase all the time?

10 Nussbaum: No, used as file folder.

11 And then he proceeded to go through the  
 12 documents that he'd taken out of the briefcase, and I  
 13 ran out of room so I started going every which way,  
 14 but he started in the middle, and if you go down the  
 15 middle, and then there's a separate stack or line on  
 16 the left, then on the right.

17 Do you want me to read these?

18 Q If you would just read them out for me?

19 A Starting down the middle. Notebook of  
 20 notes of meetings, General Counsel issues, May  
 21 calendar. I believe Mr. Nussbaum said they had these  
 22 pre-printed Xeroxed calendars for the month that had

1 his appointments on them. Mr. Margolis was very  
 2 interested in that.

3 If you look to the right, you'll see "M.  
 4 Look at that." And that went into the document pile  
 5 of interest.

6 Then you have memorandum on expenditures,  
 7 gifts, memos on GC, General Counsel issues, notepad  
 8 with handwritten notes regarding General Counsel  
 9 issues, White House Travel Office management, that's  
 10 either rule or work, but I remember the Travel Office  
 11 coming up, some document relating to the Travel  
 12 Office.

13 Standards of ethical conduct. Something  
 14 relating to standards of ethical conduct.

15 Memo on Clinton presidential library.

16 Memo re gifts and ethics issues.

17 Correspondence re transition.

18 Memos re White House functions and the  
 19 inauguration or the inaugural.

20 Documents and legal opinions of the Office  
 21 of the Legal Counsel.

22 Then if you go to the left, there's a blue

1 file of  
 2 Q  
 3 A  
 4 sequer  
 5 2 is ri  
 6 numbe  
 7 in the  
 8  
 9 article  
 10 at tha  
 11 answe  
 12  
 13 Hillar  
 14 origin  
 15 block  
 16  
 17 it?  
 18  
 19  
 20 hand  
 21  
 22 Clin

1  
 2 docu  
 3 sure  
 4  
 5 The  
 6 wo  
 7  
 8 my  
 9  
 10 up  
 11  
 12  
 13 wl  
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 17 a  
 18  
 19 tl  
 20 a  
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 22

1 Service wanted to see, as a result of the review of  
2 the trash, as you recall?

3 A I think my notes indicated that there were  
4 a couple of items of interest that they indicated.

5 Q And do you have any reason to believe that  
6 they were not shown those items?

7 MR. JOHNSON: When?

8 BY MR. BEN-VENISTE:

9 Q You may answer.

10 A No.

11 Q Mr. Johnson asked you whether the name  
12 Whitewater came up and you indicated that, to the  
13 best of your knowledge, it did not.

14 Can you tell us what it was that Mr.  
15 Margolis stated he was looking for, or interested in?

16 A Well, at the outset, Mr. Nussbaum had  
17 stated that he viewed this as looking for a suicide  
18 note, and Mr. Margolis appeared to generally agree  
19 with that. And as the search proceeded, he said  
20 describe the items of interest as things relating to  
21 motive. Was he depressed, you know, indications of  
22 why, if he committed suicide, or foul play, if there

1 were indications of threats.

2 Q Now at the end of the meeting, was there  
3 any heated discussion in your presence, between Mr.  
4 Margolis and Mr. Nussbaum?

5 A No.

6 Q Was there any indication that the  
7 procedure had not been followed to Mr. Margolis'  
8 satisfaction?

9 A You mean the one that was agreed on up  
10 front?

11 Q Yes.

12 A No indication, no.

13 Q Did you hear at any point in the meeting  
14 any of the investigators voice disapproval with the  
15 procedures that had been outlined by Mr. Nussbaum?

16 A No.

17 Q You indicated that from the briefcase,  
18 there were documents, and I don't mean to be all  
19 inclusive, but there were documents identified as  
20 Travel Office documents.

21 A My notes reflect that, yes.

22 Q Do you have any recollection, either

1 independ  
2 consult  
3 room  
4 docum  
5 A  
6 C  
7 letter  
8 Senate  
9  
10 docum  
11 A  
12 my ne  
13 menti  
14 some  
15 respo  
16  
17 Hou  
18 C  
19 Nuss  
20  
21 C  
22 was

1  
2  
3 brief  
4 the  
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7 look  
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16 the  
17 off  
18 is  
19  
20 on  
21  
22 p

1 independent of your notes, or on the basis of  
 2 consulting your notes, as to whether anyone in that  
 3 room made a request to review Travel Office  
 4 documents?

5 A No.

6 Q There was also indicated in your notes a  
 7 letter in the briefcase to Attorney General Reno from  
 8 Senator Dole.

9 Can you tell us whether in fact that  
 10 document was requested by any of the investigators?

11 A Well, I don't have an arrow next to it in  
 12 my notes, but I do have a reference that says that it  
 13 mentioned Kennedy and I don't recall whether that was  
 14 something that Mr. Nussbaum volunteered or was in  
 15 response to a question.

16 The Kennedy was the gentleman on the White  
 17 House Staff, the General Counsel's Office.

18 Q Following that clarification by Mr.  
 19 Nussbaum, was there any request to see that document?

20 A According to my notes, no.

21 Q You indicate, I think, that the briefcase  
 22 was rather full. Is that correct?

1 A Yes.

2 Q And that after removing the files from the  
 3 briefcase, Mr. Nussbaum placed the briefcase back on  
 4 the floor?

5 A That's correct.

6 Q Did you see whether or not Mr. Nussbaum  
 7 looked into the briefcase after the files had been  
 8 removed?

9 (Pause.)

10 A I don't recall one way or the other.

11 MR. JOHNSON: One second.

12 (Discussion off the record.)

13 BY MR. BEN-VENISTE:

14 Q As Mr. Johnson was going through your  
 15 handwritten notes, perhaps because of the lateness of  
 16 the hour, or perhaps because we got diverted on some  
 17 other subject, for some reason we did not cover what  
 18 is listed as credenza: on R, signifying right.

19 MR. JOHNSON: Richard, what page are you  
 20 on?

21 MR. BEN-VENISTE: These aren't numbered  
 22 pages, so I'm going to ask you to find the page that

# Exhibit D

**INVESTIGATION OF WHITEWATER  
DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

THURSDAY, JULY 27, 1995

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
Washington, DC.

The Committee met at 9:35 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

**OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO**

The CHAIRMAN. The hearing will come to order.

[Witness sworn.]

Thank you. Mr. Spafford, do you have a statement that you would like to give to the Committee?

Mr. SPAFFORD. Yes, sir, a brief statement.

**SWORN TESTIMONY OF MICHAEL L. SPAFFORD  
ATTORNEY, SWIDLER & BERLIN**

Mr. SPAFFORD. Good morning. My name is Michael Spafford—  
The CHAIRMAN. Michael, why don't you pull that microphone up closer to you?

Mr. SPAFFORD. My name is Michael Spafford; I'm an attorney practicing in Washington, DC. From time to time I have assisted my partner, Jim Hamilton, in representing the family of Vincent Foster. I performed services for the family on July 22, 1993, and I am prepared to assist this Committee by testifying about certain events that occurred that day.

I trust this Committee recognizes that all my actions in this regard were in the context of representing clients under the District of Columbia code of professional responsibility, clients, I must say, who have suffered grievously. My sole charge was to assist them. Because of my role, there are some certain privileged matters about which I cannot testify.

In an attempt to be helpful to this Committee, privilege has not been asserted as to certain documents I prepared on July 22nd and 23rd which I am prepared to discuss today and have provided to the Committee. However, I am constrained by my responsibilities to my clients and the ethics of my profession from testifying about other privileged matters.



Further down, there was a map of Metropolitan Washington. I believe I referred to this earlier. Mr. Margolis asked if Fort Marcy was circled on the map, and Mr. Nussbaum opened up the map and said no. But that went into the pile of interest to the investigators as well.

You want me to go to the next page?

Mr. BEN-VENISTE. Yes, please.

Mr. SPAFFORD. In the top right drawer was a Dictaphone. Mr. Margolis asked if there was a tape in it; he wanted someone to listen to the Dictaphone very soon. Mr. Nussbaum popped the Dictaphone open and there was no tape in it. We then proceeded—

Mr. BEN-VENISTE. So that was, as we say, a moot point?

Mr. SPAFFORD. That's correct. We then proceeded—Mr. Nussbaum proceeded to the briefcase. Mr. Margolis asked a question: Did he carry the briefcase all the time? Mr. Nussbaum answered no, he used it as a file folder.

Proceeding down the documents that were in the briefcase, Mr. Margolis was interested in the May calendar, which I believe Mr. Nussbaum described as one that was printed out on a computer, that described appointments.

That appears to be the only document that they raised a question about from the briefcase.

If you look further down on that page, we're back again to the drawers on Mr. Nussbaum's right in the desk. There were phone messages there of various dates which Mr. Nussbaum read aloud. Mr. Margolis wanted to look through those to see if there were any non-office telephone calls. Those went into the pile of interest to the investigators.

Proceeding to the next page, we get to some drawers on the left-hand side of the desk. There were telephone slips from February there. To the right, you will see "please review." That was Mr. Margolis' comment. He wanted Mr. Nussbaum to review those. At some point in this is when Mr. Margolis went through his litany of what he was interested in.

Checks, a mortgage book—that could be a meeting book. I'm not sure I understand my abbreviations here. "Mtg book." Then, the Foster notebook is another one of interest that Mr. Margolis wanted to know about. He wanted to know if there was anyone in DC or any doctors listed in it. Just so it's clear, the notebook was a notebook of telephone numbers and addresses of people. It appeared to be people that Mr. Foster had worked with before, so that document actually went in the personal document pile.

If you look at the next page, there was a drawer—it says on the right; it should be the left. If you follow the sequence of the notes, you'll see that it is on the left. This is one of the drawers that had the green files in it with the tabs listing what the files were. Mr. Nussbaum looked through those and said that they were generally work-related, and Mr. Margolis wanted him to look at those files and look through them for any threats or unusual items.

We then get to the trash bag. There were a couple of things—

Senator SARBANES. When you say that you wanted him to look through them, that was, in effect, something Mr. Nussbaum would do after all of this process was completed; is that correct?

Mr. SPAFFORD. That's correct, Senator.

Sen  
things  
state  
Mr.  
Mr. N  
took  
him  
Mr.  
Mr.  
trash  
Mr. J  
You'  
a ba  
note  
inter  
M  
gol  
tras  
life  
M  
M  
cus  
M  
thr  
he'  
agr  
thr  
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ma  
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# Exhibit E

16. Interview with Bernard Nussbaum, Counsel to the President, by staff with the General Accounting Office (September 24, 1993).

In the GAO interview notes, next to the reference that Nussbaum said there were WHTO materials in Foster's office, there is the following handwritten notation, by Nancy Kingsbury, GAO's Director, Federal Human Resources Management Issues. Kingsbury directed the GAO review of the WHTO and was the principle author of the report, White House Travel Office Operations.

"As we were drafting the report, we double-checked the support for this sentence. None of the other GAO participants recall this being raised in the discussion. The writer said that the material referred to was the GAO letter described in the following paragraph."

NKingsbury  
5/12/94

The "GAO letter" referenced above, is an anonymous letter sent to GAO in 1988 making certain allegations of wrongdoing in the WHTO (see GAO's White House Travel Office Operations at page 22).

17. Written responses to GAO Questions by Patsy Thomasson, Special Assistant to the President for Management and Director of the Office of Administration and Margaret Williams, Assistant to the President and Chief of Staff to the First Lady, transmitted by Neil Eggleston, Associate Counsel to the President, March 30, 1994.