1. No 302's on Foster docs
2. Green light letter - interviews next couple of days
3. WH document request

Precedent - Fishel - closed investigation
302's not PT
not BN
want Secret Service

doctoral protocol

no 302's
MEMORANDUM

TO: ALL OIC-DC Attorneys
    ALL FBI-DC

FROM: Brett Kavanaugh

RE: Congressional Requests for Documents

DATE: May 31, 1995

As you likely know, Congress has requested documents from various agencies on the Foster office issue. Steve Kubiatowski will be our point of contact with the agencies as they seek guidance from us in responding to the requests. So that we speak with one voice to the agencies, we should ensure that Steve is involved in all substantive discussions with an agency about the congressional document requests.
MEMORANDUM

TO: Judge Starr
    Mark Tuohy
FROM: Brett Kavanaugh
RE: Letter to Senators D’Amato and Sarbanes
DATE: April 18, 1995

Bob Giuffra has requested that Ken send a letter to Senators D’Amato and Sarbanes confirming that the Senate Banking Committee’s plans to investigate the Foster documents issue would not hinder or impede our investigation. He wants this letter so that he can assure various agencies that they are free to respond to document requests by the Senate.

We can handle Giuffra’s request in a few different ways. First, we could send a letter to the Senators stating that the Senate Banking Committee’s plan to investigate the handling of documents in the office of former Deputy Counsel Vincent W. Foster, Jr., after his death on July 20, 1993, would not hinder or impede our continuing criminal investigation into that matter. We could also send a more narrow letter stating that the Senate Banking Committee’s plans to request and obtain documents relevant to the handling of documents in the office of former Deputy Counsel Vincent W. Foster, Jr., after his death on July 20, 1993, would not hinder or impede our continuing criminal investigation into that matter. If we choose this option, we presumably would send future letters regarding depositions and hearings. Third, we could tell Giuffra that we do not wish to send a letter, but that he can tell the agencies to contact us if they have any questions about complying with Congress’ request for documents.

No matter which option we choose, we should make clear to Giuffra that we would like advance notice of all document and interview requests.

I suggest we talk about this issue in the next day or two.
MEMORANDUM

TO: OIC Attorneys
   Professor Dash

FROM: Brett Kavanaugh

RE: 302's to Congress

DATE: April 24, 1995

Bob Giuffra, Chief Counsel to the Senate Banking Committee, just called me and asked, "So when are we getting your 302's from the Foster documents investigation?" I said we would get back to him.

Giuffra's informal "request" suggests that we formulate our 302 policy in the near future. As noted in an earlier memo on this general subject (which I have attached), we obviously should give the Committee the 302's that we must disclose under FOIA -- the number of which could vary depending on our interpretation of FOIA Exemption 7(D). As to the 302's beyond the category that we must disclose under FOIA, we need to determine our position.

I have learned from various mid-level persons at DOJ and FBI that these situations usually involve negotiation with Congress, with no bright-line rules as to how to proceed. (Ken and Mark plan to meet soon with JoAnn Harris to obtain her views.) The persons to whom I have talked have stated, however, that Congress is sensitive -- "surprisingly sensitive," as they phrased it -- to the negative effect on law enforcement caused when DOJ or the FBI is required to release or disclose 302's.

No matter our substantive position on release of 302's, we should keep one procedural point in mind with respect to the 302's that we do give the Committee. We may want to negotiate a procedure whereby the Committee agrees: (a) that it will allow only certain specified Senators and staff persons to have access to 302's; and (b) that it will not publicly disseminate or disclose 302's, which includes not quoting them in public hearings or in depositions. The persons to whom I talked at DOJ and FBI said that Congress often is amenable to that kind of arrangement.
MEMORANDUM

TO: OIC-DC Attorneys
    Professor Dash

CC: Bill Duffey

FROM: Brett Kavanaugh

DATE: March 28, 1995

RE: 302’s -- FOIA and Congress

In recent weeks, witnesses in several investigations in Washington have expressed their concern that their 302’s will be available to the public under FOIA or, if not, will be given to Congress by this Office. Our policy on these issues will affect (and has already affected) the willingness of witnesses to be fully forthcoming. (One witness all but said as much.) In any event, we need to have a consistent and coherent policy on 302’s. For purposes of discussion at our Friday team meeting, this memorandum will simply outline the basic issues; a lengthier analysis and perhaps a full team discussion will be necessary in the near future.

1. FOIA Exemption 7(D) exempts from disclosure records that "could reasonably be expected to disclose the identity of a confidential source" or "information furnished by a confidential source." The Supreme Court interpreted that provision in Department of Justice v. Landano, 113 S. Ct. 2014 (1993) (9-0). Quoting the legislative history, the Court stated that Exemption 7(D) applies if a witness "provided information under an express assurance of confidentiality or in circumstances from which such an assurance could reasonably be inferred." Id. at 2019. The Court then considered the circumstances under which an assurance of confidentiality could reasonably be inferred. First, the Court stated that an assurance of confidentiality could be inferred even in situations where the witness or the government anticipated or could have anticipated that Brady and applicable procedural rules such as the Jencks Act might ultimately require disclosure of the information. Id. at 2020. The Court reasoned that "an exemption so limited that it covered only sources who reasonably could expect total anonymity would be, as a practical matter, no exemption at all." Id. The Court stated, therefore, that a confidential source is one who "furnished information with the understanding that the FBI would not divulge the communication except to the extent the Bureau thought necessary for law enforcement purposes." Id.

The Court then considered the Government’s argument that an assurance of confidentiality is inherently implicit whenever a source provides information to the FBI in a criminal
investigation -- an interpretation that would render virtually all 302's automatically exempt from FOIA disclosure. The Court did not go as far as the Government wished; the Court stated: "[W]e have determined that it is unreasonable to infer that all FBI criminal investigative sources are confidential, [but] we expect that the Government can often point to more narrowly defined circumstances that will support the inference. . . . We agree that the character of the crime at issue may be relevant to determining whether a source cooperated with the FBI with an implied assurance of confidentiality. So too may the source’s relation to the crime." Id. at 203. The Court did not spell out this standard in much greater detail, however.

Exemption 7(D) clearly applies when we provide an express assurance of confidentiality to witnesses. (Perhaps we should provide such an assurance as a matter of course in this investigation, albeit with a caveat about the potentially necessary use of a 302 at a subsequent judicial or congressional proceeding.) Absent an express assurance of confidentiality, we still have strong arguments, given the nature and magnitude of this investigation, that many of our witnesses have "furnished information with the understanding that the FBI would not divulge the communication except to the extent the Bureau thought necessary for law enforcement purposes." Id. at 2020. We have especially strong arguments with respect to information provided by persons "on the inside" who may face reprisals of one form or another if their information becomes public. See Landano, 113 S. Ct. at 2028 (listing such examples).  

2. Upon request, we should give Congress the 302's from closed investigations that must be disclosed under FOIA. What about 302's (or portions thereof) from closed investigations that need not be disclosed under FOIA? That is an extremely delicate issue, one of great importance to many witnesses. (In that regard, I note that numerous witnesses have expressed extreme displeasure at the fact that their 302's on the Foster death are now publicly available at the Archives and have become the subject of press articles.)

While we will have to consider many issues in resolving this important question (for example, standard DOJ practice, executive privilege, etc.), my initial suggestion is that we treat 302's that are not subject to disclosure under FOIA as sacred unless Congress decides to investigate our investigation under 28 U.S.C. §595(a)(1) (in which case we have no real choice

1 In addition to Exemption 7(D), Exemption 7(C) of FOIA also will apply to names and other identifying information contained in 302's. Exemption 7(C) covers records the release of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy," a standard that requires the balancing of privacy concerns against the public interest in disclosure. In Safecard Services v. SEC, 926 F.2d 1197 (D.C. Cir. 1991), the court held that the identities of individuals who appear in law enforcement files need not be disclosed unless "there is compelling evidence that the agency . . . is engaged in illegal activity" because disclosure of the information would virtually never be "very probative of an agency's behavior or performance." Under that standard, even with respect to 302's where Exemption 7(D) does not apply, certain identifying information such as names of witnesses and the like can be redacted from 302's.
but to turn over the 302's), as opposed to investigating the underlying facts. I fear that a policy of producing 302's that would not otherwise be disclosed under FOIA will hinder and impede our continuing investigation and cause harm to future investigations: Witnesses no doubt will be quite wary of providing information when they know that the information might someday be disseminated to Congress and the public.

In short, Congress has every right to investigate the same subjects we are investigating, but it is not clear to me that Congress has any right to piggy-back on our investigation by using our reports of interviews that have been conducted in circumstances where the witnesses reasonably expected confidentiality.
May 26, 1995

By Facsimile

Louis J. Freeh
Director, Federal Bureau of Investigation
Ninth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Mr. Freeh:

On May 17, 1995, the Senate passed Senate Resolution 120, a copy of which is enclosed, establishing a Special Committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters. As part of this investigation, and in order to prepare for public hearings, we request that the Federal Bureau of Investigation ("FBI") produce certain records to the Special Committee.

The FBI may have custody, control, or possession of records, including records of present and former FBI personnel, that relate to matters specified in the resolution and listed below. We hereby request that you provide all records, regardless of format, including, but not limited to, e-mail, electronic "dump files," memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that relate in any manner to the following: (1) investigative activities of the United States Park Police and the Federal Bureau of Investigation relating to the death of Vincent Foster and occurring at the White House or involving any White House official or officials; or (2) the handling of any and all documents that were in the office of Vincent Foster at the time of, or following, his death on July 20, 1993.

To the extent that FBI officials have gathered records from individuals and locations throughout the agency, please indicate where and from whom each of those records was obtained. It would also be helpful if you provide a list of the records that you are submitting so that the Committee and your office have a common list of the records supplied by the FBI. If any records are withheld based on the assertion of any privilege, please provide a log identifying the date, author, any and all recipients, and subject matter of any such records, and the basis for the privilege asserted.
The records should be delivered to Joseph Kolinski, Chief Clerk, 534 Dirksen Senate Office Building. You may submit copies in response to this request, but the Committee reserves the right to obtain the original records. As you know, the Committee is seeking to complete its work as expeditiously as possible. Therefore, it is necessary that the Committee receive these documents no later than June 5, 1995, and prior to that date, if possible.

If you have any questions concerning this request, please contact Michael Davidson, Senate Legal Counsel, at 224-4435. This request is an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a FBI official who will be responsible for responding to this request. We have consulted with Independent Counsel Kenneth W. Starr with regard to this document request, and, as indicated in the attached letter, dated April 22, 1995, the Office of Independent Counsel's investigation would not be "impeded" by the Committee’s request for records regarding "the way in which White House officials handled documents in the office of Vincent Foster at the time of his death."

Your cooperation in this matter is greatly appreciated.

Sincerely,

Paul S. Sarbanes
Ranking Member

Alfonse M. D’Amato
Chairman

Enclosure
May 26, 1995

By Facsimile

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Madam Attorney General:

On May 17, 1995, the Senate passed Senate Resolution 120, a copy of which is enclosed, establishing a Special Committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters. As part of this investigation, and in order to prepare for public hearings, we request that the Department of Justice ("DOJ") produce certain records to the Special Committee.

The DOJ may have custody, control, or possession of records, including records of present and former DOJ personnel, that relate to matters specified in the resolution and listed below.

We hereby request that you provide all records, regardless of format, including, but not limited to, e-mail, electronic "dump files," memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that relate in any manner to the following: (1) investigative activities of the United States Park Police and the Federal Bureau of Investigation relating to the death of Vincent Foster and occurring at the White House or involving any White House official or officials; or (2) the handling of any and all documents that were in the office of Vincent Foster at the time of, or following, his death on July 20, 1993.

Your response should include, but not be limited to, all records of telephone conversations or wire communications, including, but not limited to, phone logs, copies of message pads, and electronic or written records, relating to communications that took place, between 5 p.m. on July 20, 1993 and 5 p.m. July 22, 1993, between:

(i) Philip B. Heymann, Webster Hubbell, or David Margolis of DOJ, or any member of their respective staffs and

FOIA RD 56806 (URTS 16302) Docld: 70104916 Page 11
(ii) any individual at the White House.

To the extent that the DOJ has gathered records from individuals and locations throughout the Department, please indicate where and from whom each of those records was obtained. It also would be helpful if you provide a list of the records that you are submitting so that the Committee and the DOJ have a common list of the records being supplied. If any records are withheld based on the assertion of any privilege, please provide a log identifying the date, author, any and all recipients, and subject matter of any such records, and the basis for the privilege asserted.

The records should be delivered to Joseph Kolinski, Chief Clerk, 534 Dirksen Senate Office Building. You may submit copies in response to this request, but the Committee reserves the right to obtain the original records. As you know, the Committee is seeking to complete its work as expeditiously as possible. Therefore, it is necessary that the Committee receive these documents no later than June 5, 1995, and prior to that date, if possible.

If you have any questions concerning this request, please contact Michael Davidson, Senate Legal Counsel, at 224-4435. This request is an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a DOJ official who will be responsible for responding to this request. We have consulted with Independent Counsel Kenneth W. Starr with regard to this document request, and, as indicated in the attached letter, dated April 22, 1995, the Office of Independent Counsel’s investigation would not be "impeded" by the Committee’s request for records regarding "the way in which White House officials handled documents in the office of Vincent Foster at the time of his death."

Your cooperation in this matter is greatly appreciated.

Sincerely,

[Signature]

Alfonse M. D’Amato
Chairman

Paul S. Sarbanes
Ranking Member

Enclosure
By Facsimile

Robert Langston
Chief, United States Park Police
National Capital Region Headquarters
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Dear Chief Langston:

On May 17, 1995, the Senate passed Senate Resolution 120, a copy of which is enclosed, establishing a Special Committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters. As part of this investigation, and in order to prepare for public hearings, we request that the Park Police produce certain records to the Special Committee.

The Park Police may have custody, control, or possession of records, including records of present and former Park Police personnel, that relate to matters specified in the resolution and listed below. We hereby request that you provide all records, regardless of format, including, but not limited to, e-mail, electronic "dump files," memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that relate in any manner to the following: (1) investigative activities of the United States Park Police or the Federal Bureau of Investigation relating to the death of Vincent Foster and occurring at the White House or involving any White House official or officials; or (2) the handling of any and all documents that were in the office of Vincent Foster at the time of, or following, his death on July 20, 1993.

To the extent that Park Police personnel have gathered records from individuals and locations throughout the your agency, please indicate where and from whom each of those records was obtained. It would also be helpful if you provided a list of records that you are submitting so that the Committee and the Park Police have a common list of the records being supplied. If any records are withheld based on the assertion of any privilege, please provide a log identifying the date, author, any and all

FOIA RD 56806 (URTS 16302) DocId: 70104916 Page 13
recipients, and subject matter of any such records, and the basis for the privilege asserted.

The records should be delivered to Joseph Kolinski, Chief Clerk, 534 Dirksen Senate Office Building. You may submit copies in response to this request, but the Committee reserves the right to obtain the original records. As you know, the Committee is seeking to complete its work as expeditiously as possible. Therefore, it is necessary that the Committee receive these documents no later than June 5, 1995, and prior to that date, if possible.

If you have any questions concerning this request, please contact Michael Davidson, Senate Legal Counsel, at 224-4435. This request is an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a Park Police official who will be responsible for responding to this request. We have consulted with Independent Counsel Kenneth W. Starr with regard to this document request, and, as indicated in the attached letter, dated April 22, 1995, the Office of Independent Counsel's investigation would not be "impeded" by the Committee's request for records regarding "the way in which White House officials handled documents in the office of Vincent Foster at the time of his death."

Your cooperation in this matter is greatly appreciated.

Sincerely,

Paul S. Sarbanes
Ranking Member

Alfonse M. D'Amato
Chairman

Enclosure
May 26, 1995

By Facsimile

Eljay B. Bowron
Director, United States Secret Service
Department of Treasury
1800 G Street, N.W.
Washington, D.C. 20223

Dear Mr. Bowron:

On May 17, 1995, the Senate passed Senate Resolution 120, a copy of which is enclosed, establishing a Special Committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters. As part of this investigation, and in order to prepare for public hearings, we request that the Secret Service produce certain records to the Special Committee.

The Secret Service may have custody, control, or possession of records, including records of present and former Secret Service personnel, that relate to matters specified in the resolution and listed below. We hereby request that you provide all records, regardless of format, including, but not limited to, e-mail, electronic “dump files,” memoranda, correspondence, notes, and records in any other medium, including drafts of any of the foregoing, that relate in any manner to the following: (1) investigative activities of the United States Park Police and the Federal Bureau of Investigation relating to the death of Vincent Foster and occurring at the White House or involving any White House official or officials; or (2) the handling of any and all documents that were in the office of Vincent Foster at the time of, or following, his death on July 20, 1993.

To the extent that Secret Service personnel have gathered records from individuals and locations throughout the agency, please indicate where and from whom each of those records was obtained. It would also be helpful if you provide a list of the records that you are submitting so that the Committee and the Secret Service have a common list of the records being supplied. If any records are withheld based on the assertion of any privilege, please provide a log identifying the date, author, any and all
recipients, and subject matter of any such records, and the basis for the privilege asserted.

The records should be delivered to Joseph Koliński, Chief Clerk, 534 Dirksen Senate Office Building. You may submit copies in response to this request, but the Committee reserves the right to obtain the original records. As you know, the Committee is seeking to complete its work as expeditiously as possible. Therefore, it is necessary that the Committee receive these documents no later than June 5, 1995, and prior to that date, if possible.

If you have any questions concerning this request, please contact Michael Davidson, Senate Legal Counsel, at 224-4435. This request is an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a Secret Service official who will be responsible for responding to this request. We have consulted with Independent Counsel Kenneth W. Starr with regard to this document request, and, as indicated in the attached letter, dated April 22, 1995, the Office of Independent Counsel’s investigation would not be "impeded" by the Committee’s request for records regarding "the way in which White House officials handled documents in the office of Vincent Foster at the time of his death."

Your cooperation in this matter is greatly appreciated.

Sincerely,

Paul S. Sarbanes
Ranking Member

Alfonse M. D’Amato
Chairman

Enclosure
2 June 1995

NOTE

To: Steve Kubiatowski
From: Monica Burke
cc: Tim Elliott

Subject: Senate Banking Committee's request of 5/26/95 for documents re: V. Foster investigation

Per our telephone conversation last night, I am faxing you an index of those documents in the Department of the Interior's possession that we feel are responsive to the Banking Committee's request. Please note that we will not provide the Committee with documents in our possession that were generated by other agencies (particularly the Secret Service, the Department of Justice, and the Federal Bureau of Investigation). We continue to work with those agencies to make sure each agency releases its own documents as it deems appropriate.

I hope the attached information will permit you to determine which if any documents are particularly sensitive. Please advise me of the results of your review after it is concluded. I can be reached at 208-4471 or faxed at 219-1790. Thanks.
U.S. Park Police Documents
Responsive to Senate Banking Committee Request of 5/26/95

Document numbers marked with an asterisk indicate third party records that will not be released by DOI.

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<tr>
<th>Doc. No.</th>
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<td>14-15</td>
<td>Supplemental Criminal Incident Record (SCIR) summarizing investigation and concluding death was a suicide. Dated 8/5/93.</td>
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<td>SCIR summarizing interview with Bernard Nussbaum. Dated 7/21/93.</td>
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<td>SCIR summarizing interview with Betsy Pond, Staff Assistant to Bernard Nussbaum. Interview took place 8/22/93.</td>
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<td>SCIR summarizing interviews with Tom Castleton and Linda Tripp. Interviews conducted 7/22/93.</td>
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<td>36-37</td>
<td>SCIR describing review of Documents from Vince Foster’s office. Review took place 7/22/93.</td>
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<td>SCIR describing meeting with B. Nussbaum re: search of Foster office and discovery of note. Dated 8/2/93.</td>
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<td>44</td>
<td>SCIR summarizing interview with Jim Hamilton, Foster family attorney. Dated 8/1/93.</td>
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<td>SCIR summarizing interview with Steven Neuwirth, Assistant White House Counsel. B. Nussbaum was present and answered questions. Interview conducted 7/29/93.</td>
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<td>SCIR describing examination of Foster telephone log. Examination conducted 7/30/93.</td>
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<td>52-53</td>
<td>SCIR summarizing phone log for 7/20/93. Callers: Buck, Lyons, Rather.</td>
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<td>Mobile Crime Lab Report Supplement (MCLRS) describing handling of evidence including clothing and note. Dated 7/29/93.</td>
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<td>63</td>
<td>MCLRS describing treatment of original and copies of note. Dated 7/30/93.</td>
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<td>64-66</td>
<td>Laboratory Examination Results summary re: handwriting identification. Dated 7/29/93.</td>
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<td>67</td>
<td>MCLRS describing treatment of note. Events took place 8/1/93.</td>
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<td>68</td>
<td>Copy of handwritten note.</td>
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<td>71*</td>
<td>FBI results on examination of 28 pieces of paper (note). Dated 8/2/93.</td>
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<tr>
<td>84*</td>
<td>USSS report on Office alarm system. Dated 7/21/93.</td>
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<tr>
<td>85*</td>
<td>USSS map of West Wing Second Floor. Dated 1/25/93.</td>
</tr>
</tbody>
</table>
86* USSS log of persons entering Mr. Foster's office.  
Dated 7/21/93.

87 Phone log.  Dated 7/20/93.

88 *89 Mr. Foster's desk calendar for July 1993.  
Mr. Foster's desk calendar for July 1993.

106-107 USPP Evidence/Property Control Receipt on note.  
Dated 7/27/93.

110 Note containing Nussbaum phone number.  Undated.

111 Watkins business card

117 USPP officer's handwritten notes re:  
investigation.  Includes references to Nussbaum,  
Pond and Gorham interviews, other White House  
staff, checking account status, Castleton, Tripp,  
Gorham, phone calls, meeting at 3000 K St., phone  
log, interviews with family members, White House  
security.  Dated 7/20-29/93.

371* Memo from P. Heymann to J. Keeney and M. Shaheen  
(all DOJ) re: further investigation.  Dated  
8/3/93.

372* DOJ undated reproduction of Foster note.

380 Note re: letter from "BJ".  Dated 7/30/93.

392-400 GAO fax summarizing interview with Capt. Hume re:  
V. Foster and White House travel office.  
Interview took place 8/30/93.

413 Phone message notes.  Dated 7/21-29/93.

416 Note regarding handling of note.  Dated 8/1/93.

419 Original SCIR describing meeting with Nussbaum and  
others regarding search of Foster office and  
discovery of note.  Report was retyped; retyped  
SCIR is document no. 43.  Meeting took place  
7/27/93.


430* Letter from Lankler, DOJ, to Langston, USPP,  
requesting copies of documents.  Dated 3/16/94.
June 6, 1995

The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman D'Amato and Senator Sarbanes:

Thank you for continuing to apprise this Office of the investigative efforts by the Senate Committee on Banking, Housing, and Urban Affairs. At this point, our investigation would not be impeded by the Committee's plan to interview and/or deposes witnesses concerning the following issues: (1) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death; (2) the handling of criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation by Resolution Trust Corporation ("RTC") employees in both the Kansas City and Washington, D.C. RTC offices; and (3) the administrative leave and/or suspension of certain RTC employees in the Kansas City RTC office.

In order to ensure the completeness, integrity and confidentiality of our ongoing investigation, we would respectfully request: (1) that copies of transcripts of interviews and depositions be forwarded to this Office as soon as possible; (2) that the Committee refrain from asking questions about what witnesses have been asked by or told to this Office or the grand jury; and (3) that the Committee refrain from asking witnesses whether, how often, or in what fora they have been asked questions by this Office, or whether and what documents they have produced to this Office.

As always, thank you for your kind consideration of this request. Please do not hesitate to contact me with respect to this or any other matter.

Very truly yours,

Kenneth W. Starr
Independent Counsel
June 13, 1995

By Facsimile and Mail

Stephen A. Kubiatowski, Esq.
Office of the Independent Counsel
Assistant Independent Counsel
Suite 490-North
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Steve:

The Special Committee has now put in place security procedures to protect the confidentiality of documents. A copy of those security procedures is attached.

Very truly yours,

Lance Cole
Democratic Deputy Special Counsel

Attachment
1. Categories of documents

Highly Confidential Documents (i.e., national security documents or other documents produced to the Special Committee for which a compelling need exists for restricted access, e.g., their disclosure would impede the Independent Counsel's investigation).

Confidential Documents (i.e., all other documents produced to the Special Committee pursuant to document requests or subpoenas, and all transcripts of depositions and interviews conducted by the Special Committee's staff).

2. Access to documents

A. Original production sets:

The Chief Clerk will maintain the original production sets of all documents produced to the Special Committee, including both Highly Confidential and Confidential Documents, in a safe that will be used only for that purpose and that can be opened only by the Chief Clerk.

B. Highly Confidential Documents:

The Chief Clerk will initially make only four copy sets of Highly Confidential Documents. Two copy sets will be maintained in a specially-designated secure document room for the Majority Special Committee staff and two copy sets will be maintained in a specially-designated secure document room for the Minority Special Committee staff. The secure document rooms for Highly Confidential Documents will be subject to the following security protocols:

i. The four copy sets of Highly Confidential Documents will be copied by the Chief Clerk onto special paper bearing a shaded "SHC" (for "Senate Highly Confidential") pattern. During the preliminary phase of the Committee's investigation (i.e., prior to public hearings), the Committee will not permit: (a) any further copying of Highly Confidential Documents without the approval of the Chairman or the Ranking Member; or (b) the removal of Highly Confidential documents from the specially-designated secure document rooms for Highly Confidential Documents (except for depositions and witness interviews or for review by the Chairman or Ranking Member, as provided in Paragraph 2.B.iv.).
ii. Only designated staff will have access to the secure document rooms containing the Highly Confidential Documents. The designated staff will be limited to the Majority and Minority Special Counsel to the Special Committee and the Majority and Minority Staff Directors, Chief Counsel and the Chief Clerk of the Banking Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than six additional persons employed by either the Special Committee or the Banking Committee to have access to Highly Confidential Documents. The Chairman and Ranking Member may agree to increase the number of designated persons who may review Highly Confidential Documents during the period prior to public hearings. A 24-hour Capitol Police guard (discussed in Paragraph 5) will control access to the specially-designated secure document rooms for the Highly Confidential Documents and will maintain an access log for those rooms.

iii. The specially-designated secure document rooms for Highly Confidential Documents may contain computers and printers, but will not contain telephones, copiers or telex machines.

iv. Only designated staff can transport Highly Confidential Documents to depositions and witness interviews, or to the offices of the Chairman and Ranking Member for their personal review. The designated staff will be limited to the Majority and Minority Special Counsel to the Special Committee and the Majority and Minority Staff Directors, Chief Counsel and the Chief Clerk of the Banking Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than three additional persons employed by either the Special Committee or the Banking Committee to transport Highly Confidential Documents. After the removal of any such Highly Confidential Documents from the specially-designated secure document rooms, the documents must be returned promptly to those rooms. No copies of Highly Confidential Documents will be made while they are removed from the specially-designated secure document rooms, and no copies of Highly Confidential Documents will be attached to deposition transcripts.

v. The persons designated in Paragraph 2.B.ii. may remove work product, including computer disks, from the specially-designated secure document rooms. Work product must be prepared on non-white paper, and the confidentiality of any such work product must be maintained.
C. Confidential Documents:

All copies of Confidential Documents will be maintained within specially-designated secure document rooms in the Majority and Minority Special Committee respective suites of offices at all times (except for depositions and witness interviews or review by the Chairman or Ranking Member). The secure document rooms for Confidential Documents will be subject to the following security protocols:

i. The copy sets of Confidential Documents maintained in the specially-designated secure document rooms will be copied by the Chief Clerk onto special paper bearing a shaded "SC" (for "Senate Confidential") pattern.

ii. The specially-designated secure document rooms for Confidential Documents may contain computers, printers, and copiers, but will not contain telephones or telecopy machines. Telephones and telecopy machines may be maintained within the Majority and Minority office suites outside of the specially-designated secure document rooms.

iii. Only Special Committee staff who have signed confidentiality agreements (as provided for in Paragraph 4) will have access to Confidential Documents. Such staff may copy Confidential Documents, but must maintain those copies within the specially-designated secure document rooms, except as provided for in Paragraph 2.C.iv.

iv. Designated staff (as defined in Paragraph 2.B.iv.) can transport Committee Confidential Documents to depositions and witness interviews, or to the offices of the Chairman and Ranking Member for their personal review. After the removal of any such Confidential Documents from the specially-designated secure document rooms, the documents must be returned promptly to those rooms. No copies of Confidential Documents will be made while they are outside of the specially-designated secure rooms in the Majority and Minority office suites, and no copies of Confidential Documents will be attached to deposition transcripts.

v. The persons designated in Paragraph 2.C.iii. may remove work product, including computer disks, from the specially-designated secure document rooms. Work product must be prepared on non-white paper, and the confidentiality of such work product must be maintained.

3. Classification of documents

The producing agency or party will designate documents as Highly Confidential or Confidential, subject to Committee review and, where appropriate, taking into account the views of the Independent Counsel. The Chairman and Ranking Member also may designate documents as Highly Confidential.
4. Confidentiality agreements

All Special Committee staff, as defined by section 6(d) of S. Res. 120, shall have access to confidential documents only after entering into a confidentiality agreement (a form of that agreement is attached). Any staff member who violates these confidentiality procedures shall be immediately subject to sanctions, including removal from employment.

5. Capitol Police Security

A 24-hour Capitol Police officer will be posted at the specially-designated secure document rooms containing the Highly Confidential and Confidential Documents. The Police Officers will control access to the specially-designated secure document rooms containing the Highly Confidential and Confidential Documents and will restrict access to those document rooms to designated staff. The police officers will permit only designated staff to remove documents from the secure document rooms only for depositions, witness interviews, or review by the Chairman or Ranking Member. When a designated staff member removes documents for this purpose, the staff member will sign the officer's log book and indicate the time and purpose of the removal of documents, but will not be required to identify the specific documents that are being removed. All staff (except staff members designated in Paragraph 2.B.ii.) will be required to permit the Capitol police officers to search handbags, briefcases and file folders taken from the specially-designated secure document rooms.
UNITED STATES SENATE

SPECIAL COMMITTEE TO INVESTIGATE
WHITewater DEVELOPMENT CORPORATION
AND RELATED MATTERS

CONFIDENTIALITY AGREEMENT

I have read and understand Section 6 of Senate Resolution 120 (104th Congress), Paragraph 5 of Senate Rule XXIX, and the Security Procedures of the Special Committee to Investigate Whitewater Development Corporation and Related Matters ("Special Committee"). I will abide by those confidentiality requirements and maintain the confidentiality of all materials and information of which I become aware related to the Special Committee's investigation and study pursuant to S. Res. 120, unless I am authorized to disclose such materials by the Special Committee or by both the Chairman and the Ranking Member of the Special Committee. I understand that I will be subject to sanctions, including removal from employment, if I disclose confidential information or materials of the Special Committee without such authorization.

________________________
Signature

________________________
Name (Printed)

________________________
Office or Committee

________________________
Social Security Number

________________________
Date
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
534 Dirksen Building, Washington, D.C. 20510

Main Number (202) 224-7391
Fax (202) 224-5137

TO: Stephen A. Kubiakowski, Esq.

NUMBER FAXED TO: 202/514-8802

FROM: Robert J. Giafra, Jr.

DATE: 6.13.95

NUMBER OF PAGES: 7
(Including this cover sheet)

MESSAGE:

If you do not receive the specified number of pages, please contact sender at our main number. Thank you.
Mark, John, Alex, Steve:

Paul Fishman called Tuesday night, and I talked to him for a few minutes.

1. He too has concerns about the McKay material and is having trouble dealing with Giuffra on the issue. (Fishman sounds none too fond of Giuffra.) I told Fishman that we were meeting internally on this issue on Wednesday morning and that we would contact him at some time on Wednesday.

2. He flagged an issue regarding the OPR Travel Office interview reports (the Judith Wish interviews), which in large part dealt with Foster’s state of mind. These reports are within the scope of document requests by Clinger and D’Amato. Because disclosure of these reports would not hinder or impede our investigation and because these reports were not part of our investigation, the Fiske investigation, or the McKay investigation, I suggest that we raise no objection to release of the reports. (That would be consistent with our earlier response to Chairman Clinger about the possibility of hearings on the Travel Office.)

3. Fishman also has concerns about allowing FBI agents Salter and [REDACTED] to be deposed, but he recognized that to be a pure DOJ issue.

\[FOIA(b)(7)-(C)\]
VIA FACSIMILE AND MAIL

Robert M. McNamara, Jr., Esq.
Assistant General Counsel (Enforcement)
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. McNamara:

To follow up on the staff’s meeting today with William Chcatham of the Secret Service, we hereby request that the Secret Service produce certain additional records to the Special Committee.

The Secret Service may have custody, control, or possession of records, including records of present and former Secret Service personnel, that relate to matters listed below. We request that you provide any and all Secret Service alarm records, from July 20, 1993 through July 22, 1993, for the offices or suites of the following White House officials:

(a) the offices of William Kennedy, Associate Counsel; Sylvia Mathews, National Economic Counsel; Patricia L. Thomasson, Special Assistant to the President for Management and Administration and Director of the Office of Administration; and David Watkins, Assistant to the President for Management and Administration;

(b) the suite of the Chief of Staff to the President, including, but not limited to the offices of Thomas F. McLarty, Chief of Staff, William Burton, Deputy Chief of Staff, and Roy Neel, Assistant to the President;

(c) the suite of the Chief of Staff to the First Lady, including, but not limited to the office of Margaret Williams, Chief of Staff; and

(d) the suite of the Director of Communications, including, but not limited to the offices of Mark Gearan, Director of Communications, and Dee Dee Myers, Press Secretary.
Robert M. McNamara, Jr., Esq.
June 20, 1995
Page 2

We further request that you provide any records relating to so-called security "card readers," from 7 a.m. on July 20, 1993 to 12 p.m. on July 21, 1993, for each of the above mentioned individuals, and any of the following individuals: Betsy Pond, Executive Assistant; Thomas Castleton, Intern; Deborah Gorham, Executive Assistant; Craig Livingston, Director of White House Security; Steven Neuwirth, Associate Counsel to the President; Bernard Nussbaum, Counsel to the President; and Clifford Sloan, Associate Counsel to the President.

Finally, we request that you provide the name of the Secret Service guard posted at the "control center" on July 20, 1993, between 8 p.m. and 9 p.m. In particular, we are seeking to identify the person who was monitoring the alarm system for the White House Counsel's suite during that time period.

The records should be delivered to Joseph Kolinski, Chief Clerk, 534 Dirksen Senate Office Building.

Your continued cooperation in this matter is greatly appreciated.
DATE: 6/30/95
NUMBER OF PAGES TO FOLLOW: 
TO: Alex Azar
ADDRESSEE'S FAX NUMBER: 574-8802
ADDRESSEE'S CONFIRMATION NUMBER: 
FROM: Bob McNamara
SENDER'S FAX NUMBER: 622-1944
SENDER'S CONFIRMATION NUMBER: 622-
COMMENTS/SPECIAL INSTRUCTIONS:

Alex - This is the Senate Banking request for additional FSA-related documents I mentioned to you. Any concerns? Br

FOIA RD 56806 (URTS 16302) Docld: 70104916 Page 31
RECEPTION OK

TX/RX NO. 7157

CONNECTION TEL 202 622 1944

CONNECTION ID

START TIME 06/30 12:30

USAGE TIME 01'14

PAGES 3

RESULT OK
June 21, 1995

Honorable Kenneth Starr  
Independent Counsel  
2 Financial Center  
10825 Financial Center Parkway  
Suite 134  
Little Rock, Arkansas 72211

Dear Independent Counsel Starr:

I remain committed to pursuing the Banking Committee's oversight duties regarding the Whitewater-Madison matter in a manner that is consistent with safeguarding the integrity of your investigation. Accordingly, I am enclosing letters that I have sent today to the Inspectors General of the FDIC and RTC, requesting status reports on inquiries that the FDIC and RTC Inspectors General initiated in response to Banking Committee requests.

I wanted to inform you of these requests. Please forward any questions or comments to Joseph Kollinski, Chief Clerk of the Senate Banking Committee.

Sincerely,

Alfonse M. D'Amato  
Chairman
June 21, 1995

Honorable John Adair
Inspector General
Resolution Trust Corporation
801 17th Street, N.W.
Washington, D.C. 20434

Dear Mr. Adair:

In February 1994, the Committee requested a review of the RTC's Office of Contract Oversight and Surveillance's report regarding the retention of the Rose Law Firm in connection with the Madison Guaranty Savings and Loan Association conservatorship and an audit of legal fees paid to the Rose Law Firm. The Committee has received a draft copy of the audit report. I am writing to inquire as to the status of your office's investigation regarding the retention of the Rose Law Firm. I understand the extenuating circumstances presented by the Independent Counsel's concurrent investigation. Nevertheless, the Committee, in furtherance of its oversight responsibility, needs to be apprised of your progress. Please advise the Committee in writing of the status of your inquiry into the retention of the Rose Law Firm.

Please forward the requested information to Joseph Kolinski, the Chief Clerk of the Senate Committee on Banking, Housing and Urban Affairs, 534 Dirksen Senate Office Building, Washington, D.C. 20510 by no later than June 28, 1995. Please note that I will apprise the Independent Counsel's Office of this request.

Thank you in advance for your assistance.

Sincerely,

Alfonse M. D'Amato
Chairman

cc: Honorable Kenneth Starr
Honorable John E. Ryan
June 21, 1995

Honorable James A. Renick
Inspector General
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Rm. PA 4130
Washington, D.C. 20429

Dear Mr. Renick:

In February 1994, your office was asked to undertake an investigation regarding the Rose Law Firm's legal work for the FDIC. I am aware of the extenuating circumstances presented by the Independent Counsel's concurrent investigation, but the Committee, in furtherance of its oversight responsibility, needs to be apprised of your progress. Please inform me in writing of the status of your inquiry and the date that your final report should be available.

Please forward the requested information to Joseph Kolinski, the Chief Clerk of the Senate Committee on Banking, Housing and Urban Affairs, 534 Dirksen Senate Office Building, Washington, D.C. 20510 by no later than June 28, 1995. Please note that I will inform the Independent Counsel's Office of this request.

Thank you in advance for your assistance.

Sincerely,

Alfonse M. D'Amato
Chairman

cc: Honorable Kenneth Starr
    Honorable Andrew C. Hove, Jr.
Steve:

Giuffra called back, and I covered all of the issues with him.

1. He was happy about Hubbell and Lindsey.

2. July 18 is the target date for hearings.

3. Someone named Becky on his staff will coordinate transcripts. He asked who would pay for the transcripts. How do we handle that with the House?

4. He was very coy about asking agencies whether they had provided all documents that had been provided to the OIC. He first stated that the Senate did not have to follow our request. He then backed off and said simply that there was a fine line between (a) asking someone to make sure that there were no more responsive documents that might have been provided to the OIC and (b) asking someone to provide all documents that had been given to the OIC.

   In the end, at least with respect to document requests, I do not think they plan to follow the spirit of our letter to them, and I am not sure there is much we can do about it.

5. He has not received a letter from Fishman, so we will deal with that issue tomorrow.

Brett

cc: Alex, John
Issues with Congress on Foster documents investigation while investigation is still open

The goal, I suppose (and correct me if you disagree) is to put Congress in the same shoes that "we" were in when "we" began this investigation. (I am not sure that goal should or will change once this investigation is closed.) This stated goal of course begs the question of who "we" are. I think the Fiske investigation is clearly part of our investigation; I am far less certain about the July-August 1993 FBI and Park Police investigations, however.

With that in mind, here is an outline of the relevant issues, and my suggestions as to whether we allow certain documents to be given to Congress.

1. Interview Reports

   Starr 302's and Sworn Statements
   -- NO

   Fiske 302's and Sworn Statements
   -- NO

   FBI 302's (July-August 1993)
   -- maybe (have they been previously produced?)
   (are we a continuation of this investigation?)

   Park Police reports (July-August 1993)
   -- maybe (have they been previously produced?)
   (are we a continuation of this investigation?)

2. Attorney/investigator work product (e.g., investigative outlines, interview questions, etc.)

   from Starr -- NO

   from Fiske -- NO

   from pre-Fiske DOJ/FBI -- probably yes (not really an issue in Foster documents investigation) (are we a continuation of this investigation?)

   Park Police -- probably yes (not really an issue in Foster documents investigation) (are we a continuation of this investigation?)
3. **Agency Notes and Reports of Communications with Prosecutors**

   with Starr -- **NO**

   with Fiske -- **NO**

   with pre-Fiske DOJ/FBI -- **probably yes** (not really an issue in Foster documents investigation) (are we a continuation of this investigation?)

   with Park Police -- **probably yes** (not really an issue in Foster documents investigation) (are we a continuation of this investigation?)

4. **Non-Interview-Report Documents**

   from DOJ/FBI -- **OK, subject to #2-3**

   from Park Police -- **OK, subject to #2-3**

   from White House -- **OK, subject to #3**

   from Secret Service -- **OK, subject to #3**
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

- Main Number (202) 224-7391
- Fax (202) 224-5137

TO: Brent Kavanaugh, OIC

NUMBER FAXED TO: 202/514-8802

FROM: Robert J. Giuffra

DATE: 3/20/95

NUMBER OF PAGES: 4
(Including this cover sheet)

MESSAGE:

If you do not receive the specified number of pages, please contact sender at our main number. Thank you.
June 22, 1994

Lloyd N. Cutler
Special Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Cutler:

On June 21, 1994, the Senate passed Senate Resolution 229, a copy of which is enclosed, directing the Committee on Banking, Housing, and Urban Affairs to conduct hearings on matters specified in the resolution. In preparation for the hearings, we are requesting present and former White House officials, as shown on the attached initial list, to produce records to the Committee.

Your office may have custody, control, or possession of records, including records of present and former White House personnel, which relate to the matters specified in the resolution and listed below. Our request embraces these and any other White House records relating to those matters.

Accordingly, please provide to the Committee all such records, regardless of format, that relate in any manner to the following subjects:

(a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;

(b) the Park Service Police investigation into the death of Vincent Foster; and

(c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

To the extent that your office has gathered documents from individuals and locations throughout the White House, please indicate where and from whom each of those records was obtained. It would also be helpful if you provided a list of the records that you are submitting so that the Committee and your office have a common list of the records supplied by the White House.
Lloyd N. Cutler  
June 22, 1994  
Page Two

Additionally, we request that you provide to the Committee any written policies or descriptions of those policies issued by the White House Chief of Staff or the White House Counsel's Office, in effect now or to your knowledge previously, concerning communications between White House officials and officials in departments and agencies, such as the Department of the Treasury, the Resolution Trust Corporation, and the Park Service Police or other law enforcement entities.

The records should be delivered to Kelly Cordes, the Committee's Chief Clerk, 534 Dirksen Senate Office Building. As you know, Senate Resolution 229 provides that public hearings on this matter begin no later than July 29, 1994. Therefore, it is necessary that these documents be received by the Committee no later than July 1, 1994, and prior to that date, if possible.

If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at 224-4435. This request is, of course, an initial request and may be supplemented by additional ones.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Alfonse M. D'Amato  
Ranking Member

Donald W. Riegle, Jr.  
Chairman

Enclosure
ATTACHMENT

Bruce R. Lindsey  
Assistant to the President and Senior Advisor

George R. Stephanopoulos  
Senior Policy Advisor to the President

Thomas F. McLarty, III  
Chief of Staff to the President

Harold Ickes  
Assistant to the President and Deputy Chief of Staff

Mark D. Gearan  
Assistant to the President for Communications

John D. Podesta  
Assistant to the President and Staff Secretary

Clifford Sloan  
Associate Counsel to the President

Stephen R. Neuwirth  
Associate Counsel to the President

Betsy Pond  
Office of White House Counsel

Patsy L. Thomasson  
Special Assistant to the President for Management and Administration and Director of the Office of Administration

Margaret Ann Williams  
Chief of Staff to the First Lady

Lisa M. Caputo  
Press Secretary to the First Lady
June 23, 1995

Mr. Robert Giuffra, Jr.
Mr. Neil Kravitz
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, DC 20510-6075

Dear Messrs. Giuffra and Kravitz:

I am writing to confirm my various telephone conversations with you and Michael Chertoff.

In response to my letter of June 15, you have advised that the committee staff would like to schedule depositions of four FBI agents: Special Agents Condon, Gillis, Danna and Salter. Although you originally had suggested that the depositions would take place this week, I now understand that they will occur next week.

There are, however, certain preliminary matters that need to be resolved. First, the Independent Counsel has interposed an objection to Special Agent Gillis's testimony at this time because of the agent's extensive involvement in the Independent Counsel's investigation. Accordingly, until we are advised whether the Independent Counsel's concerns can be accommodated, we do not believe it would be appropriate to schedule his deposition.

With respect to the other three agents, the prospect of subjecting agents and prosecutors to congressional interviews can have a profound chilling effect on law enforcement. Accordingly, for many years, the Department's policy has been that such personnel should not be called before congressional committees to testify about the scope of, and reasons for, their investigative and prosecutive decisions. As you have described, however, the testimony of these agents is sought to relate their observations during the period following the death of Vincent Foster, and they will be available on Wednesday, June 28, to do so. If that understanding is incorrect, please let me know immediately.

In addition, I understand that the Committee would like to depose former Deputy Attorney General Philip Heymann, Associate Deputy Attorney General David Margolis, Counsel to the Deputy Attorney General Roger Adams, Deputy Associate Attorney General Nancy McFadden, and former Special Assistant to the Deputy
Attorney General Cynthia Monaco. As we discussed on Friday, Mr. Margolis underwent emergency coronary by-pass surgery last Thursday and will be unavailable for at least several weeks. In addition, Mr. Heymann left Tuesday for a long-scheduled trip to Indonesia. He will return to the United States on July 16 and has informed me that he will make himself available as soon thereafter as reasonably can be arranged. Mr. Adams will be available as requested on June 29. I am advised that Ms. Monaco's attorney will contact you to arrange for her appearance and I have not yet made arrangements with Ms. McFadden, who is out of town.

As we discussed, it is our understanding that all such depositions will be under oath with a court reporter present. Consistent with our usual practice, the Department will designate an appropriate representative to attend.

Finally, I understand that the Committee would like to take the deposition of the Attorney General. As you know, the Attorney General is scheduled to testify on Tuesday in oversight hearings before the Senate Judiciary Committee. As soon as those hearings are completed, we will respond to your request.

Please feel free to call on me if you have any questions.

Very truly yours,

Paul J. Fishman
Counsel to the Deputy Attorney General

cc: Hon. Kenneth W. Starr
Andrea Simonton, Deputy General Counsel, FBI
Philip Heymann
David Margolis
Roger Adams
Nancy McFadden
Cynthia Monaco
CONGRESSIONAL RECORD—SENATE

S6771

May 17, 1995

See, we have this idea that Demo-
crats rejected about 40 years ago, and that
the public is in favor of spending their
own money on what you do for them.

Now that sounds alien in Wash-
ington, D.C., but in Little Rock, AR, people
are beginning to think maybe that is
the way we ought to do things.

Mr. DORGAN. I wonder if the Sen-
ator from Arkansas would yield to me?

Mr. Pryor. I do not have the floor,
actually.

Mr. GRAMM. I have to go to a hear-
ing on Legal Services, to let them
know the bad news.

The PRESIDING OFFICER. The
Chair would say, the hour of 12:30 hav-
ing arrived, morning business was to
close.

Mr. Pryor. Mr. President, seeing no
other Senators desiring recognition,
I ask unanimous consent that the Sen-
ator from North Dakota be allowed to
proceed for 3 minutes.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. DORGAN. Mr. President, I was
curious about the question asked by my
colleagues from Arkansas.

Our colleague, Senator GRAMM from
Texas, said that at this fundraiser they
were not giving anybody anything. I
assume he forgot, probably, that in the
vote on the House of Representatives
on the Contract with America, just to
take one little piece of that, they
eliminated the alternative minimum tax
for corporations.

You know those stories in the old
days about a big corporation that
earned $3 billion in earned income, net
profit, and paid zero in Federal income
Tax. Well, the Federal Government said
they wanted to correct that, so they
set up what was called an alternative
minimum tax, so you could never zero it
out. Talking about the real big corpo-
rations now.

I yield to the House of Representa-
tives, in the tax bill under the con-
tract, they zero it out and they say,
"No more alternative minimum tax.
For big companies, you make $5 bil-
lion, it is all right; if you pay zero in
taxes." But at same time they do that,
they say, "But we can give those com-
panies"—incidentally, about 2,000 com-
panies—the equivalent of $2 million
each in tax breaks. We can afford to do
that, but we cannot afford to provide
student aid, as we used to, so we will
have to ask kids who are going to col-
lege who do not have any money to
pay for it, to make it harder for kids
to go to college because we cannot
afford investing in kids who go to col-
lege, as we used to. But we do have the
money to provide the equivalent of a
$2 million tax break for each of 2,000
companies by saying, you know, situa-
tions. You no longer have to worry
about a little thing called the alter-
native minimum tax. You can zero it
out, you like.

I am going the Senator from Texas
just forget about that.

And there are a dozen more like it,
little old things that I am sure folks
would show up to show their apprecia-
tion for, but they are the kinds of
things that represent priorities—the
priorities that we really believe in the
domestic interests here, we really think
the big interests need a lot more help
because we know on big interests some-
how will it all step down to the
people. We are trying to send
their kids to college. That is what I
think has been forgotten in this equa-
tion and this discussion between the
Senator from Texas and the Senator
from Arkansas.

Mr. President, I yield the floor.

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. Morning
business is closed.

Under a previous order, the Senate
will now proceed to the consideration
of a resolution submitted by the
Senator from New York [Mr. D'AMATO].

Mr. Pryor. Mr. President, I suggest
the absence of a quorum.

The PRESIDING OFFICER. The
clerk will call the roll.

Mr. D'AMATO. Mr. President, I ask
unanimous consent that the order for
the quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. D'AMATO. Mr. President, I have
a resolution which I will shortly be
sending to the desk. May I ask, what
is the pending business?

The PRESIDING OFFICER. The
pending business is the resolution to
be considered by the Senator from
New York.

Mr. D'AMATO. I believe I have
agreed that there will be no more than
2 hours.

The PRESIDING OFFICER. That is
correct, from the time you bring it up.

Mr. D'AMATO. Will the time start
to run as soon as it is in order?

The PRESIDING OFFICER. It is
when the Senator submits the resolu-
tion to the desk.

ESTABLISHING A SPECIAL
COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT
CORP. AND OTHER MATTERS

Mr. D'AMATO. Mr. President, I send
the resolution to the desk on behalf of
myself and Senator Dole—and I know
others would like to join—and I ask
for its immediate consideration.

The PRESIDING OFFICER. The
clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 120) establishing
a special committee administered by
the Committee on Banking, Housing,
and Urban Affairs to conduct an
investigation involving Whitewater
Development Corp., Madison
Guaranty and Savings Association,
Capital Management Services, Inc.,
the Arkansas Development Finance
authority, and other related matters.

The PRESIDING OFFICER. Is there
obstruction to an immediate considera-
tion of the resolution?
many serious questions still remaining about Whitewater and related matters. We have a constitutional obligation to seek the answers to these questions. That is why I am offering this resolution today.

Now I will briefly outline some of the matters that this resolution authorizes the special committee to investigate. We will begin with the handling of the papers in deputy White House counsel Vince Foster’s office following his death. Who searched Mr. Foster’s office on the night of his death? What were they looking for? What happened to Mr. Foster’s papers? Were any papers lost or destroyed? And who authorized the transfer of Mr. Foster’s Whitewater file to a closet in the First Family’s residence? The public has a right to the answers to these questions.

Mr. President, this resolution authorizes the special committee to coordinate its activities with those of the independent counsel, Kenneth Starr. Senator SARBANES and I have met with the independent counsel. Judge Starr has indicated to us that he has no objections to these committees’ plans to inquire into the handling of Mr. Foster’s papers. Senator SARBANES and I are coordinating the committee’s activities with those of the independent counsel.

This resolution authorizes the special committee to pursue answers to other questions raised during the Banking Committee hearings. We will explore the scope and impact of the improper dissemination of confidential law enforcement information concerning Madison Guaranty. How widely did the Clinton administration officials communicate this confidential information? Did any high-ranking officials inform targets of criminal investigations? If so, did this impact any ongoing investigations? The public has a right to the answers to these questions.

The special committee will also examine whether there were any improper relationships between the Clinton White House and the Justice Department regarding Madison Guaranty.

We know that Paula Casey, the U.S. attorney in Little Rock, declined to pursue criminal referrals involving Madison. That is an undisputed fact. We also know that Webster Hubbell, who has pleaded guilty to mail fraud and tax evasion, was the No. 3 official at the Justice Department at this critical time. This is another undisputed fact.

The committee will ascertain whether Mr. Hubbell contacted Paula Casey about Madison. And who else, if anyone, knew about these contacts with the U.S. attorney. The public has the right to know.

Mr. President, this resolution authorizes the special committee to examine the Resolution Trust Corporation and other officials in Washington who tried to interfere improperly with RTC staff in Kansas City responsible for investigating wrongdoing at Madison. If such interference occurred, who authorized it, and why? The public deserves answers to these questions.

During last summer’s hearings, the Banking Committee learned that the Treasury inspector general furnished the Clinton White House, at the White House counsel’s request, transcripts of the inspector general’s depositions. That is an undisputed fact. This resolution will now look into whether these deposition transcripts were used to coach administration witnesses before they appeared in front of the committee. That would be wrong. The public has a right to know if it happened.

All of these matters that I have discussed so far involve events that occurred after January 19, 1995 when President Clinton took office. There are also serious questions regarding events that occurred in Arkansas in the 1980’s when President Clinton was Governor. This resolution also authorizes the special committee to examine these matters. Some of these Arkansas matters are complex and will require the committee’s close review of many thousands of pages of documents.

We will also review the operations and regulations of Madison Guaranty. Did James McDougall, Madison’s chairman and Governor Clinton’s business partner, improperly divert Madison’s funds to himself? Did any of this happen? We may find its way into the White House real estate project in which McDougall and Governor Clinton were partners? Did McDougall misuse Madison funds? Did the First Family suffer on their Whitewater investment? The public has a right to know the answers to these questions.

Mr. President, the resolution further authorizes the special committee to examine the Rose law firm’s representation of both Madison and RTC, and senior partners at the Rose law firm, including Larry Rodham Clinton, Webster Hubbell, and Vince Foster. The committee must ascertain whether the Rose law firm improperly handled the RTC civil claims concerning Madison.

Did the firm have a conflict of interest, and did American taxpayers lose money in the process? We will also examine Capital Management Services and its president, David Hale, a former Arkansas judge and Clinton advisor. Mr. Hale has publicly charged that the President pressured him to make Small Business Administration loans that were used to prop up Madison.

Did this happen? Did Hale also make improper Small Business Administration loans to current Arkansas Gov. Jim Guy Tucker? Then there is the matter of the financing of the 1984 Arkansas gubernatorial race. We now know that the president of the Perry County Bank, Neal Airley, has pleaded guilty to violating federal laws in connection with the handling of certain large cash transactions for the Clinton campaign.

Airley claims he did so at the direction of campaign officials. The public has a right to know who authorized this activity and why.

Mr. President, this resolution will authorize the special committee to examine these and related matters. We will take every reasonable step to complete this inquiry promptly. We hope the administration cooperates with us in this regard. But we also intend to be thorough and comprehensive.

This resolution provides $250,000 to fund the special committee through February 28, 1995. If additional money is needed, the special committee will make a recommendation not later than January 15, 1995, and the majority and minority will meet to determine the time for any vote.

Mr. President, we expect to hold public hearings into the handling of the papers of Vince Foster’s office in late June or early July. We continue our inquiry by subject matter until it is completed. In doing so, we will make every effort not to interfere with the independent counsel’s criminal investigations.

Mr. President, the American people deserve to know the full facts about Whitewater and related matters. As I said at the outset, we will conduct this inquiry in a fair, evenhanded, and impartial manner.

That is what the American people want, expect, and deserve. I urge the approval of this resolution.

Mr. SARBANES, it is here. We have allocated up to 2 hours, equally divided.

I yield the floor.

Mr. SARBANES. Mr. President, may I ask what the time situation is?

The PRESIDING OFFICER (Mrs. HUTCHISON). There are 2 hours, of which 15 minutes have elapsed. Mr. SARBANES. There is an hour now remaining on this side?

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. I thank the Chair. Madam President, it is not my intention to use the entire hour. I hope at some point both sides might be able to yield back time and proceed to final consideration of the resolution.

Let me say at the outset that the resolution we are considering today, which authorizes a special committee to be authorized by the Committee on Banking, Housing, and Urban Affairs, is really a carrying out of resolutions that were adopted last year by this body. I think it is important to consider this resolution in the context of those resolutions—actions taken by the Senate last year.

On March 17, 1994, a little over a year ago, the Senate adopted a resolution by a vote of 96-0 authorizing the Senate to hold all matters relating to Madison, to Whitewater, and to Capital Management.

Then, to carry out that resolution, at least by part, on June 21 of last year,
the Senate agreed to Senate Resolution 229, which authorized hearings to be held into certain areas. Those hearings were done last summer. We had 6 days of those hearings. We had extensive analysis of documents provided to the inquiry committee in order to enable it to carry out its responsibilities.

Now, one of the things that was authorized to be looked into by the June 21 resolution was a review of one of the Foster documents. That was later deferred, in response to a request from the independent counsel who contacted the committee and indicated that, given the nature of the inquiry, it would be preferable if the committee did not go ahead with that hearing. Accordingly, we held off.

Now the distinguished chairman has indicated that it would be the first issue to be considered in the hearings that will now take place that is under the resolution we are considering here today.

So this resolution is in effect a continuation of our earlier work. It authorizes the hearings to be work specified in last year's resolution, as well as matters developed during and arising out of the hearings that were held last summer, and also a number of matters my colleague has enumerated that carry forth on the substance of the Senate committee's work last year to investigate all matters pertaining to Madison.

I want to go through some other aspects of this resolution, just to lay them out on the record. The chairman of the Banking Committee, Senator D'Amato, has gone through a number of matters that have been provided for in this resolution to be examined by the special committee. The special committee, administered by the Banking Committee, shall consist of all of the members of the Banking Committee plus two members added from the Judiciary Committee. The chairman and ranking members of the committee on the Judiciary, or their designees, will join with the members of the Banking Committee to constitute the special committee which will be administered by the Banking Committee. So it is essentially—or primarily, let me say—a Banking Committee activity, since most of the areas to be examined clearly fall under the jurisdiction of the Banking Committee. But we did add from the Judiciary Committee last year. A member came on in order to help carry out the inquiry. And there are some matters that are contained in the resolution, to be examined in that, could well be argued, are under the jurisdiction of the Judiciary Committee. So, to bring that together, we have, bringing on two members from the Judiciary Committee, the chairman and ranking number two or three designees. They will be designating someone else to handle this responsibility if they choose to do so, and I do not know at this point what Chairman Hatch and ranking member Eiden intend to do in that regard. But obviously we will abide by their decision.

We have also provided in the resolution which is now before us, and which shortly will be adopted, for rules and procedures by which this committee which essentially will be an inquiry committee, will operate. There are in the resolution sections that cover aspects of the process that the special committee will follow; these are matters it was deemed important that we spell out in the resolution how they were going to be dealt with. Those involve questions of subpoenas, powers, questions of how the hearings will be conducted—important, for example, on matters of immunity. I want to underscore that because it is a matter that we have had to address before.

We provide that to grant a witness immunity—I want to read this section because it is a very curious matter. The special committee has the power—"To grant a witness immunity under section 6002 and 6005 of title 18, United States Code, if the independent counsel has not informed the special committee in writing that communicating the witness would interfere with the ability of the independent counsel successfully to prosecute criminal violations." We also provide for staff of the committee. There is power to appoint special committee staff including consultants, assistance from the Senate legal counsel, assistance from the Comptroller General. There is a provision whereby the committee can draw on other Government agencies, Government personnel, and on other congressional staff. And we hope, through a combination of these resources, that we will have an adequate staff to carry out a proper inquiry and investigation.

There is also, of course, special provision for the protection of confidential information, since we will be interacting with the independent counsel and others and we think it is important to have such provisions.

Finally, the money asked for in this resolution. Just under $1 million, $990,000, is to cover the salaries and other expenses of the special committee carrying on this inquiry, beginning on the date of the adoption of this resolution—I assume today—and ending February 29, 1996.

If it is judged that additional money is needed, that the inquiry needs to go forward and additional money is required in order to fund it, the special committee will recommend that. Of course there will have to be a further vote for the purpose of providing additional money to the special committee.

Mr. President, I just make a couple of further, more general observations. I have very quickly gone through the resolution and I think most of it is straightforward. I think Members of the Senate upon reviewing it will conclude the same case. Many of the provisions are what one might call boilerplate for such an inquiry, and track previous provisions that have been used in various Senate resolutions establishing committees to carry out inquiries or investigations of the sort that is being authorized here.

I listened to the chairman with great interest and I was particularly encouraged by his very strong statement of need to conduct impartial, balanced, and thorough; which is exactly what I think needs to be done. There are a lot of allegations that are swirling around and there are a lot of questions that are being raised. We see certainly my take to time raised in the press and in the media. And, of course, one could sit around all day long and conjure up just one question after another. It is not difficult, it is very easy. It is not difficult simply to say, well, this is another of these questions that happened; or if this or that. Of course, one of the purposes of these hearings is to get a good, tough-minded examination of these various allegations, and see if there is anything to them. It needs to be appreciated that it is very easy to make the allegations. Whether the allegations are in fact substantiated by the facts is a tougher question to determine, and that does require an impartial, balanced, and thorough hearing. In fact, the President himself has said the best way to address these matters is to look at the facts candidly, and that is what I very much hope and expect that this committee will be able to do.

I do think last summer we conducted hearings that were perceived by all as being thorough and fair and impartial. We went at it, in effect, to find out what the facts really are the truth. I think we pressed that issue in a resolute manner, and I would expect the special committee will do so in the case that is—in the instance that is before us.

These hearings will make an effort to get the facts out fully and impartially. We anticipate that the administration will cooperate with this effort. They have indicated that is what they intend to do. Last year they made every document available that was requested, as I recall. I think I am correct in that statement. Now the time has come to move forward, to begin our hearings, to begin, in effect, to examine these various questions and allegations and ascertain with respect to each of them whether there is any factual grounding behind them or whether they are allegations that people can ask. And that, of course, is the purpose of the inquiry which we will be undertaking here with this provision of $990,000 to carry out this investigation in the period between now and February 29, 1996. The resolution provides that the special committee must make every reasonable effort to complete.
not later than February 1, 1986, the investigation, study, and hearings authorized by section 1.

This resolution does provide the basis for carrying on a full, proper, impartial, and balanced hearing.

I think our challenge now is to move ahead in carrying out our responsibilities in the special committee. It is a heavy burden to add to the responsibilities that Members already have but is one that obviously we are charged with responding to.

As I said, we adopted resolutions last year, addressed to this matter. This, in effect, carries forward on those resolutions. It is a continuation, in effect, of that work. But I hope that if we apply ourselves to it over the coming months, we will be able to work through all of these matters and, in effect, bring this issue to closure in the sense that the Members of the Senate and the American people know that the various questions have been raised and thought through and that the透过 has been done with a great deal of balance and fairness and impartiality, and that these are the facts are as a consequence of that investigation and inquiry.

Madam President, I yield the floor.

Madam President, I suggest the absence of a quorum. Will time be equally charged?

The PRESIDING OFFICIAL. Only by unanimous consent.

Mr. SARBANES. I ask unanimous consent to put in a quorum call and that the time be equally charged to both sides.

The PRESIDING OFFICIAL. Is there objection? Hearing none, it is so ordered. The time will be charged to both sides equally.

The clerk will call the roll.

The Assistant legislative clerk proceeded to call the roll.

Mr. FAIRCLOTH. Madam President, I ask unanimous consent that the order for the quorum call be suspended.

The PRESIDING OFFICIAL. Without objection, it is so ordered.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICIAL. Who yields time to the Senator from North Carolina?

Mr. D'AMATO. I yield to the Senator from North Carolina whatever time he needs, Madam President.

The PRESIDING OFFICIAL. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Madam President, I want to begin my remarks by saying that I plan to enthusiastically support the Whitewater resolution.

I think it is a good resolution. I am concerned, however, that a few key things have been left out of it. Nevertheless, I think that before the hearings are over, we will wind up working through them.

Nothing in this resolution allows us to probe the circumstances surrounding the death of Vince Foster. When we held the hearings last year in the Senate, a key witness, Captain Hume, simply did not show up at the hearings the day he was supposed to be there. The hearings had been planned for months. Captain Hume was one of the key players in the Whitewater saga at this point in time. We never heard from him. I do not think this was a thorough airing of the issues, and I think we need to do it again.

I understand that Mr. Starr is looking at this again, I hope that he will give the job that Mr. Flakie did of investigating.

Madam President, the Congress also needs to probe the $100,000 profit in the commodities market that came to Mrs. Clinton. She was the analyst of the commodities markets, and she was a general counsel Tyson Foods. This is not mentioned in the resolution, and it should be.

Just recently, I discovered that a friend of mine, Mr. Robert Holm, was conveniently installed as acting head of the CFTC before the story of Mrs. Clinton's commodity trades broke.

There are many confusing issues. Now we find that Red Bond, who did the commodity trading, who was practically bankrupt, was able to pay off $7 million in back taxes just 3 months before the commodity trading story broke. There was the evidence on this is just too much to believe that all of this is a coincidence.

Madam President, this resolution does not allow us to probe the failure of First American Savings & Loan in Illinois.

If you can believe this, Vince Foster and Mrs. Clinton were hired by the Federal Government to sue Dan Leazer. Then Dan Leazer that was a close friend of the Clintons. That is right. Mrs. Clinton was hired by the Federal Government to sue Dan Leazer in connection with the failure of First American Savings & Loan in Illinois. Mrs. Clinton participated in deciding the loss to the government would be recovered from Dan Leazer. From $2 million to $200 million, and we do not know what percentage of that went to her attorney's fee because the records were sealed.

The government spent over $1 billion to resolve the savings and loan crisis. With crooks like Dan Leazer involved and with Mrs. Clinton acting on behalf of the taxpayers, suing a friend, it is no wonder the cost was so high. I want my strong support—and I say this not necessarily in the language as we often use in the Senate—but of my good friend, fellow member of the Banking Committee and our chairman, Mr. Bob D'Amato. He is truly my good friend, and he has given us the leadership we need.

I hope, and I know that before this hearing is over, under his leadership, we will have proved all aspects of Whitewater. In a full manner, so that the American people understand what happened, when it happened, and who knew it when it happened. I look forward to the hearings and to the results.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICIAL. The Senator from New York is recognized.

Mr. D'AMATO. Madam President, I know of my good friend, Senator FAIRCLOTH's concern that there be ample scope to look into all of the matters that are relevant, and I share that concern. I think that this resolution very fairly covers the scope, and I refer to page 4.

As my friend raises, we did not attempt to spell out every single area. Page 4, line 12, says:

Subsection 3. To conduct an investigation and public hearings into and study all matters that have any tendency to reveal the full facts about

Then we go through all of the various areas. There are other Senators who are going to speak, but I think it is important to summarize those areas. Senator SARBANES has this. The fact is that we include the ability to look into the bond underwriting contracts between the Arkansas Bank & Finance Authority and Laster & Co., and all of those activities to which my friend has referred. But there must be a connection, and if there is a connection, well, then, we will look into the area, and I think the time will be fully devoted to those topics in more detail before our time is up.

So I share my friend's concern. This will be thorough. It will be thoughtful. And when subpoenas are served— and I must tell you that the specific instance that he raises, he is raising, that of a witness who failed to respond to a subpoena, especially one who works for the Government, who has given notice, and who gave the committee, either the majority or the minority or our staff, no reason to believe that he would not be there. That will not be tolerated. If we run into an instance of that sort, and I know that the ranking member shares this same concern; we want people to respond to subpoenas. We will not issue them frivolously.

I think in that case a subpoena might not have even been issued because we assumed that he was going to be there. So it is not a bad track record to have almost everybody respond, including even those who were not subpoenaed. But, we will remain vigilant in seeking this kind of cooperation.

I see that Senator BOND is in the Chamber, and he is on the Banking Committee, and was an integral part of last year's hearings, and I yield to him 10 minutes from my time:

The PRESIDING OFFICIAL. The Senator from Missouri is recognized.

Mr. BOND. Madam President, thank you.

I think of my friend, my colleague from New York.

Madam President, as we begin the debate on this resolution authorizing the second round of Whitewater hearings, I think it helpful to review why the Senate and the committee need these hearings to be held.
May 17, 1995

CONGRESSIONAL RECORD—SENATE

S6775

How did the Resolution Trust Corporation handle the RTC's referral process, and what did Maison Guarnaty say about the Bush administration and the Clinton administration regarding the RTC's referral process? Did Maison Guarnaty correctly state that no action was taken by the RTC on potential civil claims against Maison Guarnaty or was an RTC referral made against Maison Guarnaty based on the information of S&L regulators? Did Maison Guarnaty ask for a review of the RTC referral process? Were the S&L regulators correct in their referral of Maison Guarnaty?
CONGRESSIONAL RECORD—SENATE

May 17, 1988

Mr. DODD addressed the Chair.

Mr. SANTOROZ, Madam President, I yield the floor.

Mr. DODD. Thank you, Madam President, and I thank my colleague from Maryland.

Madam President, let me begin these brief remarks by commending our colleagues in the House of Representatives for what I think is a very fair and balanced resolution. Obviously, matters such as this are a source of deep controversy and can get out of hand. The fact that they have presented us with a resolution that is balanced and fair is a credit to both the Senator from Maryland and the Speaker from New York.

Any discussion of this ought to begin with an expression of appreciation on the part of all members of the body, particularly those of us who will serve on the special committee and who will be working during this calendar year to carry out the mandates and requirements of this resolution.

May I make a few brief observations about the resolution?

As my colleagues know, Madam President, there was a vote by 25 to 0 that I, together with my colleagues, voted against on these matters, and what we are talking about here is a continuation of that process. This resolution is simply another step in a process designed to help the American public know the facts about Whitewater.

Second, I would like to point out, Madam President, that the President has fully cooperated in this process. We must continue to demand an unprecedented level of cooperation.

Many of us recall other Presidents who, when confronted with similar situations, have caved up the courts of last resort and thrown the spotlight on these men in charge, who are in every sense of the word. This administration has not done that. In fact, the administration has been entirely forthcoming.

As we discuss these matters, it is important to make it clear that, unlike previous situations where there was a constant conflict between the executive branch and the legislative branch over documents and testimony, that has not been the case. This administration has not withheld any document or testimony that has been requested. Although the President has not conveyed his personal opinion, he has made it clear he is open to the committee.

I think that is an important point to make because, as we look down the road, the potential for a prolonged and nasty conflict before the conclusion of these matters is not likely to be a problem here.

Third, Madam President, unlike last year's hearings, despite the sometimes extremely heated exchanges, the administrative branch and the legislative branch appeared to carry on with their business.

I reserve the remainder of my time and I yield the floor.
last year that there had been no violation of any criminal statute or ethical standards.

Of course, individual Members may have their own particular opinions on those matters, and certainly that is their right. But, as a conclusion of the committee, let me state again, Madam President, there were no violations of any criminal statute or any ethical standards. That was the conclusion of last year's hearings. We are now going to go to a second phase. I have tried to tell someone who are suggesting that there must have been some wrongdoing, or, even worse, they have already reached the conclusion that there was wrongdoing. Quite simply, that is inappropriate. The purpose of the hearings is to determine whether there was wrongdoing—we must not prejudge the matter.

We do not want to end up appearing like the fable character from the West, Judge Roy Bean. Everyone will remember Judge Roy Bean. He used to say, "We'll hang 'em first and try 'em later.

Sometimes that can happen in congressional proceedings, and I know it is not the intention of anyone on the committee to have that be the case.

So let us avoid partisan wrangling and get the facts on the table. Now the presumption of innocence may not apply to congressional hearings in the same way as in our court system, but there ought to at least be an effort to fully consider matters, and let people have their say, before we reach any conclusions.

Last year, the Senate held thorough hearings, as I mentioned earlier. The committee heard from 30 witnesses, generating 2,600 pages of testimony. 38 witnesses were deposed, generating some 7,000 additional pages of testimony.

It is very difficult to sort through that much material and I want to thank the staff for the work they did. That was a herculean effort. Both the majority and minority staff had worked extremely long hours on this matter. Madam President, and they deserve our appreciation.

Clearly, Madam President, the Senate's integrity and credibility are at stake. The American public has a right to know the facts about Whitewater and the Senate has a constitutional obligation to see that they do.

Last year, the facts were presented fully and impartially. That must be our goal this year. The public, in my view, is fed up with the partisanship that seems to cloud every issue. As we go through this process, I urge us all to avoid that partisan pitfall. Because we are entering the critical campaign cycle, that may be difficult for some. But we must all try. The President is sadly correct, I know most of my colleagues, regardless of their political persuasion, would agree when he says that the politics of personal attack are alive and well. I agree with the President that the best way to put this matter behind us is to address the facts candidly.

Madam President, I ask for 2 additional minutes.

Mr. SARBANES. I yield whatever time the Senator requires.

Mr. DODD. I thank my colleague. I will work on this.

Madam President, the public wants us to present the facts impartially and come to our conclusions and then move on. And it bears repeating that after going through such a process last year, the Bank Committee concluded that there had been no violation of any criminal statute or ethical standards.

During this next stage, we must not get swept up in political diversions and drag this thing out. The American people want us to get on with the business of creating jobs and expanding economic opportunity, of dealing with health care issues and education. They want us to tackle the hard problems that they face today.

I think it was there sense of frustration with politics as usual, more than anything else, that created the changes in the Congress. We now have a Republican leader, and every committee is chaired by a Republican. They now have an even greater responsibility to the public. They must elevate the good of the nation above politics and I hope that they will do so in proceeding with this matter.

Once again, I commend Senator D'AMATO and Senator SARBANES for putting together a fair resolution and for stating their determination to wrap this matter up by the end of next year. I hope we can stick to that schedule and finish this job efficiently.

Finally, while the subject of the independent counsel statute is not the subject of this resolution, Madam President, I want to suggest that we revisit legislation as soon as we can.

The idea of appointing an independent counsel was to keep politics out of these issues. Unfortunately, it seems that the statute may invite flouting expeditions. We need to be very careful about spending the taxpayers dollars in this way. Otherwise, we will have some questionable expenditures. I was told the other day that someone was looking at a witness's grade school and high school transcripts. I hope that report is inaccurate, because there is just no way to justify that kind of expenditure.

There is a potential for an independent counsel to run wild and we need to carefully monitor these matters. I caution those who might like to use independent counsels for political gain—regardless of whether it was a previous administration or this administration—whatever goes around comes around. We must be well advised, in my view, to take a hard look at how some of these operations are being run.

Of course, Congress spends a great deal of money on these investigations.

The Banking Committee spent about $400,000 last year, and this resolution authorizes another $260,000. Even that amount is only a fraction of what the independent counsel is spending.

We are looking at almost $70 million spent by the independent counsel and that is just the beginning of it. That figure will go higher.

Of course, the Federal Government must investigate serious accusations of wrongdoing to maintain the public trust. But when it appears there are more Federal agents operating in Little Rock than there are in high-crime areas in certain parts of our country, then one ought to pause and look carefully at what we are doing.

Again, I know that the independent counsel statute is not the subject of this resolution. I do not want to inject a whole new subject of debate. But I think we ought to take another look at that law and make sure it is operating properly.

Again, I commend the chairman of the Banking Committee, my friend from New York, Senator D'AMATO, and my colleague and friend from Maryland, Senator SARBANES, for the fine job they have done in working out this resolution. They have a very difficult job in front of us. But they will conduct our work thoroughly, fairly, and promptly, and in a manner that brings credit to this great body. I look forward to the effort.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, at this time, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered. Mr. D'AMATO. I yield to the Senator from Pennsylvania 10 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I thank the distinguished chairmen for setting me this time. I support the resolution, and commend the Committee and the ranking member of the Banking Committee for presenting a resolution which I understand will have wide bipartisan support.

I believe it is important to have a congressional inquiry on this in the broad terms which are described in the resolution. It is with some regret, I note, that it has taken us more than a year to get to this point. But it is better late than never, and these are matters where congressional oversight is important.

I recognize the sensitivity of a congressional inquiry that is which is being handled by an independent counsel, also known as the special prosecutor. But the functions are very, very different where you have an investigation which is handled through grand jury proceedings and which are directed at indictments. I know that field with some detail, having been a district attorney myself and...
having run grand jury investigations. That is very, very different from a congressional investigation where we are inquiring into matters in the public record for the public to see what is going on in Government with a view to legislative changes.

The thrust and focus are entirely different between a grand jury investigation conducted by independent counsel and a congressional inquiry which will be handled through the Banking Committee. I am glad to see that the composition of the committee will be expanded to include the chairman and ranking minority, both of the Banking Committee, or their designees.

Madam President, the issues involved here have long been a concern of many of us in this Chamber, and I refer to statements which I made last year on March 17, June 9, June 16, and June 21. I will not incorporate them because that would unduly burden the Record, but a good many of my thoughts were expressed last year on the matter.

I was particularly concerned about issues involving the RTC as to their inclusion, which was not handled last year, and I am glad to see that the Resolution of Involuntary Suspension is included in the scope of the inquiry which we are about to undertake.

This matter was one that I focused on when we had an oversight hearing on the RTC for the record on July 28 of last year, and I ask unanimous consent, Madam President, that a number of documents be printed in the Record which have not been made a part of the Record heretofore: My letter dated July 28, 1994, to Attorney General Reno; the attachment of a list of documents which I had wanted to inquire into during the proceedings before the Judiciary Committee; the resolution which was made by Robert Fiske, who was then independent counsel; and a portion of the transcript dated July 28, 1994 before the Senate Judiciary Committee.

The PRESIDENT. Without objection, it is so ordered.

[See exhibit 1.]

Mr. SPECTER. I thank the Chair. Madam President, these documents will show on their face concerns which were on the record and which were apparent from such documents: that there were considerable issues to be investigated by the RTC at that time. It is unfortunate, in a sense, that there has been the long delay, because we all know, as a matter of investigative procedure, that leads grow cold and witnesses' memories diminish and that the best investigation is a prompt investigation. But the time factor is something that cannot be altered at this time, and at least now we will have a congressional inquiry which will move forward into these very, very important matters.

I agree with the distinguished Senator from Connecticut when he talks about the presumption of innocence. I think that is indispensable as a matter of fairness to all concerned. But these are questions which need to be answered, and questions do not imply an answer of any sort; they raise issues which need to be resolved. We ought to let the chips fall where they may. And in a Government based on a Constitution which elevates the separation of powers among the Congress in Article I, and the executive branch in Article II, and the judicial branch in Article III, the congressional oversight function is a very, very important function. Now, finally, we will be in the context where we will be able to inquire into these matters and to find out what those answers are.

I am confident that there will be a fair, judicious, quality inquiry conducted by the committee, and this resolution is one which I think ought to be supported broadly by the U.S. Senate.

I thank the Chair and yield the floor.

EXHIBIT 1

U.S. SENATE, COMMITTEE ON THE JUDICIARY, WASHINGTON, D.C., JULY 28, 1994

(Taken as a partial transcript of the above proceedings)

SENATOR SPECTER. Thank you, Mr. Chairman, Attorney General Reno, as you know, I had been involved in the handling by the Department of Justice in the matter involving David Hale in this oversight hearing, and I may be speaking over the principal word "handling" and I am interested without undue specification, or at least undue specification from your point of view.

At the outset, I would like to put into the record my letter to you dated July 28, 1994, together with the chronology of events and all the attachments which I sent over to you, except for numbers 20 and 21. I may get into 20 and 21, I think the balance have been in the record in one form or another, and even if they haven't I think they are appropriate for the public record.

The letter referred to follows:

U.S. SENATE, COMMITTEE ON THE JUDICIARY, WASHINGTON, D.C., JULY 28, 1994

RON. JANET RENO,
ATTORNEY GENERAL OF THE UNITED STATES, WASHINGTON, D.C.

DEAR ATTORNEY GENERAL RENO: I have just noted that you are scheduled to testify before the Senate Judiciary Committee on Thursday, July 28, at 2:30 p.m. at an oversight hearing.

In that hearing I intend to ask questions on the Justice Department's role in investigations of Madison Guaranty and/or "Whitewater." I have had access to many of the relevant documents, I have seen a few and am alerting you to those documents which will formulate at least some of the basis for my questions.

Some of the documents are referred to in my floor statement on June 21. Other documents that I may refer to are listed on the attached index.

Sincerely,

ALEX SPECTER

SENATOR SPECTER. I would also want to put into the record the facsimile letter from Robert Fiske, Independent Counsel, to me, dated July 27, 1994.

The letter referred to follows:

[The letter referred to follows]
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In terms of oversight for next year's budget and last year's act... it seems to me that it would impact on the outcome of the investigation view as what the Attorney General should or shouldn't do in the future.

Senator SPECTER. Well, I would be glad to respond to the chairman. It does make a difference to me, and it makes a difference to me because this is an oversight hearing and the responsibility for the chairman to have oversight on these matters was declined. There has been a charter which is very, very narrow before the Banking Committee, not to get involved in knowledge, a matter which is within the charter of Mr. Flakes until I was sent a letter to the Attorney General. I suddenly find a reply from Mr. Flakes.

I had two detailed conversations with Mr. Flakes, the thrust of which—and I would be glad to dwell on them—led me to the conclusion that there was absolutely no interference with the criminal prosecution, a subject that have had some experience with.

So when the Attorney General makes a question as to when she has knowledge of a referral. I can't conceive that it interfaces with the Banking Committee. That is why I am asking an experienced prosecutor who is now the Attorney General how could it conceivably interfere with a pending investigation.

Attorney General Reno. An experienced prosecutor. Senator, don't comment about something that she doesn't know about. I don't know anything about Mr. Flake's investigation. But if Mr. Flakes didn't have any problem with it, what I would suggest is that you do is prepare the questions, submit them to the attorney general, and ask her answering them, then we will try to answer them because I honor your oversight functions and it would be able to honor that and that to not interfere with Mr. Flakes' investigation.

Senator SPECTER. Attorney General Reno, I did not say that Mr. Flake did not have a problem. He specifically told me that he would like the file to be totally left alone. What I was saying was that after walking to Mr. Flakes, I had no doubts that these questions were appropriate, in my judgment, on oversight by the judiciary committee.

Senator SPECTER. Attorney General Reno, in the terms of the charter that Mr. Flakes has about investigating matters which may involve the Department of Justice, the Attorney General, the Department of Justice of David Hale's matter something that falls within that charter?

Attorney General Reno. Yes. Senator SPECTER. Well, if that were so, would you have a duty as the head of the Department of Justice to take some action on those matters before a long investigation was concluded?

Attorney General Reno. It depends on what they are. Senator SPECTER. Well, suppose they were obstruction of justice?

Attorney General Reno. It depends on the nature of the facts and the circumstances.

Senator SPECTER. Well, do you know anything about the Jay Rockefeller, the Department of Justice and, Attorney General Reno. Again, sir, I can't comment on the Hale matter.

Senator SPECTER. I am not asking you to comment on the Hale matter. I am asking you whether you know anything about the Hale matter.

Attorney General Reno. That would be me. Senator SPECTER. That would be me. If we want to pursue this, is that you pose the questions and then let's see whether Mr. Flakes... what would I have in any way interfere with the investigation. I am delighted to answer them if they don't interfere.

Senator SPECTER. Well, I am not going to follow the way you would like me to proceed. I make a judgment as to what I think a Senator ought to do by way of oversight, and if you don't have a question, I am unable to discuss it with you, but I am not prepared to take your instruction or your suggestion. The question is I pose on an investigation by Mr. Flakes as independent counsel within his charter to investigate crimes, obstruction of justice, within the Department of Justice is not something which bears on anything which could conceivably implicate the underlying facts on what David Hale is engaged in.

Is Ms. Paula Casey—I understand that she is, but can you confirm for me that she is still the United States attorney?

Senator SPECTER. Yes, she is. Senator SPECTER. Is she subject to a criminal investigation by Mr. Flakes?

Attorney General Reno. Yes. Senator SPECTER. Do you know whether or not she is subject to a criminal investigation by Mr. Flakes?

Attorney General Reno. You would have to talk to Mr. Flakes.

Senator SPECTER. Do you know whether or not she is subject to a criminal investigation by Mr. Flakes?

Attorney General Reno. You would have to talk to Mr. Flakes. I have avoided having any discussion of any investigation in terms of any information that he may have so that I do not impair his independence.

Senator SPECTER. Would you continue a United States attorney operating activity if there are United States attorneys were the subject of a criminal investigation?

Attorney General Reno. I would depend on the circumstances.

Senator SPECTER. Well, under what circumstances would you terminate such an attorney?

Attorney General Reno. It would depend on the circumstances. Again, you get into a number of high-stakes situations that we look at the actual facts, and I would be happy at the appropriate time to do that.

Senator SPECTER. Well, Attorney General Reno. I consider your response, as I see them, totally unsatisfactory. I consider them totally unsatisfactory because if I am not asking you anything about a pending investigation, I am asking you questions as to what came to your knowledge as the Attorney General of the United States Department of Justice.

I am asking you questions about what you know about and about what your policy would be if there were charges of criminal wrongdoing, and I don't ask these questions in a vacuum for no purpose. I ask these questions in the content of having initiated an inquiry on oversight on something which is outside the charter of the independent counsel.

The CHAIRMAN. In your opinion, Senator, right, that is correct? In your opinion?

Senator SPECTER. Everything I say is in my opinion. You can add that up everything. I don't speak for the department as a whole, but do speak independently for myself. I took a look at an extensive series of correspondence which the Department of Justice and, Justice and, and got you the United States attorney's office, and got you to the operative office, and got you to the office of General Counsel, to look at these documents, which I sent you as soon
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as I knew there wouldn't be this hearing so you wouldn't have to read it. And then I promptly advised the chairman as to what I intended to do there would be no surprise about it.

The CHAIRMAN. That is correct. Senator Specter. When you pursue the matter and find I have a telephone call and a letter I will store you. Even if I can and then I am told that it is within his charter, that is an investigation which is underway for obstruction of justice.

As a matter of fact, at this time, I am very much as to how officials in the United States attorney's office decline to have him referred to David, Halprin, and then in short order has a grant of immunity. Then officials in the United States attorney's office in Little Rock recuse themselves in a later matter, and I wonder how can they recuse themselves in a later matter without having recused themselves in an earlier matter.

Then, their relationship to subjects of the investigation.

I ran a big office myself as a prosecutor, and I have come to believe anybody in my office had any problem. I wouldn't wait for anybody to clean it totally and thoroughly and immediately. I do not believe that there is such independent counsel who takes away any of the authority or the responsibility of the attorney general to act in these circumstances. In my opinion—everything I say is in my opinion—the questions which I have asked you are entirely appropriate questions, and I give some additional counsel, because I think these are matters which ought to be answered, and I intend to pursue them and I don't intend to stop.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

General, I think you have answered totally appropriately, in my opinion. I think were you to do otherwise, in light of Mr. Flake's comments, you would be excoriated by Mr. Flake and anyone else. I guarantee you, you would have an article saying that you have interfered if you went in and, quote, "cleaned." There was a need to clean up. You would have been accused of whitewashing to avoid Mr. Flake being able to fully look at the matter.

You are answering, in my opinion, totally appropriately, and you have done what I don't know many others have been willing to do. You have said to this committee without hesitation, he is not going to show the floor, that when Mr. Flake says he is finished with this phase of the investigation you will come back to you with your questions. It seems to me you are being totally appropriate, but that is why there is Democrats and Republicans, chocolate and vanilla, good and bad, yellow and white, different points of view. Our opinions are different. I respect this man. He did notify me. Stick to your guns, don't answer his questions, in my opinion.

Senator Specter. If I might have just one sentence.

The CHAIRMAN. Yes. You may have more than one sentence.

Senator Specter. I don't think this matter has anything to do with good and bad or chocolate and vanilla.

The CHAIRMAN. Well, it may not have to do with good and bad. Perhaps some do with what one considers to be the appropriate way for you to respond. I think you are responding appropriately because I think you are in the ultimate position. As far as the recusal of all of us in the Senate, you appointed a Republican named Flake. Now, the Republican named Flake tells you, please don't respond to any of this. You are being asked to respond to something having to do with this, and if you respond or don't respond, you are in deep trouble in the minds of whoever wants to view you as being in trouble. I think you are doing fine, but you have to do something, probably a little less in this circumstance, than the Senator from Pennsylvania's, but good job, General.

INDEX

1. RHC Chronology of Criminal Investigation
2. Letter of September 1, 1993 from L. Richard Iorio (RHC-RC) to Steve Irone (FBI) transmitting criminal referral.
3. Letter of September 1, 1993 from L. Richard Iorio (RHC-RC) to Charles A. Banks (DOJ) transmitting criminal referral.
5. RHC E-Mail, May 9, 1993. Madison attorney referred to Donna Henneman in "Legal Counsel." Referral submitted to that office "because of the political ramifications to Michael Dukakis." (RHC-RC)
6. RHC E-Mail, May 18, 1993. Follow-up call from Donna Henneman (DOJ). DOJ advised by FBI agents in Little Rock that it was "a very serious thing on her desk. Criminal Division has sent memo to Doug Frasier (In Dep't, Atty. General Hayman's office) advising him that there was "no identifiable link with the crime. DOJ has seen FBI report on Rock, Eastern District of Arkansas." Referral sent to Frasier for review and final decision.
11. RHC E-Mail, June 29, 1993. Source indicates Madison referral was returned to U.S. Attorney in Little Rock. Acting U.S. Attorney will act on referral. It is being held until U.S. Attorney designates Paula Casey takes office.
12. RHC E-Mail, September 23, 1993. Conversation with Donna Henneman (DOJ). Washington DOJ would like to be cabled on all future transmittal letters concerning Madison referral. In addition, an additional one paragraph summary of the content of the referrals with the transmittal letters, so that Henneman will be aware of those with "sensitivity".
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President, thus far, as of August 31, 1994, the independent counsel, Mr. Starr and Mr. Flaks, combined, spent $1,679 million. Projected funding for the independent counsel for the 1995 fiscal year is $753 million, a total of $5,312,000, and a total, adding all the figures up, Mr. President, for both the Senate and the independent counsel to investigate so-called Whitewater, comes to almost $31 million. Why is that?

Mr. President, I think there is something else the public has a right to know. I think the public has a right to know that this White House, this President, this First Lady, this administration, has never once been accused of lack of cooperation. In fact, our President has pointed out, as one of our colleagues has already mentioned, that to be candid and truthful in this matter is easier to do that any other way. That is the quickest and best way to get to the bottom of it.

In the first round of hearings last summer, the committee heard from 30 witnesses general, 208 days of hearings, 208 days of testimony, 39 witnesses, generating 7,000 pages of testimony.

The administration has produced thousands of pages of documents for committee review. This administration has complied with every document request. They have answered every question posed to it. The administration is ready and willing to cooperate on this second round of hearings. I bear emphasis, I think, that after the long days of hearings and pages of documents reviewed, that the Banking Committee concluded at the end of this hearing, in phase 1, that there had been no violation of a criminal statute and no violation of an ethical standard.

Mr. President, I think too, it needs to be added that at no time during any of the investigations or any of these hearings, whatever it be in Little Rock or Washington, the Banking Committee or the special counsel, wherever, to the best of our knowledge, not one witness, not one person has taken the fifth amendment.

I think that this speaks loudly and clearly about this administration’s position, wanting to get on with the important business of our country.

Mr. President, let me compliment our friend, Senator SARRANES, for working out what I think—and going forward with—is a fairly reasonable plan to attack this problem and to set up these hearings. I think that there are something, however, that I must state that I do not feel are fair. I do not feel that it is fair for one of the members of the committee, as he did in his debate, to come to the floor and say what’s been within the scope of this hearing and then start talking about those particular issues as if to conclude, even though they are not in the scope of these particular hearings.

Mr. President, I think for a Senator to come to the floor who is a member of the Banking Committee and to make a statement like he knows fact or he has knowledge that Kenneth Starr, the special counsel, is now going to reinvestigate the death of Vince Foster, I think the public has a right to know how that particular Senator from North Carolina has knowledge of this so-called fact. Mr. President, I think the Senator from North Carolina needs to explain how he knows Mr. Kenneth Starr is re-investigating or re-litigating at the death of Vince Foster.

Mr. President, we hope that these hearings will be fair. We hope they will be open. We hope that they will be done in a very efficient manner. I am just hoping above all, Mr. President, that in this hearing, these issues are not going to be bogged down in the political morass that we have seen so some other hearings conclude with. I would like to see them resolve. I think for us to go back to the 1990 Governor’s campaign, I think it is stretching it a bit. I do not know what that has to do with Whitewater. I think some of my colleagues as we investigate the 1990 Governor’s campaign, we see a character issue of Bill Clinton when he was the attorney general of Arkansas. Maybe we would like to go back to look at his campaign of 1974 when he ran for the U.S. Congress. There is no one more likely to have a character issue than someone who has no limits on how far back in time we should go.

I hope we can keep our eye on the ball. I am hoping, Mr. President, that we can get focused on the issue of Whitewater and the particular mission under which carefully this resolution has basically pointed out was the scope of this particular hearing. I am also concerned that one of our colleagues has referred to the “the miserable job of Mr. Flaks.” Those remarks were made earlier on this floor. Of course, it refers to Mr. Flaks. It was a bit unfairly. I think this investigation as special counsel because he was not finding out enough, bringing forward, to satisfy some of our colleagues.

Mr. President, I will conclude once again, as I have done other times on this floor, by quoting a note that Vince Foster wrote. It is his last note. It was in his handwriting. It was on a notepaper, a lined notepaper, he said “Here”—reference to Washington—“ruining people is considered sport.” Those were the words written by the late Vincent Foster.

I am following, Mr. President, that when this investigation begins, every person involved with that investigation, from top to bottom, will realize that these are human beings; they have families; they have friends; they have beliefs; and they have reputations. Hopefully, we will not treat lightly those reputations, and hopefully we will make certain that the character and the nature of these hearings seek fairness and justice.

I yield the floor.

Mr. SARRANES. Mr. President, I yield such time as he may consume to the minority leader.

Mr. DASCHLE. Mr. President, I thank the ranking member. Let me say, I did not have the opportunity to hear all of his remarks, but let me tell you, I disagree he and any one of his words. He speaks from the heart, and he certainly speaks for all members in representing what we hope will be the ultimate goal of this committee as we begin this ever once more.

This resolution provides a sum of $500,000 for the purpose of completing work on the Whitewater matter. I think it needs to be handled again, as we consider the funding, that this resolution includes every issue related to Whitewater that has any credence whatever. There ought not be any question about its work, its scope, and the effort undertaken after today by the Banking Committee.

The funding will expire on February of next year. It is an adequate amount to fund and an ample allowance of time to fund the comprehensive and thorough hearings, while providing also for the completion of this issue.

In the 103rd Congress, the Senate voted on March 17, 1994, on a bipartisan vote of 9 to 0, to authorize hearings on the Whitewater matter. Senate Resolution 293, adopted in June of last year, authorized a first round of hearings which were subsequently held by the Banking Committee.

The new resolution creates a special committee, administered by the Banking Committee, to conduct the final round of these hearings. The committee will be comprised of the full membership the Banking Committee, with the addition of one Republican and one Democrat member of the Judiciary Committee.

Mr. D’AMATO will also chair this special committee. Senator SARRANES will serve as the ranking member.

Last year, the Banking Committee heard from a substantial number of witnesses and took thousands of pages of testimony. Last year’s hearings were thorough, fair, and bipartisan. They are the model which this year’s hearings must emulate.

The majority, which conducted the hearings last year, were fair and judicious in their approach. The new majority in this Senate has the obligation to follow that record in exactly the same manner.

It is important to be thorough and comprehensive, because the American people have a right to know all the facts about this matter; but it is equally important that hearings be fair and responsible. We must all strive to re-member and draw the distinction between an unproven allegation and a known, verifiable fact.

What is at stake is the integrity and credibility of the U.S. Senate. The last Senate recognised this by voting unanimously to authorize hearings when questions were raised that demanded examination. This Senate should follow that example.
The Senate has the constitutional obligation to see that the facts are brought out. It has the moral obligation to do so fully and impartially. If we do less, we risk reinforcing the unfortunate impression that Senators care more about protecting their positions than about conducting the Nation's business in the best interests of all the people.

The President has said that in an era of attack politics, the best way to put this matter behind America is to address the facts candidly. He is entirely right.

The administration cooperated fully and extensively with hearings last year and stands ready to do so again this year. Last year, the President ordered his administration to cooperate and all parties did so. Every document request was honored. Every question raised by the committee was answered. The right to know the facts of Whitewater. But Americans care about other matters which are also on the Senate agenda: a great deal more than they do about this.

Irown now is the administration's budget which seeks to dramatically alter Medicare and student aid programs, as well as virtually every other thing the Gov- ernment does. They are anxious about those. The millions of Americans are either Medicare enrollees or have parents who are Medicare enrollees. They are anxious to see the Senate begin the debate over the budget.

Americans expect the Senate to devote the bulk of our efforts to the issues that are of most importance to the majority of American people. I agree. That should be our priority. Today, no issue is more critical than receiving the budget debate.

Mr. President, I urge prompt action on this resolution. I hope it allows for completion of this matter with fairness and impartiality, so that Senators can focus their attention on the issues that deserve it most, the problems facing the American people.

I thank the ranking member for yielding.

Mr. D'AMATO. Mr. President, I did not mean to unduly delay action on this resolution, because I think most things that have been said summarize where we are at, what we are attempting to do, and the scope of the investigation and the manner in which we have proceeded.

I think it is important to point out that what one of my colleagues, the Senator from North Carolina, Senator FANNINGS, pointed out is a matter of profound importance that the Starr investigation is re-examining all matters reviewed by Special Counsel Fiske, including Vincent Foster's death.

I think he alluded to that, and I might add that I did so in that context. That is not an area we intend to revisit, unless there are some very special circumstances, which I certainly do not envision. However, I think we have to at least put it in that context.

As it relates to what the committee did and did not find last year, I think it is important to note that the Republican Senate did make findings on the three major areas where there were questions of misconduct and malfeasance. I will not attempt to enumerate all of them now, but that was a very strong finding.

I would like to point out that the majority made some findings and recommendations as it related to the need to indicate very clearly that, before Congress, all executive branch members who testified are "required to be fully candid and forth- coming," and testify "truthfully, accurately, and completely."

The committee recommends that the President issue an Executive order reinforcing this obligation and setting forth procedures requiring the prompt correction, amplification and/or supplementation of comments made so that it is accurate, thorough and completely responsive.

Why did they do that? Without going through the entire history, it was because it was clear and evident—and, by the way, we have not heard from Mr. Flakas and Mr. Starr, those areas, we being the Republicans on the committee, the minority—that those areas of concern, that, at the very least, there was testimony that was discongruent, thus raising serious doubt. And that is what is being reviewed.

So, to say that there were no findings of any wrongdoing, that everything was OK, or to imply that there was no wrongdoing, or to ignore the simplification and is not an accurate or fair representation of the situation.

Now, I do not intend, nor is it my job and duty, to defend the work of the special counsel. The special counsel was appointed because the Attorney General concluded that it was necessary. It was not this Congress. I thought it was. I believe it was. These charges were brought against the special counsel.

Mr. President, I am prepared to yield the remainder of my time. My colleagues may have something to do, I am prepared to vote on the resolution.
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Differing views about this matter. But I think we were able to, in the end, work out a rational approach to this inquiry and investigation, which I indicated in a sense had been committed to last year. Obviously, you always have to work out carefully the scope questions, which has been done in this resolution, because the scope could be infinite, in a sense, if you leave it to people's imagination. So there were candidates for scope that we found very unhelpful, and they are not included. But we have tried to, in effect, put a focus here.

In fact, some of the questions the distinguished Senator from New York just raised, that he felt emerged out of the previous hearings—and he made reference to last year's minority statement in the report—have in fact been spelled out here as matters that could be included as part of our special committee.

There were other candidates, of course, that were not included. We have tried to be rational here. We have tried to be reasonable. The matters specified herein have been the outcome of this process.

Second, I want to say the resolution has been put together in a way that presumably that the two sides will work together in carrying out the inquiry, that the staffs will interact in that fashion, that material will be generally available and so on. We are trying to get an inquiry here in which everyone is joined in being to find out what the facts are. A lot of questions are raised, and will be looked into. If you did not raise questions, you would not have an inquiry, so I recognize that. But our job, I think, is to probe the factual matter behind these issues.

I was interested that my colleague earlier used the word "allegations," and that is what it is until you actually lay all the facts that sustain it. And that is the process we are going to engage in. Some things, you know, when you finally examine them, turn out to be fairly innocent. At least I think. We had this about Captain Hume, who did not appear when he was supposed to be a witness.

Well, what happened—obviously there was a slip-up, but I think that is what it was, a slip-up. Captain Hume was deposed. He had over 300 pages of deposition testimony. Apparently at his deposition he said he was about to take a-—go on a vacation. After that the he knew very well of assumed that Captain Hume could be brought back in for the hearing. A subpoena, I do not think, was issued for him.

Mr. D'AMATO. I do not think it was issued.

Mr. SARBANES. I do not think it was issued for him so he did not, as it were, ignore a subpoena. And he went on a hunting and fishing trip and could not be located. And in the event, I think it was judged that given we had 300 pages worth of deposition testimony it was not worth having another hearing simply to bring Captain Hume in. I mean it is a small matter, but I only mention it to show that sometimes when you really examine the facts you discover that something that looked at first as a simple, as first has a very simple, a plausible, and a reasonable explanation for it.

We expect, as I understand it, to move forward with this. I know that the chairman and his staff will be talking with the staff to begin to plan the first set of hearings which I think will probably be in the next month or so, and then we can proceed from there as we schedule other matters which have been stipulated here in the resolution as being within the scope of the inquiry which this special committee will now undertake.

But I do again want to underscore the, I think, responsible way in which we have proceeded with this resolution. We have together in order to try to frame a resolution which we could bring to the floor of the Senate today which I think carries forward the legislation that has been imposed upon us in terms of carrying out an investigation without thereby going beyond what most people regard as reasonable bounds.

Mr. President, with that, I made my statement: I see the distinguished Senator from Arkansas, and I would like to yield time to him.

Mr. President, how much time is remaining?

The PRESIDING OFFICER. Ten minutes.

Mr. SARBANES. Mr. President, I yield 4 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the distinguished chairman for yielding me 2 minutes. I had not planned to speak again. But the distinguished Senator from Maryland, the Senate made clear to me or to four individuals who have either pled guilty or have been indicted, that at least I would like to talk about some of these.

Neil Ashley worked with a bank in New York. He was 10 miles from Little Rock. He pled guilty to four counts, but not one of those counts related to Whitewater. One was a so-called failure to file with the Internal Revenue Service a withdrawal of cash for the 1990 Clinton campaign; nothing whatever to do with Whitewater.

The second involved the distinguished chairman mentioned is Chris Wade. If I am not mistaken, Chris Wade was a real estate broker. I believe in Mountain Home, near the Whitewater development area. Chris Wade, in those many years of dealing with the lots at Whitewater, filed bankruptcy; not related to Whitewater in any way. But in the bankruptcy filing he failed to disclose either an asset or a debt. I do not know the facts but the matter was regulated, totally unrelated to Whitewater. This relationship whatever to the President and Mrs. Clinton. But yet...
the prosecution has now had him plead guilty.

The third person referred to was Webb Hubbell. We know that case. Webb Hubbell has pled guilty. It is a sad day. He is a good friend. But it was nothing that related to Whitewater Development Corp., absolutely nothing that related to Madison Guaranty, nothing whatsoever. Webb Hubbell pled guilty to overstating his clients: nothing to do with the RTC, nothing to do with Whitewater; totally irrelevant.

If we continue spreading this dragnet out further, if we go after every person that has ever had contact with Bill Clinton or Hillary Clinton or James McDougal or whatever, if they have ever made a phone call to them, if they have been borrowed money or given them a campaign contribution, Lord only knows how long this investigation is going to go. It will go beyond the year 2000.

I just hope that our colleagues on the Banking Committee will realize that we must focus this investigation as it relates to Whitewater and its original mission.

Mr. President, I thank the distinguished Senator, ranking member, and the distinguished chairman for yielding me this time.

I yield the floor.

Mr. SARBANES, Mr. President, I am prepared to yield back time.

Mr. D'AMATO, Mr. President, we yield back the remainder of our time.

The PRESIDING OFFICER. All time has been yielded, the question is on agreeing to the resolution.

On this question, the ayes and nays have been ordered, and the clerk will call the roll.

Mr. FORD, I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The legislative clerk called the roll.

The PRESIDING OFFICER (Mr. SANTORUM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yea 96, nay 3, as follows:

(Rollcall Vote No. 171, Leg.)

YEAS—96

Abraham 1
Akaka 1
Ashbrook 1
Banerjee 1
Bateman 1
Bentsen 1
Biden 1
Bond 1
Boumediene 1
Boozman 1
Breaux 1
Buchanan 1
Byrd 1
Campbell 1
Cantor 1
Costas 1
Cox 1
Cochrane 1
Coats 1
C 1
Corzine 1
Costello 1
Craig 1
D'Amato 1

AVERAGES 1

Paxton 1
North 1
Santorum 1
Senecal 1
Shemano 1
Siegelman 1
Smith 1
Voinovich 1
Warner 1
Weiss 1

NAYS—3

Baucus 1
Graham 1
Nunzio

NOT VOTING—1

Kennedy

So the resolution (S. Res. 120) was agreed to.

Mr. D'AMATO, Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SARBANES, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. I chair the Chair.

(The remarks of Senator Thurmond pertaining to the introduction of S. B12 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, it has been our hope that we could work out some agreement on H.R. 483, the so-called Medicare Select bill. I know Senator ROCKEFELLER has some concerns about it. What we would like to do is bring the bill up, and if anybody has amendments, they can offer the amendments and see if we cannot complete action. It is a program that expires on June 30. I am not an expert on the program itself. I think Senators Packwood and GRAHAM will be happy to manage the bill. I will not do that.

I would like to ask unanimous consent that we turn to the consideration of H.R. 483, the Medicare Select bill, but I am not going to make that request yet.

Is the Senator from West Virginia prepared to object to that?

Mr. ROCKEFELLER. I am afraid I will have to.

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to consideration of H.R. 483 under the following time agreement: 1 hour on the bill to be equally divided between the chairman and ranking member of the Finance Committee, with one amendment to be offered by Senator ROCKEFELLER relating to Medicare, 1 hour for debate to be equally divided in the usual form, and that no motion to table be in order; further, that following disposition of the Rockefeller amendment, the bill be advanced to third reading and that final passage occur without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. ROCKEFELLER. I do object. The PRESIDING OFFICER. Objection is heard.

EXTENDED USE OF MEDICARE SELECTED POLICIES—MOTION TO PROCEED

Mr. DOLE. In light of the objection, I move to proceed to the consideration of H.R. 483. The PRESIDING OFFICER. The question is on the motion to proceed. Is there debate on the motion?

Mr. ROCKEFELLER. Addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, this is not one of the most broadly understood issues. But it is a very important one, Medicare Select. There is, I guess, two issues that concern me. One and this is less important, but nonetheless implies the area of process. I had written Senator Dole, the majority leader, a number of months ago asking for a hearing on the subject of Medicare Select. I was told in a letter back the majority leader that we would have hearings on Medicare, obviously, and that Medicare Select would be a part of those hearings. The Finance Committee has not heard from the Select and, therefore, that constitutes a problem.

Secondly, there is a study on Medicare Select which is going to be completed by the end of the summer, and it is not a frivolous study or a frivolous problem. It is a serious problem involving seniors and Medicare supplementary insurance. Currently we are participating in the 5-year experimental Medicare Select Program. This bill would expand Medicare Select to all 50 States for 5 years.

One of the States that has Medicare Select is, in fact, the State of Florida. I cosponsored legislation sponsored by Senator Graham that would temporarily expand Medicare Select for another year. So this is not just a question of those States that have Medicare Select wanting to continue to expand it, or to make it permanent, or whatever. We have genuine concerns.

There are other issues. One of the conclusions of the preliminary evaluation of this study which I have been referring to, which will be completed at the end of the summer—and that is why I hoped we could wait until that time, this being the first year of a 2-year session—was that about half of the savings in the form of cheaper Medigap premiums for beneficiaries came about as a result of discounting payments I hospital.

Now, theoretically, if seniors are having their rates actually managed, the Medicare Program would realize savings from the lower use of health care services.
IN THE SENATE OF THE UNITED STATES

Mr. D'AMATO (for himself) submitted the following resolution; which was

RESOLUTION

Establishing a special committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.

Resolved,
SECTION 1. ESTABLISHMENT OF SPECIAL COMMITTEE.

(a) ESTABLISHMENT.—There is established a special committee administered by the Committee on Banking, Housing, and Urban Affairs to be known as the “Special Committee to Investigate Whitewater Development Corporation and Related Matters” (hereafter in this resolution referred to as the “special committee”).

(b) PURPOSES.—The purposes of the special committee are—

(1) to conduct an investigation and public hearings into, and study of, whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death;

(2) to conduct an investigation and public hearings into, and study of, the following matters developed during, or arising out of, the investigation and public hearings concluded by the Committee on Banking, Housing, and Urban Affairs prior to the adoption of this resolution—

(A) whether any person has improperly handled confidential Resolution Trust Corporation (hereafter in this resolution referred to as the “RTC”) information relating to Madison Guaranty Savings and Loan Association or
Whitewater Development Corporation, including whether any person has improperly communicated such information to individuals referenced therein;

(B) whether the White House has engaged in improper contacts with any other agency or department in the Government with regard to confidential RTC information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation;

(C) whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation;

(D) whether RTC employees have been improperly importuned, prevented, restrained, or deterred in conducting investigations or making enforcement recommendations relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation; and

(E) whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of deposition testimony—
4

(i) were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing, and Urban Affairs pursuant to Senate Resolution 229 (103d Congress); or

(ii) were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation;

(3) to conduct an investigation and public hearings into, and study of, all matters that have any tendency to reveal the full facts about—

(A) the operations, solvency, and regulation of Madison Guaranty Savings and Loan Association, and any subsidiary, affiliate, or other entity owned or controlled by Madison Guaranty Savings and Loan Association;

(B) the activities, investments, and tax liability of Whitewater Development Corporation and, as related to Whitewater Development Corporation, of its officers, directors, and shareholders;
(C) the policies and practices of the RTC and the Federal banking agencies (as that term is defined in section 3 of the Federal Deposit Insurance Act) regarding the legal representation of such agencies with respect to Madison Guaranty Savings and Loan Association;

(D) the handling by the RTC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Savings and Loan Insurance Corporation of civil or administrative actions against parties regarding Madison Guaranty Savings and Loan Association;

(E) the sources of funding and the lending practices of Capital Management Services, Inc., and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation;

(F) the bond underwriting contracts between Arkansas Development Finance Authority and Lasater & Company; and

(G) the lending activities of Perry County Bank, Perryville, Arkansas, in connection with the 1990 Arkansas gubernatorial election;
(4) to make such findings of fact as are warranted and appropriate;

(5) to make such recommendations, including recommendations for legislative, administrative, or other actions, as the special committee may determine to be necessary or desirable; and

(6) to fulfill the constitutional oversight and informational functions of the Congress with respect to the matters described in this section.

SEC. 2. MEMBERSHIP AND ORGANIZATION OF THE SPECIAL COMMITTEE.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The special committee shall consist of—

(A) the members of the Committee on Banking, Housing, and Urban Affairs; and

(B) the chairman and ranking member of the Committee on the Judiciary, or their designees from the Committee on the Judiciary.

(2) SENATE RULE XXV.—For the purpose of paragraph 4 of rule XXV of the Standing Rules of the Senate, service of a Senator as the chairman or other member of the special committee shall not be taken into account.

(b) ORGANIZATION OF SPECIAL COMMITTEE.—
7

(1) CHAIRMAN.—The chairman of the Committee on Banking, Housing, and Urban Affairs shall serve as the chairman of the special committee (hereafter in this resolution referred to as the “chairman”).

(2) RANKING MEMBER.—The ranking member of the Committee on Banking, Housing, and Urban Affairs shall serve as the ranking member of the special committee (hereafter in this resolution referred to as the “ranking member”).

(3) QUORUM.—A majority of the members of the special committee shall constitute a quorum for the purpose of reporting a matter or recommendation to the Senate. A majority of the members of the special committee, or one-third of the members of the special committee if at least one member of the minority party is present, shall constitute a quorum for the conduct of other business. One member of the special committee shall constitute a quorum for the purpose of taking testimony.

(c) RULES AND PROCEDURES.—Except as otherwise specifically provided in this resolution, the special committee’s investigation, study, and hearings shall be governed by the Standing Rules of the Senate and the Rules of Procedure of the Committee on Banking, Housing, and Urban
1 Affairs. The special committee may adopt additional rules
2 or procedures not inconsistent with this resolution or the
3 Standing Rules of the Senate if the chairman and ranking
4 member agree that such additional rules or procedures are
5 necessary to enable the special committee to conduct the
6 investigation, study, and hearings authorized by this reso-
7 lution. Any such additional rules and procedures shall be-
8 come effective upon publication in the Congressional
9 Record.
10 SEC. 3. STAFF OF THE SPECIAL COMMITTEE.
11 (a) APPOINTMENTS.—To assist the special committee
12 in the investigation, study, and hearings authorized by this
13 resolution, the chairman and the ranking member each
14 may appoint special committee staff, including consult-
15 ants.
16 (b) ASSISTANCE FROM THE SENATE LEGAL COUN-
17 SEL.—To assist the special committee in the investigation,
18 study, and hearings authorized by this resolution, the Sen-
19 ate Legal Counsel and the Deputy Senate Legal Counsel
20 shall work with and under the jurisdiction and authority
21 of the special committee.
22 (c) ASSISTANCE FROM THE COMPTROLLER GEN-
23 ERAL.—The Comptroller General of the United States is
24 requested to provide from the General Accounting Office
25 whatever personnel or other appropriate assistance as may
be required by the special committee, or by the chairman or the ranking member.

SEC. 4. PUBLIC ACTIVITIES OF THE SPECIAL COMMITTEE.

(a) IN GENERAL.—Consistent with the rights of persons subject to investigation and inquiry, the special committee shall make every effort to fulfill the right of the public and the Congress to know the essential facts and implications of the activities of officials of the United States Government and other persons and entities with respect to the matters under investigation and study, as described in section 1.

(b) DUTIES.—In furtherance of the right of the public and the Congress to know, the special committee—

(1) shall hold, as the chairman (in consultation with the ranking member) considers appropriate and in accordance with paragraph 5(b) of rule XXVI of the Standing Rules of the Senate, hearings on specific subjects, subject to consultation and coordination with the independent counsel appointed pursuant to chapter 40 of title 28, United States Code, in Division No. 94–1 (D.C. Cir. August 5, 1994) (hereafter in this resolution referred to as “the independent counsel”);

(2) may make interim reports to the Senate as it considers appropriate; and
(3) shall make a final comprehensive public report to the Senate which contains—

(A) a description of all relevant factual determinations; and

(B) recommendations for legislation, if necessary.

SEC. 5. POWERS OF THE SPECIAL COMMITTEE.

(a) IN GENERAL.—The special committee shall do every thing necessary and appropriate under the laws and the Constitution of the United States to conduct the investigation, study, and hearings authorized by section 1.

(b) EXERCISE OF AUTHORITY.—The special committee may exercise all of the powers and responsibilities of a committee under rule XXVI of the Standing Rules of the Senate and section 705 of the Ethics in Government Act of 1978, including the following:

(1) SUBPOENA POWERS.—To issue subpoenas or orders for the attendance of witnesses or for the production of documentary or physical evidence before the special committee. A subpoena or order may be authorized by the special committee or by the chairman with the agreement of the ranking member, and may be issued by the chairman or any other member of the special committee designated by the chairman, and may be served by any person des-
ignated by the chairman or the authorized member anywhere within or outside of the borders of the United States to the full extent permitted by law. The chairman, or any other member of the special committee, is authorized to administer oaths to any witnesses appearing before the special committee. If a return on a subpoena or order for the production of documentary or physical evidence is incomplete or accompanied by an objection, the chairman (in consultation with the ranking member) may convene a meeting or hearing to determine the adequacy of the return and to rule on the objection. At a meeting or hearing on such a return, one member of the special committee shall constitute a quorum. The special committee shall not initiate procedures leading to civil or criminal enforcement of a subpoena unless the person or entity to whom the subpoena is directed refuses to produce the required documentary or physical evidence after having been ordered and directed to do so.

(2) COMPENSATION AUTHORITY.—To employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as the special committee, or the chairman or the ranking member, considers necessary or appropriate.
(3) MEETINGS.—To sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate.

(4) HEARINGS.—To hold hearings, take testimony under oath, and receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study. Unless the chairman and the ranking member otherwise agree, the questioning of a witness or a panel of witnesses at a hearing shall be limited to one initial 30-minute turn each for the chairman and the ranking member, or their designees, including majority and minority staff, and thereafter to 10-minute turns by each member of the special committee if 5 or more members are present, and to 15-minute turns by each member of the special committee if fewer than 5 members are present. A member may be permitted further questions of the witness or panel of witnesses, either by using time that another member then present at the hearing has yielded for that purpose during the yielding member’s turn, or by using time allotted after all members have been given an opportunity to question the witness or panel of witnesses. At all times, unless the chairman and the ranking member otherwise agree, the questioning
shall alternate back and forth between members of the majority party and members of the minority party. In their discretion, the chairman and the ranking member, respectively, may designate majority or minority staff to question a witness or a panel of witnesses at a hearing during time yielded by a member of the chairman's or the ranking member's party then present at the hearing for his or her turn.

(5) **Testimony of Witnesses.**—To require by subpoena or order the attendance, as a witness before the special committee or at a deposition, of any person who may have knowledge or information concerning any of the matters that the special committee is authorized to investigate and study.

(6) **Immunity.**—To grant a witness immunity under sections 6002 and 6005 of title 18, United States Code, provided that the independent counsel has not informed the special committee in writing that immunizing the witness would interfere with the ability of the independent counsel successfully to prosecute criminal violations. Not later than 10 days before the special committee seeks a Federal court order for a grant of immunity by the special committee, the Senate Legal Counsel shall cause to be de-
livered to the independent counsel a written request
asking the independent counsel promptly to inform
the special committee in writing if, in the judgment
of the independent counsel, the grant of immunity
would interfere with the ability of the independent
counsel successfully to prosecute criminal violations.
The Senate Legal Counsel's written request of the
independent counsel required by this paragraph shall
be in addition to all notice requirements set forth in
sections 6002 and 6005 of title 18, United States
Code.

(7) DEPOSITIONS.—To take depositions and
other testimony under oath anywhere within the
United States, to issue orders that require witnesses
to answer written interrogatories under oath, and to
make application for the issuance of letters rogatory.
All depositions shall be conducted jointly by majority
and minority staff of the special committee. A wit-
ness at a deposition shall be examined upon oath ad-
ministered by a member of the special committee or
an individual authorized by local law to administer
oaths, and a complete transcription or electronic re-
cording of the deposition shall be made. Questions
shall be propounded first by majority staff of the
special committee and then by minority staff of the
special committee. Any subsequent round of questioning shall proceed in the same order. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to answer on the basis of relevance or privilege, the special committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling on the objection from the chairman. If the chairman overrules the objection, the chairman may order and direct the witness to answer the question, but the special committee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to answer after having been ordered and directed to answer.

(8) DELEGATIONS TO STAFF.—To issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths. The special committee, or the chairman with the concurrence of the ranking member, may delegate to designated staff members of the special committee the power to issue deposition notices authorized pursuant to this paragraph.

(9) INFORMATION FROM OTHER SOURCES.—To require by subpoena or order—
16

(A) any department, agency, entity, officer,
or employee of the United States Government;
(B) any person or entity purporting to act
under color or authority of State or local law;
or
(C) any private person, firm, corporation,
partnership, or other organization;
to produce for consideration by the special commit-
tee or for use as evidence in the investigation, study,
or hearings of the special committee, any book,
check, canceled check, correspondence, communica-
tion, document, financial record, paper, physical evi-
dence, photograph, record, recording, tape, or any
other material relating to any of the matters or
questions that the special committee is authorized to
investigate and study which any such person or ent-
ity may possess or control.

(10) RECOMMENDATIONS TO THE SENATE.—To
make to the Senate any recommendations, by report
or resolution, including recommendations for crimi-
nal or civil enforcement, which the special committee
may consider appropriate with respect to—

(A) the willful failure or refusal of any per-
son to appear before it, or at a deposition, or
17 to answer interrogatories, in compliance with a
2 subpoena or order;
3 (B) the willful failure or refusal of any
4 person to answer questions or give testimony
5 during the appearance of that person as a wit-
6 ness before the special committee, or at a depo-
7 sition, or in response to interrogatories; or
8 (C) the willful failure or refusal of—
9 (i) any officer or employee of the
10 United States Government;
11 (ii) any person or entity purporting to
12 act under color or authority of State or
13 local law; or
14 (iii) any private person, partnership,
15 firm, corporation, or organization;
16 to produce before the special committee, or at
17 a deposition, or at any time or place designated
18 by the committee, any book, check, canceled
19 check, correspondence, communication, docu-
20 ment, financial record, paper, physical evidence,
21 photograph, record, recording, tape, or any
22 other material in compliance with any subpoena
23 or order.
(11) CONSULTANTS.—To procure the temporary or intermittent services of individual consultants, or organizations thereof.

(12) OTHER GOVERNMENT PERSONNEL.—To use, on a reimbursable basis and with the prior consent of the Government department or agency concerned, the services of the personnel of such department or agency.

(13) OTHER CONGRESSIONAL STAFF.—To use, with the prior consent of any member of the Senate or the chairman or the ranking member of any other Senate committee or the chairman or ranking member of any subcommittee of any committee of the Senate, the facilities or services of the appropriate members of the staff of such member of the Senate or other Senate committee or subcommittee, whenever the special committee or the chairman or the ranking member considers that such action is necessary or appropriate to enable the special committee to conduct the investigation, study, and hearings authorized by this resolution.

(14) ACCESS TO INFORMATION AND EVIDENCE.—To permit any members of the special committee, staff director, counsel, or other staff members or consultants designated by the chairman
or the ranking member, access to any data, evidence, information, report, analysis, document, or paper—

(A) that relates to any of the matters or questions that the special committee is authorized to investigate or study under this resolution;

(B) that is in the custody or under the control of any department, agency, entity, officer, or employee of the United States Government, including those which have the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States without regard to the jurisdiction or authority of any other Senate committee or subcommittee; and

(C) that will assist the special committee to prepare for or conduct the investigation, study, and hearings authorized by this resolution.

(15) REPORTS OF VIOLATIONS OF LAW.—To report possible violations of any law to appropriate Federal, State, or local authorities.

(16) EXPENDITURES.—To expend, to the extent that the special committee determines necessary
and appropriate, any money made available to the special committee by the Senate to carry out this resolution.

(17) **TAX RETURN INFORMATION.**—To inspect and receive, in accordance with the procedures set forth in sections 6103(f)(3) and 6104(a)(2) of the Internal Revenue Code of 1986, any tax return or tax return information, held by the Secretary of the Treasury, if access to the particular tax-related information sought is necessary to the ability of the special committee to carry out section 1(b)(3)(B).

**SEC. 6. PROTECTION OF CONFIDENTIAL INFORMATION.**

(a) **NONDISCLOSURE.**—No member of the special committee or the staff of the special committee shall disclose, in whole or in part or by way of summary, to any person other than another member of the special committee or other staff of the special committee, for any purpose or in connection with any proceeding, judicial or otherwise, any testimony taken, including the names of witnesses testifying, or material presented, in depositions or at closed hearings, or any confidential materials or information, unless authorized by the special committee or the chairman in concurrence with the ranking member.

(b) **STAFF NONDISCLOSURE AGREEMENT.**—All members of the staff of the special committee with access to
confidential information within the control of the special committee shall, as a condition of employment, agree in writing to abide by the conditions of this section and any nondisclosure agreement promulgated by the special committee that is consistent with this section.

(c) SANCTIONS.—

(1) MEMBER SANCTIONS.—The case of any Senator who violates the security procedures of the special committee may be referred to the Select Committee on Ethics of the Senate for investigation and the imposition of sanctions in accordance with the rules of the Senate.

(2) STAFF SANCTIONS.—Any member of the staff of the special committee who violates the security procedures of the special committee shall immediately be subject to removal from office or employment with the special committee or such other sanction as may be provided in any rule issued by the special committee consistent with section 2(c).

(d) STAFF DEFINED.—For purposes of this section, the term “staff of the special committee” includes—

(1) all employees of the special committee;

(2) all staff designated by the members of the special committee to work on special committee business;
(3) all Senate staff assigned to special committee business pursuant to section 5(b)(13);

(4) all officers and employees of the Office of Senate Legal Counsel who are requested to work on special committee business; and

(5) all detailees and consultants to the special committee.

SEC. 7. RELATION TO OTHER INVESTIGATIONS.

(a) PURPOSES.—The purposes of this section are—

(1) to expedite the thorough conduct of the investigation, study, and hearings authorized by this resolution;

(2) to promote efficiency among all the various investigations underway in all branches of the United States Government; and

(3) to engender a high degree of confidence on the part of the public regarding the conduct of such investigation, study, and hearings.

(b) SPECIAL COMMITTEE ACTIONS.—To carry out the purposes stated in subsection (a), the special committee is encouraged—

(1) to obtain relevant information concerning the status of the investigation of the independent counsel, to assist in establishing a hearing schedule for the special committee; and
(2) to coordinate, to the extent practicable, the activities of the special committee with the investigation of the independent counsel.

SEC. 8. SALARIES AND EXPENSES.

A sum equal to not more than $950,000 for the period beginning on the date of adoption of this resolution and ending on February 29, 1996, shall be made available from the contingent fund of the Senate out of the Account for Expenses for Inquiries and Investigations for payment of salaries and other expenses of the special committee under this resolution, which shall include not more than $750,000 for the procurement of the services of individual consultants or organizations therefor, in accordance with section 5(b)(11). Payment of expenses shall be disbursed upon vouchers approved by the chairman, except that vouchers shall not be required for the disbursement of salaries paid at an annual rate.

SEC. 9. REPORTS; TERMINATION.

(a) COMPLETION OF DUTIES.—

(1) IN GENERAL.—The special committee shall make every reasonable effort to complete, not later than February 1, 1996, the investigation, study, and hearings authorized by section 1.

(2) EVALUATION OF PROGRESS.—The special committee shall evaluate the progress and status of
the investigation, study, and hearings authorized by
section 1 and, not later than January 15, 1996,
make recommendations with respect to the author-
ization of additional funds for a period following
February 29, 1996. If the special committee re-
quests the authorization of additional funds for a pe-
riod following February 29, 1996, the Majority
Leader and the Democratic Leader shall meet and
determine the appropriate timetable and procedures
for the Senate to vote on any such request.

(b) FINAL REPORT.—

(1) SUBMISSION.—The special committee shall
promptly submit a final public report to the Senate
of the results of the investigation, study, and hear-
ings conducted by the special committee pursuant to
this resolution, together with its findings and any
recommendations.

(2) CONFIDENTIAL INFORMATION.—The final
report of the special committee may be accompanied
by such confidential annexes as are necessary to pro-
tect confidential information.

(3) CONCLUSION OF BUSINESS.—After submis-
sion of its final report, the special committee shall
promptly conclude its business and close out its af-
fairs.
(c) RECORDS.—Upon the conclusion of the special committee's business and the closing out of its affairs, all records, files, documents, and other materials in the possession, custody, or control of the special committee shall remain under the control of the Committee on Banking, Housing, and Urban Affairs.

SEC. 10. COMMITTEE JURISDICTION AND RULE XXV.

The jurisdiction of the special committee is granted pursuant to this resolution, notwithstanding the provisions of paragraph 1 of rule XXV of the Standing Rules of the Senate relating to the jurisdiction of the standing committees of the Senate.
July 5, 1995

Stephen A. Kubitowski, Esq.
Assistant Independent Counsel
Office of the Independent Counsel
Suite 490-North
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Mr. Kubitowski:

As requested, enclosed is a list of the White House employees who have been scheduled for depositions by the Special Committee to Investigate Whitewater and Related Matters.

If you have any questions concerning this matter, please call me at (202) 224-0558. Best Regards.

Very truly yours,

Alice S. Fisher
List of White House Deponents

✓ Bill Burton
   Lisa Caputo ✓
✓ Thomas Castleton
✓ Mark Gearan
   David Gergen ✓
✓ Deborah Gorham
✓ Carolyn Huber
✓ William Kennedy
   Evelyn Lieberman ✓
   Bruce Lindsey ✓
✓ Craig Livingstone
✓ Sylvia Matthews
   Marlene McDonald✓
✓ Thomas McLarty
✓ Cheryl Mills
   DeeDee Myers ✓
   Roy Neel ✓
✓ Steve Neuwirth
✓ Bernard Nussbaum
   Howard Paster ✓
✓ Betsy Pond
✓ Jack Quinn
✓ Clifford Sloan
✓ George Stephanopoulos
✓ Patsy Thomasson
✓ Linda Tripp
✓ David Watkins
✓ Margaret Williams
TO:         Mr. Stephen Kubiatowski

NUMBER FAXED TO:  514-8802

FROM:       Alice S. Fisher

DATE:       7/8/95

NUMBER OF PAGES.  3
(Including this cover sheet)

MESSAGE:

If you do not receive the specified number of pages, please contact sender at our main number. Thank you.
SPECIAL COMMITTEE TO INVESTIGATE
WHITESTONE AND RELATED MATTERS
(202) 224-0218 (MAIN TELEPHONE) (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE: July 11, 1995

TO: Kenneth W. Starr, Esquire

FAX NUMBER: (501) 221-8707

FROM: Richard Ben-Veniste/Michael Chertoff

CONFIRM ARRIVAL:

☐ YES, Please contact me at 224-0218
☐ NO

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 3

MESSAGE:
July 11, 1995

BY FACSIMILE AND FIRST-CLASS MAIL.
Kenneth W. Starr, Esquire
Office of the Independent Counsel
Two Financial Centre
10825 Financial Centre Parkway, Suite 134
Little Rock, AR 72211

Dear Judge Starr:

We are writing on behalf of the Chairman and Ranking Member of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to request that you provide the information described below to the Special Committee. All of the information we are requesting is important to the Special Committee's hearings on the handling of documents at Vincent Foster's office following his death. These hearings are scheduled to begin on July 18, 1995, so we ask that you address our requests at your earliest opportunity.

There is a substantial conflict in deposition testimony that Margaret Williams and Henry O'Neill have provided to the Special Committee regarding whether or not Ms. Williams removed documents or other materials from the White House Counsel Office suite on the night of July 20, 1993. We understand that both witnesses have been interviewed by the FBI regarding the handling of documents in Mr. Foster's office in connection with investigations conducted by Mr. Fiske and by you. Indeed, we understand that on five or more occasions in 1994 and 1995 FBI agents working for the Office of the Independent Counsel interviewed Mr. O'Neill regarding his observations on the night of July 20, 1993.

We anticipate that Ms. Williams and Officer O'Neill both will be witnesses at the Special Committee's hearings this month and that the Special Committee will need all available information to consider the conflicts in their testimony. We thus request that you provide the Special Committee with copies of all FD-302 reports and FBI interview notes from all relevant FBI interviews of Ms. Williams and Officer O'Neill.
Kenneth W. Starr, Esquire  
July 11, 1995  
Page 2

We also understand that one or more persons working under the auspices of the Office of the Independent Counsel has administered a polygraph examination to Margaret Williams regarding matters relevant to the Special Committee’s current inquiry. According to press reports, the polygraph examination indicated that Ms. Williams was not being deceptive when she stated that she did not remove documents or other materials from Mr. Foster’s office on the night of July 20, 1993.

We recognize that you may not wish to provide the report of the polygraph examiner to the Special Committee, however, we request that you provide us with the questions asked and the answers given together with the expert’s conclusion regarding truthfulness as to each.

Thank you very much for your prompt attention to these requests.

Richard Ben-Veniste  
Democratic Special Counsel  

Sincerely yours.

Michael Chertoff  
Special Counsel
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Robert J. Giuffra, Jr., Chief Counsel  
Lance Cole, Democratic Deputy Special Counsel  
United States Senate  
Committee on Banking, Housing, and Urban Affairs  
Washington, D.C. 20510-6075

Dear Messrs. Giuffra and Cole:

I am writing to address certain matters that have arisen during the depositions over the last two weeks.

1. During Roger Adams' deposition, Mr. Chertoff showed him an excerpt of a newspaper article from the New York Times regarding Whitewater and asked whether there was any reason Mr. Adams had saved such an item in a file related to Vincent Foster. As I suggested at the time, although the excerpt was separately copied in the Department's document production, the original in Mr. Adams' file is merely the other side of a Foster-related newsclip that bears Bates #F003150. Accordingly, it does not appear that the assumption underlying Mr. Chertoff's question was correct.

2. The FBI notes produced by the Department on June 23, 1995, were not Bates stamped. Enclosed is a duplicate set bearing such numbers.

3. Enclosed are the handwritten notes (Bates #F000152 to F000153) prepared by Mr. Adams that correspond to the typewritten documents numbered F001707 to F001708.

4. You have asked for the name of the FBI agent who analyzed the Foster note for fingerprints. The analysis was performed by Louis Hupp who also is the expert who has performed a variety of analyses at the direction of both Mr. Fiske and Judge Starr. Mr. Hupp is available on Friday July 14, at 9:30 a.m. Per my conversations with Mr. Ben-Veniste and with Mr. Kubiatowski of OIC, it is my understanding that Mr. Hupp’s deposition will be limited to the analysis he performed in July and August of 1993.
5. Although Mr. Margolis may return to work at the end of July, his doctor has advised him not to be interviewed or deposed until at least the second week in August.

6. You have asked to interview the Attorney General as part of your investigation. Although such a staff interview is relatively extraordinary, the Attorney General is pleased to cooperate with the Committee's investigation. Accordingly, she will be available for a staff interview on July 14 at 3:00 in her conference room. Please let me know by Thursday, July 13, who will be attending.

It is my understanding that the subject of the interview will be limited to the Attorney General's personal knowledge of the events relating to the death of Vincent Foster, including any contact with the White House; the review of documents in Mr. Foster's office; the role of the Department of Justice in that review; and the discovery of Mr. Foster's note. To the extent that you have reason to believe that you will raise any additional matters with the Attorney General, please notify me in advance.

7. Enclosed are the notes taken by Pat Binninger requested in your letter of July 10, 1995 (Bates #A000026 to A000028). Apparently, Ms. Binninger was unable to locate these notes earlier because they had been inadvertently placed in an unrelated file.

8. Finally, please let me know which, if any, Department witnesses you expect to call at the public hearings.

Please call me if you have any other questions.

Sincerely,

Paul J. Fishman
Counsel to the Deputy Attorney General

cc: Steve Kubiatowski, OIC
Andrea Simonton
July 14, 1995

Robert J. Giuffra, Jr., Chief Counsel
Richard Ben-Veniste, Democratic Special Counsel
United States Senate
Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20510-6075

Dear Messrs. Giuffra and Ben-Veniste:

Enclosed are the following two documents which were requested by Mr. Ben-Veniste and Mr. Comey during the July 14, 1995, deposition of Mr. Louis Hupp of the FBI:

(1) a photo taken by the FBI latent fingerprint laboratory identified on the back as Deposition Exhibit 1 Hupp; and

(2) a more legible copy of documents previously produced to the Committee bearing Bates stamp numbers FBI00000079, FBI00000080, FBI00000081, FBI00000082, FBI00000083, FBI00000085, FBI00000086.

If you have any questions, please feel free to contact me.

Sincerely,

Charles J. Syro
Special Assistant to the Deputy Attorney General

cc: Steve Kubiatowski, OIC
Andrea Simonton, FBI
July 18, 1995

FOR IMMEDIATE RELEASE

The following statement was issued by Independent Counsel Kenneth W. Starr today from his office in Little Rock, Arkansas:

The statement of Mark D. Fabiani on behalf of the White House is wrong. The Office of the Independent Counsel has not and will not disclose matters occurring before the grand jury to anyone. In response to a joint request made by counsel for both the Chairman and Ranking Member of the Senate Banking Committee well in advance of the hearing, the Office of the Independent Counsel agreed to provide Mr. Foster's briefcase for inspection and use in the course of the Committee's investigation. The briefcase was provided last night to a representative acting on behalf of the entire Committee. The briefcase is neither a matter occurring before the grand jury nor investigative work product created by this or Mr. Fiske's office. In circumstances where such pre-existing material cannot be obtained from any other source and where disclosure of it would not hinder or impede our investigation, it is not inappropriate to disclose such material to the Committee upon its joint, bipartisan request.
United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

My Dear Senator:

At 9:30 a.m. on Tuesday, July 18, Wednesday, July 19, and Thursday, July 20, 1995

in Room SH-216, Hart Senate Office Building, the

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Special Committee to Investigate Whitewater Development Corporation and Related Matters: will meet in OPEN SESSION to conduct a hearing on the Handling of the Documents in Deputy White House Counsel Vincent Foster's Office after his death. Among the Witnesses will be: Webster Hubbell, former Associate Attorney General; Cheryl A. Braun, Sergeant, U.S. Park Police, formerly assigned to Criminal Investigation Branch; John Rolla, Detective, U.S. Park Police, formerly assigned to Criminal Investigation Branch; Robert Hines, Major, U.S. Park Police, former Commander of Office of Inspectional Services; Sylvia M. Mathews, Chief of Staff, Department of Treasury, formerly Special Assistant to the Assistant for Economic Policy, the White House; Mark D. Gearan, Assistant to the President, Director of Communications and Strategic Planning, White House; W. David Watkins, Carlsbad, California, former Assistant to the President for Management and Administration; Patsy L. Thomasson, Deputy Assistant to the President, Assistant Director for Presidential Personnel, former Director of the Office of Administration and Special Assistant to the President for Management and Administration, White House; Dennis S. Martin, United States Secret Service, Department of Treasury; John Magew, Director, Alcohol, Tobacco and Firearms, Department of Treasury, former Director of the United States Secret Service; Donald A. Flynn, Presidential Protective Division, United States Secret Service, Department of Treasury; Paul B. Imbordino, Office of Protective Operations, United States Secret Service, White House; and Henry P. O'Neill, United States Secret Service, Department of Treasury.

At the direction of the Chairman
Respectfully,

HOWARD A. MENELL,
Staff Director
TO:  Steve Kubiatskis, Esq.

NUMBER FAXED TO:  514-0802

FROM:  Robert Giuffra

DATE:  7.17.95

NUMBER OF PAGES:  2
(Including this cover sheet)

MESSAGE:

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July 18, 1995

BY FACSIMILE AND FIRST-CLASS MAIL
Kenneth W. Starr, Esquire
Office of the Independent Counsel
Two Financial Centre
10825 Financial Centre Parkway, Suite 134
Little Rock, Arkansas 72211

Dear Judge Starr:

On behalf of all of the members of the Special Committee to Investigate Whitewater Development Corporation and Related Matters, we write to reiterate the requests made by our Special Counsel by letter of July 11, 1995. A copy of that letter is enclosed for your convenience.

As you may know, the Special Committee's hearings are now ongoing, and both Officer O'Neill and Ms. Williams are scheduled to testify within the next several days. We ask that you provide the requested materials at your earliest convenience.

Thank you very much.

Sincerely yours,

Paul S. Sarbanes
Ranking Member

Alfonse D'Amato
Chairman

Enclosure
United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510-6075

July 11, 1995

BY FACSIMILE AND FIRST-CLASS MAIL,
Kenneth W. Starr, Esquire
Office of the Independent Counsel
Two Financial Centre
10825 Financial Centre Parkway, Suite 134
Little Rock, AR 72211

Dear Judge Starr:

We are writing on behalf of the Chairman and Ranking Member of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to request that you provide the information described below to the Special Committee. All of the information we are requesting is important to the Special Committee’s hearings on the handling of documents in Vincent Foster’s office following his death. These hearings are scheduled to begin on July 18, 1995, so we ask that you address our requests at your earliest opportunity.

There is a substantial conflict in deposition testimony that Margaret Williams and Henry O’Neill have provided to the Special Committee regarding whether or not Ms. Williams removed documents or other materials from the White House Counsel Office suite on the night of July 20, 1993. We understand that both witnesses have been interviewed by the FBI regarding the handling of documents in Mr. Foster’s office in connection with investigations conducted by Mr. Fiske and by you. Indeed, we understand that on five or more occasions in 1994 and 1995 FBI agents working for the Office of the Independent Counsel interviewed Mr. O’Neill regarding his observations on the night of July 20, 1993.

We anticipate that Ms. Williams and Officer O’Neill both will be witnesses at the Special Committee’s hearings this month and that the Special Committee will need all available information to consider the conflicts in their testimony. We thus request that you provide the Special Committee with copies of all FD-302 reports and FBI interview notes from all relevant FBI interviews of Ms. Williams and Officer O’Neill.
Kenneth W. Starr, Esquire
July 11, 1995
Page 2

We also understand that one or more persons working under the auspices of the Office of the Independent Counsel has administered a polygraph examination to Margaret Williams regarding matters relevant to the Special Committee’s current inquiry. According to press reports, the polygraph examination indicated that Ms. Williams was not being deceptive when she stated that she did not remove documents or other materials from Mr. Foster’s office on the night of July 20, 1993.

We recognize that you may not wish to provide the report of the polygraph examiner to the Special Committee, however, we request that you provide us with the questions asked and the answers given together with the expert’s conclusion regarding truthfulness as to each.

Thank you very much for your prompt attention to these requests.

Sincerely yours,

Richard Ben-Veniste
Democratic Special Counsel

Michael Chertoff
Special Counsel
SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER AND RELATED MATTERS
(202) 224-2218 (MAIN TELEPHONE) R (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE: 7.18.95

TO: Kenneth Starr

FAX NUMBER: Senators Sarbanes/D'Amato

FROM: □ YES, Please contact me at ________

□ NO

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NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 4

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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: July 18, 1995

TO: Richard Ben-Veniste, Democratic Special Counsel

Company Name: Senate Committee on Banking, Housing & Urban Affairs

Fax Number: 202-228-0017 Telephone Number: 202-224-8077

FROM: Kenneth W. Starr/Mark H. Tuohy III

Number of Pages: 3 (including this cover sheet)

Message:

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July 18, 1995

BY FACSIMILE

Mr. Michael Chertoff, Special Counsel
Mr. Richard Ben-Veniste, Democratic Special Counsel
United States Senate
Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

Dear Messrs. Chertoff and Ben-Veniste:

In connection with the Committee’s investigation into the handling of documents of former Deputy Counsel to the President Vincent W. Foster, Jr., you have requested that this Office provide the Committee with reports of interviews of Henry O’Neill and Margaret Williams that were conducted by this Office and by Mr. Fiske’s Office. In addition, you have requested a copy of a particular polygraph report, or at least of questions asked during a particular polygraph examination. Finally, you have requested permission to ask an individual employed by the FBI Laboratory questions about the work he has performed for the Independent Counsel.

We respectfully decline these requests. As we have informed you on this and previous occasions, we will not disclose to the Congress any investigative work product from this active and ongoing investigation. As you know, we must abide by the strictures of grand jury secrecy contained in Federal Rule of Criminal Procedure 6(e). In addition, our position that we will not disclose to the Congress any investigative work product from an open investigation represents sound policy that is deeply rooted in the history and tradition of this Nation. See generally Memorandum for Oliver B. Revell Re: Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Op. Off. Legal Counsel, at 5 (March 24, 1989) ("the policy and practice of the executive branch throughout our Nation’s history has been to decline, except in extraordinary circumstances, to provide committees of Congress with access to, or copies of, open law enforcement files. No President, to our knowledge, has departed from this position affirming the confidentiality and privileged nature of open law enforcement files"). We will adhere to this deeply rooted tradition, and so we must decline each of the above requests.

We note, moreover, that our policy on these issues is not based on whether the requested information is exculpatory or incriminating, but rather is made in accordance with long-standing Executive prerogatives to protect the internal work of this Office with respect to an active and ongoing investigation and to protect the privacy of individuals.
You also had jointly requested on behalf of the Committee the use of Mr. Foster’s briefcase. As an accommodation to the Committee’s investigative needs, we provided the briefcase to the Committee yesterday. Such pre-existing evidence, which was neither created nor modified by this Office or Mr. Fiske’s office, is in our view readily distinguished from investigative work product. Moreover, in circumstances where such evidence cannot be obtained from any other source and where disclosure of it would not hinder or impede our ongoing investigation, we believe it appropriate to disclose such evidence to the Committee upon its joint request. We have adhered to this policy thus far, and do not believe that there has been any inconsistency in our responses to the Committee’s joint requests.

Thank you for your cooperation.

Respectfully yours,

Kenneth W. Starr
Independent Counsel

Mark H. Tuohy III
Deputy Independent Counsel
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: July 18, 1995

TO: Michael Chertoff, Special Counsel

Company Name: Senate Committee on Banking, Housing & Urban Affairs

Fax Number: 202-228-0020 Telephone Number: 202-224-7391

FROM: Kenneth W. Starr/Mark H. Tuohy III

Number of Pages: 3 (including this cover sheet)

Message:

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July 19, 1995

The Honorable Alfonse M. D’Amato
The Honorable Paul S. Sarbanes
United States Senate
Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

Dear Chairman D’Amato and Senator Sarbanes:

We have received your letter of July 18, which incorporates by reference the letter of July 11 sent to this Office by Mr. Chertoff and Mr. Ben-Veniste on behalf of the Committee. We have given your request considerable thought in view of the importance of our respective obligations.

In connection with the Committee’s investigation into the handling of documents of former Deputy Counsel to the President Vincent W. Foster, Jr., the Committee has requested that this Office provide the Committee with reports of interviews of Henry O’Neill and Margaret Williams that were conducted by this Office and by Mr. Fiske’s Office. In addition, the Committee has requested a copy of a particular polygraph report, or at least of questions asked during a particular polygraph examination. Finally, the Committee has requested permission to ask an individual employed by the FBI Laboratory questions about the work he has performed for the Independent Counsel.

We respectfully decline these requests. As we have informed the Committee on this and previous occasions, we will not disclose to the Congress any investigative work product from this active and ongoing investigation. As you know, we must abide by the strictures of grand jury secrecy contained in Federal Rule of Criminal Procedure 6(e). In addition, our position that we will not disclose to the Congress any investigative work product from an open investigation represents sound policy that is deeply rooted in the history and tradition of this Nation. See generally Memorandum for Oliver B. Revell Re: Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Op. Off. Legal Counsel, at 5 (March 24, 1989) ("the policy and practice of the executive branch throughout our Nation’s history has been to decline, except in extraordinary circumstances, to provide committees of Congress with access to, or copies of, open law enforcement files. No President, to our knowledge, has departed from this position affirming the confidentiality and privileged nature of open law enforcement files"). We will adhere to this deeply rooted tradition, and therefore we are constrained, with respect, to decline each of the above requests.
We note, moreover, that our policy on these issues is not based on whether the requested information is exculpatory or incriminating, but rather is made in accordance with long-standing Department of Justice policy to protect the internal work of this Office with respect to an active and ongoing investigation and to protect the privacy of individuals.

Separately, through Mr. Chertoff and Mr. Ben-Veniste, the Committee had also requested the use of Mr. Foster’s briefcase. As an accommodation to the Committee’s investigative needs, we provided the briefcase to the Committee. Such pre-existing material, which was neither created nor modified by this Office or Mr. Fiske’s office, is in our view readily distinguished from investigative work product. Moreover, in circumstances where such material cannot be obtained from any other source and where disclosure of it would not hinder or impede our ongoing investigation, we believe it appropriate to disclose such material to the Committee upon its joint request.

In sum, the question whether and under what conditions a law enforcement agency such as this Office can and should provide information to Congress relating to an open criminal investigation entails a delicate balancing of numerous competing concerns. With respect to the Foster documents investigation, we have balanced the competing concerns and formulated the above policy. In so doing, we have been advised by Ethics Counsel Samuel Dash. We have adhered to this policy thus far, and we intend to continue to do so. We do not believe, moreover, that there has been any inconsistency in our responses to the Committee’s joint requests.

Thank you for your cooperation. Please do not hesitate to contact me if you have any questions.

Respectfully yours,

Kenneth W. Starr
Independent Counsel
July 27, 1995

Michael Chertoff
Richard Ben-Veniste
Special Committee to Investigate
Whitewater and Related Matters
United States Senate
534 Dirksen
Washington, D.C. 20510-6075

Dear Mr. Chertoff and Mr. Ben-Veniste:

As we discussed last week, the Committee has advised that it may call Louis Hupp of the Federal Bureau of Investigation to testify about certain fingerprint analyses. As you know, the Independent Counsel has expressed concern about the scope of that testimony. Although it is not appropriate for the Department of Justice to take a position in that regard, you have assured that, before Mr. Hupp is called, the Committee and the Independent Counsel will reach a definitive agreement about the scope of his testimony.

Please confirm in writing that such an agreement has been reached so that Mr. Hupp is not asked by the Committee about matters that the Independent Counsel has directed him not to discuss.

Very truly yours,

Paul J. Fishman
Counsel to the Deputy Attorney General

cc: Andrea Simonton, FBI
Steve Kubiatowski, OIC
FACSIMILE COVER SHEET

DATE: 7-27-95

TO: Steve Kubiakowski
Office of the Independent Counsel

FAX NUMBER: 4-8802

PHONE NUMBER: (202) 514-6897

FROM: Paul Fishman

ADDITIONAL INFORMATION: Please deliver ASAP. Thank you.

NUMBER OF PAGES INCLUDING COVER SHEET: 2

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July 31, 1995

Mr. Michael Chertoff, Special Counsel
Mr. Richard Ben-Veniste, Democratic Special Counsel
United States Senate
Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

Dear Messrs. Chertoff and Ben-Veniste:

This letter confirms that our Office will treat in an appropriate manner any information Associate Independent Counsel Brett M. Kavanaugh may have learned as a result of attending the deposition of FBI fingerprint examiner Louis Hupp on July 14. As you know, his sole purpose in attending that deposition was to ensure that Mr. Hupp was not asked to provide information about work he had performed for the Independent Counsel or about information he had gathered after August 1993. In fact, Mr. Ben-Veniste did ask a question calling for such information, and Mr. Hupp declined to answer it.

Please note that Mr. Kavanaugh took no notes at the deposition, except to transcribe the question asked by Mr. Ben-Veniste referenced above.

Sincerely yours,

Mark H. Tuohy III
Deputy Independent Counsel
July 31, 1995

VIA FACSIMILE AND FIRST-CLASS MAIL.

Mr. Paul J. Fishman  
Counsel to the Deputy Attorney General  
U.S. Department of Justice  
Office of the Deputy Attorney General  
Washington, DC 20530

Dear Mr. Fishman:

This will respond to your letter of July 27, 1995 regarding Louis Hupp. I do not intend to ask Mr. Hupp about anything beyond what was covered in his deposition. In view of your stated position on the appropriateness of the Department of Justice taking a position on scope, it might make sense for a representative of the Independent Counsel to be present should any question arise.

Sincerely yours,

Richard Ben-Veniste  
Minority Special Counsel

cc: Mike Chertoff, Esq.
SPECIAL COMMITTEE TO INVESTIGATE
WHITESTWATER AND RELATED MATTERS
(202) 224-3218 (MAIN TELEPHONE) (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE: July 31, 1995

TO: Paul J. Fishman

FAX NUMBER: (202) 514-6897

FROM: Richard Ben- Veniste

CONFIRM ARRIVAL:

☐ YES. Please contact me at

☐ NO

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OFFICE OF THE DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

FACSIMILE TRANSMISSION SHEET

TO: Stanislaw Kubizowski
    Office of the Independent Counsel

FAX #: ( ) 4-8802 VOICE #:

FROM: Paul Friedman
    Office of the Deputy Attorney General

FAX #: (202) 514-6897 VOICE: 514-2073

THIS TRANSMISSION CONTAINS 3 SHEETS INCLUDING THIS SHEET

Special Note(s) Please deliver ASAP. Thank you.

If any page(s) are missing, please call 514-2073 for re-transmission.
July 31, 1995

BY FACSIMILE AND FIRST-CLASS MAIL

Kenneth Starr, Esquire
Office of the Independent Counsel
Two Financial Centre
10825 Financial Centre Parkway, Suite 134
Little Rock, Arkansas  72211

Dear Judge Starr:

On behalf of all the members of the Special Committee to Investigate Whitewater Development Corporation and Related Matters, we write to renew our earlier requests that you provide the Special Committee copies of all FD-302 reports and interview notes from all FBI interviews of Margaret Williams and Henry O'Neill.

Our Special Committee first requested these reports and notes, along with other materials, on July 11, 1995. We reiterated this request on July 18, 1995. Copies of those letters are enclosed for your convenience.

We wish to call your attention to a change in circumstance since our last request for this information. Last week both Officer O'Neill and Margaret Williams testified about the events of July 20, 1993 in open hearings before our Special Committee and made reference to their prior FBI interviews. (A transcript of their hearing testimony is enclosed.) As the record now stands, only you have the ability to provide information that might shed light on whether the Senate testimony of Officer O'Neill and Ms. Williams, about these interviews and the substantive information contained therein, is consistent with prior statements to law enforcement officials.
In view of our concerns, and taking into consideration the fact that now both Officer O’Neill’s and Ms. Williams’s conflicting versions of these events, as well as references to their prior FBI interviews, are in the public record, we ask again that you provide the requested materials at your earliest convenience.

Thank you very much.

Sincerely yours,

Paul S. Sarbanes
Ranking Member

Alfonse D’Amato
Chairman

Enclosures
August 1, 1995

Michael Chertoff, Majority Special Counsel
Richard Ben-Veniste, Minority Special Counsel
Special Committee to Investigate
Whitewater and Related Matters
United States Senate
534 Senate Dirksen Office Building
Washington, D.C. 20510-6075

Dear Messrs. Chertoff and Ben-Veniste:

This letter will confirm this Office’s request that Mr. Louis Hupp’s testimony before the Committee on August 2, 1995 be limited to what was covered in his earlier deposition before the Committee -- namely, the work Mr. Hupp conducted in July and August, 1993 during the investigation by the Department of Justice and Federal Bureau of Investigation. This request is consistent with Mr. Ben-Veniste’s position, as stated in his July 31, 1995 letter to Mr. Paul J. Fishman of the Department of Justice. The Office of Independent Counsel believes that, at this time, questioning Mr. Hupp about matters beyond the scope of his deposition may hinder or impede its investigation.

If you have any questions, please feel free to contact me at (202) 514-8688. Thank you for your cooperation with this request.

Sincerely,

[Signature]

Mark H. Tuohey, III
Deputy Independent Counsel

cc: Paul J. Fishman, Department of Justice
Andrea Simonton, Federal Bureau of Investigation
Steve Kubiakowski, Esq.
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-N
Washington, D.C. 20004

Re: Testimony of Latent Fingerprint Examiner
Louis Hupp Before the Senate Special Committee
to Investigate Whitewater and Related Matters

Dear Mr. Kubiakowski:

As we discussed, Mr. Hupp is scheduled to testify before the Senate Committee on August 2, 1995, at 9:30 a.m. I have enclosed a copy of the letter from Minority Special Counsel Richard Ben-Veniste to Paul Fishman, Counsel to the Deputy Attorney General, which sets forth the scope of Mr. Hupp's testimony. It does not, however, resolve the issue of whether Mr. Hupp will be asked the same question in his Senate testimony that, based upon the request by the Office of the Independent Counsel (OIC), he declined to answer in his deposition. This question concerned the results of the palm print examination he performed for the OIC.

In his letter, Mr. Ben-Veniste suggests that a representative of the OIC be present at the testimony should any questions arise.

I request that the OIC advise Mr. Hupp in writing of any position the OIC wants him to take when being questioned at the hearing, and that a representative of the OIC be present at the hearing if the OIC wants to lodge an objection to any testimony.
Steve Kubiatowski, Esq.

Please contact me to resolve this matter as soon as possible. My telephone number is 324-8067; my fax number is 324-8541.

Sincerely,

[Signature]

Andrea M. Simonton
Deputy General Counsel
July 31, 1995

VIA FAXSIMILE AND FIRST-CLASS MAIL

Mr. Paul J. Fishman
Counsel to the Deputy Attorney General
U.S. Department of Justice
Office of the Deputy Attorney General
Washington, DC 20530

Dear Mr. Fishman:

This will respond to your letter of July 27, 1995 regarding Louis Hupp. I do not intend to ask Mr. Hupp about anything beyond what was covered in his deposition. In view of your stated position on the appropriateness of the Department of Justice taking a position on scope, it might make sense for a representative of the Independent Counsel to be present should any question arise.

Sincerely yours,

Richard Ben-Veniste
Minority Special Counsel

cc: Mike Chertoff, Esq.
August 3, 1995

The Honorable Alfonse M. D’Amato
The Honorable Paul S. Sarbanes
United States Senate
Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

Dear Mr. Chairman and Senator Sarbanes:

We have received your letter of July 31, which renews the Special Committee’s earlier requests that this Office provide the Special Committee copies of all FD-302 reports and notes from all interviews of Margaret Williams and Henry O’Neill conducted by this Office and Mr. Fiske’s Office.

We deeply appreciate the importance of Congress’s oversight authority and the constitutional underpinnings of that power; to that end, we have attempted to accommodate the Committee in executing its oversight duties. We likewise recognize the Special Committee’s particular interest in obtaining any information that might shed light on whether the Senate testimony of Officer O’Neill and Ms. Williams is consistent with their prior statements to law enforcement officials. Nevertheless, after careful reflection, we are constrained to adhere to our firmly-held position that we cannot in conscience disclose to Congress any investigative work product from our active and ongoing investigations. Therefore, we again respectfully decline the Committee’s request.

As we stated in our letter to you of July 19, our position reflects a time-honored policy first expressed by President Washington and subsequently reaffirmed by or on behalf of Presidents Jefferson, Jackson, Lincoln, Theodore Roosevelt, Franklin Roosevelt, and Eisenhower, among others. See "History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress" (Part I), 6 Op. O.L.C. 751 (1982). The reason for this policy is as simple as it is fundamental: the Executive Branch is obligated to protect its Article II responsibility to prosecute the laws fully and fairly. If Congress is apprised of details of an investigation while that investigation is ongoing, there is a distinct danger that congressional pressures will influence, or will be perceived to influence, the course of that investigation. Accordingly, the
Executive Branch has, as a matter of course, declined to provide Congress with access to, or copies of, open law enforcement files. See generally, Memorandum for Oliver B. Revell, Re: Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Op. O.L.C., at 5 (March 24, 1989).

Attorney General Robert H. Jackson addressed this very issue over 50 years ago. Recognizing the competing interests of both Congress and the Executive Branch where the dissemination of investigative materials was at stake, then-Attorney General Jackson concluded:

It is the position of [the] Department [of Justice], restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the laws be faithfully executed," and that congressional or public access to them would not be in the public interest.

Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Att’y Gen. 45, 46 (1941). In short, the Executive Branch "cannot effectively investigate if Congress is, in a sense, a partner in the investigation." Memorandum for Edward L. Morgan, Deputy Counsel to the President, from Thomas E. Kupper, Deputy Assistant Attorney, Office of Legal Counsel (Dec. 19, 1969).

The concerns articulated by Justice Jackson are as valid now as they were at the dawn of World War II. Moreover, the disclosure of investigative materials presents other perils to law enforcement that are similarly compelling. Consider, for example, the following: sensitive law enforcement techniques, methods and strategies may be revealed; witnesses may be "chilled" from speaking with law enforcement officers for fear of embarrassment or personal safety; and law enforcement officers themselves may be reluctant to express candidly their views and recommendations on controversial and sensitive matters if those views could be exposed to public scrutiny by Congress upon request. See generally, Memorandum for the Deputy Attorney
The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
August 3, 1995
Page 3

General from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Congressional Subpoenas of Department of Justice Investigative Files 14-20 (Oct. 17, 1984); United States v. Nixon, 418 U.S. 683, at 705 (1974) ("[H]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interest to the detriment of the decision-making process.").

As we have previously stated, our policy against disclosing investigative material does not hinge on whether the requested material is exculpatory or incriminating. Nor do we believe that this policy can or should be reevaluated based on the course of congressional proceedings. Indeed, with respect to the Special Committee's request, we would be setting a dangerous precedent were we to release FD-302 reports or any other prior statements made to law enforcement officials whenever there is speculation that such statements contain inconsistencies with testimony taken before the Senate.

We hasten to recognize that there have been instances deemed to constitute extraordinary circumstances in which federal law enforcement disclosed to Congress certain investigative information. See, e.g., Letter to John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, from William French Smith, Attorney General, 6 Op. O.L.C. 31, at 103 (1982) (regarding request for open law enforcement investigative files of the Environmental Protection Agency). However, after reviewing the present circumstances with the aid and consultation of our Ethics Counsel Professor Samuel Dash, we believe that relevant authority and tradition guides us to one conclusion -- this Office's interest and obligation to protect the confidentiality of its open investigations is paramount in this instance. We must, accordingly, respectfully decline the Special Committee's request.

Respectfully yours,

Kenneth W. Starr
Independent Counsel
August 3, 1995

The Honorable Alfonse M. D’Amato
The Honorable Paul S. Sarbanes
United States Senate
Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

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The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
August 3, 1995
Page 3

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Respectfully yours,

[Signature]

Kenneth W. Starr
Independent Counsel
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TO: Richard Ben-Veniste
Company Name: Senate Committee on Banking, Housing & Urban Affairs
Fax Number: 202-228-0017  Telephone Number: 202-224-8077
FROM: Kenneth W. Starr, Independent Counsel
Number of Pages: 4 (including this cover sheet)

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FOIA RD 56806 (URTS 16302) Docld: 70104916 Page 131
**ACTIVITY REPORT**

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August 7, 1995

Mr. Michael Chertoff, Special Counsel
Mr. Richard Ben-Veniste, Democratic Special Counsel
United States Senate
Special Committee on Whitewater and Related Matters
Washington, DC 20510

Dear Mr. Chertoff and Mr. Ben-Veniste:

Because a Senator raised a question at the hearings on August 3, 1995, about the joint request by the two of you on behalf of the Committee for Mr. Foster’s briefcase, we write to clarify the record. As you know from our letter of July 18th, the briefcase was submitted by this Office to the Committee upon its joint, bipartisan request as an accommodation to the Committee’s legitimate investigative needs. The briefcase met our three conditions for disclosure by this Office to Congress: First, under governing precedent, the briefcase is not a matter occurring before the grand jury for purposes of Rule 6(e) of the Federal Rules of Criminal Procedure. See Senate of the Commonwealth of Puerto Rico v. United States Department of Justice, 823 F.2d 574, 582 (D.C. Cir. 1987). Second, the briefcase is not investigative work product of this Office; rather, it is preexisting evidence that cannot be obtained from any other source. Third, disclosure of the briefcase to the Committee would not hinder or impede our ongoing investigation.

As to our physical transfer of the briefcase, the Committee should be assured that the briefcase was transmitted to an agent of the Committee by agents of the Federal Bureau of Investigation detailed to this Office in a manner that properly recorded its chain of custody.

As to the use of the briefcase during the hearings, we appreciate that there may be differing opinions within the Committee as to the most appropriate way to use the briefcase. This Office cannot and does not take any position on the proper use of the briefcase during the hearings. We reiterate our request that the briefcase be maintained in a secure place when not in use at the hearings, that it not be lost or physically damaged, and that it be returned to this Office after completion of the hearings.
Thank you for continuing to ensure that the Senators on the Committee have full and accurate information about this Office’s dealings with the Committee.

Sincerely yours,

Mark H. Tuohey III  
Deputy Independent Counsel
September 6, 1995

Robert J. Giuffra, Jr.
Majority Chief Counsel
Committee on Banking, Housing, and Urban Affairs
United States Senate
534 Senate Dirksen Office Building
Washington, D.C. 20510-6075

Dear Bob:

If possible, the Office of the Independent Counsel would like to receive copies of the depositions the Senate Special Committee conducted in preparation for its hearings this summer. Receiving the depositions in disk format would be particularly helpful for our investigation.

If you have any questions, please feel free to give me a call at (202) 514-3703. Thank you for your kind consideration of this request.

Sincerely,

Stephen A. Kubiatowski
Assistant Independent Counsel

cc: Lance Cole
I. THE HANDLING OF RTC CONFIDENTIAL INFORMATION THE PROCESSING OF RTC CRIMINAL REFERRALS AND

RTC

1) Jean Lewis - Criminal investigator
2) Lee Aussen - Criminal investigator
3) Richard Iorio - Field Investigations Officer
4) Julie Yanda - Chief, Professional Liability Section
5) Karen Carmichael - Criminal Coordinator
6) April Breslaw - Professional Liability Section
7) Ellen Kulka - General Counsel, Washington
8) Andy Tomback - Deputy Counsel, Washington
9) Jim Thompson - Vice-President RTC, Kansas City
10) Bill Roelle - Senior Vice-President in Washington
11) Jim Dudine - Criminal investigations chief, Washington
12) Albert Casey - CEO
13) Randy Knight - investigator
14) Gilion Curtis - Acting RTC Counsel
15) Tom Hindes - Counsel
16) David Swiss - Senior Counsel
17) Russell Kaufman - Senior Counsel
18) John Ryan - Deputy CEO
19) Michael VanValkenburg - Director of Tulsa investigations
20) Ken Faust - Investigator, Kansas City Investigative Office
21) Carl Gamble - National Criminal Coordinator?
22) Phillip Adams - Professional Liability Attorney, Kansas City,
23) Mike Carron - Criminal investigator, Kansas City
24) Mark Gabrellian - Professional Liability Section supervisor
25) L.J. Wilson - Criminal Investigator
26) Thomas Murray - Civil Review Investigator

FBI
1) Don Peters - Agent in Charge, Little Rock
2) Steve Irons - Agent, Little Rock
3) Agent, Kansas City

DOJ
1) Paula Casey - U.S. Attorney, E.D. AR
2) Mark McDougal - DOJ Frauds Section attorney
3) Charles Banks - former U.S. Attorney, Little Rock
4) Richard Pence - Acting U.S. Attorney, E.D. AR between Banks and Paula Casey
5) Donna Henneman - Ethics Program Manager in the DOJ Executive Office for U.S Attorneys

6) Mack Dotson - AUSA, Little Rock

7) Donald McKay - Frauds Section, DOJ

8) Deborah Westbrook - EOUSA supervisor

9) Anthony Moscato - Executive Director EOUSA

10) Webster Hubbell - former Associate Attorney General

WHITE HOUSE
1) Bernard Nussbaum

2) Bruce Lindsey

OTHERS
1) Persons listed on criminal referrals as suspects or witnesses.

II. IMPROPER RELEASE OF OFFICE OF GOVERNMENT ETHICS REPORT OF JULY 31, 1994

1) Lloyd Bentsen - former Secretary of the Treasury

2) Lloyd Cutler - former White House Counsel

3) Jim Cottos - Chief Treasury Investigator

4) Francine Kerner - Counsel to the Inspector General

5) Robert Cesca - Acting Inspector General, Department of Treasury

6) Patricia Black - RTC Deputy Inspector General

7) Stephen D. Potts - Director, Office of Government Ethics
8) Steve J. McHale - Deputy assistant general counsel Treasury

9) Staff and attorneys of the White House Counsel's staff who participated in the preparation of congressional testimony

III. OPERATIONS, SOLVENCY AND REGULATION OF MADISON GUARANTY SAVINGS AND LOAN

1) James T. Clark, national bank examiner, Controller of the Currency and examiner in charge of the 1986 Federal Home Loan Bank Board examination of Madison Guaranty

2) Dawn Pulcer, Field Manager of the Office of Thrift Supervision, Detroit who assisted James Clark in the 1986 examination of Madison


4) James McDougal

5) John Latham and other board members of Madison

6) Marlin Jackson - State Banking Commissioner

7) Beverly Bassett Schaffer - Arkansas Securities Commissioner

8) Pat Heritage - loan officer for Madison

9) Bill Brady - staff attorney, Arkansas Securities Commission

10) Rick Massey - Rose Law Firm Lawyer (worked on proposed stock offering)

11) Nancy Jones - Assistant Securities Commissioner, Arkansas

12) R.D. Randolph

13) Seth Ward

14) Robert Palmer
IV. ACTIVITIES, INVESTMENTS AND TAX LIABILITY OF WHITEWATER

1) Pillsbury, Madison employees who handled investigation on behalf of RTC

2) RTC employees working with the Pillsbury Madison firm

3) Charles James - registered agent for Whitewater

4) James and Susan McDougal - partners in Whitewater

5) James Lyons - advised on Whitewater issues

6) Leslie Patten - accounting work on Whitewater

7) Yoly Redden - accounting work on Whitewater

8) Betsy Wright

9) Susan Thomases

10) Bruce Lindsey

11) Employee of Frost & Company

12) Chris Wade - real estate agent for Whitewater

V. ROSE LAW FIRM REPRESENTATION OF MADISON AND THE RTC

1) John Adair - RTC Inspector General

2) Patricia Black - Counsel to the RTC Inspector General

3) Clark Blight - Assistant Inspector General for Investigation

4) Sharon Vander Vennot - Assistant Inspector General for Audit

5) James Renick - Inspector General of the FDIC

6) Carolyn Ryals - Deputy Inspector General, FDIC
7) Thomas Coogan - Deputy Counsel to the Inspector General
8) John Almond - Audit Manager
9) Webster Hubbell

VI. CAPITAL MANAGEMENT/DAVID HALE

1) Dick Steiner - Director, Office of Special Investigations, General Accounting Office
2) Don Fulwider - GAO agent who led GAO investigation of Capital Management
3) Wayne Foren - former Associate Administrator of Investment, Small Business Administration
4) David Hale
5) James and Susan McDougal
6) Jim Guy Tucker
7) Stephen Smith
8) Larry Kuca
9) Charles Matthews
10) Eugene Fitzhugh

VII. LASATER AND ARKANSAS DEVELOPMENT FINANCE AUTHORITY

1) Dan Lasater
2) Employees of ADFA
3) Patsy Thomasson
VIII. PERRY COUNTY BANK & CLINTON CAMPAIGN ACCOUNT

1) Bruce Lindsey

2) Neal Ainley
September 14, 1995

John Bates, Esq.
Deputy Independent Counsel
Office of the Independent Counsel
Suite 490-North
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear John:

At our meeting yesterday we discussed the Special Committee's prior requests for polygraph examination results of Maggie Williams and FBI 302 Reports for Ms. Williams and Secret Service Uniformed Division Officer Henry P. O'Neill. I raised those requests in the context of the public hearing testimony provided by Ms. Williams and Officer O'Neill, as well as the public statement to the Committee by Ms. Williams' counsel, Edward S. G. Dennis, concerning the results of Ms. Williams' polygraph examination administered by the FBI under the auspices of the Independent Counsel.

I referred you to Mr. Dennis' statement to the Committee that he had been advised that Ms. Williams had passed her FBI polygraph examination (July 26, 1995 hearing transcript at page 206). I also referred you to Officer O'Neill's sworn testimony that on each of the five or six occasions he was interviewed by FBI agents and representatives of the Office of the Independent Counsel, he recounted exactly the same version of events regarding his observations on the night of July 20, 1993 (July 26, 1995 hearing transcript at pages 35-36). As I explained at our meeting yesterday, I would expect that if the Office of the Independent Counsel has any information contrary to the statement of Mr. Dennis or the testimony of Officer O'Neill on these points, you would inform the Committee so that incorrect testimony or information would not stand unrefuted in the Committee's public record. In my view, an obligation to inform the Committee that it has been provided inaccurate information or testimony about your Office's investigation exists notwithstanding your Office's position, described in your letters of July 18, July 19, and August 3, 1995, that it is inappropriate to disclose to Congress "investigative work product" from an active and ongoing investigation. Under such circumstances, depending on your response, we could discuss whether the
release of the underlying material would constitute an appropriate exception to your previously stated policy.

Thank you for your willingness to reconsider the Committee's request. It would be helpful if you could tell me at our meeting tomorrow what your position is on this issue.

Very truly yours,

Richard Ben-Veniste

cc: Robert J. Giuffra, Jr., Esq.
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FACSIMILE TRANSMITTAL SHEET

DATE: September 14, 1995
TO: John Bates, Esq.
FAX NUMBER: (202) 514-8802
FROM: Richard Ben-Veniste, Esq.
CONFIRM ARRIVAL: □ YES, Please contact me at ____________
□ NO

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 3

MESSAGE:
September 27, 1995

The Honorable Alfonse M. D'Amato, Chairman
The Honorable Paul S. Sarbanes, Ranking Member
United States Senate
Committee on Banking, Housing, and Urban Affairs
534 Senate Dirksen Office Building
Washington, D. C. 20510-6075

Dear Mr. Chairman and Senator Sarbanes:

At our meeting on September 19, 1995, you raised some concern about my response to the Special Committee's inquiry regarding possible investigations and hearings related to certain subject matters identified in Senate Resolution 120. We have continued to examine this issue since that meeting. Our effort has involved consultations among the entire legal staff of this Office, including our trial teams and our Ethics Counsel Samuel Dash.

We are, of course, mindful of the Committee's important responsibilities. However, our duties and responsibilities as prosecutors compel us to conclude that, at this time, investigations and hearings on the following subject matters identified in Senate Resolution 120 would hinder or impede our investigations or prosecutions and might jeopardize the fair administration of justice: (1) the operations, solvency, and regulation of Madison Guaranty Savings and Loan Association ("Madison Guaranty"); (2) the activities, investments, and tax liability of Whitewater Development Corporation ("Whitewater"); (3) the policies and practices of the RTC and other federal banking agencies regarding the legal representation of such agencies with respect to Madison Guaranty; (4) the handling by the RTC and other federal banking agencies of civil or administrative actions against parties regarding Madison Guaranty; (5) the sources of funding and the lending practices of Capital Management Services, Inc. ("CMS"); and (6) the lending activities of Perry County Bank in connection with the 1990 Arkansas gubernatorial election. These are six of the thirteen subject matters listed in Section 1(b) of Senate Resolution 120.

We are particularly concerned that investigations and hearings on subject matters relating to Madison Guaranty, Whitewater and CMS would hinder or impede our investigations and prosecutions and might jeopardize the proper and fair administration of justice in light of the pending indictment in United States v. James B. McDougal, et al. Mr. McDougal was an owner of Madison Guaranty and the president and chairman of the board of Madison Financial Corporation. The pending indictment charges Mr. McDougal and the other defendants with criminal wrongdoing involving Madison Guaranty and CMS transactions. Likewise, any conceivable Committee investigations or hearings on Madison Guaranty and CMS subject matters would involve inquiries into the activities of Mr.
McDougal and the other defendants relating to Madison Guaranty and CMS. Similarly, any Committee inquiry into Whitewater subject matters would involve an exploration of activities and transactions of Mr. McDougal and Madison Guaranty.

Congressional investigations or hearings on these three subjects will necessarily involve taking the testimony of at least some of the witnesses this Office expects to call at trial. That would significantly impede our preparation for trial. It would also risk the disclosure of certain non-public information that is the focus of ongoing criminal investigations. Furthermore, the publicity from Committee investigations and hearings on Madison Guaranty, Whitewater and CMS subject matters could lead to a contention by one or more of the criminal defendants that unbiased juries could not be impaneled or that the defendants otherwise suffered prejudice to their rights to a fair trial. Long-standing Department of Justice policy -- which we are required by statute to follow where possible -- leads us to conclude that this Office must express its strong concerns about investigations or hearings on Madison Guaranty, Whitewater and CMS subject matters in these circumstances.

The third, fourth and sixth subjects we have listed above (relating to the practices of federal banking agencies in securing representation or pursuing actions with respect to Madison Guaranty and relating to certain activities of Perry County Bank) do not directly affect the pending indictment in United States v. James B. McDougal, et al. Nonetheless, we believe that Committee investigations and hearings into these subjects, at this time, will hinder or impede our investigation. We are actively pursuing these matters, and expect important investigative steps and crucial judgments in the upcoming weeks. Hearings or contacts with witnesses and others involved in these investigations could substantially disrupt our ongoing efforts.

Accordingly, we must respectfully adhere to the concerns we previously have expressed about investigations and hearings into the six subject matters identified above. As prosecutors, we are bound to do no less. At the same time, we confirm our willingness to continue to review proposals from your staff regarding Committee investigations and hearings on some of the other seven subject matters identified in Senate Resolution 120. We have informed the Committee that hearings on these subject matters will not hinder or impede our investigations.
You also have asked when our concerns in any of the six areas discussed above might change. The trial in United States v. James B. McDougal, et al., is the most significant upcoming event affecting that issue with respect to hearings on Madison Guaranty, Whitewater and CMS subjects. Although pending and anticipated motions make it unlikely that the trial will commence on October 10, 1995, as presently scheduled, we will urge that it occur as soon as practicable. However, that decision rests ultimately within the discretion of the District Court. The completion of that trial will significantly reduce our concerns, barring additional relevant developments. The concerns we have expressed on three other subject matters listed in Senate Resolution 120 may well change appreciably in the next ninety days.

We recognize that the decision whether to hold hearings at this time ultimately is one for the Committee to make. We only can provide our perspective as prosecutors with respect to the impact of proposed hearings on pending criminal cases and on our ongoing investigations, and hope that the Committee will consider our concerns.

Respectfully yours,

Kenneth W. Starr
Independent Counsel
By U.S. Mail and Facsimile

Kenneth W. Starr, Esq.
Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

Dear Judge Starr:

We have reviewed your September 27, 1995 letter advising us of your belief that, at this time, your office’s investigation would be hindered or impeded by the Special Committee’s inquiry into the matters specified in Sections 1(b)(3)(A), (B), (C), (D), (E) and (G) of Senate Resolution 120 (104th Congress). You have raised no specific concerns respecting the Special Committee’s investigation of the other seven matters specified in the Resolution, including all of those contained in Section 1(b)(2), although in our meeting on September 19, 1995 you did indicate concerns about the Committee’s investigation of the substance of the RTC’s criminal referrals relating to Madison Guaranty Savings and Loan Association.

The Senate has consistently sought to coordinate its investigation of Whitewater and related matters with the Office of the Independent Counsel. Last year, in Senate Resolution 229 (103rd Congress), the Senate refrained from authorizing the Banking Committee to investigate a great majority of such matters. Moreover, at the request of then-Special Counsel Robert Fiske, the Banking Committee postponed in July 1994 its authorized investigation of the handling of documents in the office of White House Deputy Counsel Vincent Foster following his death.

Senate Resolution 120 encourages the Special Committee, to the extent practicable, to coordinate its activities with the investigation of the Independent Counsel. As a result, over the past four months, the Special Committee has delayed its investigation into the vast bulk of the matters specified in Section 1(b) of Senate Resolution 120. We held public hearings this past summer into the handling of documents in Mr. Foster’s office following his death only after you indicated that your investigation would not be hindered or impeded by such hearings.
The Senate has directed the Special Committee to make every reasonable effort to complete its investigation and public hearings by February 1, 1996. (S.R. 120 § 9(a)(a)(1)). Your letter of September 27th asks the Special Committee to forebear, until some unspecified time, any investigation and public hearings into the bulk of the matters specified in Senate Resolution 120.

Your staff has indicated that the trial in United States v. James B. McDougal, et al. is not likely to commence until at least early 1996 and is expected to last at least two months. Our staffs have discussed the possibility that this trial could be delayed even further by pretrial motions and by possible interlocutory appeals, depending on certain pretrial rulings. Under these circumstances, if the Special Committee were to continue to defer its investigation and hearings, it would not be able to complete its task until well into 1996.

Over the past month, we have instructed the Special Committee’s counsel to work diligently with your staff to find a solution that appropriately balances the prosecutorial concerns expressed in your September 27th letter and the Senate’s constitutional oversight responsibilities. We have now determined that the Special Committee should not delay its investigation of the remaining matters specified in Senate Resolution 120.

The Senate has determined, by a vote of 96-to-3, that a full investigation of the matters raised in Senate Resolution 120 should be conducted. The Senate has the well established power under our Constitution to inquire into and to publicize the actions of agencies of the Government, including the Department of Justice. At the same time, our inquiry must seek to vindicate, as promptly as practicable, the reputations of any persons who have been unfairly accused of improper conduct with regard to Whitewater and related matters.

We understand that courts have repeatedly rejected claims that the publicity resulting from congressional hearings prejudiced criminal defendants. Fair and impartial juries were selected in the Watergate and Iran-Contra trials following widely publicized congressional hearings. Even where pretrial publicity resulting from congressional hearings has been found to interfere with the selection of a fair and impartial jury, the sole remedy applied by courts has been to grant a continuance of the trial.

For these reasons, we believe that the concerns expressed in your letter do not outweigh the Senate’s strong interest in concluding its investigation and public hearings into the matters specified in Senate Resolution 120 consistent with Section 9 of the Resolution. Accordingly, we have determined that the Special Committee will begin its next round of public hearings in late October 1995. This round of hearings will focus primarily on the matters specified in Section 1(b)(2) of Senate Resolution 120. Through the remainder of this year, the Special Committee will investigate the remaining
matters specified in Senate Resolution 120 with the intention of holding public hearings thereon beginning in January 1996.

Having determined that the Senate must now move forward, the Special Committee will, of course, continue to make every effort to coordinate, where practicable, its activities with those of your investigation. The Special Committee has provided your staff with a preliminary list of witnesses that the Committee intends to depose. We stand ready to take into account, consistent with the objectives set forth above, your views with regard to the timing of such private depositions and the public testimony of particular witnesses.

The Special Committee does not intend to seek the testimony of any defendant in a pending action brought by your office, nor will it seek to expand upon any of the grants of immunity provided to persons by your office or its predecessors. Indeed, Senate Resolution 120 expressly provides that the Special Committee may not immunize a witness if the Independent Counsel informs the Committee in writing that Immunizing the witness would interfere with the Independent Counsel’s ability "successfully to prosecute criminal violations." (§5(b)(6)).

As you know, the Special Committee has solicited the views of your office prior to making requests for documents. We will continue to take into account, where practicable, your views with regard to the public disclosure of particular documents.

In sum, it is our considered judgment that the time has come for the Senate to commence its investigation and public hearings into the remaining matters of inquiry specified in Senate Resolution 120. We pledge to do so in a manner that, to the greatest extent practicable, is sensitive to the concerns expressed in your September 27th letter.

Sincerely yours,

Paul S. Sarbanes
Ranking Member

Alfonse M. D’Amato
Chairman
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
534 Dirksen Building, Washington, D.C. 20510

- Main Number (202) 224-7391
- Fax (202) 224-5137

TO: Kenneth W. Starr, Esq.

NUMBER FAXED TO: 514-8802

FROM: Chairman D'Amato and Ranking Member Sarbanes

DATE: October 2, 1995

NUMBER OF PAGES. 4
(Including this cover sheet)

MESSAGE:

If you do not receive the specified number of pages, please contact sender at our main number. Thank you.
2 U.S.C. 190d, which directs all standing committees of the Congress to engage in continuous legislative oversight of the administration and application of laws within their respective jurisdictions, and "may require a Government agency" to assist in doing so. In 1955, the Attorney General of the United States opined that the authorization required by the Trade Secrets Act was "reasonably implied" under § 190d. A second source is the rules of each House authorizing committee oversight.

C. Accessing Information in Open and Closed Civil and Criminal Cases: The Special Problem of Overseeing the Justice Department

Congressional oversight of the conduct of civil and criminal enforcement matters by agencies, and most particularly the Department of Justice (DOJ), has raised sensitive questions respecting the exercise of prosecutorial discretion by the executive and interference with protected rights of individuals who may be the subject of such enforcement actions. However, a review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years, from the Palmer Raids and Teapot Dome to Watergate and through Iran-Contra and Rocky Flats, demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide the legal foundation for the broad congressional power of inquiry. All were contentious and involved Executive claims that committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy.

In the majority of instances reviewed, the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken formally or informally, and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, investigating committees were provided with documents respecting open or

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111 See notes, 13-20, supra, and accompanying text for a review of McGrain v. Daugherty and Sinclair v. United States.
closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations and the surveillance and arrests of suspects, and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar "sensitive" materials.

The reasons advanced by the Executive for declining to provide information to Congress about civil proceedings have included avoiding prejudicial pre-trial publicity, protecting the rights of innocent third parties, protecting the identity of confidential informants, preventing disclosure of the government’s strategy in anticipated or pending judicial proceedings, the potentially chilling effect on the exercise of prosecutorial discretion by DOJ attorneys, and precluding interference with the President’s constitutional duty to faithfully execute the laws.112

As has been recounted previously, the Supreme Court has repeatedly reaffirmed the breadth of Congress’ right to investigate the government’s conduct of criminal and civil litigation.113 The courts have also explicitly held that agencies may not deny Congress access to agency documents, even in situations where the inquiry may result in the exposure of criminal corruption or maladministration of agency officials. The Supreme Court has noted, "[B]ut surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding . . . or when crime or wrongdoing is exposed."114 Nor does the actual pendency of litigation disable Congress from the investigation of facts which have a bearing on that litigation, where the information sought is needed to determine what, if any, legislation should be enacted to prevent further ills.115

Although several lower court decisions have recognized that congressional hearings may have the result of generating prejudicial pre-trial publicity, they have not suggested that there are any constitutional or legal limitations on Congress’ right to conduct an investigation during the pendency of judicial proceedings. Instead, the cases have suggested approaches, such as granting a


113 See discussion of case law, supra at notes 2-8 and 13-20, and accompanying text.


continuance or a change of venue, to deal with the publicity problem. For example, the court in one of the leading cases, *Delaney v. United States*, entertained "no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it" but went on to describe the possible consequences of concurrent executive and congressional investigations:

We think that the United States is put to a choice in this matter: If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the United States must accept the consequences that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed.

The *Delaney* court distinguished the case of a congressional hearing generating publicity relating to an individual not under indictment at the time (as was Delaney):

Such a situation may present important differences from the instant case. In such a situation the investigative function of Congress has its greatest

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116 See e.g., *Delaney v. United States*, 199 F.2d 107 (1st Cir. 1952); *United States v. Mitchell*, 372 F.Supp. 1239, 1261 (S.D.N.Y. 1973). For discussion of issues in addition to prejudicial publicity that have been raised in regard to concurrent congressional and judicial proceedings, including allegations of violation of due process, see, *Contempt of Congress*, H.R. Rpt. No. 97-968, 97th Cong., 2d Sess. 58 (1982; and the discussion of the potential consequences of congressional grants of testimonial immunity on criminal trials, *supra*, at notes 57-67 and accompanying text.

117 199 F.2d 107, 114 (1st Cir. 1952). The court did not fault the committee for holding public hearings, stating that if closed hearings were rejected "because the legislative committee deemed that an open hearing at that time was required by overriding considerations of public interest, then the committee was of course free to go ahead with its hearing, merely accepting the consequence that the trial of Delaney on the pending indictment might have to be delayed." 199 F.2d at 114-5. It reversed Delaney's conviction because the trial court had denied his motion for a continuance until after the publicity generated by the hearing, at which Delaney and other trial witnesses were asked to testify, subsided. See also, *Hutcheson v. United States*, 369 U.S. 599, 613 (1962)(upholding contempt conviction of person who refused to answer committee questions relating to activities for which he had been indicted by a state grand jury, citing *Delaney.*
utility: Congress it is informing itself so that it may take appropriate legislative action; it is informing the Executive so that existing laws may be enforced; and it is informing the public so that democratic processes may be brought to bear to correct any disclosed executive laxity. Also, if as a result of such legislative hearing an indictment is eventually procured against the public official, then in the normal case there would be a much greater lapse of time between the publicity accompanying the public hearing and the trial of the subsequently indicted official than would be the case if the legislative hearing were held while the accused is awaiting trial on a pending indictment.\textsuperscript{118}

The absence of indictment and the length of time between congressional hearing and criminal trial have been factors in courts rejecting claims that congressionally generated publicity prejudiced defendants.\textsuperscript{119} Finally, in the context of adjudicatory administrative proceedings, courts on occasion have held that pressures emanating from questioning of agency decisionmakers by Members of Congress may be sufficient to undermine the impartiality of the proceeding.\textsuperscript{120} But the courts have also made clear that mere inquiry and oversight of agency actions, including agency proceedings that are quasi-adjudicatory in nature, will not be held to rise to the level of political pressure designed to influence particular proceedings that would require judicial condemnation.\textsuperscript{121}

\textsuperscript{118} 199 F.2d at 115.

\textsuperscript{119} See, Silverthorne v. United States, 400 F.2d 627 (9th Cir. 1968), cert. denied, 400 U.S. 102 (1971)(claim of prejudicial pretrial publicity rejected because committee hearings occurred five months prior to indictment); Beck v. United States, 298 F.2d 622 (9th Cir. 1962)(hearing occurred a year before trial); United States v. Holdeman, 559 F.2d 31, 63 (D.C. Cir. 1977), cert. denied, 433 U.S. 933 (1977); United States v. Ehrlichman, 546 F.2d 910, 917 (D.C. Cir. 1976), cert. denied, 429 U.S. 1120 (1977); United States v. Mitchell, 372 F.Supp. 1239, 1261 (S.D.N.Y. 1973)(post-indictment Senate hearing but court held that lapse of time and efforts of committee to avoid questions relating to indictment diminished possibility of prejudice); United States v. Mesarosh, 223 F.2d 449 (3rd Cir. 1955)(hearing only incidentally connected with trial and occurred after jury selected).

\textsuperscript{120} See, e.g., Pillsbury Co. v. FTC, 354 F.2d 952 5th Cir. (1966).

Thus, the courts have recognized the potentially prejudicial effect congressional hearings can have on pending cases. While not questioning the prerogatives of Congress with respect to oversight and investigation, the cases pose a choice for the Congress: congressionally generated publicity may result in harming the prosecutorial effort of the Executive; but access to information under secure conditions can fulfill the congressional power of investigation and at the same time need not be inconsistent with the authority of the Executive to pursue its case. Nonetheless, it remains a choice that is solely within Congress' discretion to make irrespective of the consequences.\(^{122}\)

In the past the executive frequently has made a broader claim that prosecution is an inherently executive function and that congressional access to information related to the exercise of that function is thereby limited. Prosecutorial discretion is seen as off-limits to congressional inquiry and access demands are viewed as interfering with the discretion traditionally enjoyed by the prosecutor with respect to pursuing criminal cases.

Initially, it must be noted that the Supreme Court has rejected the notion that prosecutorial discretion in criminal matters is an inherent or core executive function. Rather, the Court noted in *Morrison v. Olson*,\(^ {123}\) sustaining the validity of the appointment and removal conditions for independent counsels under the Ethics in Government Act, that the independent counsel's prosecutorial powers are executive in that they have "typically" been performed by Executive Branch officials, but held that the exercise of prosecutorial discretion is in no way "central" to the functioning of the Executive Branch.\(^ {124}\) The Court therefore rejected a claim that insulating the independent counsel from at-will presidential removal interfered with the President's duty to "take care" that the laws be faithfully executed. Interestingly, the *Morrison* Court took the occasion to reiterate the fundamental nature of Congress' oversight function ("... receiving reports or other information and oversight of the independent counsel's activities... [are] functions that we have recognized as generally incidental to the legislative function of Congress," citing *McGrain v. Daugherty*.)\(^ {126}\)

The breadth of *Morrison*'s ruling that the prosecutorial function is not an exclusive function of the Executive was made clear in a recent decision of the Ninth Circuit Court of Appeals in United States ex rel Kelly v. The Boeing Co.,\(^ {126}\) which upheld, against a broad based separation of powers attack, the

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\(^{122}\) See remarks of Independent Counsel Lawrence E. Walsh, *supra* n.66 and accompanying text.


\(^{124}\) *Id.* at 691-92.

\(^{125}\) *Id.* at 694.

\(^{126}\) 9 F.3d 743 (9th Cir. 1993).
constitutionality of the *qui tam* provisions of the False Claims Act vesting enforcement functions against agencies by private parties.\(^{127}\)

Prosecution, not being a core or exclusive function of the Executive, cannot claim the constitutional stature of Congress’ oversight prerogative. In the absence of a credible claim of encroachment or aggrandizement by the legislature of essential Executive powers, the Supreme Court has held the appropriate judicial test is one that determines whether the challenged legislative action "prevents the Executive Branch from accomplishing its assigned functions."

\(^{127}\) Boeing argued, *inter alia*, that Congress could not vest enforcement functions outside the Executive Branch in private parties. Applying *Morrison* the appeals court emphatically rejected the contention.

Before comparing the *qui tam* provisions of the FCA to the independent counsel provisions of the Ethics in Government Act, we must address Boeing’s contention that only the Executive Branch has the power to enforce laws, and therefore to prosecute violations of law. It is clear to us that no such absolute rule exists. *Morrison* itself indicates otherwise because that decision validated the independent counsel provisions of the Ethics in Government Act even though it recognized that "it is undeniable that the Act reduces the amount of control or supervision that the Attorney General and, through him, the President exercises over the investigation and prosecution of a certain class of alleged criminal activity." 487 U.S. at 695. The Court also stated in *Morrison* that "there is no real dispute that the functions performed by the independent counsel are ‘executive’ in the sense that they are law enforcement functions that typically have been undertaken by officials within the Executive Branch." 487 U.S. at 692 (emphasis added). Use of the world "typically" in that sentence, considered in light of the Court’s ultimate conclusion upholding the independent counsel provisions, must mean that prosecutorial functions need not always be undertaken by Executive Branch officials. See Stephanie A.J. Dangel, Note, *Is Prosecution a Core Executive Function? Morrison v. Olson and the Framers’ Intent*, 99 Yale L.J. 1069, 1070 (1990)(Framers intended that prosecution would be undertaken by but not constitutionally assigned to executive officials, and that such officials would typically but not always prosecute). *Thus, we reject Boeing’s assertion that all prosecutorial power of any kind belongs to the Executive Branch.*

9 F.3d at 751 (emphasis supplied).
and, if so, "whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." 128

Congressional oversight and access to documents and testimony, unlike the action of a court, cannot stop a prosecution or set limits on the management of a particular case. Access to information by itself would not seem to disturb the authority and discretion of the Executive Branch to decide whether to prosecute a case. The assertion of prosecutorial discretion in the face of a congressional demand for information is arguably akin to the "generalized" claim of confidentiality made in the Watergate executive privilege cases. That general claim -- lacking in specific demonstration of disruption of Executive functions -- was held to be overcome by the more focused demonstration of need for information by a coordinate branch of government. 129

Given the legitimacy of congressional oversight and investigation of the law enforcement agencies of government, and the need for access to information pursuant to such activities, a claim of prosecutorial discretion by itself would not seem to be sufficient to defeat a congressional need for information. The congressional action itself does not and cannot dictate prosecutorial policy or decisions in particular cases. Congress may enact statutes that influence prosecutorial policy and information relating to enforcement of the laws would seem necessary to perform that legislative function. Thus, under the standard enunciated in Morrison v. Olson and Nixon v. Administrator of General Services, the fact that information is sought on the Executive's enforcement of criminal laws would not in itself seem to preclude congressional inquiry.

In light of the Supreme Court's consistent support of the power of legislative inquiry, and in the absence of a countervailing constitutional prerogative of the Executive, it is likely that a court will be "sensitive to the legislative importance of congressional committees on oversight and investigations and recognize that their interest in the objective and efficient operation of ... agencies serves a legitimate and wholesome function with which we should not lightly interfere." 130

D. Access to Grand Jury Materials

Rule 6(e) of the Federal Rules of Criminal Procedure provides that members of the grand jury and those who attend the grand jury in its proceedings may not "disclose matters occurring before the grand jury, except as otherwise


130 Gulf Oil Corp. v. FPC, 563 F.2d 588, 610 (3d Cir. 1977).
TO: Brent Kavanaugh, OIC

NUMBER FAXED TO: 202/514-8802

FROM: Robert J. Giuffra

DATE: 3/20/95

NUMBER OF PAGES: 19
(Including this cover sheet)

MESSAGE: Here is the correspondence we discussed relating to the handling of papers in Vincent Foster's office following his death.

If you do not receive the specified number of pages, please contact sender at our main number. Thank you.
<table>
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<tr>
<th>Date</th>
<th>Description</th>
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<tr>
<td>June 22, 1994</td>
<td><strong>Letter from the Senate Banking Committee to Janet Reno, Attorney General of the United States</strong>, requesting all DOJ records, including all records of the FBI, that relate to, among other subjects, &quot;the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.&quot; The Committee also requested records relating to the handling of documents from the Treasury Department, the White House, the RTC and the U.S. Park Police.</td>
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<td>July 1, 1994</td>
<td><strong>Letter from the Senate Banking Committee to Robert B. Fiske, Jr., Office of the Independent Counsel</strong>, requesting all records that relate to, among other subjects, &quot;the way in which the White House officials handled documents in the office of Vincent Foster at the time of his death.&quot;</td>
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<td>July 1, 1994</td>
<td><strong>Letter from Lloyd N. Cutler, Special Counsel to the President, to the Senate Banking Committee</strong> in response to the Committee’s document request of June 22, 1994. The White House is producing documents previously gathered in response to subpoenas issued by Mr. Fiske. In accordance with the understanding reached at the June 29, 1994 meeting, White House staff members to whom the Committee made individual requests do not need to produce separately documents that they previously provided to the Office of White House Counsel in response to Mr. Fiske’s subpoenas. The White House production does not, however, include any personal documents that these individuals may have provided to Mr. Fiske.¹</td>
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<td>July 1, 1994</td>
<td><strong>Letter from Jeffrey D. Robinson, Deputy Assistant Attorney General, to the Senate Banking Committee</strong> in response to the Committee’s document request of June 22, 1994. Mr. Fiske will directly provide to the Committee DOJ documents generated in his investigation. DOJ will directly provide documents in its possession to the Committee only after Mr. Fiske has reviewed DOJ’s proposed production.</td>
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¹ Individual requests for documents were made to 12 present and former White House Staff members; only Betsy Pond, Office of the White House Counsel, and Patsy L. Thomasson, Special Assistant to the President, did not provide individual responses.
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<tr>
<td>July 5, 1994</td>
<td>**Letter from Timothy S. Elliott, Deputy Associate Solicitor, U.S.</td>
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<td><strong>Department of Interior, to Michael Davidson, Senate Legal</strong></td>
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<td><strong>Counsel</strong> in response to the Committee's document request of June</td>
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<td>22, 1994. Enclosed are certain U.S. Park Police records. Documents</td>
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<td>relating to the handling of documents by the White House, however,</td>
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<td>are not included. &quot;The Park Police advised the Independent Counsel</td>
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<td>they would not release documents that might interfere with any</td>
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<td>ongoing investigation being conducted by him. We understand Mr.</td>
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<td>Fiske still has under consideration matters that might implicate the</td>
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<td>handling of certain documents. We believe the documents in our files</td>
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<td>may be part of his investigation.&quot;</td>
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<td>July 11, 1994</td>
<td><strong>Letter from Robert B. Fiske, Jr., Independent Counsel, to the</strong></td>
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<td><strong>Senate Banking Committee</strong> in response to the Committee's document</td>
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<td>possession of the OIC pertaining to the completed investigation</td>
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<td>into the death of Vincent Foster. &quot;I cannot yet release to you records</td>
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<td>Vincent Foster because...the document investigation is ongoing.&quot;</td>
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<td>July 18, 1994</td>
<td><strong>Letter from John C. Keeney, Deputy Assistant attorney General,</strong></td>
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<td><strong>to the Senate Banking Committee</strong> in response to the Committee's</td>
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<td>document request of June 22, 1994. Enclosed are DOJ records relating</td>
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<td>to the death of Vincent Foster. This response does not include</td>
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<td>documents solely in the custody and control of Mr. Fiske. DOJ will</td>
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<td>produce documents relating to the handling of documents in the office</td>
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<td>determines that disclosure will not interfere with his ongoing</td>
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<td>investigation.&quot;</td>
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<td>July 27, 1994</td>
<td><strong>Letter from John C. Keeney, Deputy Assistant Attorney General,</strong></td>
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<td><strong>to the Senate Banking Committee</strong> regarding the DOJ's refusal to</td>
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<td>produce FBI documents relating to the handling of documents in the</td>
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<td>office of Vincent Foster at the time of his death. &quot;As stated</td>
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June 22, 1994

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Constitution Avenue and Tenth Street, N.W.
Washington, D.C. 20530

Dear Madam Attorney General:

On June 21, 1994, the Senate passed Senate Resolution 229, a copy of which is enclosed, directing the Committee on Banking, Housing, and Urban Affairs to conduct hearings on matters specified in the resolution. In preparation for the hearings, we are requesting that you provide to the Committee all Department of Justice records, including all records of the Federal Bureau of Investigation, in your custody, control, or possession, regardless of format, that relate in any manner to the following subjects:

(a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;

(b) the Park Service Police investigation into the death of Vincent Foster; and

(c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

To the extent that your office has gathered documents from individuals and locations throughout the Department, please indicate where and from whom each of those records was obtained. It would also be helpful if you provided a list of the records that you are submitting so that the Committee and your office have a common list of the records supplied by the Department of Justice.

The records should be delivered to Kelly Cordes, the Committee's Chief Clerk, 534 Dirksen Senate Office Building.
The Honorable Janet Reno
June 22, 1994
Page Two

As you know, Senate Resolution 229 provides that public hearings on this matter begin no later than July 29, 1994. Therefore, it is necessary that these documents be received by the Committee no later than July 1, 1994, and prior to that date, if possible. If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at 224-4435. This request is, of course, an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a Department of Justice official who will be responsible for responding to this request.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Alfonse D'Amato
Ranking Member

Donald W. Riegle, Jr.
Chairman

Enclosure
Robert B. Fiske, Jr.
Office of the Independent Counsel
1001 Pennsylvania Avenue, NW
Suite 490 North
Washington, D.C. 20037

Dear Mr. Fiske:

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(c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

Those records should be delivered to Kelly Cordes, the Committee’s Chief Clerk, 534 Dirksen Senate Office Building. As you know, Senate Resolution 229 provides that public hearings on this matter begin no later than July 29, 1994. Therefore, it is necessary that these documents be received by the Committee no later than July 11, 1994, and prior to that date, if possible. Please provide us, together with the delivery of documents, with a list of the records that you are submitting so that the Committee and you have a common list of the records supplied by you.

If you at one time had records on the matters listed above, but have provided them to someone else, please advise us in writing, by July 11, 1994, to whom you provided those records and furnish us a list of the records provided.
Robert B. Fiske, Jr.
July 1, 1994
Page Two

If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at (202) 224-4435. This request is, of course, an initial request and may be supplemented by additional ones.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Alfonse M. D’Amato
Ranking Member

Donald W. Niegé, Jr.
Chairman

Enclosure
July 1, 1994

The Honorable Donald W. Riegle, Jr.
The Honorable Alfonso M. D'Amato
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Senate Dirksen Office Building
Washington, D.C. 20510-6075

Dear Chairman Riegle and Senator D'Amato:

By cover of this letter, the White House is producing documents responsive to the requests made in your letter of June 22, 1994. As indicated in a meeting with your staff on July 29, 1994, the documents we are producing in response to your enumerated requests are from the set of documents previously gathered by the White House in response to subpoenas issued by Independent Counsel Robert Fiske. We have withheld a small number of responsive documents until we conclude arrangements for their special handling.

In accordance with the understanding reached at the July 29 meeting, we have directed White House staff members to whom the Committee made individual requests that they need not separately produce documents they previously provided to the Office of White House Counsel in response to Mr. Fiske's subpoenas. Those documents are included in the White House production. The White House production does not include any personal documents that these individuals may have provided to Mr. Fiske.

We are also producing written policies requested by the Committee that have been issued by the White House Chief of Staff or the White House Counsel's Office concerning communications between White House officials and officials in departments and agencies and at law enforcement entities.

As you requested, we are providing a list that identifies each document produced and its source.
The White House is making this document production with the understanding that, until the time of the Senate Banking Committee hearing:

(1) the documents will be treated as if they are classified material;

(2) they will be maintained in a secure reading room that is guarded or locked at all times;

(3) access to the documents will be limited to Committee Members, one or two designated members of the staff of each Committee Member, Mr. Codinhia and his staff, and Mr. Chertoff and his staff;

(4) all staff members will be required to sign an appropriate confidentiality agreement before being given access to the documents;

(5) documents will be maintained in a safe within the reading room; Messrs. Codinhia and Chertoff and one additional person from each of their staffs will be the only individuals with the combination to the safe;

(6) documents will not be copied or removed from the room except for the limited purpose of temporary use at a deposition or interview;

(7) deposition transcripts will be treated in the same manner as documents;

(8) there will be two stand-alone computers in the reading room for use by staff; no print-outs may be taken out of the room.

We look forward to working cooperatively with your Committee on this matter.

Sincerely yours,

Lloyd N. Cutler
Special Counsel to the President
Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, D.C. 20510

Honorable Alfonse M. D'Amato
Ranking Member
Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator D'Amato:

This is in response to your letter of June 22, 1994 to Attorney General Reno requesting that the Committee be provided documents relating to the following subjects:

(a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;

(b) the Park Service Police investigation into the death of Vincent Foster; and

(c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

Representatives of the Department met today with majority and minority staff of the Committee and Senate Counsel Michael Davidson concerning production of these materials. It was noted that documents generated in the investigation of these matters by Independent Counsel Robert B. Fiske, Jr. would be provided directly to the Committee by Mr. Fiske. Documents in the possession of Department would be provided by the Department.
The Department has set July 11 as its goal for production of the documents. But as was noted at the meeting, Mr. Fiske will review our proposed production to assure it will not interfere with his investigation. We hope to adhere as closely as possible to the target date.

Sincerely,

[Signature]

Jeffrey D. Robinson
Deputy Assistant Attorney General
United States Department of the Interior

OFFICE OF THE SOLICITOR

Michael Davidson, Esq.
Senate Legal Counsel
United States Senate
Washington, DC

JUL 5 1994

Dear Mr. Davidson:

Enclosed with this letter, as I discussed with Ms. Beth O’Neill-Maloney on the telephone today, are certain of the records of the United States Park Police. These records are being provided in response to the request from the Committee on Banking of the United States Senate and dated June 22, 1994. We will supply a list of the documents released herewith no later than July 6, 1994.

As I advised, we are not releasing at this time the following information or types of information:

1) photocopies of the "handwritten" note
2) records pertaining to the handling of documents by the White House
3) photographs, or copies thereof, of Vincent Foster’s body at the death scene
4) photographs, or copies thereof, of the body taken during the autopsy

While we are prepared to discuss all of these documents at your convenience, nos. 1, 3, and 4 above would, in our opinion, result in an unwarranted invasion of the personal privacy of the Foster family. They have not to our knowledge been released outside of the Executive Branch. Furthermore, we are protecting them in pending litigation under the Freedom of Information Act.

As for no. 2, we have either removed from the copies being provided to you, or noted on relevant pages those documents as being 7(A). The Park Police advised the Independent Counsel they would not release documents that might interfere with any ongoing investigation being conducted by him. We understand Mr. Fiske still has under consideration matters that might implicate the handling of certain documents. We believe the documents in our files may be part of his investigation; therefore, in keeping with our commitment, we have not included them in this package.

In addition, we have deleted the names of certain persons who were at, or near, Fort Marcy when Mr. Foster’s body was discovered. Again, while we are prepared to discuss these, we are concerned for the privacy of the individuals since neither their names or other identifying information have been made public. Those witnesses were interviewed by the Park Police and are not mentioned by name.

We have not included copies of the contents of Mr. Foster's wallet. These are personal items, most of which were listed generically in the Independent Counsel's Report. The only added information photocopies would reveal are details such as PIN numbers, shopping habits, and charge card numbers.

Finally, we are not producing documents we believe to be substantively within the purview of another agency. We are attempting to determine from those agencies whether they might object to the release of their documents. As soon as we hear from them, we will advise you and produce copies of their documents, as appropriate.

While we have not deleted the names or other information that might identify law enforcement officers (whose names were not included in the Independent Counsel's Report), we have put brackets around the information. This is to alert you to the fact that we are protecting it in the FOIA litigation, in accordance with case law allowing the withholding of such information under FOIA. We would appreciate you understanding of this, and ask that, if you receive a request for the bracketed information, you provide us with the opportunity to respond or advise you of its continued sensitivity. Furthermore, should you believe you must release such information, we would like notice in advance of such a release.

We look forward to our meeting to discuss further the documents you have sought and how we may further assist you.

Sincerely,

[Signature]

Timothy S. Elliott
Deputy Associate Solicitor

Enclosure
July 11, 1994

Donald W. Riegle, Jr.
Chairman
United States Senate
Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20510

Alfonse M. D'Amato
Ranking Member
United States Senate
Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20510

Dear Senators Riegle and D'Amato:

Pursuant to your request of July 1, 1994, enclosed please find copies of records in the possession of the Office of the Independent Counsel ("OIC") pertaining to the completed investigation(s) into (1) the death of Vincent W. Foster, Jr., and (2) communications between officials of the White House and the Department of the Treasury or Resolution Trust Corporation. As we have discussed, I cannot yet release to you records pertaining to the possible mishandling of documents in the office of Vincent Foster because, unlike the two aforementioned investigations, the document investigation is ongoing. As you also know, under Federal Rule of Criminal Procedure 6(e), I cannot produce to you any record pertaining to any of the three investigations if it involves matters presented to the Grand Jury.

Much of the material provided to you today is in the form of "FBI FD-302s" -- records of witness interviews conducted by FBI agents and attorneys on my staff. In an effort to expedite a production to you and to avoid needless repetition, I am not at this time producing the "backup" to these forms -- handwritten notes of the agents, memos to file, communications between members of my staff, or other material that reflects the deliberative process of this Office or is traditionally protected attorney work product. I am similarly not producing documents that I know are being produced to you from their original sources and documents such as newspaper articles that are publicly available.
I have attempted to release as much information as is possible today. In many instances, witnesses were interviewed on more than one topic, and the records of their interviews have had to be redacted to the extent that they reflect either Grand Jury or ongoing investigation material. In the interest of expediency, to the extent that a record consists primarily of such material, it is being withheld in its entirety at this time.

Out of respect and consideration for the Foster family and in appreciation of the witnesses who came forward despite great hesitancy to become involved in this investigation, I have redacted certain names and descriptive information from the FBI FD-302s, and withheld the original note found in Mr. Foster's office and photographs taken on July 20, 1993 at the scene of his death. I am sure you will appreciate their need for privacy as much as I, and I understand that all materials released to you today will be afforded the same security procedures as those produced to you by the Department of the Interior.

Finally, it has recently come to my attention that some records responsive to your request might already be in an FBI storage facility in Virginia. My office is looking into this, and if necessary, I will supplement this production. If you have any questions, please feel free to contact me at (202) 514-8688.

Respectfully yours,

Robert B. Fiske, Jr.
Independent Counsel

* Large aerial photographs of Ft. Marcy Park are available for viewing at the OIC, should you so desire.
July 18, 1994

Donald W. Riegle, Jr., Chairman
Alfonse M. D’Amato, Ranking Member
United States Senate
Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20510

Dear Senators Riegle and D’Amato:

Enclosed are Department of Justice records responsive to part (b) of your June 22, 1994 request relating to the Park Police investigation into the death of Vincent Foster. This response covers all Department of Justice components, but does not include documents solely in the custody and control of Independent Counsel Robert B. Fiske, Jr. The enclosed documents were produced from the Office of the Deputy Attorney General. We understand that you have obtained copies of the Park Police report and related Park Police records from the Department of the Interior; therefore, the Department of Justice has not provided additional copies of those records.

The Department will produce documents responsive to part (c) of your request as soon as Mr. Fiske determines that disclosure will not interfere with his ongoing investigation into the handling of documents in Vincent Foster's office. The Department has no documents responsive to part (a) of your request.

We have not construed your request to seek copies of other requests for documents. Thus, we have not produced FOIA requests and the like, departmental responses, or other documents relating to ongoing FOIA litigation. To the extent that newscuttings maintained by Department employees could be deemed responsive to the Committee's request, you should be aware that the Department provides a cuttings service through the Office of Public Affairs and back cuttings are available through that office. You and your staff are welcome to review the cuttings. We have provided copies of cuttings only if they are attached to a responsive document or otherwise contain responsive markings or notes.

We have redacted very limited information, consisting mainly of home addresses and telephone numbers, because of the concern for the privacy of persons named. Please feel free to contact me if you would like to review the redacted information. By
producing these materials to the Committee, the Department of Justice does not intend to waive any claims it may otherwise raise pursuant to FOIA.

If you have any questions, please feel free to contact me.

Sincerely,

John C. Keeney
Deputy Assistant Attorney General

Enclosures
July 27, 1994

Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, D.C. 20510

Honorable Alfonse M. D'Amato
Ranking Member
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator D'Amato:

This responds to your letter dated July 19, 1994, received by the Department on July 26, 1994, regarding the Department of Justice's production of documents in response to part (b) of the Committee's June 22, 1994 request. The Department's response covered all of its components, including the FBI. Other than duplicates of documents, the Department has turned over all documents in its possession that relate solely to the Park Service Police investigation into the death of Vincent Foster.

The Department has not turned over documents (including documents from the FBI and documents from the Office of the Deputy Attorney General) pursuant to part (c) of your request relating "to the way in which White House officials handled documents in the office of Vincent Foster at the time of his death." That subject remains part of the ongoing investigation by Independent Counsel Robert B. Fiske, Jr. After receiving your letter, we again reviewed the documents collected from the FBI. Although the FBI was involved in the early stages of the investigation into the death of Vincent Foster, the FBI reports relate also to the issue of the handling of the documents in Vincent Foster's office. As stated previously, the Department will produce these documents as soon as Mr. Fiske determines that disclosure will not interfere with his ongoing investigation.

In response to your question as to where in the Department Park Police records were located, the following components had copies of Park Police records: Office of the Deputy Attorney
General; Executive Secretariat Office; Office of Professional Responsibility; the Criminal Division; and the FBI.

If you have any questions, please feel free to contact me.

Sincerely,

John C. Keeney
Deputy Assistant Attorney General