

Investigative history

XI. INVESTIGATIVE HISTORY

Because the initial investigation was in fact conducted jointly by the Park Police and the FBI, both agencies bear responsibility for almost all of the deficiencies that occurred during that seventeen-day period. Basic investigative procedures were ignored, both at the scene⁶⁴³ and thereafter.⁶⁴⁴ Significantly, the death was not investigated as homicide until foul play could be ruled out, the fundamental tenet of any death investigation.

1. The FBI and the first 17-day probe

When more than one agency works the same case, one agency may assume the responsibility for the investigation. This assumption of the role as the lead investigative agency is called assuming primary jurisdiction.

Initially, the FBI admitted that a federal statute⁶⁴⁵ required it to exercise primary jurisdiction over the case. Next, the Fiske Report declared that the FBI did not need to determine whether the statute covered Mr. Foster's death. The third version, provided in the OIC's Report, is that the statute did not mandate that the FBI investigate Mr. Foster's death.

At a August 10, 1993 press conference, given to announce the results of the joint FBI/Park Police investigation, Robert Bryant, then Special Agent-in-Charge of the FBI's Washington Metropolitan Field Office,

⁶⁴³ For example, there was no effort made to determine the time of death, the crime scene was not secured, all persons known to have been at the park, as well as at the body site, were not interviewed, and there was no canvas of the neighborhood.

⁶⁴⁴ For example, the firearm was not tested for operability, Mr. Foster's handwriting was authenticated without the benefit of a certified document examiner, the police did not attend the entire autopsy, there was no effort made to determine if Mr. Foster left the White House grounds alive, and a number persons with whom Mr. Foster spent his final 72 hours have never been interviewed.

⁶⁴⁵ 18 U.S.C. § 1751, *Presidential and Presidential staff assassination*.

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explained why the FBI investigated.

"[T]here is a death of a high government official that's covered by the assault or assassination statute..."⁶⁴⁶

FBI Agent John Danna was one of the FBI agents who initially investigated the death. Agent Danna knew the statutory basis for the FBI's participation, as he later told the Senate investigators probing the removal of documents from Mr. Foster's office.

"It was that violation... the potential violation involving a presidential staff member... Title 18, section 1751."⁶⁴⁷

* * *

"[T]he only basis we have on our squad is the 175[1] classification, which is a Presidential staff member investigation... we have to have a reason to do investigations, and the only reason we had is, again for a Presidential thing."⁶⁴⁸

At the August 10, 1993 press conference, then FBI Special-Agent-in-Charge Bryant explained that the FBI ruled the death a suicide.

"We [FBI] followed this case from the time we were notified until we were basically of the opinion, along with Chief Langston's staff, that this was a suicide."⁶⁴⁹

⁶⁴⁶ Exhibit 162, Transcript of August 10, 1993 press conference with Deputy Attorney General Philip B. Heymann, Chief of U.S. Park Police Robert Langston, Special Agent-in-Charge of the FBI's Washington Metropolitan Field Office Robert Bryant.

⁶⁴⁷ Exhibit 85, Deposition of FBI Agent John K. Danna, June 28, 1995.

⁶⁴⁸ Exhibit 85, Deposition of FBI Agent John K. Danna, June 28, 1995.

⁶⁴⁹ Exhibit 162, Transcript of August 10, 1993 press conference with Philip B. Heymann, Deputy Attorney General, Robert Langston, Chief, U.S. Park Police, Robert Bryant, Special Agent-in-Charge of the Washington Metropolitan Field Office, FBI.

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A year after Mr. Foster's death, on June 30, 1994, just over five months after Mr. Fiske's appointment, the *Report of the Independent Counsel In Re Vincent W. Foster, Jr.* ("Fiske Report") was released. The second page of the Fiske Report unabashedly explained that the FBI in fact conducted the probe.

The Federal Bureau of Investigation ("FBI") provided substantial and invaluable support in this investigation. The FBI assigned seven experienced agents to the Independent Counsel's Washington office, all of whom have worked exclusively with this office for approximately the last four months. Assistance was also provided by representatives of the FBI's National Center for the Analysis of Violent Crime. In addition, experts in the FBI Laboratory performed a thorough analysis of the available evidence.⁶⁵⁰

Under its section entitled *Summary of Conclusions*, the Fiske Report declared that there was "no evidence" to contradict the official version of events.

On the afternoon of July 20, 1993, in Fort Marcy Park, Fairfax County, Virginia, Vincent W. Foster, Jr. committed suicide by firing a bullet from a .38 caliber revolver into his mouth. As discussed below, the evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary.⁶⁵¹

The Fiske Report explained that "the FBI did not determine whether Foster was covered by this statute." It need not make this determination, it reasoned, "because the preliminary investigation by the FBI provided no indication of criminal activity."⁶⁵² Under this analysis, the case was

⁶⁵⁰ Exhibit 12, Fiske Report, June 30, 1994.

⁶⁵¹ Exhibit 12, Fiske Report, June 30, 1994.

⁶⁵² Exhibit 12, Fiske Report, June 30, 1994: The FBI would have had primary investigative jurisdiction if the circumstances fell within the Presidential and Presidential Staff Assassination statute, Title 18, United States Code, Section 1751. That statute makes it a federal crime to, among other things, kill the President, Vice-President, or a specified number of persons appointed by the President or Vice-President. The statute further provides that violations shall be investigated by the FBI.* Based on a

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so obviously open-and-shut that there was no need for an investigation.

The third version, that the federal statutes were inapplicable to the investigation into Mr. Foster's death, is provided by the OIC.

OIC, p. 4, fn. 4:

See 16 U.S.C. § 1a-6(b). The FBI has mandatory jurisdiction to investigate the murders of certain high-ranking individuals employed at the White House - those appointed under Section 105 (a)(2)(A) of title 3 employed in the Executive Office of the President. See 18 U.S.C. § 1751 (a) (defining persons covered by statute). Mr. Foster was appointed under Section 105 (a)(2)(B) and thus was not an official covered by Section 1751. OIC Doc. No. DC-210-5151.

The Statute to which the OIC refers fixes the salaries of fifty executive branch employees. Twenty-five, appointed under 105 (a)(2)(A), were paid salaries of \$133,600. The other twenty-five, appointed under 105 (a)(2)(B), were paid \$123,100 per year.⁶⁵³ The *Presidential and Presidential staff assassination* statute mandates that the FBI investigate assaults and assassinations of those

preliminary inquiry by the FBI which failed to indicate any criminal activity, the FBI's inquiry into this matter was closed... *18 U.S.C. Section 1751 covers "any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President... Title 3, United States Code, Section 105(a)(2)(A) provides that the President may appoint twenty-five employees at a specified rate of pay. Because the preliminary investigation by the FBI provided no indication of criminal activity, the FBI did not determine whether Foster was covered by this statute.

⁶⁵³ Section 105(a)(2), subparagraph (A) of Title 3 provides that "the President may appoint... 25 employees at rates... paid for level II of the Executive Schedule of section 5314 of Title 5...", whereas subparagraph (B) provides that "the President may appoint... 25 employees at rates not to exceed the rate... paid for level III... of section 5314..." Under the 1993 version of section 5314 of Title 5, level II employees were paid \$133,600 annually and level III employees were paid \$123,100.

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top twenty-five employees appointed pursuant to 105 (a)(2)(A), paid \$133,600.⁶⁵⁴ According to the OIC, Mr. Foster's position of deputy White House counsel was in the bottom half of these fifty employees,⁶⁵⁵ yet it offers no proof of its position.

Thus, there are three distinct official versions of whether the statute mandated that the FBI exercise primary jurisdiction over the investigation into Mr. Foster's death. But no matter which of the three versions is true (that the death was covered, that it was not, or that coverage was undetermined), the FBI had a vested interest in a finding of no criminal activity. The FBI did in fact initially investigate along with the Park Police, at which time it ruled that the death was a suicide.⁶⁵⁶ Therefore,

⁶⁵⁴ Section 1751 of Title 18 of the United States Code, *Presidential and Presidential staff assassination... and assault...*, covers "any person appointed under Section 105(a)(2)(A) of Title 3 employed in the Executive Office of the President..."

⁶⁵⁵ Mr. Foster's salary is not public information.

⁶⁵⁶ Compare M. Isikoff, Park Police to Conduct Inquiry 'Routine' Probe Set On Foster's Death, Wash. Post, July 27, 1993: The Justice Department yesterday backed off its pledge to conduct a full investigation into the death of White House senior aide Vincent Foster Jr., saying it was merely participating in a low-level "inquiry" that was being run by the U.S. Park Police. "There is no investigation being conducted by the Justice Department," chief department spokesman Carl Stern said. Because Park Police officials are convinced that Foster took his own life, the department had no authority to launch such a probe, Stern said. "There's no suspicion that a crime occurred," he said. At the same time, a Park Police official minimized that agency's inquiry, calling it a "routine" probe that was primarily aimed at assuring investigators there was a general explanation, such as depression, for Foster to have killed himself... *** Stern's comments yesterday appear to conflict with statements made by White House and Justice Department officials... *** Stern sought to minimize the apparent conflict yesterday, suggesting that some of it may result from a semantical confusion over the difference between an inquiry and "an investigation" that is launched to solve a crime... *** [A]n FBI official said yesterday the bureau

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the FBI had an interest in a finding of no criminal activity in both of its subsequent investigations. Moreover, if Mr. Foster's death were not a suicide, the FBI would have violated the *Presidential and Presidential staff assassination* statute by not exercising primary jurisdiction as it requires -- another reason why the FBI has had a vested interest in a finding of no criminal activity.

The OIC concealed the breadth of the FBI's role in the initial seventeen-day death investigation, conducted jointly with the US Park Police from July 20, 1993 through August 5, 1993. The OIC's Report merely states that the FBI "*assisted the Park Police in certain aspects*" of the case, and that the FBI opened a "*separate*" investigation regarding the discovery of the alleged suicide note. There is no discussion as to why the investigation of the note was separate and apart from the investigation into the death of its author.⁶⁵⁷ The OIC's version of the "*primary*

was merely "monitoring" the inquiry but not actively participating.

⁶⁵⁷ OIC, p. 4: The FBI assisted the Park Police in certain aspects of the ensuing death investigation, as did other federal and Virginia agencies. Moreover, the FBI, at the direction of the Department of Justice, opened a separate investigation of possible obstruction of justice after a note was found on Monday, July 26, 1993, in Mr. Foster's briefcase at the White House. On August 10, 1993, the Department of Justice, FBI, and Park Police jointly announced the result of the death and note investigations.

OIC, p. 2: "Two law enforcement investigations -- the initial United States Park Police investigation... concluded that Mr. Foster committed suicide by gunshot at Fort Marcy Park." OIC, p. 4: "Because Mr. Foster's body was found in Fort Marcy Park, a park maintained by the National Park Service, the United States Park Police conducted the investigation of his death."^{fn4}

See FBI Probes Handling of Foster Note, Wash. Post, July 31, 1993: The [FBI] agents were brought in to determine why 30 hours elapsed before it was turned over to U.S. Park Police investigating Foster's apparent suicide on July 20. *** Justice Department spokesman Carl Stern said that Deputy Attorney General Philip B. Heymann requested that the FBI conduct the interviews on the handling of the note as part of an upcoming Park Police report on Foster's

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issues that have been raised" about the case, which it sets out on page ten of its Report to define the parameters of its ensuing 104 pages, does not include the FBI's role in any investigation.⁶⁵⁸

The public has been told that only the US Park Police investigated from the time of the discovery of Mr. Foster's body, until the case was officially closed (the first time) sixteen days later. But publicly available federal government records demonstrate that throughout the 17-day Park Police investigation, FBI participation was considerable. This FBI participation is variously described as "investigated," "conducted interviews," "followed," "working on," "assisting" and "working leads."

On the evening of the discovery of Mr. Foster's body, the FBI arranged to send FBI Agents Scott Salter and Dennis Condon to the White House to investigate the death.⁶⁵⁹ They were dispatched to the White House the following morning, as Agent Salter testified.

"[FBI Agent] John Danna called us in my car [on July 21] and told us to go to the southwest gate of the White House and meet him there and that we were to,

death. The idea was to have a "clearly disinterested party" review the matter.

⁶⁵⁸ OIC. p. 9-10: The primary issues that have been raised regarding the cause and manner of Mr. Foster's death can be grouped into several broadly defined categories: (1) forensic issues; (2) apparent differences in statements of private witnesses, Park Police personnel, and Fairfax County Fire and Rescue Department (FCFRD) personnel regarding their activities and observations at Fort Marcy Park on July 20; (3) physical evidence (such as the fatal bullet) that could not be recovered; and (4) the conduct of the Park Police investigation and the autopsy.^{fn15}

⁶⁵⁹ Exhibit 84, Deposition of Secret Service Agent Dennis S. Martin, June 22, 1995: Q. On the evening of the 20th, Mr. Imbordino told you to meet [FBI] investigators the next morning? A. He said I would help facilitate getting the investigators in, yes... before 9:00 a.m... I had been told the night before they would be going up to Mr. Nussbaum's office to talk about Mr. Foster's death.

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that we were going to be working on a death investigation involving Mr. Foster's death."⁶⁶⁰

At his June 30, 1995 deposition, when handed a memorandum and asked to identify it, Agent Salter said, "[I]t's basically a summary of events from the 21st through the conclusion of, through August 4th or 6th or whatever it was, through the conclusion of the investigation that we did."⁶⁶¹ Park Police Captain Charles Hume signed Park Police "Synopsis/Conclusion" of the investigation on August 5, 1993.⁶⁶²

Salter explained that the FBI's function was to interview witnesses along with the U.S. Park Police: "We were there to assist them in conducting the investigation which meant interviewing co-workers... [and] then proceed as the investigation, you know, called for."⁶⁶³

Department of Interior Chief of Staff Thomas Collier testified on deposition on June 23, 1995 that "the FBI and the Park Police ended up working on this kind of hand in glove."⁶⁶⁴ US Secret Service Agent Paul Imbordino, in response to the question at his June 22, 1995 deposition "Who conducted the interviews?" answered "Park Police and FBI."⁶⁶⁵ Other FBI agents who conducted interviews during the initial investigation into Mr. Foster's death included Charles K. Dorsey⁶⁶⁶ and Bradley J. Garrett.⁶⁶⁷

⁶⁶⁰ Exhibit 65, Deposition of FBI Agent Scott Salter, June 30, 1995.

⁶⁶¹ Exhibit 65, Deposition of FBI Agent Scott Salter, June 30, 1995.

⁶⁶² Exhibit 159, Park Police Report, signed by Park Police Captain Charles Hume, August 5, 1993.

⁶⁶³ Exhibit 65, Deposition of FBI Agent Scott Salter, June 30, 1995.

⁶⁶⁴ Exhibit 163, Deposition of Department of Interior Chief of Staff Thomas Collier, June 23, 1995.

⁶⁶⁵ Exhibit 164, Deposition of Secret Service Agent Paul Imbordino, June 22, 1995 deposition.

⁶⁶⁶ Exhibit 165, Report of FBI interview of Chief of Staff for the First Lady Margaret Williams, August 3, 1993.

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During his July 30, 1994 deposition, US Park Police Major Robert Hines testified that the FBI dominated much of the investigation.

Q. Did there come a time when you determined that [the] Department of Justice was really in charge of this investigation?"

A. There came a time when I determined that they were calling a lot of shots, setting up a lot of protocols... [and that this became evident] on the evening of July 22."⁶⁶⁸

During the course of the initial investigation, FBI agents interviewed over two dozen people regarding events leading up to and immediately following Mr. Foster's death,⁶⁶⁹ far more than the Park Police interviewed.

At the August 10, 1993 press conference, Deputy Attorney General Philip Heymann explained that "[t]he FBI

⁶⁶⁷ Exhibit 183, Report of FBI interview of Director of White House Personnel David Watkins, August 5, 1993.

⁶⁶⁸ Exhibit 124, Deposition of Park Police Major Robert Hines, July 30, 1994.

⁶⁶⁹ Exhibit 160, Table of Contents of reports of FBI interviews, by FBI Agent Scott Salter, August 9, 1993: [Assistant White House Counsel] Stephen Neuwirth, [White House Counsel] Bernard Nussbaum, [Deputy Assistant Counsel to the President] Charles W. Burton, [White House Chief of Staff] Thomas McLarty, [Assistant to the President] David Gergen, James Hamilton, [Deputy Attorney General] Phillip Heymann, Leonard Megby, [Assistant Counsel] Clifford Sloan, [Secret Service Agent] Donald Flynn, [Secret Service Agent] Paul Imbordino, [Deputy Assistant Attorney General] David Margolis, [Deputy Assistant Attorney General] Roger Adams, [Park Police Captain] Charles Hume, [Park Police Detective] Peter Markland, [White House executive secretary] Deborah Gorham, Duncan Sellers, Ray Scott, Susan Purvis, Joseph Purvis, Roger Kammerdeiner, Joseph Phillips, James Young, [Chief of staff to the First Lady] Margaret Williams, [Special assistant to the President] Patsy Thomasson, [Assistant to the President] David Watkins.

See also FBI/Park Police interviews of Secretary to the White House Counsel Betsy Pond, Executive assistant to the White House Counsel Linda Tripp, and Staff assistant Tom Castleton.

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joined the Park Police in the initial stages of the inquiry into Vince Foster's death... [and] the FBI has been assisting in that investigation..."⁶⁷⁰

The FBI officially closed its first investigation on August 5, 1993. But at the press conference Mr. Heymann said he had "received an FBI report this morning..."⁶⁷¹ four days after the FBI and Park Police had officially closed the case.

The day after the death, July 21, FBI agents met with White House Counsel Bernard Nussbaum, Assistant White House Counsel Steven Neuwirth and Assistant White House Counsel Clifford Sloan to discuss the search of Mr. Foster's office. The press focused on Mr. Nussbaum's refusal to let authorities see all the documents he reviewed during the office search on July 22 in the presence of the FBI and the Park Police, and later, to allegations that White House personnel searched the office before Nussbaum's official search.

No press account has ever mentioned the FBI's prior search, memorialized by a US Secret Service Report, written by a TSD (Technical Security Division) officer of the US Secret Service. On August 3, 1993, that officer wrote that on July 31, 1993, eleven days after the death, an FBI agent told him of the FBI's involvement in the case.

"[The agent]... and some other agents (five) were working on the Foster suicide... working... leads on some info they had received..."⁶⁷²

This Report also recounts that another Secret Service Officer told the author that, by the time the locks to Mr. Foster's office had been changed, FBI agents had already removed "evidence" from Mr. Foster's office.

⁶⁷⁰ Exhibit 162, Transcript of August 10, 1993 press conference with Philip B. Heymann, Deputy Attorney General, Robert Langston, Chief, U.S. Park Police, Robert Bryant, Special Agent-in-Charge of the Washington Metropolitan Field Office, FBI.

⁶⁷¹ Exhibit 162, Transcript of August 10, 1993 press conference with Philip B. Heymann, Deputy Attorney General, Robert Langston, Chief, U.S. Park Police, Robert Bryant, Special Agent-in-Charge of the Washington Metropolitan Field Office, FBI.

⁶⁷² Exhibit 166, US Secret Service Memorandum, August 3, 1993.

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The reason for the Officer there and the lock request [was] to seal the office for the investigation. The [Uniformed Secret Service] officer then told us [the author and another T.S.D. officer] that the FBI had removed evidence from Mr. Foster's desk, never inferring [sic] what the evidence was.⁶⁷³

The source of the information that "the FBI had removed evidence" was the Officer who was there to change the locks on Wednesday, July 21 at 10:30 p.m.⁶⁷⁴ So, we know that the FBI had to have removed evidence from Mr. Foster's office before the locks were changed. The FBI was later charged with determining who had secretly ferreted out documents from Mr. Foster's office in the aftermath of his death,⁶⁷⁵ and determining what was removed.

2. Publicity of the removal of Whitewater documents from Mr. Foster's office on the eve of the Fiske probe

The Independent Counsel Statute expires every five years, unless reenacted. Congress let it expire on December 15, 1993. It was not until August of 1994 that Congress reenacted the statute and the three-judge panel of the United States Court of Appeals for the DC Circuit regained its power to appoint a special prosecutor.

⁶⁷³ Exhibit 166, US Secret Service Memorandum, August 3, 1993.

⁶⁷⁴ Exhibit 167, Federal Security Systems Work Orders for lock change in Mr. Foster's White House Office, July 21, 1993.

⁶⁷⁵ See Exhibit 178, Senate testimony of FBI Agent Lawrence Monroe, July 29, 1994:

Senator Faircloth: As a professional law enforcement Officer, would you infer from the removal of these documents the evening of Mr. Foster's death after the office was supposed to have been secured, would that constitute obstruction of justice?

Mr. Monroe: I can make no inference there, and that is going to be, and is, part of our continuing investigation, sir.

[Senate Report 104-280 (June 17, 1996), which specifically addressed the issue of the removal of documents from Mr. Foster's office in the aftermath of his death, fails to address the prospect of culpability of any FBI agents.]

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In late 1993, federal regulations did, however, authorize Attorney General Janet Reno to appoint what is know as a "regulatory" Independent Counsel. Six months to the day after Mr. Foster died, January 20, 1994, Ms. Reno appointed Robert B. Fiske, Jr., to serve as regulatory Independent Counsel. His mandate was to investigate whether there were violations of criminal law relating to the Clintons' "relationship with:

- (1) Madison Guaranty Savings and Loan Association;
- (2) Whitewater Development Corporation; or
- (3) Capital Management Services."⁶⁷⁶

Mr. Foster's name was linked to Whitewater and to the failed Madison Guaranty Savings & Loan in two articles that appeared in the Washington Post in early November, 1993.⁶⁷⁷ On December 18, 1993, the Washington Post published an article by Michael Isikoff, *Probe Pursues White House Aide's Undisclosed Diary*.⁶⁷⁸ It reported that in December, an anonymous "Park Police investigator has said he recalls seeing 'paperwork' related to McDougal in the pile of documents he inspected at Hamilton's office" five months earlier, in July of 1993.⁶⁷⁹ According to the next day's New York Times, anonymous sources were "trying to

⁶⁷⁶ 28 CFR § 603.1 (1993) (Code of Federal Regulations).

⁶⁷⁷ See M. Isikoff & S. Schmidt, *Clinton's Former Real Estate Firm Probed*, Wash. Post, Nov. 2, 1993. "[T]he late Vincent Foster, the Clintons' personal attorney and later Deputy White House counsel, met McDougal to execute the sale of the Clintons' interest in Whitewater to McDougal." See also S. Schmidt, *Regulators Say They Were Unaware Of Clinton Law Firm's S&L Ties*, Wash. Post, Nov. 3, 1993. "Madison Guaranty Savings and Loan, failed in 1989, costing taxpayers... According to FDIC records, however, the late Vincent Foster, a Rose partner before joining the Clinton White House..."

⁶⁷⁸ See M. Isikoff, *Probe Pursues White House Aide's Undisclosed Diary*, Wash. Post, December 18, 1993: "One Park Police investigator has said he recalls seeing 'paperwork' related to McDougal in the pile of documents he inspected at Hamilton's office."

⁶⁷⁹ Exhibit 6, Deposition of Park Police Investigator John Rolla, July 21, 1994: "Myself and Lieutenant Kass, K-a-s-s, went to Hamilton's office. This was, again, a couple days after the initial search of his office at the White House."

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determine" whether Whitewater files were removed from Mr. Foster's office, "no such file was listed in the inventory," but "it was possible that the file... had been... given to James Hamilton, the family lawyer."⁶⁸⁰

The next day, Jerry Seper's Washington Times piece, *Clinton papers lifted after aide's suicide*,⁶⁸¹ reported that Whitewater documents were, in fact, ferreted out of Mr. Foster's White House office by "two Clinton political operatives... less than three hours" after the discovery of the body. It credited the account to "two U.S. Park Police investigators who asked not to be publicly identified," who said it was "not clear who took the documents," but that they were "turned over to Mr. Foster's attorney, James Hamilton."

Three days later, on December 23, 1993, the Washington Post reported White House confirmation of the removal of a file, but that attorney David Kendall, not James Hamilton, had it. A "file on Whitewater" was in the possession of "the Clinton's personal attorney, David E. Kendall," having been given to Kendall by Bernard Nussbaum.⁶⁸²

⁶⁸⁰ See D. Johnston, *Missing White House File Is Sought*, N.Y. Times, December 19, 1993: Federal investigators are trying to determine whether a file relating to a failed Arkansas savings-and-loan owner and his investment firm was taken from the White House office of Vincent W. Foster Jr. after he committed suicide in July, law-enforcement officials said today... But the law enforcement officials said no such file was listed in the inventory of items in Mr. Foster's office that was conducted by Bernard W. Nussbaum, the White House Counsel, in the presence of Federal agents on July 22...

⁶⁸¹ See J. Seper, *Clinton papers lifted after aide's suicide*, Wash. Times, December 20, 1993: White House officials removed records... [during] a clandestine visit July 20 to Mr. Foster's office - less than three hours after his body was found... by two Clinton political operatives, according to two U.S. Park Police investigators who asked not to be publicly identified... The investigators said the existence of the Whitewater records came to light when Park Police visited Mr. Hamilton's office "about a week after the death" to review a personal diary that also was taken during one of the searches...

⁶⁸² See S. Schmidt, *Hill Seeks Probe of Land Deal*, Wash. Post, December 23, 1993: "A file on Whitewater was discovered in

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The Washington Times's claim, that the Park Police knew in July of 1993 that Whitewater documents were removed, is suspect. Even if the Park Police did, in fact, see the papers in July of 1993, it is unlikely that they would have known at that stage what they were viewing. The term "Whitewater," as well as Mr. McDougal's name, appeared only once as of July, 1993, in an April Washington Post article concerning the President's tax returns. Indeed, if the Whitewater documents had been turned over to Hamilton or Kendall, the person who took them would likely be known. That person, if he or she exists, has not yet materialized.

The OIC recounts this dubious version of events.

OIC, p. 6:

On December 20, 1993, the White House confirmed that Whitewater-related documents had been in Mr. Foster's White House Office at the time of his death. On January 12, 1994, President Clinton asked Attorney General Reno to appoint an independent counsel, and on January 20, 1994, the Attorney General appointed Robert B. Fiske, Jr....

The report of the removal of Whitewater documents appeared to have provided a rationale, or pretext, for the FBI, working under the auspices of Mr. Fiske's office of the regulatory Independent Counsel, then planned and established a month later, to have its FBI agents investigate Mr. Foster's death, again.

3. Reports generated by Fiske's FBI probe

Most of the evidence cited in this work was generated during the Fiske probe. As we have seen, evidence that the FBI under the auspices of the Fiske probe concealed the facts surrounding Mr. Foster's death pervades the publicly available federal government record in the case.

Foster's office after his July 20 suicide and was turned over to the Clinton's personal attorney, David E. Kendall, by White House Counsel Bernard Nussbaum."

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OIC, p. 2:

"[The] law enforcement investigation... under the direction of regulatory Independent Counsel Robert B. Fiske, Jr. -- concluded that Mr. Foster committed suicide by gunshot in Fort Marcy Park."

The Report's description of the Fiske probe as "a new investigation of Mr. Foster's death" misleads the reader. Given the FBI's significant participation in the first probe, the Fiske probe was new in name only.

OIC, p. 6-7:

"Mr. Fiske also opened a new investigation of Mr. Foster's death, utilizing FBI resources and a panel of distinguished and experienced pathologists."

The OIC omits that Fiske's "panel of distinguished and experienced pathologists" had significant ties to the FBI, as well as to each other. Dr. James L. Luke, who headed Fiske's pathology panel at the same time as the FBI employed him,⁶⁸³ co-authored publications with two of the other three of the pathologists on the panel, Drs. Donald Reay⁶⁸⁴ and Charles Stahl.⁶⁸⁵

The FBI's *Law Enforcement Bulletin* published an article by Dr. Reay.⁶⁸⁶ Dr. Stahl held a faculty position at

⁶⁸³ Exhibit 12, Fiske Report, June 30, 1994: "Employment... Present Forensic Pathologist, Investigative Support Unit, Federal Bureau of Investigation, FBI Academy, Quantico, Virginia."

⁶⁸⁴ Exhibit 12, Fiske Report, June 30, 1994: "J.L. Luke, D.T. Reay... *Correlation of Circumstances with pathological findings in asphyxial Deaths by Hanging...*" "J.L. Luke and D.T. Reay. *The perils of investigating and certifying deaths in police custody...*"

⁶⁸⁵ Exhibit 12, Fiske Report, June 30, 1994: "Stahl, C.J... Luke, J.L. *The effect of Glass as an Intermediate Target on Bullets...*"

⁶⁸⁶ Exhibit 12, Fiske Report, June 30, 1994: "D.T. Reay and Mathers, R.L.: *Physiological effects of neck holds, FBI Law Enforcement Bulletin...*"

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the FBI Academy in Quantico, Virginia.⁶⁸⁷ He also served on the faculty of a seminar given by the Office of the Chief Medical Examiner of Virginia, which is the office that performed the autopsy on Mr. Foster.⁶⁸⁸

The OIC's pathologist, Dr. Brian Blackbourne, worked for the District of Columbia Medical Examiner's Office at the same time as Dr. Stahl and Dr. Luke, the Fiske probe's lead pathologist.⁶⁸⁹ Dr. Blackbourne also co-authored at least one publication with Dr. Luke.⁶⁹⁰

4. The FBI and the OIC

Under the heading *OIC Personnel*, the Report tells us that its investigators included three FBI agents.⁶⁹¹ The OIC

⁶⁸⁷ Exhibit 12, Fiske Report, June 30, 1994: "Teaching Appointments: Faculty, Advanced Forensic Pathology Course, Armed Forces Institute of Pathology, FBI Academy, Quantico, VA"

⁶⁸⁸ Exhibit 12, Fiske Report, June 30, 1994: "Teaching Appointments... Faculty, Medico-Legal Seminar, Office of the Chief Medical Examiner, Commonwealth of Virginia..."

⁶⁸⁹ Exhibit 12, Fiske Report, June 30, 1994: "Employment... 1971-1983 Chief Medical Examiner, District of Columbia Office of the Chief Medical Examiner, 19th Street and Massachusetts Ave, S.E. Washington, D.C." Exhibit 12, Fiske Report, June 30, 1994: "Faculty, Inservice Training Program in Homicide Investigation, Criminal Investigations Division, Metropolitan Police Department, District of Columbia, May 1969; October 1969; May 1970; April 1971; September 1972; March 1973; September 1973"

⁶⁹⁰ Exhibit 12, Fiske Report, June 30, 1994: "J.L. Luke, B.D. Blackbourne and W.J. Donovan, *Bed-Sharing Deaths Among Victims of Sudden Infant Death Syndrome - A Riddle within a Conundrum...*"

⁶⁹¹ OIC, p. 2-3: "The OIC's conclusion is based on analyses and conclusions of a number of experienced experts and criminal investigators retained by the OIC. They include... several experienced investigators with extensive service in the Federal Bureau of Investigation (FBI)..."

OIC, p. 12: OIC investigators who worked with these outside, independent experts included an FBI agent detailed from the FBI-MPD^{fn16} Cold Case Homicide Squad in Washington, D.C. Agents with the Cold Case Squad work with MPD homicide detectives in reviewing and attempting to solve homicides that have remained unsolved for more than one

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notes (p. 12) that "*these [three] investigators did not work on previous investigations of Mr. Foster's death.*" It fails, however, to reveal that during the course of its three-year Foster death probe, it did use FBI agents other than the three it mentioned, and that some of these agents had been detailed to the Fiske investigation. FBI agent Russell T. Bransford, who served the grand jury subpoena on Patrick Knowlton, was one such agent.

As we have seen, the FBI Laboratory served a major role in the OIC's Report.

5. Congress never conducted a probe of the death

The OIC declares on the second page of its Report that "*[t]wo inquiries in the Congress of the United States reached the same conclusion.*"⁶⁹² This is not true. Not one congressional committee has ever investigated the circumstances of Mr. Foster's death.

OIC, p. 8:

*[T]he [Senate Banking] Committee concluded its inquiry with a report issued on January 3, 1995, stating that "[t]he evidence overwhelmingly supports the conclusion of the Park Police that on July 20, 1993, Mr. Foster died in Fort Marcy Park from a self-inflicted gun shot wound to the upper palate of his mouth."*¹²

The OIC omits that this conclusion, which it recounts under its *Congressional Inquiries* section, was outside the scope of the Committee's limited investigative jurisdiction. Senate Resolution 229, *Section 1, Scope of the Hearings*, adopted in June of 1994 by a Democratic controlled Congress, confined the Foster death inquiry to

year. Another OIC investigator has extensive homicide experience as a detective with the MPD in Washington, D.C., for over 20 years. Two other investigators assigned to the Foster death matter have experience as FBI agents investigating homicides of federal officials and others.^{fn17}

⁶⁹² See also OIC, p. 114: "In sum, based on all of the available evidence, which is considerable, the OIC agrees with the conclusion reached by every official entity that has examined the issue: Mr. Foster committed suicide by gunshot in Fort Marcy Park on July 20, 1993."

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whether the White House was guilty of "improper conduct" during the course of "the Park Service Police investigation into the death."⁶⁹³ Mr. Fiske had supported the adoption of Resolution 229.

The OIC accurately excerpts the Senate Banking Committee Report which states that "[t]he evidence overwhelmingly supports the conclusion," but actually, the 1994 Banking Committee had no jurisdiction to consider the matter. Because lines of inquiry exploring the issue of how and where Mr. Foster died were beyond the Committee's limited investigative jurisdiction, the Senate Banking Committee's having included those statements in its Report was misleading.

Although most Committee members plainly disavowed having considered the issue,⁶⁹⁴ Senator Orrin Hatch in his opening statement spoke as if the Committee had thoroughly investigated the issue and had independently determined the manner and place of the death, and that there was "is absolutely no credible evidence to contradict the Fiske Report's conclusion that Vincent Foster took his own life and it happened at Fort Marcy Park."⁶⁹⁵

⁶⁹³ Exhibit 161, Resolution 229 states in pertinent part:

SECTION 1. SCOPE OF HEARINGS.

The Committee on Banking, Housing, and Urban Affairs (referred to as the "committee") shall-

(1) conduct hearings into whether improper conduct occurred regarding -

* * *

(B) the Park Service Police investigation into the death of White House Deputy Counsel Vincent Foster;

⁶⁹⁴ Exhibit 26, Senate Banking Committee opening statements, July 29, 1994: Senator Carol Moseley-Braun, "Our investigation is only into the propriety of the investigation surrounding his tragic and untimely death;" Senator Robert F. Bennett, "I will be happy to stipulate that Vincent Foster committed suicide;" Senator Pete Domenici: "I don't think anyone on our side is challenging whether or not it was a suicide."

⁶⁹⁵ Exhibit 26, Senate Banking Committee opening statement of Senator Orrin Hatch, July 29, 1994.

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When the 1994 Senate Banking Committee had its one day hearing in July, the only representatives who appeared to represent Mr. Fiske's office were Dr. Charles Hirsch and FBI Agents Larry Monroe and William Columbello. These two agents interviewed some of the more problematic witnesses in the case, including Patrick Knowlton and the civilian who was officially the first to discover the body and who requested anonymity. We do not know who else Agents Monroe and Columbello may have interviewed.

The other Report cited by the OIC under its *Congressional Inquiries* section is the "Summary Report," authored by Congressman William Clinger.

OIC, p. 7:

On February 24, 1994, Congressman William F. Clinger, Jr., then the ranking Republican on the Committee on Government Operations of the United States House of Representatives, initiated a probe into the death of Mr. Foster. Mr. Clinger's staff interviewed emergency rescue personnel, law enforcement officials, and other persons involved in the Park Police investigation of Mr. Foster's death.^{fn9} Mr. Clinger's staff obtained access to the Park Police reports and to photographs taken at the scene and at the autopsy.^{fn10} Mr. Clinger issued a report on August 12, 1994, concluding that "all available facts lead to the conclusion that Vincent W. Foster, Jr. took his own life in Fort Marcy Park, Virginia on July 20, 1993."^{fn11}

OIC, p. 7, fn. 9:

Summary Report by William F. Clinger, Jr., Ranking Republican, Committee on Government Operations, U.S. House of Representatives, on the Death of White House Deputy Counsel Vincent W. Foster, Jr., at 1 (Aug. 12, 1994)

The OIC omitted that this Report is not a Government Operations Committee report, and that it was only six pages long (plus two pages of endnotes), and that the FBI or people associated with it supplied the information upon which it was largely based.⁶⁹⁶

⁶⁹⁶ Exhibit 168, Summary Report by William F. Clinger, Jr.,