

TELECOPY COVER SHEET

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Date: _____

TO: Hick Ewing

Company Name: _____

Fax Number: _____ Telephone Number: _____

FROM: Brett Kavanaugh

Number of Pages: 4 (including this cover sheet)

Message: _____

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MEMORANDUM

TO: Judge Starr
Mark Tuohey
Hickman Ewing
John Bates

FROM: Brett Kavanaugh

RE: Foster Issues

DATE: June 6, 1995

As Dr. Lee prepares to give us advice, this seemed an appropriate time to outline my thoughts about the major steps we can and should take to complete our factfinding on the Foster death investigation. Dr. Lee will no doubt have further thoughts and may tell us that some of my proposed major steps are unnecessary or wasteful, but I thought it nonetheless might be useful to outline my ideas.

As I have stated before, the Foster death investigation can be divided into two related but distinct issues: (1) state of mind; and (2) physical evidence (which includes death scene observations, blood, forensic evidence, ballistics, etc.).

As I said in my last memo, we have made progress from the Fiske investigation on Foster's state of mind -- although we have not entirely solved that issue. Indeed, assuming arguendo a suicide, we still have not discovered a single triggering event that led to the death. Nor do we have a true suicide note.

With respect to the physical evidence, we have employed investigatory tools and procedural steps that were not utilized by the Fiske team. The most prominent example is our use of the grand jury in questioning witnesses who were at the scene or the autopsy. Nonetheless, it is important to recognize that these extra investigative tools have not as yet yielded any significant substantive results. (Indeed, if anything, some issues are more confused than ever thanks to witnesses making statements in the grand jury somewhat inconsistent with prior statements.)

In any event, the two most important issues to resolve in this case are rather obvious: (1) where was the fatal shot fired; and (2) who fired it.

It seems that the best way to determine where the shot was fired would be to find the bullet. If the bullet is in the park, then it seems to me that we would have established beyond a reasonable doubt that the shot was fired in the park. The Fiske team and the FBI conducted a rather elaborate search of the park for the bullet. Nonetheless, they did not go as far as they

could have gone. As is stated on page 56 of the Fiske report, "[t]he FBI Lab's search for the bullet focused on the most likely area for the bullet to have come to rest . . . It would have been enormously time-consuming, costly, and in all likelihood unproductive, to have searched the entire Park for the bullet" (emphasis added). Dr. Lee in our initial meeting suggested a broader search of the park, including of the trees in the park. I strongly recommend (subject to his continued agreement) that we pursue this tack. I also recommend that we get Ed Lueckenhoff intimately involved in implementing it because there is substantial resistance from the Washington FBI on this subject.¹

As to who fired the gun, we should try to establish an individual's link to the gun. The best way to do that would be to determine ownership/possession of the gun as of July 20, 1993. Because no Foster family members can positively identify the gun and the gun cannot be traced, I believe the best remaining way to establish ownership of the gun would be to identify the person whose fingerprint is on the underside of the grip handle. We know that it is not Foster's fingerprint. We are currently attempting to determine whether it is Foster's father's fingerprint by having the military records center perform a search. If that does not turn up a match, we will have to go back to the drawing board on this issue.

Two other areas that are matters of some controversy -- although probably of lesser relevance -- are the identity of the person whose hairs were found on Foster's clothes and the identity of the carpets and/or furniture that were the source of the carpet fibers on Foster's clothes. Until Dr. Lee informed me otherwise, I believed that we could not match the hairs to any particular person because we do not have the roots from the hairs. That turns out to be incorrect. I therefore recommend (subject to Dr. Lee's concurrence) that we consider obtaining hair samples from Laura Foster; if we do not obtain a match with her hair, we can discuss how to proceed further. As to the carpet fibers, I recommend (subject to Dr. Lee's concurrence) that we implement a plan of obtaining carpet fibers from the various places that Foster was located on July 20: his house, his car, and the White House.

Finally, while not necessarily relevant to the Foster death as opposed to the Foster documents investigation, we can do more to determine the identity of the partial palm print on the Foster note. I recommend that we obtain palm prints from various people who we know touched the note. If we do not obtain a match from any of them, I recommend that we obtain palm prints from persons who we suspect touched the note. (We do not have Foster's palm prints, but we may also want to think of ways to determine whether we can lift a palm print of Foster's from any documents or items in Lisa Foster's possession.)

¹ Dr. Lee also noted that there may be other ways to establish that the shot was fired in the park; for example, by blowing up the scene pictures to determine whether there was any blood spatter on the surrounding leaves.

Conclusion

As Dr. Lee pointed out, we are likely to make progress over past investigations not by interviewing people who have already been interviewed but by reexamining the physical evidence to see what else can be learned from it. With that in mind and subject to change based on Dr. Lee's advice, the above listed items are the remaining major steps I propose we take with respect to the death investigation.

MEMORANDUM

TO: Judge Starr
Mark Tuohey
Hickman Ewing
John Bates
LeRoy Jahn
Jim Clemente
Coy Copeland

FROM: Brett Kavanaugh

RE: Vincent Foster and the Whitewater Development Corporation

DATE: August 17, 1995

This memorandum summarizes the evidence about Vincent Foster's involvement in Whitewater matters, including his involvement in the tax treatment of Whitewater on personal Clinton returns and corporate Whitewater returns. The summary is based primarily on the documents from Foster's office that deal with Whitewater, supplemented by some testimonial evidence. This memorandum is not intended as any kind of final analysis, but only as a preliminary analysis so that we are all on the same page.

There is little doubt that Foster and others such as Yoly Redden were concerned prior to April 15, 1993, that the Clintons could be audited and required to pay more taxes if they claimed a loss with respect to the Whitewater investment on their 1992 personal tax returns. But as of this point, I believe the suggestion or implication made by newsmen in recent weeks (based on no more material than we possess) that Foster suffered continuing distress over Whitewater and/or was driven to commit suicide in whole or in part because of the Clintons' Whitewater investment, or their tax treatment of the investment, is quite far-fetched, as I will explain below. (I nonetheless caution that my analysis here is based on what I now know; there always could be some smoking gun document or testimony that has been destroyed or never given to this Office.)

Background

The Whitewater issue arose in March 1992 as the result of a news article by Jeff Gerth in the New York Times. (This article was in Foster's files at the time of his death.) The article was based in part on an interview with Jim McDougal and suggested, among other things, that the Clintons had improperly deducted at least \$5,000 on their personal tax returns in 1984 and 1985 for interest paid on a portion of at least \$30,000 in bank loan payments that Whitewater made for them. In addition, the article suggested that McDougal heavily subsidized the

Whitewater investment, insuring that the Clintons were under little financial risk.

When the story broke in 1992, Governor Clinton stated at a press conference that he believed he had lost about \$25,000 in the Whitewater investment. The campaign then commissioned Jim Lyons to do a report on the investment. He did so, and concluded that the Clintons had lost nearly \$59,000 on the investment, but also noted that the Clintons had taken certain improper deductions totalling \$5,133 in 1984 and 1985 on their personal tax returns. (Because of their age, those improper deductions did not need to be repaid, but the Clintons did repay them in late 1993.) The story lay dormant for the remainder of the campaign and until late 1993 when it became known that the documents from Foster's office included Whitewater documents.

The basic issues remain to this day, however. Indeed, the New York Times editorial of Sunday, August 13, 1995, is not much different from earlier stories written about the Clintons' Whitewater investment and tax treatment of it. The Clintons have admitted they took improper deductions in the 1980's; the question remains whether they knowingly did so. And questions remain about the extent of the Clintons' risk in the Whitewater investment and about the extent of their contributions to the investment.

Foster's Involvement

The documents in Foster's office reveal that Foster's involvement in Whitewater breaks down into three distinct categories:

- (1) sale of the Clintons' interest in Whitewater to Jim McDougal in December 1992;
- (2) treatment of Whitewater on the Clintons' personal tax returns in April 1993; and
- (3) filing of delinquent Whitewater corporate tax returns in June 1993.

The news stories in recent weeks (e.g., "can of worms") have focused on the second of these issues.

1. Sale of Interest in Whitewater to Jim McDougal

After the election in 1992, the Clintons decided to sell their interest in Whitewater to Jim McDougal. Foster's notes of a November 24, 1992, meeting with Foster, Lyons, Lindsey, Tisdale, and Hubbell show that a number of issues were discussed at that time, including:

- (a) executive orders on the gag rule, gays in the military, and the reduction of White House staff;
- (b) a Presidential retreat; and

- (c) personal finances, including Whitewater and blind trust versus diversified trust.

It appears that Jim Blair was to take the lead for the Clintons in transferring their interest to McDougal. According to a Foster memo to file written on December 30, 1992, Blair intended to meet with McDougal and McDougal's attorney on December 22, 1992, to close the sale. Little Rock was fogged in, however, so Foster took the transfer agreement to Sam Heuer's office at Blair's request. The agreement stated that the Clintons would transfer their interest in Whitewater to McDougal for \$1000. There was some discussion at the meeting about preparation of the delinquent corporate tax returns, but ultimately Heuer and McDougal signed the transfer agreement. The agreement stated that "Grantee [McDougal] warrants that all tax returns due for the period of Grantors' ownership of the stock being transferred shall be filed forthwith, and Grantee warrants that he shall cause said returns to be filed forthwith."

On December 23, 1992, Foster wrote a letter to accountant Yoly Redden enclosing the signed agreement and asking her to prepare the delinquent corporate tax returns for WWDC. The letter stated that "the Corporation will determine independently whether the returns are accurate and take the responsibility for filing them." Mrs. Clinton and Jim Blair were blind-copied on this letter. Also on December 23, 1992, Foster sent Jim Blair a copy of the transfer agreement.

On December 24, 1992, a \$1000 check payable to the Clintons was mailed to Foster by Sam Heuer.

2. Preparation and Filing of Clintons' 1992 Taxes in April 1993

Having sold their interest in Whitewater for \$1000, the Clintons had to decide how to treat the \$1000 on their 1992 taxes. Did they have a gain or loss to report?

Foster received a letter on April 2, 1993, from Yoly Redden enclosing a draft of the Clintons' federal and state returns. It stated: "If I receive additional documentation from Mr. Patten of Patten, McCarthy & Associates in Denver, we may be able to claim a \$10,000 to \$15,000 loss in the disposal of Whitewater stock. The present return reflects no gain or loss on the disposal. I will let you know if a loss can be claimed. I realize that we need to take the most conservative approach possible and that was the position taken in the return."

On April 5, 1993, Foster sent a letter to Bob Barnett of Williams & Connolly enclosing the draft returns. The letter discusses several issues, but says the following about Whitewater: "At this point, there is no gain or loss reflected from the sale of the interest in Whitewater Development Corporation. The local accountant thus far has been unable to obtain documentation of payments to or for the benefit of the Corporation in excess of the stock sales price. This could change, however, in the next few days. Enclosed is a copy of the analysis by Jim Lyons and his forensic accountants on the Whitewater financial issues. There was an erroneous tax deduction taken in a prior year which was intended to be accounted for in this return."

On April 6, 1993, Foster sent a letter to Barnett with various supporting documents, including various federal and state returns and financial disclosure statements. Included is "a memorandum from the Media Research Office concerning news articles about financial and tax issues which were published during the campaign, including specifically articles about Whitewater Development Company. The memorandum also includes articles concerning the tax returns filed by the Bushes and the Quayles in 1989. I have confirmed that the Whitewater Development Company has not filed tax returns in recent years." It appears that this letter and the enclosures were likely sent in response to a phone call from Barnett.

On April 6, 1993, Yoly Redden sent a letter to Foster covering a few issues and concluding, "I should be calling you tomorrow afternoon concerning Whitewater."

Barnett apparently had another accountant review the returns in his office on April 6, 1993. That accountant prepared a letter dated April 7, 1993. The letter discusses a number of issues and says the following about Whitewater:

I guess the treatment of the Whitewater investment will be a very sensitive item. I read the press reports you made available to me and it seems that the opposition was contending that the Clintons' investment in Whitewater was such that they had an opportunity to realize half of the profits if the project was successful but were protected against losses if the project was unsuccessful. The President responded that they had lost at least \$25,000.

The return currently shows that disposition of the investment on Schedule D at a cost of \$1,000 and a sales price of \$1,000 and no gain or loss. It seems to me that this treatment bolsters the opponents' position. That is, they claim he was protected against loss -- the President said he incurred a significant loss -- the return shows no loss.

Judging from the return I assume that the Clintons are not expecting to get tax benefit from the loss. I further assume, based on the President's response as reported in the press, that they did not receive any proceeds upon disposition of the investment. [This was not true; thus, the remainder of this paragraph does not follow. BK] Thus, it appears that the \$1,000 of proceeds on Schedule D is for cosmetic purposes. If that is the case, wouldn't the best course of action be to simply not report anything on the return. I am not aware of any provision in the tax law that requires one to claim all losses that have been incurred. And even if there were such a provision, the present method of reporting does not report the loss that the President says was incurred.

Barnett faxed a copy of this letter to Foster on April 7, 1993.

On Foster's handwritten notes that are undated (but likely are some time from April 7 to April 12) and list a number of different issues with respect to the draft returns, such as "pay

Keough" and "use of name Rodham," Foster notes the following: "Options: FN -- cost in excess but not documented yet \$1000 gain." He also wrote notes to "call Sam Heuer, Jim Lyons."

On April 12, Foster sent a one-page FAX to Yoly Redden stating: "Insert re: WWDC: The estimated basis substantially exceeds the sales price; however, because of the unavailability of complete documentation, no basis is claimed."

On April 12, Redden wrote a letter to Foster. It is unclear whether this letter is before or after the above FAX. It states as follows:

I am enclosing summary workpapers on Whitewater to document the assumed loss of \$5,878.35. These include the report from Patten, McCarthy detailing their findings of an estimated investment of \$68,880.07, workpapers that we had in our Whitewater file of payments made on behalf of Whitewater, deductions taken on tax returns, and lists prepared possibly by Carolyn Huber concerning the same items.

I still recommend that we do not attach any statement to the tax return concerning Whitewater other than the listing of the sale of stock. We have a minimum basis of \$500, which was the amount allocated on the corporate books as 50 percent of the capital stock. Because of the numerous problems with Whitewater records and the commingling of funds with other companies and individuals, I believe many explanations may have to be made if we claim a loss. I do not believe we should claim a gain, because the Clintons did suffer a loss, and that should be the implication in closing the transaction. . . .

Handwritten notes that are undated say the following: "Worst case -- IRS audits return, disallows \$1000 loss -- press says 'you said you invested \$25,000 and couldn't even prove 1000.'" (I am not sure these notes are in Foster's handwriting, but I might have an analysis done. All other notes referenced in this memo appear clearly to be Foster's handwriting.)

On Foster's handwritten notes that are undated but were probably taken at some time from April 7 through 13 and that appear to reflect one or more conversations with at least Yoly Redden, Norris Weese, and Jim Lyons, Foster wrote the following:

Q's

1. What was nature of deductions
A. How deduct interest/principal payments for corp.?
2. Can you use contributions which predated incorporation?

3. Contribution/advancements of \$68,900 to the McD
4. Inability to use \$8000 capital loss.

500 eliminate precision
 1000 arbitrary
 0 would be presumed

JR [Yoly Redden] resists any gain since inconsistent with saying we had a loss --
 zero is arbitrary

(were making payments because McD was missing)

opposes FN

reason is 0 is what IRS uses if you don't prove basis

JR -- we did not know WWDC existed in earlier years

Discussion Points

1. An argument that they were protected against loss:
 A) wash is consistent with this theory
2. Improper to reduce basis by improper tax benefit
3. Computation of economic loss was based, in part, on assumptions whereas
 computation of tax gain or loss must be defensible in audit

Weese [he was one of the Denver accountants]

sometimes relied on Clinton's returns as evidence
 don't want to go back into that box
 Was McD trying to circumvent bank loss
 why HRC getting loans from other

Lyons

HCR transaction re: lot
 A) long-term capital loss limitation

raises Q's re

reasonable for forensic purposes vs IRS audit

On Foster's handwritten notes that are undated but were probably written at some time from April 7 through April 13, Foster made a list of various issues related to the returns, including "pay Keough," "Chelsea's return," and "California return." There also are notes about Whitewater. It is unclear, but these notes appear to reflect conversations with Yoly Redden and Ricki Seidman.

9. Whitewater

Discuss w/ Yoly [**query whether what follows reflects Foster's views or Redden's views. It at least appears to be the latter. BK**]

A. Colo. analyses of economic loss

- 1. did not take into account interest deductions
- 2. calculation included some items for which there were no cancelled checks
- 3. when back out [? BK] unsupported and deductions \$5800 -- rec'd \$1000 for tk
- 4. Yoly recommends vs taking a loss of \$4800

A) other interest deduction of \$4300 which cannot be sure were not WW

B) more importantly would result in an audit of proof of basis

can of worms you shouldn't open [I believe the "worms" are the next three listed items. BK]

1) propriety of characterizing pre-incorp payments on affiliated corporations (\$10M to Great Southern Land)

2) propriety of taking

int deductions for debt
which should be corp

3) prior deduction of
\$8000 prior [?]
payment in 1980

Colo came up with theory to justify but it is shaky

10. Options

\$1000 basis so no tax effect but is arbitrary and still risks audit
versus 0 basis w/ \$1000 gain avoids any audit of issue

political

in Ricki's view no significant difference in
answering Q's for \$4000 loss, no loss, \$1000 gain

On April 15, 1993, Redden wrote a letter to Foster enclosing an original and a copy of the 1992 Arkansas return "which [she] revised to allocate to the President \$500 of the gains from the sale of the Whitewater stock. I am sorry for the inconvenience of so many revisions."

The returns treated Whitewater as a \$1000 gain with a 0 basis, so the only real concern over the returns' treatment of Whitewater was whether the press would seize upon those returns as an indication that the Clintons' statements during the campaign about the extent of their investment in Whitewater were incorrect. There was, however, no risk of an IRS audit on these returns, at least on the basis of their treatment of Whitewater.

As it turned out, the press had very little to say about these returns. I found only two articles mentioning the returns, both on Monday, April 19. The Washington Post reported as follows:

They also reported a \$1000 gain from the sale of their interest in Whitewater Development Corp., a land deal that became an issue last spring after disclosure that a partner, James McDougal, had been the head of a troubled state-chartered savings and loan. Spokeswoman Ricki Seidman said the Clintons sold their half-interest in the unsuccessful 230-acre Ozark Mountain resort development back to McDougal and his wife. Though the Clintons said they lost thousands of dollars on the investment, they listed its initial value for tax purposes as zero. "They decided to take the most conservative position," Seidman said. "The IRS needs extensive documentation to establish basis and not all the documentation was

available, so they declined to show the loss."

USA Today reported as follows: "The Clintons sold their interest in Whitewater Development, a company they and another couple created in 1978 to develop land in Arkansas' Ozark Mountains. The Clintons reportedly sank \$69,000 into the project. They sold their interest in December for \$1000, leaving a loss of \$68,000, which they apparently claimed in previous years." The USA Today story was obviously somewhat inaccurate.

3. Whitewater Corporate Tax Returns

I have found very little documentation in Foster's files relating to the preparation of the Whitewater corporate tax returns. It appears that, consistent with the December 1992 sale, Jim Blair took the lead on this issue. Foster did receive a letter on June 23, 1993, from Yoly Redden stating "I am enclosing copies of the letters that were sent to Mr. Blair today, together with the income tax returns of Whitewater Development Company. Please let me know if you need copies of these returns for your files."

This letter suggests that Foster did not even see the returns before they were filed and that Foster was not involved in the filing of the Whitewater corporate tax returns. That is appropriate because it is difficult to see how he ethically could have been substantially involved in such matters for a corporation while a government attorney.

Conclusions

That summarizes the evidence we possess from Foster's office related to Whitewater. It seems likely that Foster, as well as Seidman, Barnett, Redden, and Lyons, were aware by April 15, 1993, if not earlier: (1) that it would be difficult for the Clintons to prove with documentation that the Clintons had contributed to, and therefore lost as much money on, Whitewater as the Lyons report had claimed (but note that this was stated publicly at the time of the 1993 tax returns); (2) that it might even be difficult for the Clintons to prove (although it did not appear that they would ever have to) that they were at risk of loss in the Whitewater investment; and (3) that the Clintons claimed improper deductions on their personal tax returns in the 1980's (which they conceded, at least in part, during the campaign).

In my view, any suggestion based solely on this evidence that Whitewater was a contributing cause of Foster's distress in July 1993 is quite far-fetched. Why would Foster kill himself or even feel uneasy about the filing of tax returns that had been handled properly and had generated no controversy over Whitewater? I could see that he may well have held his breath upon the filing of the returns in April because they could have generated press reexamination of the Lyons report and old tax returns, but in fact it created no controversy whatsoever. Indeed, this appears to have been one of the few issues that Foster handled in the White House that did not go wrong.

Perhaps Foster was such a worrier that he thought that it could someday come to light that the Clintons knowingly had taken improper deductions in the 1980's or really were at no risk of any loss in the Whitewater investment. But that does not make much sense because those allegations had already been made, and had not resulted in any continued problem for the Clintons. And even if such allegations were renewed and even investigated, there was no possibility of criminal liability given the statute of limitations. Moreover, because the documentation relating to Whitewater was so spotty, it would be at least as difficult to prove such allegations in a civil tax or congressional proceeding as it was to disprove the allegations in the personal tax returns. More to the point, even if I am wrong about all of this, would a person kill himself because of the potential tax problems related to returns of someone else that were filed many years ago and with respect to which the person played no role? It seems unlikely.

In sum, absent more evidence, the "Whitewater contributed to Foster's death" allegations make little sense to me, although I am willing to listen to contrary views. Nonetheless, in the event that we write a report discussing state of mind, I do not think we are qualified to say what issues in effect caused his suicide. The best we can do is to point out the issues that Foster was working on and/or those issues that reasonably could have caused Foster concern at one point or another. With respect to Whitewater, we can say simply that in April 1993, the treatment of Whitewater in the tax returns was an issue of some sensitivity and difficulty that appears from the written record to have caused Foster (as well as others) some degree of concern.

TO: BRETT KAVANAUGH

Revised 7/25/95

FROM: SA [FOIA(b)7 - (C)]

SUBJECT: DISCREPANCY LIST

The following list is my last comprehensive outline of all of the noted discrepancies, inconsistencies, and problems that have been identified in the Vincent W. Foster death investigation to date. The outline is broken down into the following areas: U.S. Park Police, Emergency Medical Technicians (EMTs), the White House, Northern Virginia Medical Examiner, Miscellaneous, and Forensic Examinations. Although mostly the same as the previous list of 6/21/95, there are a few additions, particularly under USPP and Medical Examiner:

- I. U.S. Park Police
 - A. No gunshot residue samples of the decedent's hands.
 - B. Lack of complete documentation of the gunshot residues on the left hand.
 - C. Poorly diagrammed death scene; lack of measurements.
 - D. No photo log; no documentation regarding who took what photographs, and the total number of photos.
 - 1. Edwards initialed Ferstl's photographs.
 - 2. Ferstl is unsure of the exact number of photographs he took with Edwards camera.
 - E. Death scene 35mm photos did not develop.
 - F. No documentation regarding the initial search of the decedent's vehicle at the death scene- no inventory.
 - G. Photo of an unidentified briefcase next to a U.S.P.P. vehicle.
 - H. Decedent's pager returned too soon; no records obtained regarding previous pages.
 - I. Suicide weapon processed with dust prior to other laboratory exams.
 - 1. No latent prints of any kind; value/no-value.
 - J. Inconsistent statements regarding moving and searching the body. (Rolla, Braun, Simonello, Hodakaviec)
 - K. Inconsistent and poorly documented autopsy.
 - 1. Morrisette's report.
 - 2. No gunshot residue samples from hands.
 - 3. No fingernail clippings/scrapings.

1-Tuohey
①-Ewing
1-Lueckenhoff
1-Kavanaugh
1-Gillis
1-[FOIA(b)7 - (C)]
1-Clemente
1-29D-LR-35063

4. No major case prints of decedent.
5. No photo of left hand.
6. Possible contamination of evidence subsequent to autopsy at M.E.'s Office.
7. Inconsistent statements regarding what was done to the body prior to autopsy.
8. No description of body and clothing prior to autopsy.

L. Possible contamination of evidence at U.S. Park Police facility.

M. Poor interview and documentation of witnesses at death scene (Doody and Feist).

N. Photo of an unidentified white male wearing plainclothes at death scene.

O. Inconsistent statements regarding vehicle doors being locked/unlocked. (Braun, Rolla, Hodakievic, Simonello, Gavin)

P. All photographs not produced pursuant to initial subpoena.

Q. Inadequate and incomplete metal detector search by the USPP. (Operators had no prior experience or training)

R. Eyeglasses and revolver lifts contain trace evidence.

S. Case was closed prior to completion of laboratory exams.

T. Inconsistent statements of Officer Watson, Jeff McGaughey, and Braun regarding Watson's and McGaughey's actions/observations at the scene.

1. Watson is the Special Forces officer that responded to the scene.

U. Watson did not notify Gavin, as requested by Braun at approximately 7:30 p.m.

V. No neighborhood investigation.

1. Did not obtain video from Saudi residence of second entrance.

W. Incorrect number of torn pieces of note in Simonello's report.

X. No documentation of the latent prints of value that were obtained from the decedent's vehicle.

1. The prints were identified by the FBI Lab.

Y. Incomplete search of the decedent's vehicle.

1. Numerous items were not taken as evidence; they were later obtained by OIC FBI agents.

II. Inconsistent statements and observations of Fairfax County Fire and Rescue personnel.

A. Wound on neck (Arthur: .45 cal. bullet hole.)

B. Gun under thigh.

C. Wound on upper right front of skull (Gonzales).

D. Briefcase in vehicle.

E. Unidentified person in woods (Hall).

F. Vehicle doors locked.

G. Death scene photos do not accurately depict scene.

H. Two unidentified white males walking from death scene.

I. Color of gun was silver.

J. Type of gun was semiautomatic pistol (Arthur).

K. Statements of initial paramedics at scene regarding their actions are inconsistent with Fairfax County paramedic protocols.

L. Report coded as a homicide (Ashford).

III. Medical Examiner

A. X-rays

1. Autopsy report indicates x-rays were taken.
2. Morrissette's report indicates Beyer told him x-rays were taken.

B. All individuals present at autopsy not indicated on autopsy report.

C. No photographs of decedent's left hand.

D. Inconsistent statements regarding removal of decedent's tongue and palate.

E. Inconsistent "on-scene" times reported for Dr. Haut; 7:40 pm and 7:15.

F. Stomach contents; no definitive digestion time, or positive identification.

G. "Cross-hatched" lines in autopsy diagram- discrepancy between Dr. Luke's autopsy review and 7/13/95 conversation with Dr. Beyer.

IV. White House

A. Foster's office unsecured until 7/21/93, approximately 10:10 a.m.

1. Patsy Thomasson, Maggie Williams, Bernie Nussbaum search Foster's office.

B. Confidential trash bag removed and replaced.

C. Nussbaum enters office; removes small photo.

D. Pond rearranges papers on Foster's coffee table.

E. Exclusive initial review of documents by Nussbaum.

F. Torn note found one week later in briefcase previously searched by Nussbaum.

G. Note not released to investigators until the following week; a day after it was discovered.

V. Miscellaneous

A. CW's inconsistencies.

1. positioning of decedent's hands.

2. no gun.

3. winecoolers and briefcase in vehicle.

4. trampled area around death scene.

5. does not see white car occupied.

B. Inconsistencies between Doody and Feist's statements.

1. Inconsistencies between USPP interviews and FBI interviews of Doody and Feist.

2. Their statements re- other people at the park were "completely ignored" by Fiske investigators.

C. No initial investigation of the park's "second entrance".

D. No one heard a gunshot.

E. The gun exemplifies a "drop gun".

F. No matching ammo at the decedent's residence.

G. The decedent's grip on the gun was not the simplest nor the easiest to shoot himself in the mouth.

H. The decedent never previously spoke of suicide.

I. The decedent had no particular obsession, "dire

predicament", or one thing that would have put him over the edge.

J. The decedent had dealt with stress before.

K. The suicide weapon has never been positively identified as belonging to the decedent, or the decedent's father.

1. Family members have been unable to reliably and conclusively identify the gun.

L. Lisa Foster's initial spontaneous question "was the gun in his mouth?".

M. Five unaccounted for hours between the time the decedent left work and was discovered dead.

N. Lack of blood at death scene.

O. No bullet.

P. No cadaveric spasm causing decedent to clench gun.

Q. The gun did not fly out of the decedent's hand.

R. No chipped teeth noted by M.E.

S. No flashburns inside mouth noted by M.E.

T. The mortician lost the original embalming report and diagram.

U. The decedent's glasses were discovered 13' downslope from his body.

V: The positioning of the body is inconsistent with suicide; body neatly laid out; "as if it was in a coffin".

W. Fairfax Hospital Laboratory Supervisor statement re-gunshot wound to middle of head.

X. Helen Dickey telephone call to Roger Perry.

Y. Committed suicide at an unfamiliar location.

Z. No suicide note.

A1. No previous mention of suicide.

B1. Ate lunch prior to committing suicide.

C1. Jeff McGaughey's statements are inconsistent with Officer Watson's.

D1. USSS memo of SA Scott Marble, dated 7/20/93, re-decedent's body discovered in his car, and revolver recovered in car.

E1. Other witnesses were in the park (Ruddy article of 6/14/95).

1. Several men wearing orange vests.

2. Several people who entered the park through the rear entrance and encountered police.

F1. Enhanced photograph depicts a wound on neck.

G1. Not an independent investigation (Ruddy article of 6/19/95).

1. Tuohey conflicts.

2. Colombell oppositon/resistance.

H1. Eyeglasses found 13' from body.

VI. Forensic Examinations

A. Unidentified latent print inside grip of suicide weapon.

B. Unidentified blonde head hairs.

C. Unidentified carpet fibers.

D. Unidentified stain on shirt. (Dr. Lee).

E. Unidentified gunpowder in scrapings.

F. The decedent's head was moved.

G. No blood on suicide weapon.

- H. No soil on shoes. (mica flakes)
- I. Large semen stain in the decedent's underwear.
- J. Blood flowed uphill (video).
- K. Excavation of site disputed.
- L. Possible blood on handkerchief (Item 4a)
- M. Inconsistent vegetation at death scene.
- N. Polaroid photos depict decedent's hand in different positions.
- O. FBI Lab relied on third generation photographs for their examinations; copies of copies.

TO: BRETT KAVANAUGH

3/22/95

FROM: SA FOIA(b)7 - (C)

SUBJECT: DISCREPANCY LIST

The following list is offered as a comprehensive and itemized outline of all of the noted discrepancies, inconsistencies, and problems that have been identified in the Vincent W. Foster death investigation to date. The outline is broken down into the following areas: U.S. Park Police, Emergency Medical Technicians (EMTs), the White House, Northern Virginia Medical Examiner, Miscellaneous, and Forensic Examinations.

I. U.S. Park Police

- A. No gunshot residue samples of the decedent's hands.
- B. Lack of complete documentation of the gunshot residues on the left hand.
- C. Poorly diagrammed death scene; lack of measurements.
- D. No photo log; no documentation regarding who took what photographs, and the total number of photos.
- E. Death scene 35mm photos did not develop.
- F. No documentation regarding the initial search of the decedent's vehicle at the death scene- no inventory.
- G. Photo of an unidentified briefcase next to a U.S.P.P. vehicle.
- H. Decedent's pager returned too soon; no records obtained regarding previous pages.
- I. Suicide weapon processed with dust prior to other laboratory exams.
- J. Inconsistent statements regarding moving and searching the body. (Rolla, Braun, Simonello, Hodakaviec)
- K. Inconsistent and poorly documented autopsy.
 - 1. Morrisette's report.
 - 2. No gunshot residue samples.
 - 3. No fingernail clippings/scrapings.
 - 4. No major case prints of decedent (palms, sides and tops of fingers).
 - 5. No photo of left hand.
 - 6. Possible contamination of evidence subsequent to autopsy at M.E. Office.

1- Tuohey
①- Kavanaugh
1- Gillis
1-29D-LR-35063

4. trampled area around death scene.
5. does not see white car occupied.
- B. Inconsistencies between Doody and Feist's statements.
- C. No initial investigation of the park's "second entrance".
- D. No one heard a gunshot.
- E. The gun exemplifies a "drop gun".
- F. No matching ammo at the decedent's residence.
- G. The decedent's grip on the gun was not the simplest nor the easiest to shoot himself in the mouth.
- H. The decedent never previously spoke of suicide.
- I. The decedent had no particular obsession, "dire predicament", or one thing that would have put him over the edge.
- J. The decedent had dealt with stress before.
- K. The suicide weapon has never been positively identified as belonging to the decedent.
- L. Lisa Foster's initial spontaneous question "was the gun in his mouth?".
- M. Five unaccounted for hours between the time the decedent left work and was discovered dead.
- N. Lack of blood at death scene.
- O. No bullet.
- P. No cadaveric spasm causing decedent to clench gun.
- Q. The gun did not fly out of the decedent's hand.
- R. No chipped teeth noted by M.E.
- S. No flashburns inside mouth noted by M.E.
- T. The mortician lost the original embalming report and diagram.
- U. The decedent's glasses were discovered 13' downslope from his body.

VI. Forensic Examinations

- A. Unidentified latent print on note.
- B. Unidentified latent print inside grip of suicide weapon.
- C. Unidentified blonde head hairs.
- D. Unidentified carpet fibers.
- E. Unidentified stain on shirt. (shirt being resubmitted to lab)
- F. Unidentified gunpowder in scrapings from decedent's shoes and socks, and the paper that they were dried on.
- G. The decedent's head was moved.
- H. No blood on suicide weapon.
- I. No soil on shoes. (mica flakes)
- J. Large semen stain in the decedent's underwear.

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL
1001 Pennsylvania Avenue, N.W., Suite 490N
Washington, D.C. 20004
telephone (202) 514-8688 facsimile (202) 514-8802

Date: _____

TO: HickSwing

Company Name: _____

Fax Number: _____ Telephone Number: _____

FROM: Brett Kavanaugh

Number of Pages: 4 (including this cover sheet)

Message: _____

CONFIDENTIALITY NOTE

This facsimile is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination, distribution, or copying of this facsimile or the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the facsimile by mail.

Memorandum



To : ASSOC. INDEPENDENT COUNSEL BRETT KAVANAUGH 6/22/95

From : SA [FOIA(b)7 - (C)]

Subject: FOSTER DEATH INVESTIGATION
SUMMARY OF PHYSICAL EVIDENCE

The following is a comprehensive summary of the physical evidence in this case. This summary does not include the items obtained during the search of Ft. Marcy Park on 4/4/94, since none of the items were determined to be relevant to this investigation. Preliminary examination by Dr. Lee indicates the possibility of the presence of blood on the USPP latent lifts from the glasses and revolver, as noted in my memo documenting my meeting with him on 6/9/95. My memo of 6/12/95 identifies the particular locations and amounts of hairs, fibers, and latent prints. Additionally, my memo of 3/2/95, which documents our meeting with the laboratory examiners, contains information regarding the nature of the forensic examinations and some of the conclusions that can be drawn from the results.

I) Death Scene Observations.

A) The decedent was lying face-up on an approximate 45 degree sloped embankment, with his head toward the top of the slope. The location was consistently described to be near the "second cannon".

B) The decedent was wearing a white shirt. Blood stains are only observed on the right shoulder and neck area, and around the right rib cage area.

C) Blood trails are observed on the decedent's face.

D) The decedent's arms were at his sides. The right hand was around the cylinder of a black revolver.

1) right thumb trapped between trigger and inside edge of trigger guard.

2) one blood droplet on right index finger above second joint.

3) apparent gunshot residues along the outside edge of the right index finger, in close proximity to the cylinder gap of the weapon.

1-Tuohey

① Ewing

1-Lueckenhoff

1-Kavanaugh

1-Gillis

1-Clemente

1-[FOIA(b)7 - (C)]

1-29D-LR-35063

4) The hammer of the revolver had to be cocked to remove the weapon from the hand (indicates that the revolver was cocked when the thumb was inserted).

5) The decedent's hand was flexible (gun was not tightly gripped).

E) Prescription glasses were collected approximately 13' downslope from the decedent's feet.

F) When the body was rolled, a large pool of blood was observed where the head had been resting.

1) Additionally, a larger area of blood was observed where the decedent's back was in contact with the ground, which coincided with blood stains observed on the back of the decedent's shirt.

2) A gunshot wound was observed at the back of the decedent's head.

G) The area was not searched for blood, other than by sight.

1) No blood was visually seen on surrounding vegetation.

H) The decedent was still wearing his jewelry and pager.

1) The pager had been manually turned off.

2) The decedent's wallet and identification were located in his unlocked vehicle.

a) The wallet contained \$292 and various credit cards.

I) The weapon was unloaded at the USPP office.

1) The hammer was down on a fired .38 caliber casing.

2) An unfired .38 cal. bullet was in the next chamber.

a) Colt revolvers rotate clockwise. The unfired bullet was in the next chamber to be rotated into firing position.

3) The serial number from the crane of the revolver cylinder (356555) was traced to the Seattle Hardware Co., Seattle, WA., 9/14/13.

a) The serial number on the frame of the revolver (355055) was traced to the Gus Habich Co., Indianapolis, IN., 12/29/13.

b) Consistent with describing the weapon as an antique or family heirloom.

J. The following items were taken as evidence at the location of the body on 7/20/93:

a) eyeglasses- 13' downslope from the decedent's feet. (Simonello).

b) revolver- from the decedent's right hand (Simonello).

c) Seiko wrist watch- from decedent's left wrist (Rolla).

Returned to Cliff Sloan on 7/21/93.

d) Pager- from decedent's right waist area (Rolla). Returned to Cliff Sloan on 7/21/93.

e) Silver ring with large white stone- from decedent's right ring finger (Rolla). Returned to Cliff Sloan on 7/21/93.

f) Gold colored ring with inscription "E.B.B. to V.W.F. 4-20-68" - from decedent's left ring finger (Rolla). Returned to Cliff Sloan on 7/21/93.

K. The following items were taken as evidence from the decedent's vehicle in the Ft. Marcy parking lot:

a) Brown leather wallet containing identification, credit cards, miscellaneous papers, and photos- from decedent's suit jacket pocket (Braun- Rolla). Returned to Cliff Sloan on 7/21/93.

(1) one of the papers in the wallet was a list of psychiatrists.

b) Black suit jacket- from front passenger seat of decedent's vehicle (Braun).

c) Blue silk tie with swans- on top of coat on front passenger seat (Braun).

d) White House Identification- under coat on front passenger seat (Braun).

e) Miscellaneous papers- from glove box, trunk, and door (Braun).

L. Photos.

1. 35mm photos taken by Simonello were underexposed, and did not develop.

2. 5 Polaroid photos of the death scene initialed by Edwards, probably taken by Ferstl.

3. 8 Polaroid photos of the death scene taken by Rolla.

4. 5 Polaroid photos of the decedent's car at the Ft. Marcy parking lot taken by Braun.

M. The following items were taken as evidence from the decedent's right front pants pockets at the Fairfax Hospital Morgue on 7/20/93:

a) one key ring marked "Cook Jeep Sales" (Braun).

b) one key ring marked "Vince's Keys" (Braun). Returned with vehicle on 7/27/93.

II. Autopsy

A. Observations.

1. Cause of death: perforating gunshot wound mouth - head, no other trauma noted.

a. No evidence of abrasions, lacerations, contusions, or bone fractures (other than that associated with the head wound).

b. No evidence of teeth fractures or chipping.

2. Apparent gunpowder residues on both index fingers; more pronounced on right hand.

3. Abundant gunpowder residues on the soft palate of the mouth.

4. Toxicology was negative for alcohol and drugs.

B. The following items were taken as evidence subsequent to the autopsy at the Northern Virginia Medical Examiner's Office on 7/21/93. The items of clothing were placed into one bag and transported to the US Park Police Anacostia Office:

a) white colored, long-sleeved, button-down shirt (Johnson).

b) white colored, short-sleeved t-shirt (Johnson).

c) white colored boxer shorts (Johnson).

d) blue-gray colored pants with black colored belt (Johnson).

e) a pair of black colored socks (Johnson).

f) a pair of black colored dress shoes, size 11M (Johnson).

g) known hairs of Vincent Foster, Jr. (Johnson).

- h) known blood of Vincent Foster, Jr. (Johnson).
- i) known fingerprints of Vincent Foster, Jr. (Johnson).

The clothing was set out to dry on three pieces of brown wrapping paper, which were layed out on the floor of the USPP photo developing room. On 7/26/93, the items were packaged in separate containers and placed in the USPP evidence locker.

C. Autopsy documentation.

- 1. Diagrams (Beyer).
- 2. 5 microscopic slides containing sections of the soft palate, brain, heart, lung, and liver (Beyer).
- 3. 5 paraffin blocks, 3 of soft palate (Beyer).
- 4. 13 Polaroid photographs (Beyer).
- 5. 14 35mm photographs (Beyer).
- 6. 35 mm photos (Hill).

III. Vehicle search.

A. The following items were obtained from a search of Foster's grey Honda Accord at the USPP impound lot on 7/21/93 by Officer E.J. Smith, and stored at the USPP evidence room:

- 1. Rand McNally Washington, D.C. map.
- 2. sunglasses.
- 3. "Happy Birthday card to Tom".
- 4. piece of white paper with red writing.
- 5. box of "The DeLuxe Check Printers, with four checkbooks in the name of Laura Foster.
- 6. clear plastic envelope with Insurance Identification Card listed to Vincent or Elizabeth Foster, Policy number 10094177-01, exp. 8/6/90.
- 7. one Sierra Nevada beer bottle (from inside white and green bag).
- 8. one Miller Lite beer can.
- 9. empty container of Marlboro Lites cigarettes.
- 10. one Kaopectate bottle.
- 11. one Clos Du Bois corkscrew.
- 12. Contents of front ashtray:
 - a. 35 pennies, two quarters, one nickel, a Compton's Foodland disk, a \$100 Estados Unidos Mexicanos coin dated 1985.
 - b. Chevron credit card.
 - c. Texaco credit card.
 - d. a guitar pick.

B. 35 mm photos were taken of the vehicle during the search (Smith).

C. The vehicle was processed for latent prints with negative results (Smith).

1. Four of these latent prints were later identified by the FBI Laboratory as being of comparison value.

D. The following items were obtained from the law firm of Sharp & Lankford by SA Russell Bransford on 6/16/94. The items were in the decedent's grey Honda Accord at the time it was released by the USPP. The items were removed from the car by William Kennedy.

The items were subsequently stored at the OIC-DC Office:

1. coffee mug
2. container of jellybeans
3. black eyeglass pouch with Rayban sunglasses
4. green kitchen mitt
5. one pair of brown moccasins
6. one blue audiocassette carryingcase with 12 music tapes
7. two hardcover books:
 - a. Speak Up With Confidence, by Jack Valenti
 - b. 2,000 Famous Legal Quotations, by M. Frances McNamara
8. Tysons Center directory
9. Potomac Mills directory
10. Eastern U.S. area map
11. one yellow envelope containing papers pertaining to the Honda Accord.
12. one White House envelope, hand addressed in pencil to William Kennedy, containing an Arkansas vehicle registration for a 1992 Lexus 300, with an attached post-it note.

IV) The note.

A. On 7/27/93 at 9:30 pm, numerous pieces of small yellow lined paper were obtained from Bernard Nussbaum by Det. Megby of the USPP.

B. On 7/28/93, the note was reconstructed and photographed (Simonello).

C. On 7/30/93, the note was released to SA Scott Salter, FBI.

D. On 8/5/93, the note was returned to the USPP.

V) On 3/21/94, all of the above items from the death scene, vehicle search, autopsy, and the note were released to the Office of the Independent Counsel (Colombell 302 of 3/21/94). The items were subsequently provided to the FBI Laboratory on 3/24/94.

VI) In December 1994, Sharon Bowman (decedent's sister) provided five .38 caliber rounds that were obtained from the Foster residence in Hope, AK.

VII) Approximately one week after Foster's death, Deborah Gorham located a copy of his life insurance policy in the middle drawer of his desk.

VI) FORENSIC EXAMINATIONS

A. The note.

1. one latent palm print of value was developed, and subsequently positively compared to the known prints of Bernie Nussbaum.

2. the handwriting was positively compared to the known writing of Vincent W. Foster, Jr. by the U.S. Capitol Police and the FBI.

3. one unidentified blue wool fiber.

4. no indented writing.

5. insufficient DNA for exam.

B. The vehicle.

1. four latent prints of value (as identified by the FBI Lab).
2. two latent prints of value from a business card which was part of the miscellaneous papers removed from the car.
 - a. one of the prints was positively compared to the known prints of Simonello (USPP).
3. one latent fingerprint on a white envelope.
4. four latent fingerprints from a pink envelope.
5. one latent palm print from a greeting card.

C. Revolver.

1. no latent prints on outside.
 - a. one partial latent fingerprint on underside of grip (unable to compare with decedent's known prints).
2. no blood. *-USPP latent lifts
3. decedent's DNA on muzzle.
4. no alteration of serial number.

D. White, long-sleeved shirt.

1. positive reaction for gunpowder gunshot residue (ATF and FBI).
2. ball shaped gunpowder
3. decedent's blood.
 - a. the only stains on the shirt are blood and sodium rhodizonate.
4. no semen.
5. no hairs dissimilar to the decedent/suitable for comparison.
6. unidentified fibers (3).
7. no coherent soil.
8. mica particles.

E. Fired cartridge case.

1. fired from the revolver.
2. several pieces of ball smokeless powder.
3. no latent prints.

F. Unfired cartridge.

1. similar to fired cartridge in caliber, manufacturer, and headstamps.
2. contained ball smokeless powder.
3. no latent prints.

G. Eyeglasses.

1. one piece of ball smokeless powder.
2. no blood. (USPP latent lifts).
3. insufficient DNA for exam.
4. no latent prints.

H. Paper that decedent's clothes were set out on to dry at USPP.

1. ball shaped gunpowder.
2. one dissimilar gunpowder particle (perforated disk shaped, from a fired cartridge)

3. no hairs dissimilar to decedent's/suitable for comparison.
4. unidentified fibers (approx. 20).
5. no coherent soil.
6. mica particles.

I. Known blood of the decedent.

1. Trace amounts of trazodone, diazapam/nordiazapam.

J. Known hair of the decedent.

1. No drugs.

K. T-shirt.

1. ball shaped gunpowder
2. decedent's blood.
3. no semen.
4. unidentified head hairs.
5. unidentified fibers (2).
6. no coherent soil.
7. mica particles.

L. Socks and shoes.

1. one dissimilar gunpowder particle (flattened ball shaped from an unfired cartridge).
2. blood of unknown origin on one shoe.
3. no blood on the socks and the other shoe.
4. unidentified head hairs.
5. unidentified fibers (approx. 17 short fibers).
6. no coherent soil.
7. mica particles.

M. Known tissue samples from decedent's soft palate.

1. no unconsumed gunpowder particles- no ball shaped gunpowder.

N. Belt and pants

1. human blood, too limited to identify, on belt.
2. unconfirmed blood on pants.
3. no semen on pants.
4. unidentified head hairs.
5. unidentified fibers (numerous small/short fibers- all on one microscope slide).
6. no coherent soil.
7. no gunpowder residues (ATF & FBI).
7. mica particles.

O. Shorts.

1. unconfirmed human blood.
2. semen (DNA matched to decedent).
3. no hairs dissimilar to decedent's/suitable for comparison.
4. unidentified fiber (1).
5. no coherent soil.
6. mica particles.

P. Jacket.

1. no blood.
2. no semen.
3. no hairs dissimilar to decedent/suitable for comparison.
4. unidentified fibers (8 total from jacket, tie, handkerchief scrapings).
5. no coherent soil.
6. no mica.

Q. Handkerchief.

1. unconfirmed blood.
2. no semen.
3. unidentified fibers (8 total from jacket, tie, handkerchief scrapings).

R. Tie.

1. no blood.
2. no semen.
3. no hairs dissimilar to decedent/suitable for comparison.
4. unidentified fibers (8 total from jacket, tie, handkerchief scrapings).
5. no coherent soil.
6. no mica.

S. Brown wrapping paper, white filter paper, and white wrapping paper from around revolver.

1. no blood.
2. no DNA exam conducted (decedent's DNA on muzzle of revolver).

T. Miscellaneous papers from decedent's car.

1. unidentified DNA on an envelope (flap and stamp).
2. insufficient DNA for exam on other paper items.
3. indented writing ("VU Parking Ticket") on Ty Tippet business card. No indented writing on any other items.

U. Miller Lite beer can.

1. insufficient DNA for exam.

V. Sierra Nevada beer bottle.

1. insufficient DNA for exam.

W. .38 caliber ammunition provided by Sharon Bowman.

1. four rounds are of the same manufacture (Remington) as the rounds found in the revolver.
 - a. two of these rounds are lead round nosed bullets; the same as the unfired round in the revolver, but manufactured at a different time.
2. one bullet was a lead round nosed cartridge, but made by a different manufacturer.
3. all of these rounds were capable of being fired from the revolver.

May 3, 1995
2:50 pm

From: H. Ewing
To: B. Kavanaugh
re: "Safe House"

1. I was advised on the afternoon of May 2 by that the alleged "safe house" was located in Merrywood on the Potomac, a development located 100-200 yards from the back entrance to Fort Marcy Park.

The house was in the name of FNU Wallace, an attorney close to Bill Clinton. Or, the house was jointly in Wallace's and Foster's names.

The caller told me he did not know how good this information was, but wanted to pass it on.

2. I asked the caller where it was physically in relation to Fort Marcy. I told him there was a subdivision west of the Park. He simply repeated that it was 100-200 yards from the back entrance.

I got the impression that the caller was not familiar with the layout of the Park or the surrounding area.

3. The caller called me back at 8:33 am on Wed., May 3, leaving a voice mail: I have some more specifics on the safe house. I called this person back at 12:02 pm and left my name and number.

4. At 2:45 pm this person advised:

The house is on Dogwood Street. It leads to a deadend in a cul-de-sac. It is in Fairfax County.

On the left in the back of the cul-de-sac is a big white two story house. It abuts Fort Marcy Park. This development is about 300 yards from the park.

There is a Larry Wallace, who is a big shot attorney.

Again, this information may not be accurate.

HICKMAN EWING, JR.
ATTORNEY AT LAW
2124 S. GERMANTOWN RD.
GERMANTOWN, TN 38138

Phone: 901-755-2597

Facsimile: 901-755-7609

FACSIMILE TRANSMISSION COVER SHEET

TO: Brett Kavanaugh
OIC - Washington, D.C.

DATE: 5-12-95

FAX#: 202-514-8802

FROM: Hickman Ewing

FAX #: 901-755-7609

RE: _____

Total number of pages transmitted (including this page): 4

Message: _____

THE DEATH OF VINCENT FOSTER. WHAT REALLY HAPPENED?

--Jeremiah Films

This video was produced by the same people who produced "The Clinton Chronicles." It begins with a statement to the effect, "The following information is documented and true." Some of the highlights of this video are as follows:

INTRODUCTION

The Citizens for Honest Government presents: "The Death of Vince Foster. What really happened?"

I. PART ONE - THE INCONSISTENCIES

- 1 - very little blood at scene
- 2 - Foster's head assumes four different positions after death
- 3 - no skull fragments found at the scene
- 4 - gun found in Foster's hand
- 5 - gun found in wrong hand
- 6 - Foster's fingerprints not on gun
- 7 - powder residue suggests Foster did not fire gun
- 8 - powder on Foster's clothing did not match gun
- 9 - gun not positively identified as Foster's
- 10 - fatal bullet never located
- 11 - no gunshot heard
- 12 - no dust found on Foster's shoes

Six pieces of evidence which indicate it is likely Foster did not die in the park.

1. Very little blood
2. Four different head positions
3. No skull fragments
4. No bullet
5. No gunshot reported
6. No dust on shoes

Three pieces of evidence which indicate it is more than likely Foster did not fire gun himself.

1. Gun still in hand
2. Gun in wrong hand
3. Untraceable weapon used

II. PART II - THE COVER-UPS

A.

1. Falsified position of the body - a second crime scene created that night
2. White House demanded key evidence, and park police gave it to them. This included papers, etc., given back.

B. Was Foster suicidal?

Initially - "Absolutely not." The secretary said there was nothing unusual. Bill Clinton said there was nothing unusual.

But the Fiske report said that he was depressed, he organized his desk, he paid bills, he was apparently stiff that morning, and he was apparently distracted.

Everyone fell in line that he was depressed.

Hillary Clinton said on April 22, 1994, "No one had a clue. Neither did the people who spent the weekend with him."

Day of death - no suicide indications

1. Drove children to work
2. No final words
3. No final preparations

4. Arrived on time
5. Worked conscientiously
6. Set up future appointments
7. Ate lunch
8. Read the newspaper
9. Checked out a pager
10. Said he would return later
11. Wrote no suicide note

Dr. Beyer gave very inconsistent statements.

Bill Clinton gave conflicting versions of Foster's state of mind.

III. PART III - THE RAID ON FOSTER'S OFFICE

Ending quote by Webb Hubbell, July 20, 1993: "Don't believe a word you hear; it was not a suicide."

MEMORANDUM

TO: Judge Starr
Mark Tuohey
Hickman Ewing
John Bates

FROM: Brett Kavanaugh

CC: Ed Lueckenhoff
Dana Gillis
Russ Bransford

RE: Foster Documents/Office/Note Investigation

DATE: June 15, 1995

The following is a tentative schedule for the Foster documents investigation, including for decisions on possible indictments. This schedule assumes no significant new information is developed in the next three months.

July 7, 1995

- completion of all grand jury appearances and major interviews.

July 17-28, 1995

- Senate Hearings (tentative dates).

August 1995

- attorney and agent evaluation of evidence and of Senate hearings.
- follow-up interviews if necessary.
- preparation of internal report/memorandum regarding the investigation and possible indictments.

September 6, 1995

-- circulation to all OIC attorneys of internal report/memorandum, including recommendations regarding possible indictments.

September 7-15, 1995

-- indictment decisions.

[Note: I anticipate that the Foster death investigation will conclude later than the Foster documents investigation, in large part because we still have various ideas and theories to pursue in the Foster death investigation.]

MEMORANDUM

TO: Judge Starr

CC: Mark Tuohey
Hickman Ewing
John Bates
Steve Kubiowski

FROM: Brett Kavanaugh

RE: DOJ OPR Report on Travel Office

DATE: May 31, 1995

URGENT

Chairman Clinger plans to hold hearings on the Travel Office affair as soon as practicable. He has requested from the Department of Justice the Department's OPR Report on the Travel Office. The Department (Peggy Irving) has contacted me to determine whether we object to release of the OPR report. **THE DEPARTMENT NEEDS AN ANSWER IMMEDIATELY.**

I recommend that we not object to release of the Travel Office report. I see no danger that release of this report would hinder or impede our investigation of Mr. Foster's state of mind. Indeed, I think it possible that congressional inquiry may further illuminate the involvement of Mr. Foster and others, including the First Lady, in the Travel Office affair.

Mr. Fiske had objected to release of the OPR report while his investigation of the Foster death was proceeding. I do not believe that should alter our decision, however. Much of the information regarding Mr. Foster in the OPR Travel Office report is now public by means of the Fiske report and other news articles. Therefore, we are not in an identical situation to Mr. Fiske with respect to the OPR report. In addition, even were that not the case, I would still recommend that we adopt a position different from the one adopted by Mr. Fiske. It seems to me that we need to be cautious in dealing with Congress, and resist Congress only when it "really matters." This seems an especially tangential matter over which to incur the wrath of Congress. If we object to congressional inquiry into any matter in which Mr. Foster was involved, we would object to inquiry into the Travel Office, WACO, gays in the military, etc. In my opinion, that is not a posture that we should adopt.

RECOMMENDATION: I call Peggy Irving and tell her that we do not object to release of the OPR report on the Travel Office.

Please give me an answer today if possible.

MEMORANDUM

TO: Judge Starr
Mark Tuohey
Hickman Ewing

FROM: Brett Kavanaugh

RE: Foster Issues

DATE: May 8, 1995

HL
5-9-95

This seems an appropriate time for a few brief thoughts on the Foster investigations.

1. The Foster death investigation can be divided into two related but distinct issues: (1) state of mind; and (2) for lack of a better term, physical evidence (which includes death scene observations, blood, forensic evidence, ballistics, etc.). In my opinion, we have made progress from the FBI/Fiske investigation on Foster's state of mind -- although we have not entirely solved that riddle. I do not believe, however, that we have yet made significant advances on the physical evidence, in large part because the FBI and Mr. Fiske did a fairly thorough job on that aspect of the investigation and seemed to answer the questions that could be answered.

To the extent, therefore, that we write a public report on the physical evidence, such a report is likely to be largely repetitive of the Fiske report. And I have serious doubts about the wisdom of or necessity for a public report on the Foster physical evidence if, as now would be the case, that report does little more than rehash the Fiske report. (If we solve the gun issue, that would be a significant breakthrough, but we have yet to do so.)

In any event, this is something to keep in mind as we continue the Foster death investigation.

2. For the next 6-8 weeks, Chuck Regini and Jeff Greene will continue the investigation/review of the Foster physical evidence and will attempt to complete the factfinding on it. To assist them, I recommend that we retain an independent pathologist; despite all of his qualifications, Dr. Hirsch unfortunately cannot be viewed as truly independent because of his work on the Fiske investigation.

3. During the next 6-8 weeks, I will attempt to complete the factfinding on the Foster office/documents investigation and the Foster state of mind investigation. One major task for me during this period will be to review at the White House the documents from Mr. Foster's office. In addition, I have a number of additional grand jury witnesses on the Foster documents

investigation.

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

MEMORANDUM

TO: Judge Starr
Mark Tuohey
Hickman Ewing
John Bates

FROM: Brett Kavanaugh

DATE: July 11, 1995

RE: Foster Documents Investigation -- Grand Jury Schedule

As of this date, we have interviewed 42 witnesses in the grand jury on the Foster documents investigation. We thus have completed the grand jury phase of this investigation -- with two exceptions. First, we may interview [REDACTED] in the grand jury at some point depending on his status in Little Rock investigations. Second, we will have a few questions to ask [REDACTED] when he appears in the grand jury on White House-Treasury contacts issues.

Absent significant new developments, I plan to circulate a prosecution memorandum by Monday, August 21, if at all possible.

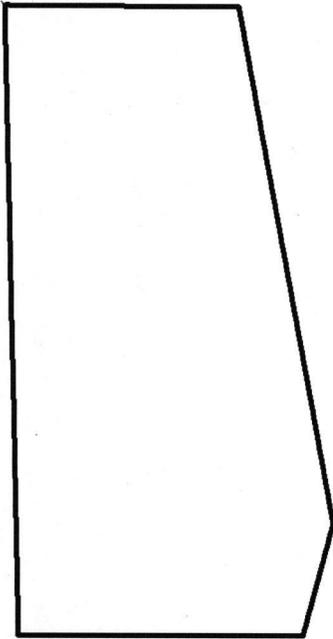
Attached is a list of the grand jury witnesses.

**Grand Jury Update -- Foster Documents/Office/Note Investigation
(as of July 11, 1995)**

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

Subjects

White House (18)



Starr GJ

Fiske GJ

- X (will not be subpoenaed)
- X (will not be subpoenaed)
- X
- X (awaiting Bennett's approval)
- X
- X (will not be subpoenaed)
- X
- X
- X
- X (to be scheduled on WH/DOT)
- X
- X
- X

X

X

X

X

Department of Justice (1)

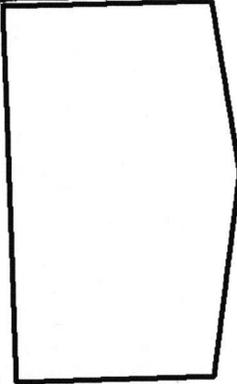


X

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

Important Witnesses

White House (11)



Starr GJ

Fiske GJ

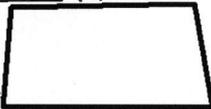
- X
- X
- X
- X
- X
- X
- X
- X
- X
- X
- X

Department of Justice (4)



- X
- X
- X
- X

Park Police (3)



- X
- X
- X

FBI (2)



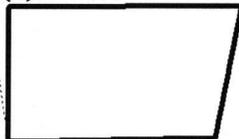
- X
- X

Secret Service (5)



- X
- X
- X
- X
- X

Other (4)



- X
- X
- X

(will not be subpoenaed)