

Foster Death - Special Division

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August 21, 1997

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

RE: Report of Death on Vincent W. Foster, Jr.

Dear Ms. Langer:

In response to your letter of July 25, 1997, pertaining to the report prepared by Independent Counsel Starr on the death of Vincent W. Foster, Jr., I hereby waive my rights to examine portions of the Report. Therefore, I will not be submitting any additions, deletions or amendments to be placed in the Report.

Sincerely,

A handwritten signature in black ink that reads "J.C. Beyer".

James C. Beyer, M.D.
Deputy Chief Medical Examiner

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ALSO ADMITTED IN VIRGINIA
AND MARYLAND

July 29, 1997

United States Court of Appeals
For the District of Columbia Circuit (202) 822-8820

FILED JUL 29 1997

Special Division

The Honorable David B. Sentelle
The Honorable John C. Butzner
The Honorable Peter T. Fay
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Division 94-1 for the Purpose of
Appointing Independent Counsels

Re: *In re: Madison Guaranty
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Request to include comments and factual
information, pursuant to the Ethics in
Government Act of 1978, As Amended, to the
Report on the Death of Vincent Foster, Jr.*

Dear Sirs:

Pursuant to 28 U.S.C. § 594(h)(2), Patrick Knowlton respectfully requests that this letter be appended to Mr. Starr's Report of the Death of Vincent Foster, Jr., "[t]o assure that the report is full and complete and to afford [him] a measure of fairness."¹

Facts. While heading home in heavy traffic on the George Washington Memorial Parkway, and facing over a two hour commute, Patrick Knowlton pulled into Fort Marcy Park at 4:30 p.m. on July 20th, 1993, to relieve himself. Patrick parked close to the footpath entrance into the park, between the only two cars in the small parking lot, which were parked just four spaces apart.

To Patrick's left was parked an unoccupied mid-1980s rust-brown four-door Honda sedan with Arkansas tags (closest

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As he started from his car toward the footpath, Patrick heard the blue-gray sedan's door open. Apprehensive, Patrick walked to the sign bordering the footpath entrance to the park and feigned to read its historical information while nonchalantly glancing to his right to see if the man was approaching. He saw the man leaning on the roof of the driver's side of his blue-gray sedan, watching him intently. Patrick then cautiously proceeded 75 feet down the footpath's left fork to the first large tree, in the opposite direction from which Mr. Foster's body was later recovered.

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The following evening, Patrick saw on the news for the first time that Vincent Foster had been found dead at Fort Marcy Park, so he telephoned the U.S. Park Police and reported what he had seen. Nine months later, FBI Special Agent Larry Monroe interviewed him. Monroe subsequently wrote in his reports of those interviews that Patrick "identified this particular vehicle [Honda] as a 1988-1990...", and that Patrick "reiterated his description of this Honda as a 1988-1990." This information was false and known to be false.²

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Two days later, on Tuesday, October 24, the paper reached American newsstands. That day, Mr. Starr's office prepared a subpoena summoning Patrick to testify before the Whitewater grand jury in this courthouse on November 1, 1995. Two days after that, Thursday, October 26, FBI agent Russell Bransford served the secret grand jury subpoena.³

Beginning that same day he was subpoenaed, and continuing into the following day, Patrick was harassed by at least 25 men. The intimidation began at around 7:20 p.m., when Patrick and his girlfriend, Kathy, walked from his home in the Foggy Bottom neighborhood to the Dupont Circle neighborhood, and back. During that time, eleven or more men walked towards him, or came at him from behind.

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Experts tell us that the technique is known to federal intelligence and investigative agencies, and that its objects were twofold: (i) to intimidate and warn Patrick in connection with his grand jury testimony; and failing that, (ii) to destabilize him and discredit his testimony before the grand jury.

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participation began early,⁷ was significant,⁸ and continued after the U.S. Park Police investigation was closed.⁹ Mr. Fiske's Report was little more than a summary of an FBI investigation.¹⁰ Thus, the only substantive investigations into the case, with the sole exception of the U.S. Park

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Police investigation (conducted with FBI participation), were conducted by the FBI.¹¹ The underlying record upon which the Fiske Report was based is replete with evidence of an FBI cover-up.¹² Inasmuch as Patrick was subpoenaed then harassed and intimidated 15 months after Mr. Starr first employed the FBI, it is readily apparent that Mr. Starr's Foster death investigation also heavily relied upon the FBI.

Standing. Mr. Starr's use of the FBI (and many of the same agents detailed to Mr. Fiske) in his investigation into Mr. Foster's death undermines a fundamental purpose of the Ethics in Government Act, to preserve and promote public confidence in the integrity of the federal government by maintaining the appearance that justice has been done.¹³ Any

¹¹ There have been no other official investigations other than a eight page "Summary Report" issued by Representative William Clinger on August 12, 1994. The 1994 Senate Banking committee was precluded by the limited authority of Resolution 229 from independently exploring of the issue of how or where Mr. Foster died. Senator D'Amato's committee did not explore these issues.

¹² Patrick's lawsuit in this District Court (No. 96-2467) alleges liability for *inter alia*, violation of 42 U.S.C. § 1985, "...Obstructing justice; intimidating... witness..." Much evidence of conspiracy to obstruct justice during Fiske's investigation is documented in that suit, e.g., "(2) The FBI removed evidence from Mr. Foster's desk... (3) The FBI concealed that significant irregularities occurred during the U.S. Park Police investigation... (7) The FBI knew that Mrs. Foster could not identify the black... revolver... so the agents showed her a silver gun and then falsely reported that she identified the gun found... (8) ...concealed that an automatic pistol was found in Mr. Foster's hand before the revolver was placed in his hand... (13) Fiske ignored that it is inconceivable for the glasses... location where they were found; (14) The FBI Laboratory concealed that the 35 millimeter roll of film taken apparently produced usable photographs and... concealed that many of the Polaroids... vanished... (18) The FBI knew Mr. Foster had gained weight, but reported he lost weight... (20) The FBI lab reported that the 'suicide note' was written by Mr. Foster, but it was forged."

¹³ Because of the initial FBI conclusion of "no criminal activity" in July of 1993, FBI agents who worked for Mr. Fiske would necessarily have embarrassed the Bureau had they concluded otherwise. And once the agents reported to Mr. Fiske that there was no criminal activity, there could be no abandonment of the FBI's repeated conclusion of suicide in Fort Marcy Park without a horrendous embarrassment to the FBI and possible criminal exposure to the FBI agents detailed to Mr. Fiske's investigation, some of whom subsequently were also detailed to Mr. Starr's investigation.

failure of the OIC to name Patrick in the Report would be a conspicuous attempt to thwart the legislative purpose of 28 U.S.C. § 594(h)(2), "[t]o assure that the report is full and complete and to afford [him] a measure of fairness,"¹⁴ and would not prevent the Division of the Court, in its discretion, from granting him the relief requested, to append a copy of this letter with attachments to the subject Report.¹⁵

Conclusion. Because Patrick did not heed the warning regarding his grand jury testimony and continued to tell the truth, including the truth of the *bizarre* harassment he suffered, his testimony was discredited. Patrick was harassed in an effort to set him up to look unbalanced or dishonest. Since that time, he has been defamed by numerous individuals, most of whom are journalists. He has been attacked as a delusional conspiracy theorist, a homosexual, and as an outright liar. Patrick has been fighting to reestablish his credibility for the past 21 months.¹⁶ Patrick did nothing to deserve this outrageous treatment at the hands of the OIC and its FBI agents. He did nothing to deserve being yanked into this FBI debacle, having his life turned upside down, and having to endure this fight for his reputation. Patrick only "crime" was reporting to the

¹⁴ In re North, 10 F.3rd 831, 835 (D.C. Cir. 1993).

¹⁵ In construing statutes, courts should consider the "mischief" Congress was seeking to alleviate Liberation News Service v. Eastland (1970, CA2 NY) 426 F2d 1379; the primary function of the courts in construing legislation is to effectuate the legislative intent. Re Arnett (1984, CA6 Tenn) 731 F2d 358.

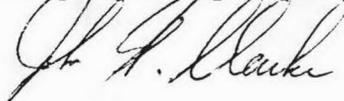
¹⁶ Efforts Patrick has undertaken to establish his credibility include, *inter alia*, undergoing a polygraph examination; undergoing an extensive psychiatric examination including psychological testing; giving a sworn statement; obtaining sworn Affidavits of other witnesses; assembling and publishing these documents (and photographs of two of the men who harassed him) along with a detailed description of the harassment he suffered in a 147 page Report; hand-delivering a personalized letter to the offices of every member of Congress; hand-delivering a follow-up personalized letter to the offices of every Congressperson on committees having jurisdiction over the matter; avoiding affiliation with organizations known to be opposed to the Clinton administration; avoiding obtaining funding from conservative organizations in order to avoid any appearance of political motivation or influence; and filing his Complaint under seal of Court on October 24, 1996 because press reports of his claims on the eve of the presidential election would further undermine his credibility by the appearance of political motivation or influence.

authorities what he had seen at Fort Marcy Park -- consistent with his understanding of his duties as a good citizen.

The OIC employed a federal investigative agency with a powerful vested interest in a finding of no criminal activity in the final federal investigation into Mr. Foster's death.¹⁷ In light of evidence of a cover-up which implicates this very federal agency, such employment maintains the appearance that justice has *not* been done. A denial of the relief Patrick requests would augment the appearance of justice having not been done, and would further frustrate legislative intent.

Patrick respectfully asks that the Division of the Court exercise its discretion and grant the relief he prays for. Patrick should not have to go through the rest of his life labeled as a liar or some kind of nut. He has no remedy at law for injury to his reputation causally related to the subject investigations. Patrick Knowlton merely seeks to establish that he is telling the truth and that he is mentally stable.

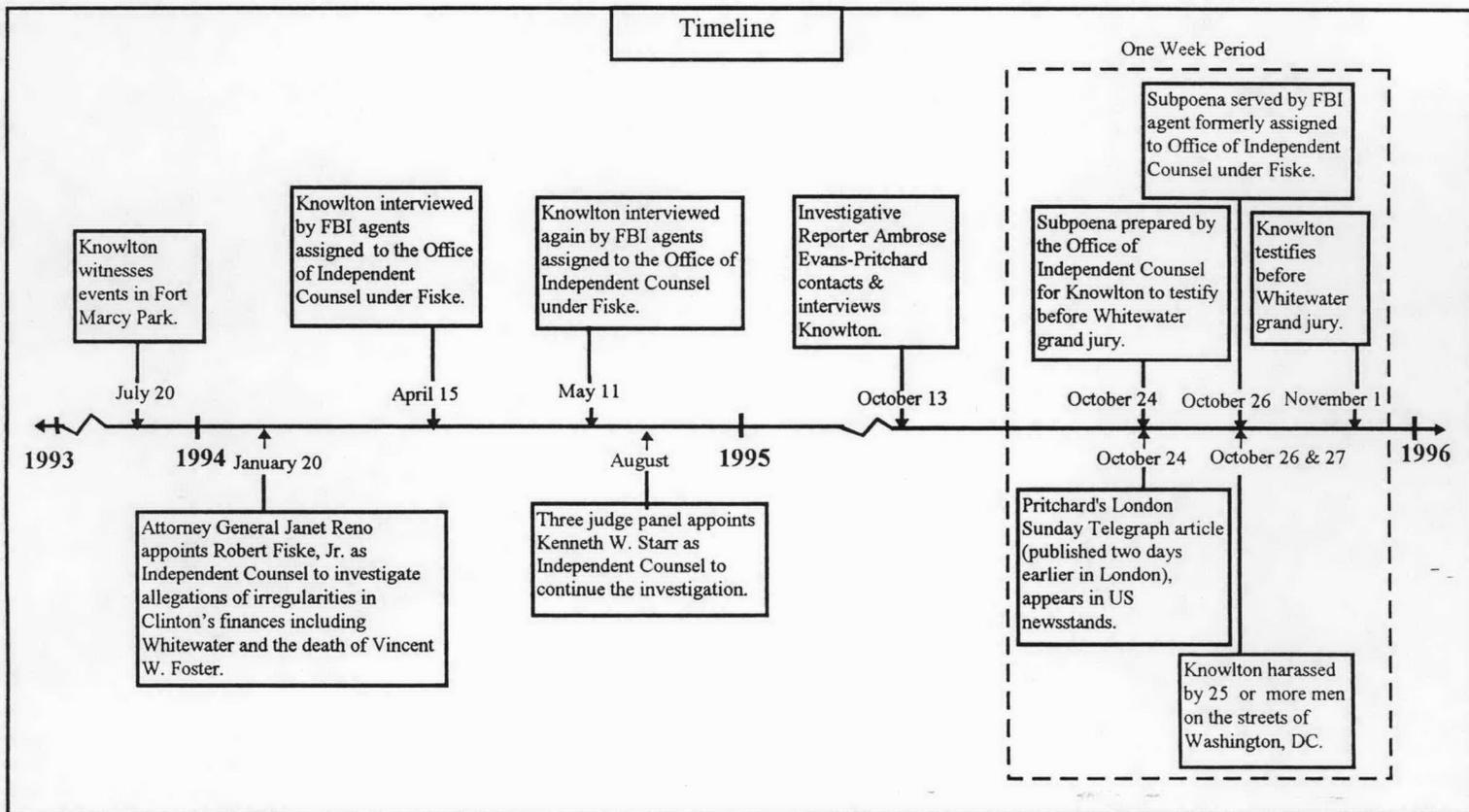
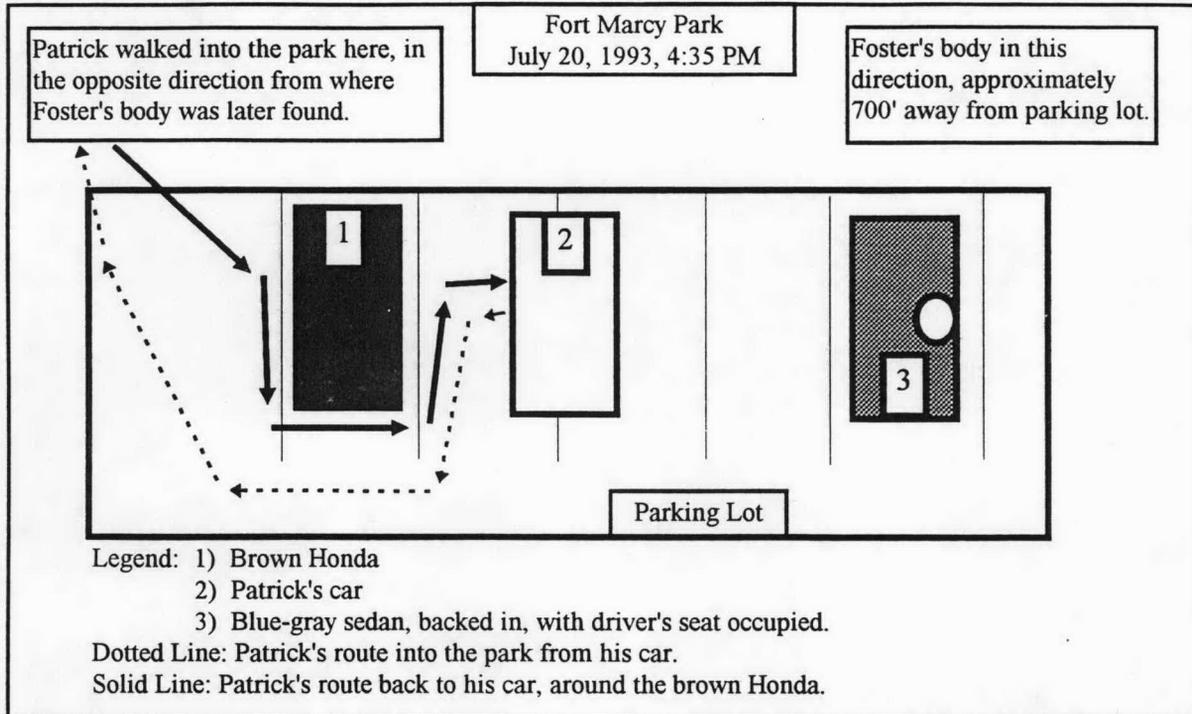
Respectfully submitted,



John H. Clarke

¹⁷ The subject Report is undoubtedly nothing more than another layer of an FBI cover-up. It probably contains further evidence of a cover-up by the FBI laboratory, and it likely reports that subsequent FBI interviews of key park witnesses demonstrates that they now admit that they "could have" been wrong about events they reported 18 months earlier.

Mr. Starr's use of the FBI was probably motivated in part by the discontinuance of the Justice Department's practice of requiring reimbursement agreements from independent counsels for their use of Justice Department resources (including the FBI laboratory and FBI agents). See Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.C.A.N. (101 Stat. 1293) p. 2172: "Congress intended the Justice Department to provide independent counsels with the same assistance it provides to its other high-priority, federal criminal cases... federal agencies are instructed to ~~discontinue~~ the practice of requiring reimbursement agreements..."



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Standing. Mr. Starr's use of the FBI (and many of the same agents detailed to Mr. Fiske) in his investigation into Mr. Foster's death undermines a fundamental purpose of the Ethics in Government Act, to preserve and promote public confidence in the integrity of the federal government by maintaining the appearance that justice has been done.¹³ Any

¹¹ There have been no other official investigations other than a eight page "Summary Report" issued by Representative William Clinger on August 12, 1994. The 1994 Senate Banking committee was precluded by the limited authority of Resolution 229 from independently exploring of the issue of how or where Mr. Foster died. Senator D'Amato's committee did not explore these issues.

¹² Patrick's lawsuit in this District Court (No. 96-2467) alleges liability for *inter alia*, violation of 42 U.S.C. § 1985, "...Obstructing justice; intimidating... witness..." Much evidence of conspiracy to obstruct justice during Fiske's investigation is documented in that suit, e.g., "(2) The FBI removed evidence from Mr. Foster's desk... (3) The FBI concealed that significant irregularities occurred during the U.S. Park Police investigation... (7) The FBI knew that Mrs. Foster could not identify the black... revolver... so the agents showed her a silver gun and then falsely reported that she identified the gun found... (8) ...concealed that an automatic pistol was found in Mr. Foster's hand before the revolver was placed in his hand... (13) Fiske ignored that it is inconceivable for the glasses... location where they were found; (14) The FBI Laboratory concealed that the 35 millimeter roll of film taken apparently produced usable photographs and... concealed that many of the Polaroids... vanished... (18) The FBI knew Mr. Foster had gained weight, but reported he lost weight... (20) The FBI lab reported that the 'suicide note' was written by Mr. Foster, but it was forged."

¹³ Because of the initial FBI conclusion of "no criminal activity" in July of 1993, FBI agents who worked for Mr. Fiske would necessarily have embarrassed the Bureau had they concluded otherwise. And once the agents reported to Mr. Fiske that there was no criminal activity, there could be no abandonment of the FBI's repeated conclusion of suicide in Fort Marcy Park without a horrendous embarrassment to the FBI and possible criminal exposure to the FBI agents detailed to Mr. Fiske's investigation, some of whom subsequently were also detailed to Mr. Starr's investigation.

failure of the OIC to name Patrick in the Report would be a conspicuous attempt to thwart the legislative purpose of 28 U.S.C. § 594(h)(2), "[t]o assure that the report is full and complete and to afford [him] a measure of fairness,"¹⁴ and would not prevent the Division of the Court, in its discretion, from granting him the relief requested, to append a copy of this letter with attachments to the subject Report.¹⁵

Conclusion. Because Patrick did not heed the warning regarding his grand jury testimony and continued to tell the truth, including the truth of the *bizarre* harassment he suffered, his testimony was discredited. Patrick was harassed in an effort to set him up to look unbalanced or dishonest. Since that time, he has been defamed by numerous individuals, most of whom are journalists. He has been attacked as a delusional conspiracy theorist, a homosexual, and as an outright liar. Patrick has been fighting to reestablish his credibility for the past 21 months.¹⁶ Patrick did nothing to deserve this outrageous treatment at the hands of the OIC and its FBI agents. He did nothing to deserve being yanked into this FBI debacle, having his life turned upside down, and having to endure this fight for his reputation. Patrick only "crime" was reporting to the

¹⁴ In re North, 10 F.3rd 831, 835 (D.C. Cir. 1993).

¹⁵ In construing statutes, courts should consider the "mischief" Congress was seeking to alleviate Liberation News Service v. Eastland (1970, CA2 NY) 426 F2d 1379; the primary function of the courts in construing legislation is to effectuate the legislative intent. Re Arnett (1984, CA6 Tenn) 731 F2d 358.

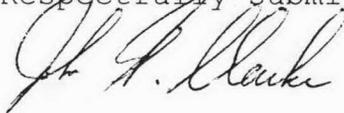
¹⁶ Efforts Patrick has undertaken to establish his credibility include, *inter alia*, undergoing a polygraph examination; undergoing an extensive psychiatric examination including psychological testing; giving a sworn statement; obtaining sworn Affidavits of other witnesses; assembling and publishing these documents (and photographs of two of the men who harassed him) along with a detailed description of the harassment he suffered in a 147 page Report; hand-delivering a personalized letter to the offices of every member of Congress; hand-delivering a follow-up personalized letter to the offices of every Congressperson on committees having jurisdiction over the matter; avoiding affiliation with organizations known to be opposed to the Clinton administration; avoiding obtaining funding from conservative organizations in order to avoid any appearance of political motivation or influence; and filing his Complaint under seal of Court on October 24, 1996 because press reports of his claims on the eve of the presidential election would further undermine his credibility by the appearance of political motivation or influence.

authorities what he had seen at Fort Marcy Park -- consistent with his understanding of his duties as a good citizen.

The OIC employed a federal investigative agency with a powerful vested interest in a finding of no criminal activity in the final federal investigation into Mr. Foster's death.¹⁷ In light of evidence of a cover-up which implicates this very federal agency, such employment maintains the appearance that justice has *not* been done. A denial of the relief Patrick requests would augment the appearance of justice having not been done, and would further frustrate legislative intent.

Patrick respectfully asks that the Division of the Court exercise its discretion and grant the relief he prays for. Patrick should not have to go through the rest of his life labeled as a liar or some kind of nut. He has no remedy at law for injury to his reputation causally related to the subject investigations. Patrick Knowlton merely seeks to establish that he is telling the truth and that he is mentally stable.

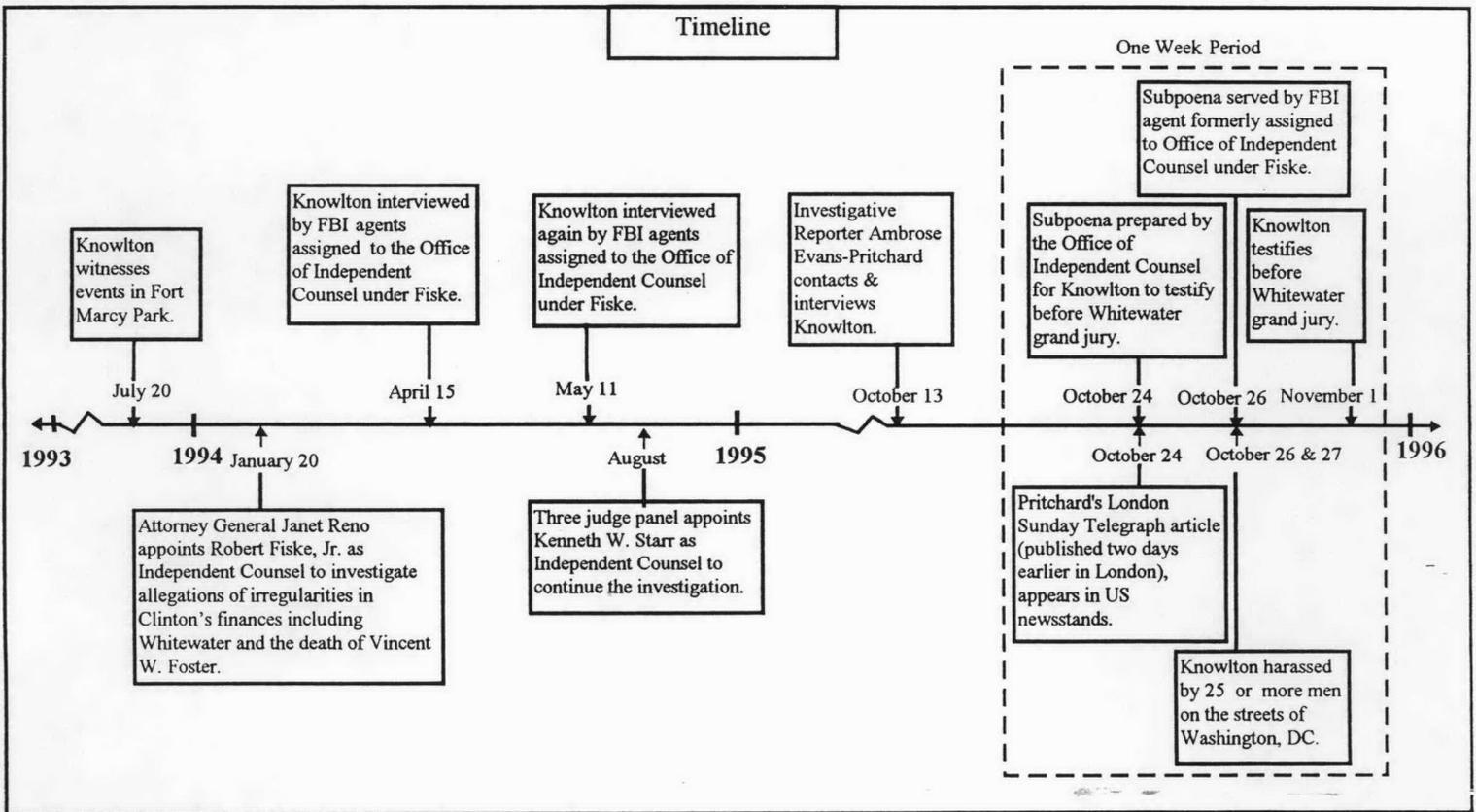
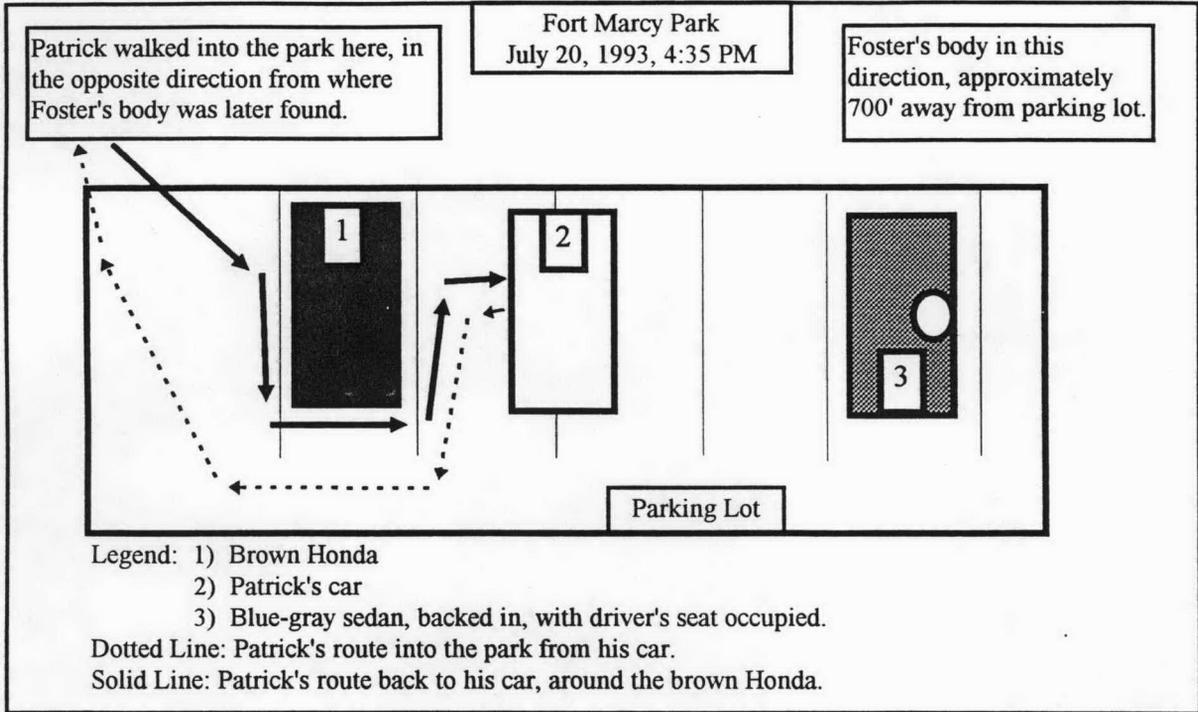
Respectfully submitted,



John H. Clarke

¹⁷ The subject Report is undoubtedly nothing more than another layer of an FBI cover-up. It probably contains further evidence of a cover-up by the FBI laboratory, and it likely reports that subsequent FBI interviews of key park witnesses demonstrates that they now admit that they "could have" been wrong about events they reported 18 months earlier.

Mr. Starr's use of the FBI was probably motivated in part by the discontinuance of the Justice Department's practice of requiring reimbursement agreements from independent counsels for their use of Justice Department resources (including the FBI laboratory and FBI agents). See Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.A.N. (101 Stat. 1293) p. 2172: "Congress intended the Justice Department to provide independent counsels with the same assistance it provides to its other high-priority, federal criminal cases... federal agencies are instructed to discontinue the practice of requiring reimbursement agreements..."



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September 23, 1997

The Honorable David B. Sentelle
The Honorable John C. Butzner
The Honorable Peter T. Fay
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Division 94-1 for the Purpose of
Appointing Independent Counsels

Re: *In re: Madison Guaranty
Savings & Loan Association
Patrick James Knowlton -
Request to include comments and factual
information, pursuant to the Ethics in
Government Act of 1978, As Amended, to the
Report on the Death of Vincent Foster, Jr.*

Dear Sirs:

Pursuant to 28 U.S.C. § 594(h)(2), Patrick Knowlton respectfully requests that this letter be appended to Mr. Starr's Report of the Death of Vincent Foster, Jr., "[t]o assure that the report is full and complete and to afford [him] a measure of fairness."¹

Facts. While heading home in heavy traffic on the George Washington Memorial Parkway, and facing over a two hour commute, Patrick Knowlton pulled into Fort Marcy Park at 4:30 p.m. on July 20th, 1993, to relieve himself. Patrick parked close to the main footpath entrance into the park, between the only two cars in the small parking lot, which were parked just four spaces apart.

To Patrick's left was parked an unoccupied mid-1980s rust-brown four-door Honda sedan with Arkansas tags (closest

¹ In re North, 10 F.3rd 831, 835 (D.C. Cir. 1993).

to the footpath entrance), and on his right was a late model metallic blue-gray sedan, backed into its parking space. A man was seated in the driver's seat of the blue-gray sedan. Immediately after Patrick parked, the man lowered the passenger side electric window and stared at him, menacingly. This unnerved Patrick as he exited his car.

As he started from his car toward the footpath, Patrick heard the blue-gray sedan's door open. Apprehensive, Patrick walked to the sign bordering the footpath entrance to the park and feigned to read its historical information while nonchalantly glancing to his right to see if the man was approaching. He saw the man leaning on the roof of the driver's side of his blue-gray sedan, watching him intently. Patrick then cautiously proceeded 75 feet down the footpath's left fork to the first large tree, in the opposite direction from which Mr. Foster's body was later recovered.

As he relieved himself, Patrick heard the man close his car door. Because the foliage was dense, he couldn't see the parking lot and hoped the man wasn't approaching. As Patrick walked back to the parking lot with a heightened sense of awareness, he scanned the lot but did not see the man. Patrick surmised that the man had either gotten back in his car or perhaps could even be crouching between the brown Honda and Patrick's car preparing to attack him.

In order to maintain his distance from the space between the two cars until he learned the man's whereabouts, Patrick walked directly toward the driver's side door of the brown Honda, and then around the back of it. As Patrick reached the driver's side door of the brown Honda, he looked through the window. He also looked into the back seat as he walked the length of the car. He saw a dark colored suit jacket draped over the driver's seat, a briefcase on the front passenger's seat, and two bottles of wine cooler on the back seat. As he reached the back of the Honda, Patrick was relieved to see that the man had returned to his own vehicle. The man was still staring fixedly at him.

Of the five things Patrick witnessed at the park ((1) the man and his car, (2) the suit jacket, (3) the briefcase, (4) the wine cooler, and (5) the mid-1980s Arkansas brown Honda), the Honda itself is the most relevant. It was not Mr. Foster's car. When Mr. Foster's body was discovered approximately 70 minutes after Patrick had left the park, Mr. Foster had been dead for well over 70 minutes. Mr. Foster therefore could not have driven to the park in his Honda, as claimed in the government Reports on the death.

The following evening, Patrick saw on the news for the first time that Vincent Foster had been found dead at Fort Marcy Park, so he telephoned the U.S. Park Police and reported what he had seen. Nine months later, FBI Special Agent Larry Monroe interviewed him. Monroe subsequently wrote in his reports of those interviews that Patrick "identified this particular vehicle [Honda] as a 1988-1990...", and that Patrick "reiterated his description of this Honda as a 1988-1990." This information was false and known to be false.²

Eighteen months later, in October of 1995, Patrick was provided a copy of his then publicly-available FBI interview reports by a reporter for a London newspaper. He realized for the first time that Monroe had falsified his account of the car and other facts he had recounted during his FBI interviews. His true account, along with the contradictory information from his FBI interview reports, was reported in the London newspaper on Sunday, October 22, 1995.

Two days later, on Tuesday, October 24, the paper reached American newsstands. That day, Mr. Starr's office prepared a subpoena summoning Patrick to testify before the Whitewater grand jury in this courthouse on November 1, 1995. Two days after that, Thursday, October 26, FBI agent Russell Bransford served the secret grand jury subpoena.³

Beginning that same day he was subpoenaed, and continuing into the following day, Patrick was harassed by at least 25 men. The intimidation began at around 7:20 p.m., when Patrick and his girlfriend, Kathy, walked from his home in the Foggy Bottom neighborhood to the Dupont Circle neighborhood, and back. During that time, eleven or more men walked towards him, or came at him from behind. Each man directed a constant threatening glare into Patrick's eyes.

² Monroe tried for hours to get Patrick to admit that the Foster's 1989 silver-gray Honda "could have been" the car Patrick saw. Patrick steadfastly responded, "No," repeating the description he had provided to the Park Police by telephone. Monroe falsified his interview report, writing that Patrick had "identified" the Honda as a "1988-1990," despite the fact that during his second FBI interview, Patrick had picked out the same color he had seen on the mid-1980s Honda from the "browns" section of the car color panels in the FBI laboratory, and that color corresponded to one available only on 1983 and 1984 Hondas.

³ Agent Bransford had been detailed to regulatory Independent Counsel Fiske's investigation, where he worked with Agent Monroe. Bransford told Patrick he had been "kept on under Starr."

Most of these incidents happened in a rapid and coordinated fashion, so that before one man departed, another was approaching. It is difficult to convey the cumulative effect on the target of this technique of intimidation. Kathy, a Ph.D. consultant and educator, stated in her affidavit that at one point she had to "struggle to keep from crying"⁴ and that she "had never witnessed anything like this before or since. It was intentional, coordinated, intimidating, and extremely unnerving."

Experts tell us that the technique is known to federal intelligence and investigative agencies, and that its objects were twofold: (i) to intimidate and warn Patrick in connection with his grand jury testimony; and failing that, (ii) to destabilize him and discredit his testimony before the grand jury.

It worked.⁵

Investigations by U.S. Park Police & regulatory Office of Independent Counsel ("OIC") Robert Fiske. The investigation under the auspices of regulatory OIC under Mr. Fiske was little more than an FBI investigation.⁶ Publicly-

⁴ Kathy struggled to maintain her composure when she and Patrick began to cross Connecticut Avenue to escape from the sixth, seventh and eighth men, whereupon they noticed the ninth man standing on the corner of R Street and Connecticut Avenue, awaiting their approach while staring directly at Patrick.

⁵ Prior to Patrick's appearance, OIC prosecutors had been fully apprised by counsel of Patrick's reports of being harassed by 25 or more men. They clearly appeared not to believe Patrick's bizarre account of having been harassed, at one point asking him to "tell us about the alleged harassment," nor did Starr's deputies appear to believe much of anything Patrick had to say.

⁶ That the Fiske Report is for the most part little more than a summary of an FBI investigation is clear from the following excerpt appearing on page two of the Fiske Report: "*The Federal Bureau of Investigation ('FBI') provided substantial and invaluable support in this investigation. The FBI assigned seven experienced agents to the Independent Counsel's Washington office, all of whom have worked exclusively with this office for approximately the last four months.*" When the Senate Committee on Banking, Housing and Urban Affairs conducted its day and a half hearing in 1994, it was not Mr. Fiske who appeared to defend the Fiske Report, but rather FBI agents Larry Monroe and William Colombell, both of whom conducted Patrick's FBI interviews.

available official federal government records demonstrate that throughout the 16 day U.S. Park Police investigation into the case, FBI participation was significant.⁷

⁷ At his June 30, 1995 deposition, FBI agent Scott Salter testified that on July 21 he and FBI Agent Dennis Condon were summoned to the White House by FBI Agent John Dana: "called us in my car and told us to go to the southwest gate of the White House and meet him there and that we were to, that we were going to be working on a death investigation involving Mr. Foster's death." On July 21, FBI Agents met with Messrs. Nussbaum, Neuwirth and Sloan to discuss the search of Mr. Foster's office and FBI agents were present the next day during the office search. At a press conference given on August 10, 1993, Deputy Attorney General Philip Heymann said, "The FBI joined the Park Police in the initial stages of the inquiry into Vince Foster's death... [and] the FBI has been assisting in that investigation..." Robert Bryant, Special Agent in Charge of the FBI's Washington Metropolitan Field Office said at the press conference, "We [FBI] followed this case from the time we were notified until we were basically of the opinion, along with Chief Langston's staff, that this was a suicide." At his 6/30/95 deposition, Agent Salter was handed a memorandum and asked to identify it. He responded, "it's basically a summary of events from the 21st through the conclusion of, through August 4th or 6th or whatever it was, through the conclusion of the investigation that we did." Department of Interior Chief of Staff Thomas Collier testified on deposition (6/23/95) that "the FBI and the Park Police ended up working on this kind of hand in glove."

Agent Salter in his 6/30/95 deposition explained the FBI's function was to interview witnesses along with the USPP (from 7/20 thru 8/5), "We were there to assist them in conducting the investigation which meant interviewing co-workers [and] ...then proceed as the investigation, you know, called for." USSS Agent Paul Imbordino, in response to the question at his 6/22/95 deposition "Who conducted the interviews?," answered "Park Police and FBI." During the (7/20 thru 8/5) USPP investigation, FBI agents interviewed over a dozen persons regarding events immediately following Mr. Foster's death.

A U.S. Secret Service memorandum indicates that FBI's active participation included removal of evidence from Mr. Foster's desk. A USSS officer relates in a memorandum to his boss that he was told on July 31 of 1993: (1) by an FBI agent that "[the agent]... and some other agents (five) were working on the Foster suicide... working... leads on some info they had received..."; and (2) by another USSS officer "that the FBI had removed evidence from Mr. Foster's desk..." The FBI's participation apparently did not end on August 5. At the August 10, 1993 press conference, Mr. Heymann said he had "received an FBI report this morning...", four days after the case was officially closed.

Therefore, prior to Mr. Starr's appointment to head the statutory OIC in August of 1994, the only substantive investigations into the case, with the sole exception of the U.S. Park Police investigation (conducted with FBI participation), were conducted by the FBI.⁸ The publicly-available federal government record upon which the Fiske Report is based is replete with evidence that the FBI concealed the true facts surrounding Mr. Foster's death.⁹

⁸ There have been no other official investigations. The 1994 Senate Banking committee was precluded by the limited scope of Resolution 229 from independently exploring of the issue of how or where Mr. Foster died ("whether improper conduct occurred regarding... the Park Service Police investigation into the death..."). Mr. Clinger did not investigate and Senator D'Amato's Committee did not explore these issues.

⁹ Much evidence of obstruction of justice by the FBI is documented in Patrick's lawsuit in this District Court (No. 96-2467) for *inter alia*, violation of 42 U.S.C. § 1985(2), "...Obstructing justice; intimidating... witness...": "... (3) The FBI concealed... irregularities... during the U.S. Park Police investigation; (4) ...more than two cars in the parking lot; (5) ...deceptively omitted the fact that Foster's car keys were not found at Fort Marcy Park...; (6)...concealed that Mr. Foster's briefcase vanished from the Honda...; (8)...concealed that an automatic pistol was found in Mr. Foster's hand before the revolver...; (9) The FBI ignored forensic evidence...; (10) The wound... [and] blood... is not consistent with... a point blank shot...; (11) The FBI concealed that... a branch [was] lying across Mr. Foster's body; (12) The FBI ignored that the absence of soil on Mr. Foster's shoes is inconsistent with... to where he was... found; (13)... inconceivable for the glasses to have been thrown or bounced...; (15)...taking medication for depression but he was not; (16)...concealed ...doctor opined... Foster was not depressed; (17) The FBI falsely reported that those close... said he was deeply depressed; (20) The FBI lab reported...'suicide note' [authentic]..., but it was forged." See also attached: Exhibit 1: (i) Map of the cars in the Fort Marcy lot and Patrick's route to and from his car; & (ii) Timeline. Exhibit 2: Map depicting the harassment Patrick suffered. Exhibit 3: The FBI knew that Mrs. Foster could identify only a silver gun, so FBI agents showed her a silver gun, told her it was found in Mr. Foster's hand, and falsely reported that she identified the (black) gun found in Mr. Foster's hand as belonging to Mr. Foster. Exhibit 4: The FBI concealed that Mr. Foster's car was not in the Fort Marcy lot by the time he was dead. Exhibit 5: The FBI concealed the gunshot wound in Mr. Foster's neck by: (i) concealing the contents of the Medical Examiner's Report which states that there was a gunshot wound in Mr. Foster's neck; (ii) falsely reporting that the 35 mm photographs were unclear; (iii) concealing that Polaroid photographs vanished; and (iv) concealing that autopsy x-rays vanished.

The Fiske Report correctly states at page 39 that upon Mr. Foster's death, "the FBI would have had primary investigative jurisdiction if the circumstances fell within... the United States Code Section... [which] makes it a federal crime to... kill... a specified number of persons... appointed by the President... [and that the statute mandates that] violations shall be investigated by the FBI." If Mr. Foster's death is ever ruled a homicide, the FBI will necessarily have violated the law simply by virtue of its having failed to exercise primary jurisdiction. The Fiske Report excuses the FBI's failure to take the case (relegating the investigation ostensibly only to the U.S. Park Police) "based on a preliminary inquiry by the FBI which failed to indicate criminal activity."

The OIC's investigation. The fundamental purposes of our Ethics in Government Act are (1) to ensure that justice has been done and (2) to preserve and promote public confidence in the integrity of the federal government by maintaining the appearance that justice has been done.¹⁰ In light of (1) the FBI's statutory mandate to exercise primary jurisdiction in July of 1993 in the event of foul play, (2) two prior FBI findings of no criminal activity, and (3) evidence of a cover-up by the FBI already in the public domain, the OIC's use of the FBI in this matter undermines both purposes of the Act. No OIC can fulfill its mandate to preserve and protect the appearance of justice having been done when its investigation employs the very agency it is designed to be independent from, the Justice Department.¹¹

¹⁰ See 139 CONG. REC. S15846-01, S15847-01 & S15850-01 (daily ed, Nov. 17, 1993), statement of Sen. Cohen: "[W]here an investigation has been conducted by the Justice Department... questions have remained. They say, 'Well, was it really an independent investigation or was it a cover-up, a whitewash?'"... The law, however, serves two ends, both equally important in our democratic society. One is that justice be done, and the other is that it appear to be done." See also (daily ed, Nov. 17, 1993), statement of Sen. Levin: "Here is what **the American Bar Association said** in its letter of November 17. 'As noted above, **the principle underlying statute is that an independent counsel may be needed when there may be a conflict of interest in having the Department of Justice carry out a particular investigation..**'"

¹¹ Under the Act, the OIC's use of the FBI is free, tempting the OIC to create a microcosm of the DOJ. (See Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.C.A.N. (101 Stat. 1293) p. 2172: "Congress intended the Justice Department to provide independent counsels with the same assistance it provides to its other high-priority, federal criminal cases... federal agencies are instructed to discontinue... requiring reimbursement agreements...")

Upon review of those excerpts of the Report provided by the OIC, it is manifest that the Report omits the information Patrick provided which refutes the FBI's repeated official conclusion of suicide in the park. Even though our review is limited by the fact that we were provided only the passages reprinted below and so the context is unclear, it is apparent that the Report also omits evidence Patrick provided which indicates that the FBI obstructed justice in this matter.

For example, the Report's first reference notes that at 4:30 p.m., Patrick saw in the Fort Marcy lot a rust-brown Honda with Arkansas license plates. Although this information is correct, it deceptively omits that Patrick is certain that this older car was not Mr. Foster's 1989 silver-gray colored car. Forensic evidence strongly indicates that Mr. Foster was dead by the time Patrick was in the park. Therefore, Mr. Foster could not have driven to the park in his Honda.¹²

Page 21 of the OIC's Report:

Another citizen (C2) drove his rental car into Fort Marcy parking lot at approximately 4:30 p.m. While there, C2 saw one unoccupied car which he describes as a "Rust brown colored car with Arkansas license plates."³⁵ C2 also saw another nearby car; that was occupied by a man who exited his car as C2 exited his own car.³⁶ C2 described this man as having "as look like he had a -- an agenda, although everything I based my observation of this guy, was from the gut," "more than anything else.:" C2 and the man did not speak to one another.

³⁵ OIC 11/1/95 at 22, 28

³⁶ Id at 25

³⁷ Id at 27, 62

³⁸ Id at 61-62

¹² See Exhibit 4. A USPP report notes that the autopsy doctor estimated that Mr. Foster died "2-3 hours" after having eaten "large meal" "which might have been meat and potatoes." Several people reported that Mr. Foster had finished his lunch of a cheeseburger and French fries by 1:00 p.m., therefore putting the time of death between 3:00 and 4:00 p.m. Also, the paramedic in his Incident Report estimates that based upon the "pooling of blood in the extremities," Mr. Foster had been dead "2-4 hrs" at 6:10 p.m., putting the time of death between approximately 2:00 and 4:00 p.m. Because Patrick saw an Arkansas car at 4:30 p.m. which was not Mr. Foster's, parked in the same space where Mr. Foster's car was later found, Mr. Foster could not have driven to the park. Also, the descriptions of this older car (the only car in the lot) provided by the two other civilians who arrived at the park 40-55 minutes after Patrick left generally fits the description of the car Patrick saw, not Mr. Foster's car.

This first passage also notes that the other car in the lot was occupied by a man who exited his car as Patrick exited his own car (the man exited his car after Patrick walked toward the park). The excerpt omits any other details of the man's behavior. Mr. Foster's body was located about 700 feet away from the area where: (1) the man's car was backed in to its parking spot giving him full view of the driveway leading into the lot; (2) the man gave Patrick a menacing stare; and (3) the man returned to his own car only when Patrick chose to walk in the opposite direction from where Mr. Foster's body was found about 70 minutes later.

The Report goes on at page 22 to tell us that the "man had reentered his car by the time" Patrick had "returned to the parking lot," and at 69 that he saw "a man in a car next to him." We do not know of the context in which these passages appear.

Page 22 of the OIC's Report:

went into the park to urinate, and the other man had reentered his car by the time C2 returned to the parking lot.³⁹ C2 then left the park in his car.⁴⁰

³⁹ Id at 38

⁴⁰ Id at 61-62

Page 69 of the OIC's Report:

During the afternoon, before Park Police and FCFRD personnel were called to the scene at Fort Marcy Park, C2 saw a man in a car next to him;

Twenty pages later, the Report notes that Patrick "saw a briefcase" in the Arkansas car along with a "jacket... [and two] wine coolers." This statement again deceptively implies that the car was Mr. Foster's even though Mr. Foster's car reportedly did not contain wine coolers or a briefcase.

Page 89 of the OIC's Report:

C2 testified that he saw a briefcase -- as well as wine coolers in a car with Arkansas plates that was parked in the parking lot. He stated: "I looked and saw the briefcase and saw the jacket, saw the wine coolers it was two of them. I remember exactly how they were laying in the back seat of the car."²⁷⁴

²⁷⁴ C2 OIC, 11/1/95, at 34

This final passage omits that Patrick testified (and repeatedly told the FBI) exactly where these items were in the rust-brown Honda. The suit jacket Patrick saw in that car was draped over the back of the driver's seat. The suit jacket later found in Mr. Foster's car was folded and lying on the front passenger's seat.

Moreover, the Report's purported reliance on grand jury testimony¹³ is an attempt to give the Report more credibility. Indeed, the catalyst for Patrick's grand jury testimony was the appearance in U.S. newsstands of the October 22nd issue of the *London Sunday Telegraph*, in which Ambrose Evans-Pritchard described Patrick's reaction when he was shown the FBI report of his interview with two FBI agents detailed to Mr. Fiske's probe. It was the first time Patrick had seen the report of the interview, which had been conducted eighteen months earlier. Pritchard wrote that Patrick "was stunned." Referring to the FBI's assertion that Patrick stated he "would be unable to recognize the man" he had seen at the park, Patrick is quoted as saying "That's an outright lie."

Pritchard's article also states:

"They showed him a photograph of [Foster's] Honda... 'They went over it about 20 times, telling me that this was Foster's car,' said Knowlton. 'But I was quite adamant about it. I saw what I saw, and I wasn't going to change my story'... Starr's investigators have never talked to Knowlton. The federal grand jury has never summoned him to give sworn testimony."

¹³ Patrick was not interviewed by Mr. Starr's FBI agents about events at Fort Marcy Park until December 1, a month after he testified. When Patrick testified on November 1, 1995, one OIC prosecutor failed to introduced himself, sat behind Patrick and passed notes to the other prosecutor who questioned him while resting his head on his hand, as if Patrick's testimony was little more than an annoyance. During the two and a half hours of testimony, Patrick was asked about what occurred at Fort Marcy Park and his prior statements to the FBI for about an hour. During the balance of the time, the prosecutor insinuated that Patrick was a liar, a homosexual, and a publicity hound. He was repeatedly asked: (1) to explain his relationship with the two men who lived in his Etlan, Virginia residence (a joint real estate venture); and (2) about his involvement with the press or anyone on Capitol Hill. He was also asked: (1) about the "alleged misquotes" in the FBI reports of his statements; (2) to describe the "alleged harassment;" (3) whether the man in the park passed him a note, pointed a gun at him, or touched him; (4) how many times he had been to Fort Marcy Park alone (the park is a reputed homosexual pick-up spot - unbeknownst to Patrick at the time); (5) why he called the police and didn't wait for the police to call him; and (6) sarcastically if he came forward because he is a "good citizen" and a "good Samaritan." When Patrick asked who had sent Agent Bransford to his home on October 30, 1995 (Bransford further intimidated him), the prosecutor seated behind him spoke for the first time, "We sent Bransford."

On October 24, the same day that this newspaper reached U.S. newsstands, the OIC prepared a subpoena summoning Patrick to testify before the Whitewater grand jury. The secret grand jury subpoena was served two days later by an FBI agent who was formerly detailed to Mr. Fiske's probe, whereupon Patrick was harassed and intimidated by 25 or more men -- during which time the FBI ignored his repeated pleas for help. The Report omits all of this, even though Patrick submitted a report detailing the harassment to the OIC in March of 1996, which included reports of a polygraph examination, a psychiatric examination, witnesses' affidavits, photographs of two members of the harassment team and the names and addresses of two others.

Conclusion. Because Patrick did not heed the warning regarding his grand jury testimony and continued to tell the truth, including his account of the *bizarre* harassment he suffered, his testimony was discredited. Patrick was harassed in an effort to make him look unbalanced or dishonest. Since that time, he has been defamed by numerous individuals, most of whom are journalists. He has been attacked as a delusional conspiracy theorist, a homosexual, and as an outright liar. Patrick has been fighting to reestablish his credibility for the past two years. Patrick did nothing to deserve the outrageous treatment he received at the hands of the OIC and its FBI agents. He did nothing to deserve being yanked into this FBI debacle, having his life turned upside down, and having to endure this fight for his reputation. Patrick's only "crime" was reporting to the authorities what he had seen at Fort Marcy Park, consistent with his understanding of his duties as a good citizen.

Patrick respectfully asks that the Division of the Court append this letter to the Independent Counsel's Report on the Death of Vincent Foster, Jr. to afford him a measure of fairness. A denial of this relief would augment the appearance of justice having not been done and would further frustrate legislative intent. Patrick should not have to go through the rest of his life labeled as a liar or some kind of nut. He has no remedy at law for injury to his reputation causally related to the subject investigations. Patrick Knowlton merely seeks to establish that he is telling the truth and that he is mentally stable.

Respectfully submitted,



John H. Clarke

Fort Marcy Park
July 20, 1993. 4:30-4:35 p.m.

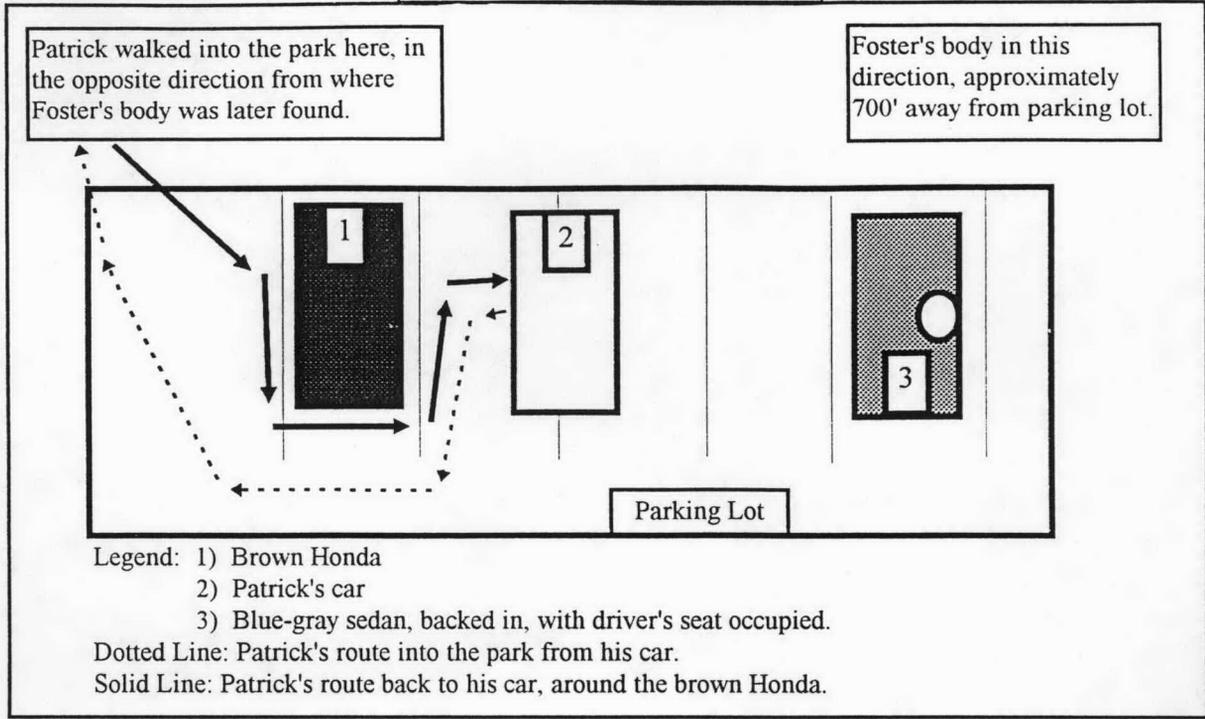
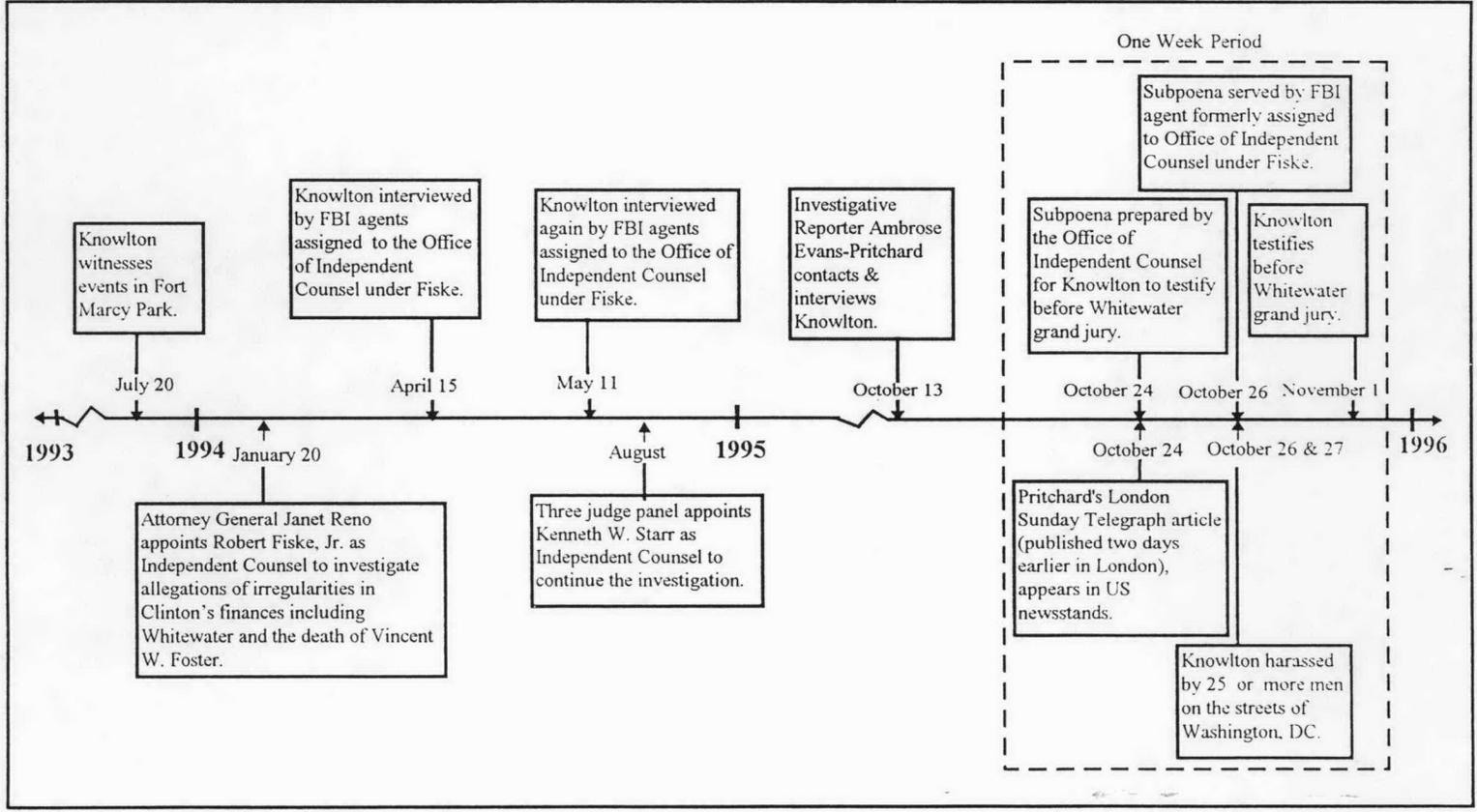


EXHIBIT
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TIMELINE

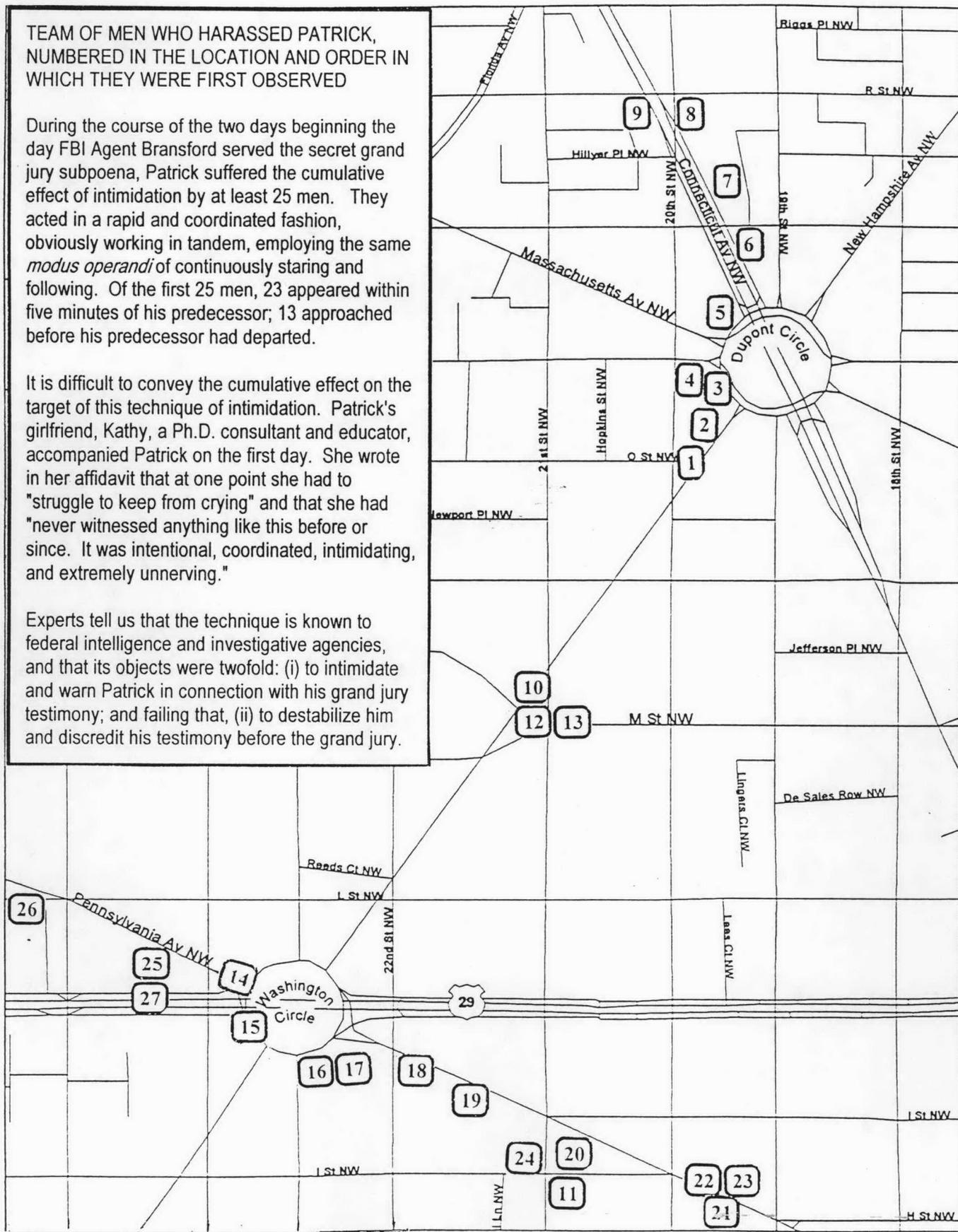


**TEAM OF MEN WHO HARASSED PATRICK,
NUMBERED IN THE LOCATION AND ORDER IN
WHICH THEY WERE FIRST OBSERVED**

During the course of the two days beginning the day FBI Agent Bransford served the secret grand jury subpoena, Patrick suffered the cumulative effect of intimidation by at least 25 men. They acted in a rapid and coordinated fashion, obviously working in tandem, employing the same *modus operandi* of continuously staring and following. Of the first 25 men, 23 appeared within five minutes of his predecessor; 13 approached before his predecessor had departed.

It is difficult to convey the cumulative effect on the target of this technique of intimidation. Patrick's girlfriend, Kathy, a Ph.D. consultant and educator, accompanied Patrick on the first day. She wrote in her affidavit that at one point she had to "struggle to keep from crying" and that she had "never witnessed anything like this before or since. It was intentional, coordinated, intimidating, and extremely unnerving."

Experts tell us that the technique is known to federal intelligence and investigative agencies, and that its objects were twofold: (i) to intimidate and warn Patrick in connection with his grand jury testimony; and failing that, (ii) to destabilize him and discredit his testimony before the grand jury.



USPP REPORT. INTERVIEW BY USPP & FBI OF ASSISTANT WHITE HOUSE COUNSEL'S OFFICE: MR. FOSTER ATE LUNCH OF "CHEESEBURGER" AND "FRENCH FRIES."

STATE	MO	DAY	YR	YEAR	CASE/INCIDENT NUMBER
United States Park Police	07	20	93	93	0301501
NATURE OF INCIDENT		RECLASSIFICATION OF INCIDENT			
Death Investigation					
<p>The first conversation she had with him was about lunch around 1200-1230 hours. He said he would eat at his desk. He ordered a medium rare cheeseburger, french fries and coke. She and Linda Tripp went to the cafeteria and ordered his lunch. She</p>					

FBI INTERVIEW REPORT. EXECUTIVE ASSISTANT IN WHITE HOUSE COUNSEL'S OFFICE: MR. FOSTER LEFT OFFICE SHORTLY AFTER 1:00 PM AFTER HE ATE LUNCH.

Continuation of FD-302 of Linda A. Tripp, On 4/12/94, Page 4

from work. When he left the office at shortly after 1:00PM he did not have anything with him. TRIPP did not know where he was going and it was not appropriate for her to ask him. He did not have any appointments noted on his office calendars or that anybody knew about.

USPP REPORT. DOCTOR WHO PERFORMED AUTOPSY SAID EATEN "MEAT AND POTATOES" "2-3 HOURS PRIOR TO DEATH."

NATIONAL PARK SERVICE					JUVENILE CASE <input type="checkbox"/>
SUPPLEMENTAL CRIMINAL INCIDENT RECORD					
STATE	MO	DAY	YR	YEAR	CASE/INCIDENT NUMBER
GMP Ft. Marcy	07	20	93	93	0301502
<p>Dr. Byer stated that it appeared that the victim had eaten a "large" meal which he believed to have occurred within 2-3 hours prior to death. He was unable to state positively what type of food was consumed but stated that it might have been meat and potatoes.</p>					

PARAMEDIC'S INCIDENT REPORT. AT 6:10 PM "HAD BEEN DEAD APPROX 2-4 HRS."

This is certified a true copy of the actual field incident report in possession of the Fairfax County Fire and Rescue Department
 Signed Bonnie Diamentko
 Date 7-19-94

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NARRATIVE REPORT	NARRATIVE REPORT
<p>INCIDENT # R32011315 UNIT M01 SUPP 01 SITF 801 DATE 07/20/93</p> <p>HAD SET IN. POOLING OF BLOOD IN THE EXTREMITIES. PT HAD BEEN DEAD APPROX 2-4 HRS. PT HAD A WEAPON IN HIS-RIGHTHAND</p>	<p>INCIDENT # R32011315 UNIT M01 SUPP02 SITF 801 07/20/93</p> <p>HAD SET IN. POOLING OF BLOOD IN THE EXTREMITIES. PT HAD BEEN DEAD APPROX 2-4 HRS. PT HAD A WEAPON IN HIS-RIGHTHAND</p>

FBI REPORTS OF INTERVIEWS WITH PATRICK AND TWO OTHER CIVILIAN PARK WITNESSES

PATRICK ARRIVED 4:30 PM. CAR "BROWN... HONDA WITH ARKANSAS PLATE"

parking area, he immediately noticed an unoccupied vehicle parked front end in facing the park in one of the first parking slots on the left-hand side. He identified this particular vehicle as a 1988-1990 brown or rusty brown in color Honda with Arkansas plates. He stated that he could not remember whether this vehicle was a two door or four door sedan, and outside of the

MALE SAYS HE AND FEMALE ARRIVED AROUND 5:00 P.M. CAR "BROWNISH."

They arrived at Fort Marcy Park at approximately 5:00 p.m. As they drove into the parking lot, he observed a vehicle, possibly a small station wagon or "hatchback" model, brownish in color, parked to his left. The vehicle was parked close to the path leading up to Fort Marcy, with the front of the car pulled

FEMALE SAYS THEY ARRIVED BETWEEN 5:15 & 5:30 PM. CAR "MID-1980s."

Marcy Park in her white Nissan , arriving at Fort Marcy Park sometime between 5:15 and 5:30 p.m. To the best of her recollection, she maintained that upon entering the parking lot at Fort Marcy Park, she noted that the only vehicle in the parking area was a relatively old (mid-1980's) Honda, possibly a Honda Accord, either tan or dark in color, parked close to the entry of the parking lot, adjacent to a path leading to the Northern section of the park. believed that this particular Honda was parked with the front of the vehicle facing the park area and to the best of her recollection, believes a

SWORN TESTIMONY OF PATRICK KNOWLTON (ARRIVED FMP 4:30 PM)

REGARDING: VINCENT FOSTER. SWORN STATEMENT OF PATRICK KNOWLTON
PRESENT: CONGRESSMAN DAN BURTON KEVIN BINGER JOHN CLARKE

14 | THERE WAS TWO VEHICLES IN THE PARKING LOT -- ONE WAS A
15 | BROWN, RUST-BROWN COLORED HONDA WITH ARKANSAS LICENSE
16 | PLATES. IT WAS AN OLDER VEHICLE.

19 | SUGGESTED TO ME THAT THAT WAS THE AGE OF IT, AND, WHEN HE
20 | SHOWED ME THE PICTURES OF A CAR THAT WAS AN '88 OR A '90, I
21 | SAID, NO. IT IS, OBVIOUSLY, AN OLDER CAR. THE CAR THAT
22 | YOU ARE SHOWING ME THE PICTURE OF IS TOO NEW.

EXHIBIT

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REPORT... BY MEDICAL EXAMINER. "NARRATIVE SUMMARY..." STATES "...GUNSHOT WOUND MOUTH TO NECK..." DISCOVERED JULY 17, 1997 AT NATIONAL ARCHIVES.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DISTRICT
9797 BRADDOCK ROAD
SUITE 100
FAIRFAX, VA 22032-1700
PHONE (703) 764-4640

Resident
Non-resident Washington D.C.
* Jan 15, 1945



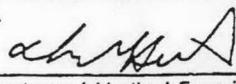
REPORT OF INVESTIGATION BY MEDICAL EXAMINER

DECEDENT Vincent Walker FOSTER Jr AGE: 48 RACE: Cauc SEX: male

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

JULY 20, 1993 After anonymous call was received at 18:04 hours US Park Police officers found 48 yrs Caucasian male with self-inflicted gunshot wound mouth to neck on a foot path in Marcey Park .His car was parked in the parking lot but no note was found,
MEDICAL HISTORY Unknown

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with the Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

July 20, 1993 Fairfax County 
Date City or County of Appointment Signature of Medical Examiner

DEPOSITION OF PARAMEDIC. SAW BULLET HOLE IN NECK.

**DEPOSITION OF RICHARD M. ARTHUR
IN RE: S. RES. 229**

THURSDAY, JULY 14, 1994

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.
Deposition of RICHARD M. ARTHUR, called for exam-

19 Q Where was the blood coming from?
20 A To me, it looked like there was a bullet hole
21 right here.
22 Q In the neck?

1 A Yes, right around the jawline.

24

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FISKE REPORT. DISMISSES BULLET WOUND IN NECK BASED ON PHOTOGRAPHS AND AUTOPSY.

**Report of the
Independent Counsel**

Arthur believed he saw a

bullet wound in the right side of Foster's neck. These wounds did not exist. The autopsy results, the photographs taken at the scene, and FOIA # none (RTS 16310) DocId:37010518 Page 50 investigators conclusively show that there were no such wounds.

FBI LABORATORY REPORT. EFFORTS TO ENHANCE 35MM PHOTOGRAPHS TO MAXIMUM IMAGE PRODUCED LIMITED DETAIL.



FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

PHOTOGRAPHIC:

The 35mm color negatives (Q32) were examined to locate frames for photographic enhancement. The selected frames (5, 6, 7, 8, 9, 10, 17, 18) were printed using Kodak Ultra print paper to produce maximum image detail. Due to the negatives having been underexposed during the photographic process, limited detail could be extracted from each of the selected frames.

USPP WHO TOOK 35 MM PHOTOGRAPHS TESTIFIED THESE PHOTOGRAPHS "LOOKED GOOD."

DEPOSITION OF PETER J. SIMONELLO

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.
Deposition of PETER J. SIMONELLO, called for exam-

18 Q Have you subsequently become aware of any
19 information that would contradict anything in your report?

20 A The only thing I read in there that I was
21 wondering about is they said my 35 millimeter roll of film
22 was overexposed and they weren't able to get any prints

1 from it. But I recall that I was in the office there when
2 they took a statement from me that day. I guess that was
3 that date in May, and they showed me some 8-by-10 color
4 photographs, and they indicated they were able to, in fact,
5 enhance the photographs which I took, and I saw several of
6 those 8-by-10s and I commented on what a good job they did
7 because they looked good to me. They didn't look
8 underexposed. They were able to enhance them and in the
9 report they indicate they were not able to get anything
10 from them.

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of 4 pages

DEPOSITION OF USPP WHO TOOK POLAROID PHOTOGRAPHS. "BACKSIDE" PHOTOS VANISHED.

DEPOSITION OF JOHN C. ROLLA

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.
Deposition of JOHN C. ROLLA, called for examination

11 A I think I had more than one packet. I don't
12 think I took more than one. There's only 10 in a pack. I-
13 may have reloaded because I know I took some on the
14 backside. I don't have those photos, I put them in a
15 jacket, God knows how many people looked through those, and
16 I don't know what happened.

Continuation of FD-302 of FRANZ JOSEF FERSTL On 5/2/94 Page 2

lot. FERSTL advised that he also took several polaroid photos of the crime scene, adding that he is not sure if he did the photography or taping first. He stated that to the best of his recollection, on returning a second time to the death scene, the body appeared to be in the identical position it was when he first observed it.

FERSTL stated that to the best of his recollection, he took approximately seven photos; he cannot recall if he initialed

FBI REPORT FOR RECEIPT OF POLAROID: FIRST SET OF FIVE POLAROID OF BODY SITE TAKEN BY USPP EDWARDS; SECOND SET OF FIVE POLAROID OF CAR TAKEN BY USPP BRAUN; THIRD SET OF EIGHT POLAROID OF BODY SITE TAKEN BY USPP ROLLA.

ALL OF FERSTL'S "APPROXIMATELY SEVEN" POLAROID VANISHED, AND ROLLA'S "BACKSIDE" POLAROID VANISHED -- ONLY NINE USABLE PHOTOGRAPHS OF BODY OFFICIALLY EXIST (SEVEN OF BODY AND TWO OF FACE).

Form FD-302 (Rev. 3-28-84) UNITED STATES DEPARTMENT OF JUSTICE
 FEDERAL BUREAU OF INVESTIGATION
 Receipt for Property Received/Returned/Released/Seized

On (date) 5/2/94

Item(s) listed below:
 Received From
 Returned To
 Released To
 Seized

(Name) Capt. Charles Hume
 (Street Address) U.S. Park Police
 (City) CTIS - Anacostia Gen. Facility
Wash DC

Description of Property:
5 Polaroids marked 1-2-3-4-5 depicting:
 1 - Rear of Cannon
 2 - Heavily foliage area
 3 - VF's body - looking down from top of beam
 4 - VF's body - focusing on face
 5 - VF's body - focusing on RT. side shoulder
 (notation in back of 1-5 - from Ctr. Sp. Edwards 7/2/93)

5 Polaroids (Marked in back 7/2/93 03-7050)
1 - Driver Seat
 2 - Rear seat - driver side
 3 - Rear seat - passenger side
 4 - Ft. seat - passenger side
 5 - Rear of Vehicle

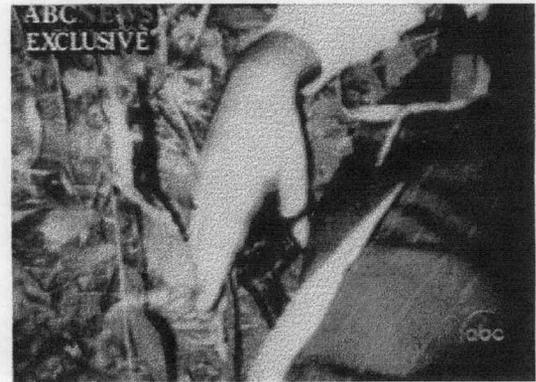
8 Polaroids (Marked in back JCR 7/2/93 03-7050)
 1 - Right hand showing gun + thumb in guard
 2 - glasses on ground
 3 - VF's body - taken from below + UT
 4 - VF's body - focusing on right side + arm
 5 - VF's body - focus on top of head then heavy foliage
 6 - VF's body - focus on head + upper torso
 7 - VF's face - looking directly down into face
 8 - VF's face - taken from right side focusing

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 Page 3
 of 4 pages

US PARK POLICE REPORT. GUN FOUND IN MR. FOSTER'S HAND WAS BLACK.

UNITED STATES PARK POLICE			
MOBILE CRIME LAB REPORT SUPPLEMENT			
OFFENSE/INCIDENT: <u>Death Investigation</u>	CASE NO: <u>30502-63</u>		
INCIDENT LOCATION: <u>Ft. Marcy</u>	DATE: <u>7-20-93</u>		
were at his sides and the victim had his right hand on a black revolver. The right thumb			
ID TECHNICIAN	DATE	SUPERVISOR	DATE
<u>Federal Sincido</u>	<u>7-26-93</u>	<u>[Signature]</u>	<u>7/28/93</u>

PHOTOGRAPHS OF BLACK GUN FOUND IN MR. FOSTER'S HAND AT FORT MARCY PARK .



US PARK POLICE HANDWRITTEN INTERVIEW NOTES. MRS. FOSTER UNABLE TO IDENTIFY BLACK GUN.

<p><i>Not the gun she thought it must be. Silver, six-guns, large barrel.</i></p>	<p>Not the gun she thought it must be. Silver, six-gun, large barrel.</p>
	<div style="border: 2px solid black; padding: 5px; display: inline-block;"> <p style="margin: 0;">EXHIBIT</p> <p style="margin: 0; font-size: 2em;">3</p> </div>

FBI INTERVIEW REPORT. FBI SHOWED MRS. FOSTER "SILVER" GUN "FOUND" AT FMP. SHE IDENTIFIED IT.

<p>Continuation of FD-302 of <u>ELIZABETH BRADEN FOSTER</u> , On <u>5/9/94</u> , Page <u>14</u></p>
<p>LISA FOSTER then examined a revolver which had been brought to the interview by the interviewing agents. FOSTER examined the revolver, which had also been found at Fort Marcy Park on July 20, 1993, and stated that she believed it may be a gun which she formerly saw in her residence in Little Rock, Arkansas.</p>
<p>may be the silver gun which she brought up with her other belongings when she permanently moved to Washington DC LISA FOSTER</p>

Page Denied

Page Denied

MEMORANDUM

TO: OIC Attorneys

FROM: Brett Kavanaugh

RE: Relevant Factors in Analyzing Possible Prosecutions of Thomasson, Moore, and Marceca

DATE: August 13, 1997

At the last all-attorney meeting, there was some question raised about possible prosecutions of Thomasson, Moore, or Marceca on the grounds of "how would that advance the investigation?" I am circulating this memo to express my vehement disagreement with reliance on that factor to justify non-prosecution of any of those three individuals.

A. In general, I have identified three factors that seem to me legitimate in deciding whether to seek an indictment in a particular case. (Obviously the DOJ Manual is our necessary starting point, but the Manual is so vague as to be virtually worthless on this subject.)

The first and most important factor is provability -- our belief that the person is guilty and that a jury would so find. That must be the threshold consideration in our analysis of any proposed indictment.

The second factor is whether there would be a negative effect on another case. If the prosecution would be harmful to another prosecution that is pending or about to be brought, that might justify non-prosecution of a case.

The third factor is whether the offense is so minor or technical as not to warrant a federal prosecution. This factor can be intertwined with the first factor. It assumes particular importance if there are other mitigating factors, such as the fact that the person has otherwise led a law-abiding life. In short, this is a somewhat amorphous factor, but nonetheless seems a justifiable consideration in some cases.

B. In my view, three other factors are often bandied about to justify non-prosecution -- but these should not be legitimate factors.

First, I reject the oft-raised sort of bastardized equal protection argument: "You prosecuted me, but you did not prosecute someone else who did the same thing." This argument, if accepted and applied to its logical conclusion, would paralyze law enforcement. It is simply not possible to detect and prosecute all persons who commit

similar criminal acts. The fact that the Justice Department might target drug smugglers in California arguably puts those smugglers in a worse position than those who smuggle drugs through JFK Airport. The fact that the Justice Department seeks the death penalty in some murder cases but not others puts certain murderers in a worse position than others. One U.S. Attorney's Office might emphasize drug cases, another fraud cases. An undercover agent might be targeted to one gang but not another. So be it. Unless a person's race or skin color is the reason he was selected for prosecution, no prosecutor should shy away from an otherwise valid case because he can dream up some other similarly situated person who was not prosecuted.

Second, I would not accept any suggestion that we do not have sufficient staff to prosecute a case. We are appointed so that we will have sufficient staff to prosecute otherwise prosecutable cases within our jurisdiction, just as the campaign finance task force is appointed to do the same within its jurisdiction. If we have a valid case, we can and should obtain the staff we need.

Third, as indicated above, I completely disagree with any suggestion that a prosecution should not be brought because it "would not advance the overall investigation." This suggestion, when raised in connection with Marceca/Thomasson/Moore, is particularly galling. The implicit message is that we should not pursue a case if it would not somehow lead to the President and Mrs. Clinton. But I would think that we should neither pursue a case simply because it might lead to the Clintons, nor decline a case simply because it might not lead to them.

In addition, with respect to the Travel Office and FBI files matters, we were given separate and discrete jurisdiction over those matters. If we justify non-prosecution on a case within that jurisdiction by stating that a possible prosecution might not lead anywhere with respect to our Whitewater/Madison investigation, we should shift those matters back to the Justice Department ASAP. (Indeed, we should have refused jurisdiction initially.) The Special Division, the Attorney General, and Congress wanted those matters thoroughly investigated and prosecuted by this Office -- regardless of whether those investigations could assist our Whitewater and Madison investigations -- and it is our duty to do just that.

Conclusion

If anyone disagrees with any of this, please feel free to let me know. In any event, I will be prepared to expand on this analysis when we discuss these possible prosecutions in the near (hopefully) future.

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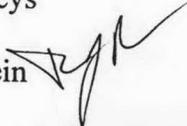
Conclusion

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MEMORANDUM

August 14, 1997

TO: All OIC Attorneys

FROM: Rod J. Rosenstein 

SUBJECT: **Summary of the Justice Department's Principles of Federal Prosecution**

The Justice Department's "Principles of Federal Prosecution," promulgated by Attorney General Civiletti in 1980, state in their preface that they constitute "a significant event in the history of federal criminal justice" because they provide "for the first time in a single authoritative source, a statement of sound prosecutorial policies and practices." U.S. Attorneys' Manual § 9-27.001. The preface adverts to the weightiness of a decision to prosecute:

The manner in which federal prosecutors exercise their decision-making authority has far-reaching implications, both in terms of justice and effectiveness in law enforcement and in terms of the consequences for individual citizens. A determination to prosecute represents a policy judgment that the fundamental interests of society require the application of the criminal law to a particular set of circumstances -- recognizing both that serious violations of federal law must be prosecuted, and that prosecution entails profound consequences for the accused and the family of the accused whether or not a conviction ultimately results.

Id. The guidelines are intended to "promote the reasoned exercise of prosecutorial authority, and contribute to the fair, evenhanded administration of the federal criminal laws." *Id.* However, the preface acknowledges the ambiguity inherent in the guidelines:

For the most part, they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing flexibility.

Id. The guidelines were "not intended to produce rigid uniformity among federal prosecutors in all areas of the country." *Id.* at § 9-27.140(B).¹ Because local conditions differ, "each U.S. Attorney is specifically authorized to modify or depart from the principles . . . as necessary in the interests of fair and effective law enforcement." *Id.*

¹ In each substantive provision, the guideline is codified as subsection "A" and the comment as "B." I see no reason to distinguish between the formal guidelines and the accompanying comments.

Under the Department of Justice guidelines, prosecution should be *considered* if the government attorney believes that:

- i. the person's conduct constitutes a federal offense; and
- ii. the admissible evidence probably will be sufficient to obtain and sustain a conviction.

Id. at § 9-27.220(A).²

If the two threshold conditions are satisfied, then the guidelines state that a prosecution should be commenced unless, *inter alia*, "no substantial federal interest would be served by prosecution."³ *Id.* This provision is drafted in the negative, as if it is a limited exception, but it actually introduces unbounded discretion. In evaluating the federal interest, the prosecutor must "weigh all relevant considerations," including but not limited to eight enumerated factors. *Id.* at § 9-27.230(A). The specified factors may be summarized as follows:

1. **Federal Law Enforcement Priorities** -- Since federal law enforcement resources and judicial resources are not sufficient to permit prosecution of every alleged offense, the prosecutor should give careful consideration to the extent to which prosecution would accord with established national and regional priorities, which are designed to focus law enforcement efforts on matters that most deserve federal attention.⁴
2. **Nature and Seriousness of the Offense** -- Limited federal resources should not be wasted in prosecuting inconsequential cases or cases in

² The guidelines call for an evaluation of the likelihood of conviction by the actual jury given all of the attendant circumstances. However, if the prosecutor believes that a neutral and objective factfinder would reach a guilty verdict but the likelihood of conviction is low because of extraneous factors -- *e.g.*, in a controversial civil rights case or a case involving a popular political figure -- prosecution nonetheless may be warranted in order to "allow the criminal process to operate in accordance with its principles." U.S. Attorneys' Manual § 9-27.220(B).

³ There are two additional negative factors. Prosecution should be declined if:

- ii. the person is subject to effective prosecution in another jurisdiction; or
- iii. there exists an adequate non-criminal alternative to prosecution.

U.S. Attorneys' Manual § 9-27.220(A).

⁴ Although it is appropriate to consider the resources that would be required in the future in considering whether to pursue a prosecution, the time and resources already invested in the investigation "deserve no weight and should not influence the decision. . . . No amount of investigative effort warrants commencing a prosecution that is not fully justified on other grounds." *Id.* at § 9-27.230(B).

which the violation is only technical. Thus, the prosecutor should consider the actual or potential impact of the offense on the community and on the victim.

3. **Deterrent Effect of Prosecution** -- Some offenses, although seemingly not of great importance by themselves, would have a substantial cumulative impact on the community if committed with impunity.
4. **Relative Culpability** -- It is appropriate to give consideration to the degree of the person's culpability in connection with the offense, both in the abstract and in comparison with any others involved in the offense.
5. **Criminal History** -- A person's prior criminal involvement should be given due consideration in appropriate cases.
6. **Willingness to Cooperate** -- In some cases, the value of a person's cooperation may outweigh the federal interest in prosecuting him.
7. **Personal Circumstances**⁵ -- In some cases, the personal circumstances of a suspect may be relevant in determining whether to prosecute or to take other action. Relevant circumstances include advanced age, medical or physical impairment, and whether the person occupied a position of trust or responsibility when he committed the offense.
8. **Probable Sentence** -- The prosecutor should consider whether the likely sentence or other consequences would justify the time and effort of prosecution.

Id. at § 9-27.230(B). The guidelines state that the above factors "may be relevant in determining whether prosecution should be declined because no substantial federal interest would be served by prosecution in a case in which the person is believed to have committed a federal offense and the admissible evidence is expected to be sufficient to obtain and sustain a conviction." *Id.* "The list of relevant considerations is not intended to be all-inclusive." *Id.*

⁵ This factor appears in the comment; the formal guideline lists only seven factors.

ACCURACY IN MEDIA, INC.

Sulte 330
4455 Connecticut Avenue, N.W.
Washington, D.C. 20008

Phone: (202) 364-4401
Fax: (202) 364-4098

DATE 7/28/97

PLEASE DELIVER THE FOLLOWING 4 PAGES (INCLUDING THIS ONE) TO:

NAME Mr. Kenneth W. Starr

COMPANY Office of the Independent Counsel

FAX NUMBER 202-514-8802

FROM Reed Irvine
Accuracy in Media



ACCURACY IN MEDIA, INC.

Reed Irvine
Chairman of the Board

4455 Connecticut Avenue, N.W. • Suite 330 • Washington, D.C. 20008

Phone: (202) 364-4401 • Fax: (202) 364-4098

July 28, 1997

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Judge David B. Sentelle
Court of Appeals for the District of Columbia
333 Constitution Avenue, N.W.
Washington, DC 20001

Dear Judge Sentelle:

I understand that Kenneth Starr's report on his investigation of the death of Vincent W. Foster, Jr. is now in the hands of you and your colleagues and that you will decide when and if to release it. I am writing to urge that you release it as quickly as possible and that you also authorize the release of the grand jury testimony that was taken as part of this investigation.

I have been investigating the Foster death since January 1994 and am one of a handful of private citizens who have made a careful study of the evidence that is in the public domain. This consists mainly of the two volumes of Hearings released by the Senate Banking Committee, which investigated the death in 1994. Those 2,672 pages include the reports of the U.S. Park Police, the Fiske Report, the testimony before the Banking Committee and many, if not most, of the back-up depositions, FBI FD-302s and other back-up documents.

Unfortunately, very few people have taken the time to analyze the evidence found in those two volumes. My experience is that those who have done so have, without exception, recognized that the U.S. Park Police did not conduct a serious investigation. The police concluded that Foster committed suicide as soon as they saw the gun in his hand, and they made no effort to determine if foul play could have been involved. They spoiled and lost vital crime-scene photos, failed to safeguard important evidence and made no effort to seek out and interview all those who might have important information relating to the case. They had very little crime-lab work done, and for what little they did, they avoided using the FBI crime lab, which is considered to be the best in this area. Their ineptitude and negligence severely handicapped all subsequent investigations.

Few people are aware of this because the news media have not reported it. The main reason they never reported it was because the Park Police report was not released for nearly a year. There was some grumbling by reporters when the Park Police refused to make their report public when they formally announced their finding that the death was a suicide on August 10, 1993.

Had it been released at that time, many reporters would have studied it and would have recognized how inadequate the investigation had been. They would have been less willing to accept the facile finding of suicide. By delaying issuance of the report until June 30, 1994, the Park Police escaped the critical scrutiny it should have been given. By the time it was released the media had been routinely referring to the death as a suicide for nearly a year, and they were no longer interested in evidence to the contrary. The Fiske report, which was released the same day, diverted attention away from the flaws in the Park Police investigation.

The Fiske investigation was much more thorough than that conducted by the Park Police, but it left a number of stones unturned, and we know now that Fiske's findings were not based on the evidence that his team had gathered. Had the back-up reports and documents been made available for public inspection at the time his report was issued, more reporters would have taken the trouble to look at them and evaluate Fiske's conclusions more critically.

For example, if reporters had been able to study the police and FBI interviews with Foster's widow, they would have seen that Fiske's claim that Mrs. Foster had identified the gun found in Foster's hand as one she had brought to Washington from Little Rock was blatantly false. We know from her interviews that the gun she brought from Little Rock was silver and that the gun found in Foster's hand was blue/black. This is an example of the evidence that Fiske was willing to misrepresent to support his confirmation of the Park Police finding.

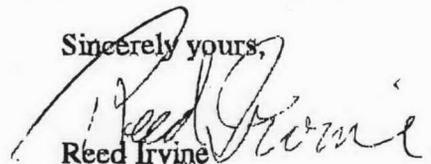
This experience shows the importance of minimizing the delay in releasing Mr. Starr's report and all the supporting evidence, including the reports of the interviews conducted by his agents and the grand jury testimony. Those of us who have studied the evidence already in the public domain are eager to see how Mr. Starr disposes of the evidence that indicates that Foster did not die in Fort Marcy Park. His report will have to address the many unanswered questions hanging over this case if it is to be taken seriously by those who know the facts.

One of those questions which I have some reason to believe Mr. Starr's report addresses is the question of whether or not the medical examiner who performed the autopsy on Foster, Dr. James Beyer, lied when he told Fiske's investigators and testified before the Senate Banking Committee that he had not taken an X-ray of Foster's head. I will attach a column that I have written about this matter. In July 1994, I checked with the companies that were responsible for installing and servicing the medical examiner's X-ray equipment, and I reported that they had no service calls to repair or adjust the equipment from June to October 1993. A conversation I had this week with the chief medical examiner for Virginia leads me to believe that Starr's report may say that this is not true and that there were serious problems with the equipment that would explain the absence of X-rays. I have listened to the tapes I made of my interviews of the employees of the two companies about the service calls to confirm that their records showed there was no basis for the chief medical examiner's claim of persistent problems with the equipment from the very beginning of its installation in June 1993. Even Dr. Beyer did not make that claim.

If this is one of the questions the report addresses, and since it is known by many others that I did the research that challenges Dr. Beyer's veracity, I would like to have an opportunity to place in the record the transcripts of my taped conversations with the employees of Capital X-ray Services and Atlantic X-ray. If Mr. Starr found service records that refute that information, he has

presumably included it in his report. If he has not, he should not be permitted to impugn the accuracy of my research, whether I am named or not, simply on the basis of the claims of the medical examiners. I am confident that the service records are more reliable than their word. See Dr. Beyer's evasive replies to Senator Faircloth's questions in the attached column.

Sincerely yours,



Reed Irvine
Chairman

cc: Mr. Kenneth W. Starr
Judge Peter Fay
Judge John Butzner

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Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

September 19, 1997

BY FACSIMILE

Marilyn Sargent
Chief Deputy Clerk
United States Court of Appeals
for the D.C. Circuit
Washington, DC 20001

Dear Ms. Sargent:

Ms. Nicole Seligman of the law firm of Williams & Connolly represents President and Mrs. Clinton and should be granted access to the report on the death of Vincent Foster currently on file at the Court.

Please contact me if you have any questions at 514-8688.

Sincerely,

Brett M. Kavanaugh
Associate Counsel

*** TX REPORT ***

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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: September 19, 1997

TO: Juanita Mathies, Administrative Secretary to the Clerk of the Court
United States District Court of Appeals for the District of Columbia
Company Name: Circuit

Fax Number: 202-273-0988 Telephone Number: 202-216-7300

FROM: Brett M. Kavanaugh, Associate Independent Counsel

Number of Pages: 2 (including this cover sheet)

Message: Per your conversation with Neille Russell of my office and Nicole

Seligman of Williams & Connolly, I trust the attached will suffice as written

permission for Ms. Seligman to view the Foster report.

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N
Washington, D. C. 20004
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED JUL 15 1997

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

In re: In re Madison Guaranty Savings
& Loan Association

Division No. 94-1

Before: SENTELLE, *Presiding Judge*, BUTZNER and FAY, *Senior Circuit Judges*.

**Order Authorizing Independent Counsel to Disclose
Filing of Report**

The Independent Counsel in the above-captioned matter has notified the court of his intent to file with the court a report on the death of Vincent Foster, Jr. In his notification the Independent Counsel requests leave to disclose to the public the fact of this filing; the court construes this request as a motion for leave to disclose. It appearing to the court that the motion is well taken, it is

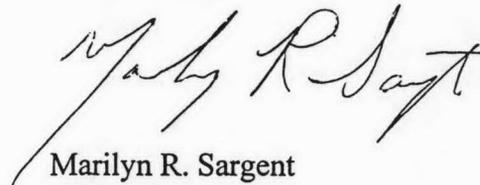
ORDERED, that leave is granted to the Independent Counsel pursuant to 28 U.S.C. § 592(e) to publicly disclose the fact that a filing regarding the death of Vincent Foster has been made with the court.

Per Curiam

For the Court:

Mark J. Langer, Clerk

by



Marilyn R. Sargent
Chief Deputy Clerk

Page Denied

From: Steve Bates
To: BKAVAN
Date: 5/1/97 2:35pm
Subject: final report

Some other notes from M. Sargent:

She recommends giving named people enough surrounding material from the report to establish a bit of context ("the thought"). Otherwise they'll move for it and the court will likely grant it.

She isn't sure whether the court has ever granted a named person access to grand jury material other than his own testimony (such as someone else's testimony referring to him). She'll check.

We need to recommend how the court should handle the interim report. Ordinarily, issuance of the final report opens up the period for considering attorneys' fees. We'll presumably want to avoid that.

We needn't submit the lists of named individuals, folders with the excerpts related to them, etc. until the court decides how to deal with FD--whether to issue it now or to hold it for inclusion in the final report. That will take several days after the report's filing.

The comment period depends on how many people are named: 30 days if very few, 90 days if => 150, 60 days if somewhere in between.

The court has not heretofore restricted comment length.

The court has denied motions of people named to keep all or part of the report secret, unless for some reason the IC joined the motion.

People who moved to do so got to inspect not only the to-be-public version of the Walsh report, but also the classified version. She suspects the court would similarly treat a to-be-sealed version of or appendix to a final report, though she isn't sure.

GUIDELINES FOR IC FINAL REPORTS

The Ethics in Government Act of 1978, 28 U.S.C. § 591, *et seq.*, in section 594(h)(1)(B), requires an independent counsel ("IC") to file a final report with the division of the court setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought. Section 594(h)(2) states that the court may make any portion of the final report available to any individual named in the report for the purposes of receiving any comments or factual information that individual may submit. The court's practice has been to allow these individuals to review the report sections in which they are mentioned at the Clerk's office before the report is released to the public. Also, the comments submitted by these individuals have been released as an appendix to the final report at the same time the report is publicly released.

With these considerations in mind, the court offers the following guidelines for preparation and submission of the final report in order to foster efficiency in the notification, review, comment, and release procedures.

1. In preparing the final report, please compile an index of people whom the report mentions and record the pages on which each person is mentioned. File this index along with the report.
2. Please submit a current list of the addresses and phone numbers of the individuals mentioned in the report and include their counsel's addresses and phone numbers, if known. The court will use this list to contact the individuals and notify them of their right to review and comment on the final report. Please provide this list in a database on a disk, preferably in WordPerfect, so that it can be merged with a form notification letter.
3. If there are people mentioned in the report whom the IC does not wish to review the report before its public release (such as news media personnel mentioned briefly), please submit

to the court a list of these people and the reasons why they should not have a pre-release review of the report

4. In order for each individual to review the sections of the report in which he or she is mentioned, the report must be broken down into separate folders containing the relevant pages for each individual. Please prepare these individual folders, label each one with the individual's name, and submit the folders to the court in alphabetical order at the time the final report is filed, or as soon thereafter as is feasible.

5. The court will issue a sealed order acknowledging the filing of the report, notifying individuals of their right to comment, setting a deadline for the filing of comments, and setting a deadline for the filing of attorneys' fee applications. If any individuals contact the IC to arrange review of the final report, please direct them to the Clerk of the United States Court of Appeals for the D.C. Circuit. Also, if any individuals send comments directly to the IC instead of the court, please forward these comments to the Clerk's office.

6. If the IC wishes to make any changes to the report based on comments submitted by individuals or otherwise, the IC must file a motion with the court requesting such changes and setting forth the reasons for such changes.

7. At the end of the comment period, the IC may make a motion for public release of the final report. The court will also consider any motions for public release filed by other parties.

8. If the court grants a motion for public release, section 954(h)(3) directs the IC to ask the Public Printer to print the report and to certify to the Printer the number of copies necessary for the public. The IC should request a sufficient number of copies for the court to receive 4 copies for itself, for each person named in the report to receive one copy, for the congressional oversight committees to each receive a copy, and for a sufficient number to be distributed to the media. At

least 24 hours before the scheduled public release of the report, the IC should deliver directly to the Clerk's office the copies for the court and for the persons named in the report. The IC and the court can decide who should provide the report copies to the media.

If you have any questions, please contact Marilyn Sargent, Chief Deputy Clerk at 202 273-0309, or Maureen Ohlhausen, Special Assistant to Judge Sentelle, at 202 273-0364.