

MEMORANDUM

TO: Judge Starr
Mark Tuohey
Bill Duffey
Hickman Ewing
John Bates

FROM: Brett Kavanaugh

RE: Foster Investigations

DATE: March 4, 1995

At Friday's meeting in Washington, decisions were made regarding certain aspects of the Foster death investigation. I will summarize those decisions and then list other points for discussion at our next team meeting.

Decisions

1. The Foster state of mind investigation necessarily must be a balance of thoroughness against reasonableness. Striking that balance, Ken concluded that it would be inappropriate at this juncture to issue a subpoena to the White House for "all documents to, from, or referring or relating to Vincent W. Foster, Jr." Such a subpoena remains a future option, however.

2. The goal of the Foster death investigation is to attempt to determine to as high a degree of certainty as is reasonably possible whether Foster's death was a homicide or a suicide. One factor to consider in making that determination is Foster's state of mind prior to his death. A troubled state of mind would be probative of suicide; a healthy state of mind would be probative of homicide. Of course, a particular state of mind is not definitive proof of suicide or homicide, but it nonetheless is a standard factor to weigh in death investigations.

With that in mind, the Travel Office is an important issue. It is well documented that the Travel Office concerned Foster a great deal. The episode seems to have bothered him in two different ways. First, he was angry and upset at the press, the FBI, and the White House for the manner in which they portrayed the events surrounding the firing of the Travel Office employees and the subsequent reprimands of various White House officials. Second, he appears to have been concerned about the possibility of congressional hearings on the Travel Office.

With respect to Foster's concern about potential congressional hearings, it is incumbent upon us to determine the precise nature of his concern about the potential hearings. Foster's

brother-in-law Beryl Anthony has speculated that there might have been facts about the Travel Office that were not publicly known and that Foster did not want to reveal to Congress and the public. For that reason, it is necessary that we carefully examine all of the facts surrounding the firings of the Travel Office employees.

At this point, however, it is important to note that we are not investigating the Travel Office for the purpose of determining whether any individual inside or outside the White House violated any federal criminal law in connection with the firing of Travel Office employees. Of course, if we discover credible evidence of criminal wrongdoing with respect to the Travel Office firings during the course of the Foster investigation, we might initiate such an investigation. If so, we would immediately inform the Public Integrity Section because of their pending case against Billy Dale, which might have to be suspended under 28 U.S.C. § 597. We also would apply for an expansion of jurisdiction.

In light of the above, it would be appropriate at this juncture to issue a subpoena to the White House for (1) all documents to or from Foster referring or relating to the Travel Office; (2) all documents that both were within Foster's office on July 20, 1993, and refer or relate to the Travel Office; and (3) all documents referring or relating both to Vincent W. Foster and to the Travel Office.

For next team meeting

1. (Foster death) Given the above discussion, we should discuss whether it would be appropriate to issue a subpoena to the White House for all documents referring or relating to the Travel Office affair. Alternatively, we perhaps could issue a subpoena for all H. Clinton, Kennedy, Watkins, Thomasson, Livingstone, and McLarty documents referring or relating to the Travel Office.
2. (Foster death) Because Vince Foster apparently consulted Jim Hamilton, Jim Lyons, and Susan Thomases about the Travel Office in the week prior to his death, we should discuss whether to request a waiver of attorney-client privilege from the executor of Foster's estate (John Sloan).
3. (Foster documents and Foster death) We should discuss whether to subpoena the White House for all documents that were within Vince Foster's office, on his computer, within his secretary's office space, on his secretary's computer, or in the Counsel's safe on July 20, 1993. If we do not issue such a subpoena, we implicitly will have accepted the Nussbaum view of privilege and relevance as to Foster's office. If the White House objects to such a subpoena - as I am sure it will -- we may want to offer a compromise whereby they would collect all such documents and I would review them. But we need to review them all -- regardless of the sensitivity of such documents.
4. (Foster documents and Foster death) We should discuss whether to issue a

subpoena or request to Jim Hamilton and Lisa Foster for all documents that were within Vince Foster's office, on his computer, within his secretary's office space, on his secretary's computer, or in the Counsel's safe on July 20, 1993.

5. (Foster documents) We should discuss whether to subpoena from the White House all e-mail, calendars, diaries, and message logs for the following people for the period July 15-July 30, 1993: Kennedy, Lindsey, McLarty, Burton, Williams, Gergen, Thomasson, Livingstone, Scott, Neuwirth, Sloan, Nussbaum, Watkins, Quinn, Kennedy, Mills, Cerda, Nolan, Gearan, Klain.

6. (Foster death) We should obtain or review Foster's diary and any and all of Foster's calendars. We should also inquire about whether he used e-mail. Some of these documents have previously been reviewed by the FBI, but I would like to examine them. (White House, Lisa Foster, or Hamilton in possession).

7. (Foster death) We should discuss whether to issue subpoenas to Foster's mother, Lisa Foster, Foster's children, Foster's siblings, and Foster's friends for documents that might shed light on Foster's state of mind or their perceptions of Foster's state of mind (e.g., letters from Foster, letters to each other before or after Foster's death, notes, personal diaries, etc.). I would be uneasy issuing such subpoenas, but I would be more uneasy making definitive conclusions about Foster's state of mind without reviewing these relevant documents.

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: Hick Ewing and Judge Starr

Company Name: _____

Fax Number: _____ Telephone Number: _____

FROM: Brett Kavanaugh

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FOIA(b)7 - (C)

MEMORANDUM

FOIA(b)7 - (C)
FOIA(b)6

TO: Judge Starr
Mark Tuohey
Hickman Ewing
John Bates
Ed Lueckenhoff
[REDACTED]

FROM: Brett Kavanaugh

RE: Summary of Foster Meeting on 6-15-95

DATE: June 16, 1995

We discussed the following at our meeting on Thursday, June 15.

1. We will search the park. Ed and [REDACTED] will coordinate this plan with the FBI lab people and Henry Lee. There is a very high chance that the bullet now is in the same place that it landed on July 20, 1993. That being the case, our attitude should be to do whatever is feasible to find the bullet -- whether that includes searching beyond the park or searching trees. If we find the bullet, that would help to prove place of death, which is an important issue.
2. We will attempt to determine whether a Foster family fingerprint is on the inside of the gun. We may perform a fingerprint search of the Foster home in Hope to obtain prints. In addition, Ed and [REDACTED] agreed to think and consult FBI fingerprint experts about other ways to obtain prints of Foster's father. I encourage Ed and [REDACTED] to consult with the very best fingerprint people in the Bureau to resolve this crucial issue. (We have been using an FBI agent named Hupp; the lack of clarity of his fingerprint reports frankly gives me less than full confidence that he is one of the best Bureau fingerprint examiners.)
3. We agreed to have the IRS perform a full financial analysis of Foster. Ed will take the lead in coordinating this with the IRS. [REDACTED] and I will ensure that we gather all existing financial information about Foster for the IRS.
4. We agreed to track down all of Foster's foreign travel. It should not be difficult to obtain immediate information regarding all of Foster's foreign travel. Ed and [REDACTED] will coordinate this step.
5. We will investigate an alleged Swiss bank account that was in Foster's name. Ed and [REDACTED] will consult with Mark in coordinating this investigatory step.
6. [REDACTED]

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in an investigation of this sort. At our meeting, however, this was more theory and speculation than a proposed investigatory step. Indeed, no one suggested any concrete steps to pursue in this regard.

[REDACTED] For obvious reasons, that is a delicate issue, one we should discuss in detail before that interview occurs.

Summary of My Views at this Stage

At this point, I am satisfied that Foster was sufficiently discouraged or depressed to commit suicide. (Of course, that does not establish that he did in fact commit suicide.) I base my conclusion on the fact that Foster was found with a list of three psychiatrists in his wallet, the fact that Foster obtained a prescription on July 19 for an anti-depressant, and the many witness interviews describing his state of mind in the days and weeks preceding his death.

As to exactly what fact or facts were causing Foster to be discouraged or depressed, we have some answers, but there may well be more than we have learned at this point. I would be very interested to hear suggestions from any of you about concrete investigatory steps that we could pursue to discover other possible sources of Foster's discouragement or depression. (A full financial analysis was one such good idea; as noted above, we will pursue that suggestion.)

As to the physical evidence, there are several steps that we and Dr. Lee are currently pursuing -- some of which are discussed above. If we establish (1) that the gun was a Foster gun and (2) that the shot was fired in the park, then I think we can be satisfied beyond a reasonable doubt that Foster committed suicide in Fort Marcy Park. These two issues are therefore crucial to the bottom line, and I think we should devote extraordinary efforts to resolving them.