

Justice Documents

Screened By: NARA (RD-F) Date: 08-08-2018 DOCID: 70105202

Vince Foster's Desk

[listed on SN index as
"VWF - Working Files - Desk -Right Middle Drawer]

OK ✓ manila folder 8.5 x 14 with gold label
"Armstrong
VWF"

on SN index listed as #1 as "Armstrong"

OK ✓ manila folder 8.5 x 14
"BEATTY, Michael
VWF"

on SN index listed as #2 as "Michael Beatty"

OK ✓ green hanging folder 8.5 x 14
"CABINET MEMBERSHIPS"

on SN index listed as #3 as "Cabinet Memberships"

OK ✓ manila folder 8.5 x 14
"CABINET SECRETARY
VWF"

on SN index listed as separate heading below
#3 as "Cabinet Secretary"

OK ✓ green hard folder 8.5 x 11
"VWF 1993
Calendars"

on SN index listed as #4 as "Calendars"

OK ✓ green hanging folder 8.5 x 14
"CLEARANCE PROCEDURES"

on SN index listed as #5 as "Clearance Procedures"

OK ✓ manila folder 8.5 x 14 with red label
"CLEARANCE PROCEDURES"

on SN index listed as separate heading below #5 as
"Clearance Procedures"

OK ✓ manila folder 8.5 x 14 with gold label
"ENERGY, DEPARTMENT OF
VWF"

on SN index listed as #6 as "Energy, Dep't of"

OK ✓ manila folder 8.5 x 11 with gold label
"Department of Justice
VWF"

on SN index listed as #7 as "Dep't of Justice"

OK ✓ green hanging folder 8.5 x 14
"ETHICS - ONE YEAR RECUSAL RULE"

on SN index listed as #8 as "Ethics - One Yr
Recusal Rule (Empty)"

OK ✓ manila folder 8.5 x 14 with red label
"ETHICS - ONE YEAR RECUSAL RULE"
on SN index listed as separate heading below #8 as
"Ethics - One Yr Recusal Rule"

OK ✓ manila folder 8.5 x 14 with gold label
"ETHICS SUMMARY
VWF"
on SN index listed as separate heading below #8 as
"Ethics Summary"

OK ✓ manila folder 8.5 x 14 with gold label
"EXECUTIVE ACTION PROCEDURE /
GENERAL RESEARCH
VWF"
on SN index listed as separate heading below #8 as
"Exec Action Procedure/Gen. Rsrch"

OK ✓ manila folder 8.5 x 14 with gold label
"ETHICS PLEDGE
VWF"
on SN index listed as separate heading below #8 as
"Ethics Pledge"

OK ✓ manila folder 8.5 x 14 with gold label
"EXECUTIVE ORDERS/ACTIONS - MISCELLANEOUS
VWF"
on SN index listed as #9 as "Exec Orders/Actions -
Misc."

OK ✓ green hanging folder 8.5 x 14
"EXECUTIVE CLERK"
on SN index listed as #10 as "Exec Clerk"

OK ✓ manila folder 8.5 x 14 with orange label
"EXECUTIVE CLERK"
on SN index listed as separate heading below #10 as
"Exec Clerk"

OK ✓ manila folder 8.5 x 14 with gold label
"FERC COMMISSION
VWF"
on SN index listed as #11 as "FERC Comm."

SN Index #12 "Deborah Gorham" is missing

✓OK manila folder 8.5 x 14 with gold label
"HAITIAN OPTIONS
VWF"
on SN index listed as #13 as "Haitian Options"

✓OK manila folder 8.5 x 14
"VWF HUBBELL, WEBSTER 1993"
on SN index listed as #14 as "Webster Hubbell"

✓OK manila folder 8.5 x 14 with gold label
"JUDICIAL NOMINATION
VWF"
on SN index listed as #15 as "Judicial Nominations"

✓OK manila folder 8.5 x 14 with gold label
"TOP SECRET SECURITY CLEARANCE
VWF"
on SN index listed as #16 as "Top Secret Security
Clearance"

✓OK manila folder 8.5 x 14
"VWF WHITE HOUSE ACQUISITIONS 1993"
on SN index listed as #17 as "White House
Acquisitions"

✓OK green hanging folder 8.5 x 14
"McLarty - General"
on SN index listed as #18 as "McClarty -General"

✓OK manila folder 8.5 x 14 with orange label
"McLARTY - GENERAL"
on SN index listed as separate heading below #18 as
"McClarty - General"

✓OK manila folder 8.5 x 14 with gold label
"HERMAN, ALEXIS
VWF"
on SN index listed as #19 as "Alexis Herman"

✓OK green hanging folder 8.5 x 14
"OFFICE PROCEDURE"
on SN index listed as #20 as "Office Procedure"

✓OK manila folder 8.5 x 14
"VWF 1993
Policies re White House Conduct" [with handwritten
cross-outs so that
it would read "White
House Policies"
on SN index listed as separate heading below #20 as
"White House Policies"

✓OK manila folder 8.5 x 14 with orange label
"OFFICE PROCEDURE"

on SN index listed as separate heading below #20 as
"Office Procedure"

manila folder 8.5 x 14

OK "PARDONS
VWF"

on SN index listed as #21 as "Pardons"

green hanging folder 8.5 x 14

OK "PRESIDENT - COMMERCIAL APPROPRIATION"

on SN index listed as #22 as "President -
Commercial Appropriation (empty)"

green hanging folder 8.5 x 14

~~OK~~ "PRESIDENTIAL DISABILITY"

on SN index listed as #23 as "Presidential
Disability (empty)"

manila folder 8.5 x 14 with red label

~~OK~~ "PRESIDENTIAL DISABILITY"

on SN index listed as separate heading below #23 as
"Pres. Disability (empty)"

OK green hanging folder 8.5 x 14

✓ "PRESIDENTIAL GIFT RESEARCH"

on SN index listed as #24 as "Pres. Gift Research"

OK manila folder 8.5 x 14 with red label

✓ "PRESIDENTIAL GIFT RESEARCH"

on SN index listed as separate heading under #24 as
"Pres. Gift Research"

manila folder 8.5 x 14 with green label

OK "PRESIDENTIAL PAPERS ADVICE/FOIA
INCOMING

VWF"

on SN index listed as separate heading under #24 as
"Pres. Papers Advice/FOIA Incoming"

manila folder 8.5 x 14 with gold label

OK "PRESIDENTIAL PERSONNEL - GENERAL
VWF"

on SN index listed as #25 as "Presidential
Personnel - General"

manila folder 8.5 x 14 with gold label

OK "READING FILE
VWF"

on SN index listed as #26 as "Reading File"

green hanging folder 8.5 x 14

OK "RUFF"

on SN index listed as #27 as "Ruff"

manila folder 8.5 x 14 with orange label
"RUFF"

OK ✓ on SN index listed as separate heading below #27 as
"Ruff"

SN Index #28 "Resumes" is missing ⇒ *DN - Gorham files*

OK ✓ manila folder 8.5 x 14 with grey label
"RUBIN
VWF"

on SN index listed as #29 as "Rubin"

OK ✓ manila folder 8.5 x 14 with gold label
"STAFF - BUDGET
VWF"

on SN index listed as #30 as "Staff - Budget"

OK ✓ manila folder 8.5 x 14 with gold label
"STAFF - DETAILEES
VWF"

on SN index listed as #31 as "Staff - Detailees"

OK ✓ manila folder 8.5 x 14 with gold label
"STAFF - PERSONNEL
VWF"

on SN index listed as #32 as "Staff - Personnel"

OK ✓ manila folder 8.5 x 14 with red label
"STAFF SECRETARY"

on SN index there are two "Staff Secretary"
folders, one inside the other, listed as #33 and as
a separate heading under #33

OK ✓ manila folder 8.5 x 14 with gold label
"STAFF - STRUCTURAL OPERATIONS
VWF"

on SN index listed as separate heading under #33 as
"Staff Structural Operations"

OK ✓ green hanging folder 8.5 x 14
"STANDARDS OF CONDUCT - FICA"

on SN index listed as #34 as "Standards of Conduct
- FICA (empty)"

SN Index #35 "Personal File List" is missing

OK ✓ green hanging folder 8.5 x 14
"TRANSITION/PERSONNEL FORMS"

on SN index listed as #36 as "Transition/Personnel
Forms (empty)"

green hanging folder 8.5 x 14

OK ✓

"TRANSITION - general
personal and confid"
on SN index listed as #37 as "Transition - general
personal & confid"

manila folder 8.5 x 14
"PERSONAL MISC. AND CONFIDENTIAL
VWF"

OK ✓

on SN index listed as separate heading below #37 as
"Personal Misc and Confidential"

Cabinet 2

green hard folder 8.5 x 11

OK ✓
"VWF Personal & Confidential 1993
WJC -- Form 278 5/14/93"

on SN index listed as #1 in upper of computer cabinet as "Personal - WJC Financial Disclosure Form 278 5/14/93"

manila folder 8.5 x 14 red label

OK ✓
"Clinton Public Financial Disclosure Report 1992 ["1992" handwritten] VWF"

on SN index listed as #2 in upper of computer cabinet as "Clinton Pub. Financial Disclosure Report 1992"

green hard folder 8.5 x 14

OK ✓
"VWF WJC Passport 1993"

on SN index listed as #3 in upper of computer cabinet as "WJC Passport"

manila folder 8.5 x 14 label

OK ✓
with red stamp "Personal and Confidential"
"Clinton - Mansion"

2 entries on SN index listed as #4 and #11 in upper of computer cabinet: "Clinton - Mansion" [#4] and "Clinton - Mansion (Empty)" [#11]

manila folder 8.5 x 14 red label

OK ✓
"Clinton Campaign '92 - Correspondence Personal and Confidential VWF"

on SN index listed as #5 in upper of computer cabinet as "Personal - Clinton Campaign '92 - Correspondence"

manila folder 8.5 x 14

OK ✓
with red stamp "Personal and Confidential"
"Clinton - Baird Confirmation"

on SN index listed as #6 in upper of computer cabinet as "Personal - Clinton - Baird Confirmation"

manila folder 8.5 x 14 red label

OK ✓
"CLINTON - CLINTON PAPERS Personal and Confidential VWF"

on SN index listed as #7 in upper of computer cabinet as "Personal - Clinton papers"

manila folder 8.5 x 14 red label

OK ✓
"CLINTON - DOJ Personal and Confidential VWF"

on SN index listed as #8 in upper of computer

cabinet as "Personal - Clinton - DOJ"

manila folder with red label 8.5 x 14

"ICKES

Personal and Confidential

VWF"

on SN index listed as separate heading under #9
"Clinton -Health Issue" in upper of computer
cabinet as "ICKES - Personal and Confidential"

SN Index "Clinton - Health Issues" is missing

green hard folder 8.5 x 14

OK ✓ "VWF" PERSONAL & CONFIDENTIAL 1993

Clinton Arkansas Office"

on SN index listed as #10 in upper of computer
cabinet as "Personal - Clinton Ark. Office"

manila folder 8.5 x 14 red label

OK ✓ "NEPOTISM - Vol. I

Personal and Confidential VWF"

on SN index listed as #12 in upper of computer
cabinet as "Personal - NEPOTISM - Vol. I"

manila folder 8.5 x 14 red label

OK ✓ "NEPOTISM - Vol. II

Personal and Confidential VWF"

on SN index listed as #13 in upper of computer
cabinet as "Personal - NEPOTISM - Vol. II"

manila folder 8.5 x 14 red label

OK ✓ "TRANSITION NOTES

Personal and Confidential VWF"

on SN index listed as #14 in upper of computer
cabinet as "Personal - TRANSITION NOTES"

manila folder 8.5 x 14 label

OK ✓ with red stamp "Personal and Confidential"

"CLINTON - LEGAL"

on SN index listed as #15 in upper of computer
cabinet as "Personal - Clinton - LEGAL"

manila folder 8.5 x 14 red label

OK ✓ "TRANSITION VETTING NOTES

Personal and Confidential VWF"

on SN index listed as #16 in upper of computer
cabinet as "Personal - Transition Vetting Notes"

manila folder 8.5 x 14 gold label

OK ✓ "ATTORNEY GENERAL Candidates [handwritten]

VWF"

on SN index listed as #17 in upper of computer

NOT HIGHLIGHTED

cabinet as "AG Candidates"

manila folder 8.5 x 14 red label

"MISCELLANEOUS

Personal and Confidential VWF"

on SN index listed as #18 in upper of computer
cabinet as "Personal - Miscellaneous"

OK ✓

OK ✓
green hanging folder 8.5 x 14:

yellow post-it:

"Presidential Appointments and Nominations

Folder A: March 3-31

Folder B: April 9 - June 15"

see next entry

OK ✓
green hard folder 8.5 x 14:

"VWF 1993

Presidential Appointments"

**on SN index listed as #1, #2, and #3 in upper left
of computer cabinet as "Presidential Appointments."**

That would suggest 3 files by this name.

OK ✓
manila folder 8.5 x 11 with gold label

"RENO

VWF"

**on SN index listed as "RENO" as #4 in upper left of
computer cabinet**

OK ✓
green hanging folder 8.5 x 14:

"VWF 1993

Hubbell Confirmation"

**on SN index listed as #5 in upper left of computer
cabinet as "Hubbell Confirmation"**

green hard folder 8.5 x 11

OK ✓ "VWF 1993

Residence Security"

on SN index listed as #1 of upper right drawer of cabinet as "Residence security"

green hard folder 8.5 x 14

"Executive Residence Security"

(separate file by same name in Kendall production) perhaps on SN index listed as #2 on upper right drawer of cabinet as "Exec. Residence" with separate listing for "EEO - Sean Hadden" underneath

green hard folder 8.5 x 14

OK ✓ "VWF Renovation/Oval Office 1993 and Executive Residence"

on SN index listed as #3 of upper right drawer of cabinet as "Renovation/Oval Office and Executive Residence"

dark blue soft folder 8.5 x 11 with yellow post-it "Residence" written on post-it

NOT ON SN INDEX

OK ✓ green hard folder 8.5 x 14 yellow folder

"Bush -- File Index"

on SN index listed as #1 of lower right drawer of cabinet as "Bush file index"

OK ✓ redwell folder 8.5 x 11

"Stephen Breyer" [handwritten] with several folders inside

on SN index listed as #2 in lower right drawer of cabinet as "Stephen Breyer docs (redweld)"

blue folder 8.5 x 11

"Camb. Tennis Club" [handwritten not by Foster] **see above**

yellow folder 8.5 x 11

"Passport" [handwritten not by Foster] **see above**

yellow folder 8.5 x 11

"Mass. State Correspondence" [handwritten not by Foster] **see above**

bright green folder 8.5 x 11

"Domestic Arrangement" [handwritten not by Foster] **see above**

orange folder 8.5 x 11

"Forms & Correspondance with IRS" [handwritten not

by Foster]
see above

manila folder 8.5 x 11 yellow label
"Stephen Breyer"
see above

OK ✓
red/well folder 8.5 x 14

post-it: "V - This is VF's Babbitt file org. preserve in tact
Joel"

**on SN index listed as #4 in lower right drawer of
cabinet as "Bruce Babbitt"**

manila folder 8.5 x 11
"VWF 1993
Bruce Babbitt"

**see above (in above red well folder although a
Babbitt file; see below for other Babbitt
file)**

bright green folder 8.5 x 14
"Babbitt, Bruce Edward"
see above

manila folder 8.5 x 11
"Babbitt" [handwritten, not VF's]
see above

Bookcase -- First Box

hard green folder 8.5 x 11 yellow label
"Health Care - TORT REFORM"

yellow folder 8.5 x 14
"Reinventing Government" [handwritten]

Files and Binders Produced by W.H. that are not on SN Index

manila folder 8.5 x 14 grey label

"Clinton Memos"

NOT ON SN INDEX -- APPARENTLY GIVEN TO SPAFFORD --
ON SPAFFORD INDEX AND THEN RETURNED TO WHITE HOUSE

manila folder 8.5 x 14 with orange label

"SESSIONS"

NOT ON SN INDEX -- note that it is a manila folder

↓
IN SAFE(?)

Loose Folders (i.e., White House unsure about precise location in Foster's office)

green hard folder 8.5 x 14
"VWF D.C. Income Tax Exemption 1993"

green hard folder 8.5 x 11
"VWF 1993
TIKKUN Magazine"

green hard folder 8.5 x 11
"IMMEDIATE ATTENTION"

manila folder 8.5 x 11
"Dallas, Texas April 29, 1993"

red folder 8.5 x 11
"Signature"

hard green folder 8.5 x 11
"Pending"

hard green folder 8.5 x 11
"VWF WH Travel Office 1993"

Not on SN Index (had been taken by Nussbaum)

manila envelope 8.5 x 11 with White House label to Jim Hamilton and yellow post-it over that label with "Cliff Sloan" written on it

green hard file 8.5 x 11
"DLG Waves Clearances 1993"

manila folder 8.5 x 14
yellow post-it: "Clarissa Cerda Files from Foster"
handwritten label: "Chron Drafts / Notes"

manila folder 8.5 x 14
handwritten label:
"Presidential Appointees & DC Income Tax
(file under tax)"

Binders at White House

black 1-inch 3-ring hard binder 8.5 x 11
"Pickering" on side ??

white 1-inch 3-ring hard binder with nothing written on binding
"Staff Handbook National Performance Review" on front

light blue 1-inch, 3-ring soft binder
"VWF Residence Renovation 1993" on side
Not on SN Index

OK ✓ white 2-inch, 3-ring hard binder with nothing written on binding
"Heber Springs" on front
**listed on SN index as "Materials on Heber Springs (w/
letter to President)" in lower right of computer cabinet**

OK ✓ black 3-inch, 3-ring hard binder
"SEAN HADDON MATTER" on side
**listed on SN index as "1 notebook re Sean Haddon" in
upper right of cabinet**

OK ✓ black and colored 1-inch, 3-ring soft binder
"WASHINGTON RELOCATION GUIDE" on side
**listed on SN index as "Washington relocation guide" on
lower right of computer cabinet**

black 1.5-inch, 3-ring hard binder
"JUDICIAL SELECTION PROCESS
FOSTER" on side

OK ✓ black 2-inch, 3-ring hard binder
"D.C. SUPERIOR COURT VACANCY
FOSTER" on side
**listed on SN index as "D.C. Superior Court Vacancy
Notebook" in upper left of cabinet**

black 2-inch, 3-ring binder
"Supreme Court
Candidates
Vincent W. Foster" on side

black 1-inch, 3-ring hard binder
"COURT OF APPEALS PROFILES
Vincent W. Foster" on side
"COURT OF APPEALS NOMINATIONS
Vince Foster
CONFIDENTIAL" on front

OK ✓ blue 1-inch, 3-ring hard binder
"State Justice Institute" and other notations on front label
**listed on SN index as "State Justice Institute notebook"
in upper left of cabinet**

black 1-inch, 3-ring hard binder
"DISTRICT COURT PROFILES
O-Z
Vincent W. Foster" on side

black 1.5-inch, 3-ring hard binder
"DISTRICT COURT PROFILES
A-N
Vincent W. Foster" on side

black 1.5-inch, 3-ring hard binder
"SUPREME COURT PROFILES
Vincent W. Foster" on side

OK ✓ white 3-inch, 3-ring hard binder
"MALPRACTICE AND TORT REFORM Workgroup 11
BRIEFING BOOK" on side
**listed on SN index as "Malpractice Materials" in
bookcase**

several unlabeled binders and folders

Deb Gorham's Desk

hard green folder 8.5 x 11
"Pending for DLG"

blue folder 8.5 x 11 with yellow label
"TRAVEL"

Outer Cabinets -- Box 1 (not reflected on SN index)

green hard folder 8.5 x 14
"VWF Agency Contact 1993"

green hard folder 8.5 x 11
"VWF AIDS Policy 1993"

green hard folder 8.5 x 11
"VWF ABA 1993"

green hard folder 8.5 x 14
"VWF Amer. Board of Trial 1993
Advocates (ABOTA)"

green hard folder 8.5 x 11
"VWF Arkansas Bar 1993"

green hard folder 8.5 x 11
"VWF BIOS - Senior Officials 1993"

green hard folder 8.5 x 14
"VWF British Airways/USAir 1993"

green hard folder 8.5 x 14
"VWF Brooksley Born 1993"

green hard folder 8.5 x 11
"VWF Bush Administration 1993"

green hard folder 8.5 x 14
"VWF Center for the Study 1993
of the Presidency"

green hard folder 8.5 x 11
"VWF Command Influence 1993"

green hard folder 8.5 x 11
"VWF 1993
Commercialization-Arkansas"

green hard folder 8.5 x 14
"VWF Commercialization 1993
of the Presidency"

green hard folder 8.5 x 14
"VWF U.S. Court of Claims 1993"

green hard folder 8.5 x 14
"VFW [sic] Standards of CONDUCT 1993"

green hard folder 8.5 x 11
"VWF 1993
Deputies' Meetings"

green hard folder 8.5 x 11
"VWF 1993
Department of Defense
Accounting Centers"

green hard folder 8.5 x 11
"VWF 1993
Meihold v. U.S. Dept. of Defense"

green hard folder 8.5 x 11
"VWF DOD Investigations 1993"

green hard folder 8.5 x 11
"VWF Ethics 1993"

green hard folder 8.5 x 14
"VWF Executive Actions 1993
Family"

green hard folder 8.5 x 14
"VWF Executive Actions 1993
Gays in the Military"

green hard folder 8.5 x 14
"VWF Executive Actions 1993
Midnight Regulations"

green hard folder 8.5 x 14
"VWF Executive Actions 1993
Perks"

green hard folder 8.5 x 14
"VWF Executive Orders 1993
Labor"

green hard folder 8.5 x 14 [no "VWF . . . 1993"]
"Congressman HAROLD FORD"

green hard folder 8.5 x 11
"VWF 1993
Foreign Relations"

Outer Cabinets -- Box 2 (not reflected on SN index)

green hard folder 8.5 x 14
"VWF FOIA 1993
Freedom of Information Act"

green hard folder 8.5 x 14
"VWF FOIA - Requests 1993"

green hard folder 8.5 x 14
"VWF Judge Ginsburg 1993"

green hard folder 8.5 x 14
"VWF Greenberg Book 1993"

green hard folder 8.5 x 11
"VWF Gun Control 1993"

green hard folder 8.5 x 11
"VWF 1993
Health Care Task Force
Malpractice Articles"

manila folder 8.5 x 11
"VWF Notes 1993"

manila folder 8.5 x 11
"VWF FOIA Requests 1993"

red well folder 8.5 x 14
"VWF Correpondence 1993"

green hard folder 8.5 x 14
"VWF Health Care Reform 1993
Task Force"

green hard folder 8.5 x 11
"VWF Health Care Reform Task Force 1993
Malpractice Reform Correspondence"

green hard folder 8.5 x 11
"VWF Health Care Reform Task Force 1993
Malpractice - Draft Legislation"

green hard folder 8.5 x 14
"VWF Fourth Estates 1993"

green hard folder 8.5 x 14
"VWF Press Releases 1993"

red well folder 8.5 x 14
"VWF Pleadings 1993"

red well folder 8.5 x 14
"VWF Pleadings 1993" [another folder]

green hard folder 8.5 x 11
"VWF Household Employment 1993"

Outer Cabinets -- Box 3 (not reflected on SN index)

green hard folder 8.5 x 14
"VWF PICKERING 1993"

green hard folder 8.5 x 11
"VWF Personnel Staffing 1993"

green hard folder 8.5 x 11
"VWF PCIE 1993"

green hard folder 8.5 x 11
"VWF 1993
NAFTA/USTR Suit"

green hard folder 8.5 x 14
"VWF NEPA 1993
National Environmental Policy Act"

green hard folder 8.5 x 11
"VWF NEA 1993"

green hard folder 8.5 x 11
"VWF National Archives 1993
Former Presidents"

green hard folder 8.5 x 14
"VWF National Economic Council 1993"

green hard folder 8.5 x 11
"VWF National Security Council 1993"

green hard folder 8.5 x 11
"VWF Legal Services Corporation 1993"

green hard folder 8.5 x 11
"VWF Little Rock 1993"

green hard folder 8.5 x 11
"VWF MFN 1993"

green hard folder 8.5 x 14
"VWF Kennedy Book 1993
President's Preface"

green hard folder 8.5 x 14
"VWF Virginia KELLEY 1993"

green hard folder 8.5 x 11
"VWF 1993"

Virginia Kelley - Canada
10-28-93"

green hard folder 8.5 x 14
"VWF Judicial Nominations 1993"

green hard folder 8.5 x 14
"VWF Justice Resumes 1993"

green hard folder 8.5 x 11
"VWF Judicial Conference Requests 1993"

green hard folder 8.5 x 14
"VWF Jogging Track 1993"

green hard folder 8.5 x 14 [no "VWF . . . 1993"]
"Reverend JESSE JACKSON"

green hard folder 8.5 x 11
"VWF Inauguration 1993"

Outer Cabinets -- Box 4 (not reflected on SN index)

green hard folder 8.5 x 11
"VWF Kimba Wood 1993"

green hard folder 8.5 x 11
"VWF Timothy Wirth 1993"

green hard folder 8.5 x 14
"VWF Lea Willenbring 1993"

green hard file 8.5 x 14
"White House TECHNOLOGY" [no "VWF . . . 1993"]
yellow post-it "Subject File" in VWF's handwriting

green hard file 8.5 x 14
"VWF 1993
WH Internship Program"

green hard file 8.5 x 11
"VWF 1993
WH Fellows Program"

green hard file 8.5 x 14
"VWF WHCA 1993
White House Communications Agency"

green hard file 8.5 x 14
"VWF U.S. Attorneys 1993"

manila folder 8.5 x 14 with green label
"WACO" [label over the word "Completed" in handwriting]

green hard file 8.5 x 11
"VWF 1993
WALL STREET JOURNAL -- Photos"

green hard file 8.5 x 11
"VWF Ward's Cove 1993"

green hard file 8.5 x 11
"VWF 1993
Acquisitions of Property"

green hard file 8.5 x 14
"VF Supreme Court 1993" [not "VWF"]

green hard file 8.5 x 11
"VWF Dept. of State 1993"

green hard file 8.5 x 11
"VWF Speech Materials 1993"

green hard file 8.5 x 11
"VWF Speeches Delivered 1993"

manila folder 8.5 x 11
"Fayetteville Speech"

green hard file 8.5 x 14
"VWF SLATER 1993"

green hard file 8.5 x 14
"VWF SENTENCING COMMISSION 1993"

green hard file 8.5 x 14
"VWF Sentencing 1993"

green hard file 8.5 x 11
"VWF RTC 1993"

manila folder 8.5 x 14 with gold label
"RESUMES
VWF"

green hard file 8.5 x 14
"VWF Janet Reno 1993"

green hard file 8.5 x 14
"VWF Regulatory Review 1993
OIRA"

Outer Cabinet Box 5 (not reflected on SN index)

manila folder 8.5 x 14
"Biography"

VWF"

red folder 8.5 x 11
"Personal Mail"

green hard folder 8.5 x 11
"VWF Chronological - APRIL 1993"

green hard folder 8.5 x 11
"VWF May Chronological File 1993"

red well folder 8.5 x 14
"VFW [sic] Chronological File 1993
01/25 - 02/28/93"

green hard folder 8.5 x 14
"VWF General Correspondence 1993
Sent"

green hard folder 8.5 x 14
"MARCH Chronological File - VF"

green hard folder 8.5 x 14
"VWF General Correspondence 1993
Received"

Outer Cabinet Box 6 (not reflected on SN index)

green hard folder 8.5 x 11
"VWF June 1993 Telephone Log 1993"

green hard folder 8.5 x 11
"JUNE 1993 - Chronological"

green hard folder 8.5 x 11
"VWF JULY Chronological File 1993"

red well folder 8.5 x 11
"VWF 1993
March, April, May Telephone Log"

ROSE LAW FIRM

A PROFESSIONAL ASSOCIATION
ATTORNEYS

120 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201-2893

TELEPHONE (501) 375-9131

FACSIMILE (501) 375-1309

U. M. ROSE
1834-1813

WRITER'S DIRECT DIAL NO.

GEORGE E. CAMPBELL
HERBERT C. RULE III
W. WILSON JONES
ALLEN W. BIRD II
WILLIAM E. BISHOP
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LES R. BALEOGE
JIM HUNTER BIRCH
KEVIN R. BURNS
RICHARD T. DONOVAN
RICHARD N. MASSEY
JOHN T. HARDIN
STEPHEN N. JOINER
JAMES M. GARY
JAMES H. DRUFF
GORDON M. WILBOURN

AMY LEE STEWART
DAVID A. SMITH
BRIAN ROSENTHAL
J. SCOTT SCHALLHORN
JEFFREY J. GEARHART
JAMES L. HARRIS
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FROM: Ronald M. Clark

DATE: August 26, 1996

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J. GASTON WILLIAMSON
PHILLIP CARROLL
W. DANE CLAY
JOHN A. DAVIS, III
OF COUNSEL

Steve Colloton, Esq.
Office of the Independent Counsel
1001 Pennsylvania Ave., NW
Suite 490 North
Washington, D.C. 20004

Dear Mr. Colloton:

Per your request please find enclosed an unredacted copy of page 8 to Mr. Foster's draft index. Please let me know if you require further assistance.

Very truly yours,



Ronald M. Clark

jh
Enclosure

cc: Alden L. Atkins, Esq.

W+C

Clinton

SN

- ✓ * Presidential Retreat - Chenal Valley Video Tape
- * Miscellaneous
- * Pending
- * DOJ
- * Clinton Papers
- ✓ * Chenal Property Fact Sheets
- ✓ * Presidential Retreat - Little Rock Properties
- * McLarty
- ✓ * Whitewater Development
- ⊙ * Presidential Retreat
- * Public Financial Disclosure Report
- ✓ * 1992 & 1993 Projected Income Taxes
- * Federal Gift Research
- ✓ * Blind Trust
- ✓ * Financial Statements
- * Mansion
- * Campaign '92 - News Articles
- ✓ * Fund Raiser "Dream Team" - Receptions
- ✓ * Clinton Exploratory Committee
- * Campaign '92 - Correspondence
- * Nepotism
- * Ethics
- * Health Issue
- ✓ * Hillary Rodham Clinton

✓ [Pres. Gift Research]

⊙ [✓]

MEMORANDUM

TO: File
FROM: Brett Kavanaugh
DATE: November 29, 1995
RE: Review of Documents at Williams & Connolly

On November 23, 1995, I reviewed documents that apparently had been in Vincent Foster's office on July 20, 1993, and had been transferred to Williams & Connolly from the White House residence on July 27, 1993. Williams & Connolly has produced an index of these files. In addition, Williams & Connolly has produced those documents that relate to Whitewater. I supplement the W&C index here with additional noteworthy items; I also have my original handwritten notes that I took while reviewing the documents at Williams & Connolly.

The following files were contained in the materials:

1. White House Project

There was an empty envelope dated 5-7-93 with handwriting "Vince Foster Confidential (For your eyes only) From: Watkins"

2. Executive Residence Security

There are handwritten notes re: chefs and ushers.

3. Clinton, Hillary Rodham (Personal and Confidential)

There is an 8-26-92 letter to Don Hollingsworth from Foster referring to an article in the American Spectator.

4. Clinton Financial Statements (Personal and Confidential)

* This file includes typewritten notes of December 9, 1992, that include:

"settlement w/firm"
"blind trust/cash management"
"other firm-related issues"
incl. "segregation and storage of personal, First Lady, and campaign-related files"
"Whitewater"
A. release and indemnity agreement
B. tax effect"

* There is a Smith Capital Management portfolio appraisal

for HRC with a note that says "1/31 exit date for Value Partners"
(BK: what was actual exit date?)

* There is a 12/17 LEXIS printout regarding blind trusts

* There is a 12/22 VF Jr. note to HRC stating

"1) Office of Govt Ethics informally believes you and Bill are entitled to a certificate of divestiture on stocks you must sell

2) OGE is independent federal agency. The director is a 'PAS' whose term expires 8/95"

5. Whitewater Development (Personal and Confidential)

Produced

6. First Family -- 1993 Income Tax Returns

there are notes re: deductibility of moving expenses, expenses of campaign

7. Blue Folder -- unlabeled

* memo from Mike Berman re: residence entertainment

* memo from Mike Berman re: funds provided by private sources

8. HRC Financial

copy of portfolio

9. Clinton Blind Trust

July 9, 1993, formal memo from Beth Nolan and VWF to President noting that savings bonds and AT&T stock had not previously been disclosed in prior financial disclosure reports (BK: interview Beth Nolan about this?)

June 28 note from VWF to Carolyn Huber re: domicile and "Welcome back"

July 11, 1993, memo to Brant Buck re: blind trust "Please hold until Thursday when I get final clearance on amendment of financial disclosures"

July 2, 1993, handwritten note to HRC: "There is an original blind trust agreement adding an account for Chelsea. It has been approved by OGE.

Ricki is getting increased calls re: status of blind trust. It would be nice if it were signed before you and the President leave so we don't lose another 2-3 weeks.

There is a typo on page 14 which Brant will fix upon receipt. You can also sign investment transfer documents with him while you are in Little Rock. He has been a great help."

May 27, 1993, handwritten note to Hillary re: will

May 22, 1993, formal memo to HRC from VWF re: blind trust

May 21, 1993, memo from Bill Smith to VWF re: editorial in Wall Street Journal

May 19, 1993, story re: HRC stocks -- story says that White House attorneys should have advised her to divest health care stocks (underlined by Foster) (FAXed from 7805 to 6279) (who is 7805?)

May 21, 1993 Wall Street Journal article

yellow pad with handwritten notes "Perry Co Bank" in top left corner

10. WJC -- Arkansas CLE

July 9, 1993, note to Nancy Hernreich from VWF re: Arkansas CLE

11. Clinton Exploratory Committee

memo to Rose partners in 1991 from VWF seeking contributions

12. Clinton Fund Raiser Dream Team

8-12-92 memo to all attorneys at Rose noting that attys at Friday, Mitchell, and Wright firms have given more than attys at Rose firm

13. Clinton Physician

14. Clinton, William and Hillary -- 1992 and 1993 Projected Taxes

15. WJC July Amendment to 1993 SFC-278

July 9, 1993, formal memo to the President from VWF and Beth Nolan regarding error in 278 "In preparing blind trust . . . " (this document is also in Clinton Blind Trust File)

statement of account and copies of common shares for Chelsea Clinton

16. WJC and HRC Blind Trust

July 19, 1993, FAX from Brant Buck to VWF -- revised

objectives for trust

June 18, 1993, letter from Bill Smith re: Dan Dorfman article -- note from VWF that assets not yet in blind trust ... "doc has been approved by not signed yet pending some details"

formal May 27, 1993 memo from VWF to Seidman and Caputo with CC to HRC re: Valuepartners

memo to Seidman with 4-21-93 Newsweek regarding Clinton taxes

17. HRC Arkansas Law License

June 1 handwritten letter to HRC with her handwritten response

18. WJC Arkansas Home

19. Presidential Retreat

20. Clinton -- Chenal Property Fact Sheets

21. Green Folder (unlabeled)

* a page right before #22 envelope with Chelsea's investments and savings bonds written on it (**check this page again; it corresponds to page found in his wallet**):

1000	2/80
100	2/80
50	3/80
50	3/80
500	12/83
500	12/84
500	12/91 (need to check this again)

* there are several letters with "sign here" stickers relating to blind trust

* 7-15-93 letter to President from Buck with "sign here" stickers

* stocks for Chelsea AT&T

22. First Family -- Form 278

memo to VWF from Carolyn Huber dated July 1, 1993, with blind trust information

23. Clinton 1992 Income Tax Return

produced

24. WJC -- 1993 Chronological File (all related FF personal)

July 11, 1993, letter to Buck with four original blind trusts

April 13, 1993, note with "sign here" sticker (???)
per C. Huber "In 1991 restoration WJC threw some std records away including checks"

April 2, 1993, handwritten FAX from Peggy Richardson "For your information. Let me know if you need additional. Please give HRC our love."

Joel -
Here's the
current draft -
- Clith

001164

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 1 of 16

BN

Videotape - 6/19/93 - Arkansas Bar Assn

Calendar

Newspaper clip

Title 28 - USCode

User's manual - secure phone

Document - re: secure calls

Directory - secure phone

Telephone directory -

Hope, Arkansas

Personal note - Volunteer - note - put to one side

7/20 - 3 calls

Documents related to First Family re: trust - privileged advice

001165

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 2 of 16

Note to VF re: legal research - health care

Correspondence in connection w/[attending?] mtg. - bar

Editorials - newspapers - privileged communication -
given by BN

Legal paper - college of law

Malpractice/health care

Correspondence - internal in-office - in connection w/official
duties

Letter in connection w/office duty - misuse of WH for commercial
reasons

Memo re: summer clerks

Insurance policy - property/casualty
- motor vehicle

Letters having to do w/President

Note having to do w/his dut^{ies}

Letter re: jobs

Similar people wanting jobs

001166

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 3 of 16

Get VF finan. disclosure form [from?] before Little Rock

WH function

Continuing education(?)

letters on behalf of Pres.

Matter in WH

Matter in WH - University of Arkansas

" " - Ark^e Rep. Theater

Reprint of Amer. Lawyer story

Health Care Story

Office of Govt. Ethics Manual

Memo from one of our counsel to Vince

Letter in connection w/WH duties

Memo re: WH

Note re: WH duties

0001167

Note - work-related.

Magazines -

Memos - between people in counsel office

WH letter - WH Counsel office & somebody else

Intra-office memo

Invitation

Calendar

Malpractice reform

Letter re: speech(?)

Memo - Office of Vice President

Memo - internal to WH

Budget - WH

Memo - Asst. Counsel - Deputy counsel

Letter re: official duties

0001168

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 5 of 16

Memo to person in Pres. office - draft correspondence

Memo - in counsel's office

Memo to BN - sent to Vince

Memo from Sobol

Phone log

Letter from Nat'l Archives

List of issues re: Counsel office ^{review} _____ (?)

Memo re: tax obligations

Note - rec [recommendation?] ^{on} a note

List - April - various issues in the Counsel's office

Notes on issues in counsel's office

- list of things he's working on
- looking at every page
- stuff he's [worked on?] - conditions(?)

001169

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 6 of 16

Various issues - ethics issue

People we're looking at

2/4/93

Diff. issues

Judicial appts.
Use of mil. aircraft
Cabinet retreat
Volunteers - use of volunteers

Notes on transition

Listing possible people

Things to work on - Exec. Order

Tape recorder - listen to it

Notes of meetings

"Work notes(?) "

Notes re: meeting

Calendar re: matter - May

0001170

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 7 of 16

*May calendar - review

- Expenditure - memoranda
- Rules re: what WH can spend \$\$ for
- Disbursements(?) - Exec Residence - _____ - gifts

Work - related materials - assgts to be given in office

- WHTO - Mgmt review
- Standards of Ethical Conduct
- Pres. library
- Acceptance of Gifts
- Transition planning/transition expenses
- WH functions - how to spend WH funds
- Inaugural matters/inaugural expenses
- Memo re: potential ee [employee] - Labor Dept.
- Messages - before there were phone logs

Stationery

001171

Docs re: Exec. Residence⁺ expenses
Legal opinions - OLC legal opinions - re: gifts
Memo - one staff to another - nomination
Letter to Janet Reno from Sen. Dole
Newspaper articles - nothing [personal?]
1/20 - Ark. papers
Atlanta Constitution
Article - 1/3
Another article re: appt
Entertainment expenses - residences
Payment of expenses re: travel
Travel expense [stuff?]
Articles -
"Gore's speech"

001172

Letter - April 8 -
- somebody asked to be given to HRC

Matter he's working on - w/other people in office

Memo - 1 Asst. to Pres. to another Asst _____

List of people at WH & addresses

Cards -

Unopened letter to him from law firm

Resume

List of people - various law firms - work-related

List - work-related - 2 [stats? [statutes] states?]

List of phone #'s in office

Phone calls from Feb.

Checkbooks

Work-related

001173

Bills

Invitation to _____

[Schwab acct - personal?]

Notebook listing names of people he knows - may be client matters
from old firm

Personal[recusal?] file

Work-related

Transition

Active matters

Intern _____

Membership - Ark. Trial Lawyers

Tel #'s - Cabinet members

WH personnel list

Internal WH Tel. #'s

Old memoranda - RR & GHB - Administrations

001174

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 11 of 16

Drawer - all matters - work-related

Sep. categories

Trash

- WH envelope
- CU [credit union] slip

Work notes

WH Bulletin

Morning News Summary

File drawer

- all work-related
- "residence" "renovations"

Work orders

Financ disclosure

Various investment matters re: First Family

[Ⓢ]
Judicial nominations

List of people - prepare book of prospective nominees

[Trans.?.]

Treas. Regs.

^
WH Mess

0001175

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 12 of 16

Marine Helicopter

"State Justice Institute"

Q _____

Book Pres. would write ^{Foreward} ~~forward~~ to

Book on Civ. Pro.

Market Liberalism ~~{name of a book}~~ _____

WH mil. office

Judic. selection

3/18 - letter re: posters - using Pres. likeness next (?) WH

Card -

Judic. selection process

Book - work related

Books

Work-related

S.Ct. candidates

001176

Pres. appt. folders

Briefing books

Pers. files

- tax returns
- ~~Freq. Flyers~~

Official business

Conflicts(?)

Fund-raisers

First Family

Property in Ark.

Work-related - Health Care Task Force

Speeches

- Address to DOJ ee's - 4/6
- Notes re: various legal issues
- letters & articles
- L.Rev. articles
- ABA [policies?]

001177

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 14 of 16

- "Doctors unchecked"
- Legal opinions
- Cases
- Health Care

*Computer

Burn bag

- lists
- background investigations [?]
- references to jobs
- arbitration of claims
- nothing personal
- campaign stuff

Personal stuff

001178

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 15 of 16

Don Flynn, Secret Service
Paul Imbordino

Capt. Charles Hume, U.S. Park Police
Det. Peter Markham, U.S. Park Police

Scott Salter, FBI
Dennis Condon, FBI

David Margolis, DOJ
Roger Adams, DOJ

Mike Spafford, family

WH

Bernie
Cliff
Steve Neuwirth
Bill Burton

get Maggie - go thru office - get HRC, WJC stuff

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 16 of 16

001179

Brant Buck

M E M O R A N D U M

TO: Bill Duffy
FROM: Carl Stich
RE: Index to David Kendall Files on the Clintons

Enclosed are copies of the index to the Clinton personal files, together with David Kendall's transmittal letter. I asked for a copy of the index last Friday while interviewing Kendall. This index should cover all documents provided to Williams & Connolly by the White House on July 27, 1993.

I will send you a copy of the FD-302 on our interview with Kendall and Bob Barnett, Kendall's partner who represented the Clintons at the time the documents were sent over from the White House. Barnett explains that he was advised on July 27, 1993 that the White House had Clinton personal files that he would need for his representation. He went to the White House and was shown a box of files by Maggie Williams. He flipped through them without doing a detailed review, then taped the box shut. He then sent Peter Barlow, the Williams & Connolly Comptroller, to retrieve the box from the White House. When Barlow returned the box to Barnett's office, Barnett opened the box and inserted a thin file he had received in the meantime. The thin file contained documents forwarded by Brantley Buck to Vincent Foster relating to Clinton finances. The file had been enroute to the President from Vince Foster, and was intercepted after Foster's death and sent to Barnett. (Barnett believes that Brantley Buck prepared a second set of documents which the Clintons later signed.) Barnett then resealed the box and it was placed in a vault at Williams & Connolly.

Later, the documents were taken out of the box and put in a file cabinet in the vault. Barnett would use the documents periodically, but never took anything out or put anything in. Barnett withdrew from personally representing the First Family after news of RTC referrals were reported in the press on October 31, 1993. David Kendall took over in early November.

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Page Denied

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury
FOIA(b)(6)
FOIA(b)(7) - (C)

Page Denied

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury
FOIA(b)(6)
FOIA(b)(7) - (C)

Page Denied

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury
FOIA(b)(6)
FOIA(b)(7) - (C)

Page Denied

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury
FOIA(b)(6)
FOIA(b)(7) - (C)

Page Denied

ENVIRONMENTAL PROTECTION AGENCY

et al., Petitioners,

v.

Patsy T. MINK et al.

No. 71--909.

Argued Nov. 9, 1972.

Decided Jan. 22, 1973.

Suit was brought by members of Congress, in both their official and private capacities, under the Freedom of Information Act to obtain documents pertaining to underground atomic explosion. The United States District Court for the District of Columbia entered summary judgment for the federal defendants and the members of Congress appealed. The Court of Appeals, 150 U.S.App.D.C. 233, 464 F.2d 742, reversed and remanded and the federal defendants brought certiorari. The Supreme Court, Mr. Justice White, held that where documents pertaining to proposed underground atomic explosion were classified 'top secret' or 'secret,' pursuant to executive order, provision of Freedom of Information Act which excludes from the operation of the Act matters specifically required by executive order to be kept secret in interest of the national defense or foreign policy precluded compelled disclosure of the documents.

Reversed and remanded.

Mr. Justice Stewart filed concurring opinion.

Mr. Justice Brennan filed an opinion concurring in part and dissenting in part, in which Mr. Justice Marshall joined.

Mr. Justice Douglas filed a dissenting opinion.

Mr. Justice Rehnquist took no part in the consideration or decision of the case.

[1] RECORDS ⇔ 56

326k56

Formerly 326k14

Where documents pertaining to proposed underground atomic explosion were classified "top secret" or "secret," pursuant to executive order, provision of Freedom of Information Act which excludes from the operation of the Act matters

specifically required by executive order to be kept secret in interest of the national defense or foreign policy precluded compelled disclosure of the documents. 5 U.S.C.A. § 552(b)(1); Executive Order, No. 10501, 50 U.S.C.A. § 401 note; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C.A. § 4332(2)(C).

[2] RECORDS ⇔ 56

326k56

Formerly 326k14

For purposes of exemption from the operation of the Freedom of Information Act of matters that are specifically required by executive order to be kept secret in the interest of national defense or foreign policy, the President may delegate his authority to classify documents. 5 U.S.C.A. § 552(b)(1).

[3] RECORDS ⇔ 56

326k56

Formerly 326k14

The Freedom of Information Act exempts matters specifically required by executive order to be kept secret and classification of material under executive order is sufficient to protect documents from disclosure. 5 U.S.C.A. § 552(b)(1).

[4] RECORDS ⇔ 56

326k56

Formerly 326k14

The Freedom of Information Act is not intended to subject the soundness of executive security classifications to judicial review at the insistence of any objecting citizen. 5 U.S.C.A. §§ 552, 552(b)(1, 5).

[5] RECORDS ⇔ 66

326k66

Formerly 326k14

Provision of the Freedom of Information Act which exempts from its mandate matters which are specifically required by executive order to be kept secret in interest of the national defense or foreign policy does not authorize or permit in camera inspection of a contested document bearing a single classification so that the court may separate the secret from the supposedly nonsecret and order disclosure of the nonsecret. 5 U.S.C.A. § 552(b)(1).

[6] RECORDS ⇔ 57

326k57

Formerly 326k14

The Freedom of Information Act entitles the public to all inter-agency or intra-agency memoranda or letters that a private party could discover in litigation with the federal agency. 5 U.S.C.A. § 552(b)(5).

[7] RECORDS ⇔ 57

326k57

Formerly 326k14

Provision of the Freedom of Information Act which exempts from its mandate inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency makes confidential intra-agency advisory opinions privileged from inspection. 5 U.S.C.A. § 552(b)(5).

[8] FEDERAL CIVIL PROCEDURE ⇔ 1636.1

170Ak1636.1

Formerly 170Ak1636

In actions under the Freedom of Information Act, courts are not given the option to impose alternative sanctions--short of compelled disclosure--such as striking a particular defense or dismissing the government's action. 5 U.S.C.A. §§ 552, 552(b)(1, 5).

[8] FEDERAL CIVIL PROCEDURE ⇔ 1639

170Ak1639

In actions under the Freedom of Information Act, courts are not given the option to impose alternative sanctions--short of compelled disclosure--such as striking a particular defense or dismissing the government's action. 5 U.S.C.A. §§ 552, 552(b)(1, 5).

[9] RECORDS ⇔ 57

326k57

Formerly 326k14

The privilege of compelled disclosure that attaches to intra-governmental memoranda clearly has finite limits, even in civil litigation; in each case, the question is whether production of the contested document would be injurious to the consultative functions of government that the privilege of nondisclosure protects. 5 U.S.C.A. § 552(b)(5).

[10] FEDERAL CIVIL PROCEDURE ⇔ 1593

170Ak1593

In absence of claim that disclosure would jeopardize

state secrets, memoranda consisting of only compiled factual material or purely factual material contained in deliberative memoranda and separable from its context would generally be available for discovery by private parties in litigation with the government. 5 U.S.C.A. §§ 552, 552(b)(1, 5).

[11] RECORDS ⇔ 57

326k57

Formerly 326k14

Although the Freedom of Information Act does not require nondisclosure of manifestly private and confidential policy recommendations simply because the document containing them also happens to contain factual data, it does not permit the withholding of factual material otherwise available on discovery merely because it was placed in a memorandum with matters of law, policy or opinion. 5 U.S.C.A. § 552(b)(5).

[12] RECORDS ⇔ 57

326k57

Formerly 326k14

Provision of Freedom of Information Act exempting inter-agency or intra-agency memorandums or letters which would not be available by law to a party contemplates that the public's access to internal memoranda will be governed by the same flexible, common sense approach that has long governed private parties' discovery of such documents involved in litigation with government agencies. 5 U.S.C.A. § 552(b)(5).

[13] FEDERAL CIVIL PROCEDURE ⇔ 1615.1

170Ak1615.1

Formerly 170Ak1615

Although in some situations in which compelled disclosure of governmental agency memoranda is sought, in camera inspection will be necessary and appropriate, it need not be automatic; an agency should be given the opportunity, by means of detailed affidavits or oral testimony, to establish to the satisfaction of the district court that the documents sought fall clearly beyond the range of material that would be available to a private party in litigation with the agency. 5 U.S.C.A. § 552(b)(5).

[14] FEDERAL CIVIL PROCEDURE ⇔ 1615.1

170Ak1615.1

Formerly 170Ak1615

Burden is on the agency resisting disclosure of intra-agency or inter-agency memoranda on ground it is beyond range of material available to a private party in litigation with the government and if it fails to meet its burden without in camera inspection, the district court may order in camera inspection of government memoranda in order to determine whether it might be disclosed. 5 U.S.C.A. § 552(a)(3), (b)(1).

[15] RECORDS ⇌ 65

326k65

Formerly 326k14

Government agency may demonstrate, by surrounding circumstances, that particular documents are purely advisory, contain no separable, factual information which might be subject to disclosure and are within exemption of Freedom of Information Act for intra-agency memoranda used in the decision-making processes of the Executive Branch and a representative document of those sought may be selected for in camera inspection. 5 U.S.C.A. § 552(b)(5).

[16] RECORDS ⇌ 65

326k65

Formerly 326k14

Agency may itself disclose the factual portions of the contested documents and attempt to show by circumstances that the excised portions constitute the bare bones of matter protected by the Freedom of Disclosure Act as being used in the decision-making processes. 5 U.S.C.A. § 552(b)(5).

[17] RECORDS ⇌ 66

326k66

Formerly 326k14

In camera inspection of all documents is not a necessary or inevitable tool in every case in which the government claims that disclosure is exempted by the Freedom of Information Act provision excluding inter-agency or intra-agency memoranda which is not available by law to a party in litigation with the agency. 5 U.S.C.A. §§ 552, 552(b)(1, 5).

****829 *73 Syllabus [FN*]**

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed.

499.

Respondent Members of Congress brought suit under the Freedom of Information Act of 1966 to compel disclosure of nine documents that various officials had prepared for the President concerning a scheduled underground nuclear test. All but three were classified as Top Secret or Secret under E.O. 10501, and petitioners represented that all were inter-agency or intra-agency documents used in the Executive Branch's decisionmaking processes. The District Court granted petitioners' motion for summary judgment on the grounds that each of the documents was exempt from compelled disclosure by 5 U.S.C. s 552(b)(1) (hereafter Exemption 1), excluding matters 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy,' and s 552(b)(5) (hereafter Exemption 5), excluding 'inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency.' The Court of Appeals reversed, concluding (a) that Exemption I permits nondisclosure of only the secret portions of classified documents but requires disclosure of the nonsecret components if separable, and (b) that Exemption 5 shields only governmental 'decisional processes' and not factual information unless 'inextricably intertwined with policy-making processes.' The District Court was ordered to examine the documents in camera to determine both aspects of separability. Held:

1. Exemption 1 does not permit compelled disclosure of the six classified documents or in camera inspection to sift out 'non-secret components,' and petitioners met their burden of demonstrating that the documents were entitled to protection under that exemption. Pp. 832--839.

2. Exemption 5 does not require that otherwise confidential documents be made available for a district court's in camera inspection regardless of how little, if any, purely factual material they contain. In implying that such inspection be automatic, the Court of Appeals order was overly rigid; and petitioners should be afforded the opportunity of demonstrating by means short of *74 in camera inspection that the documents sought are clearly beyond the range of material that would be available to a private party in litigation with a Government agency. Pp. 832--839.

(Cite as: 410 U.S. 73, *74, 93 S.Ct. 827, **829)

150 U.S.App.D.C. 233, 464 F.2d 742, reversed and remanded.

Roger C. Cramton, St. Johnsbury, Vt. for petitioners.

Ramsey Clark, Washington, D.C., for respondents.

****830** Mr. Justice WHITE delivered the opinion of the Court.

The Freedom of Information Act of 1966, 5 U.S.C. s 552, provides that Government agencies shall make available to the public a broad spectrum of information, but exempts from its mandate certain specified categories of information, including matters that are 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy,' s 552(b)(1), or are 'inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,' s 552(b)(5). It is the construction and scope of these exemptions that are at issue here.

***75 I**

Respondents' lawsuit began with an article that appeared in a Washington, D.C., newspaper in late July 1971. The article indicated that the President had received conflicting recommendations on the advisability of the underground nuclear test scheduled for that coming fall and, in particular, noted that the 'latest recommendations' were the product of 'a departmental under-secretary committee named to investigate the controversy.' Two days later, Congresswoman Patsy Mink, a respondent, sent a telegram to the President urgently requesting the 'immediate release of recommendations and report by inter-departmental committee. . . .' When the request was denied, an action under the Freedom of Information Act was commenced by Congresswoman Mink and 32 of her colleagues in the House. [FN1]

FN1. A separate action was brought to enjoin the test itself. *Committee for Nuclear Responsibility v. Seaborg* (D.C., Civ. Action No. 1346--71). After adverse decisions below, plaintiffs in that case applied for an injunction in this Court. On November 6, 1971, we denied the application,

Committee for Nuclear Responsibility, Inc. v. Schlesinger, 404 U.S. 917, 92 S.Ct. 242, 30 L.Ed.2d 191 and the test was conducted that same day. It should be noted that in the District Court respondents stated that they 'have exhausted their administrative remedies (and) . . . have complied with all applicable regulations.' Petitioners did not contest those assertions.

Petitioners immediately moved for summary judgment on the ground that the materials sought were specifically exempted from disclosure under subsections (b)(1) and (b)(5) of the Act. [FN2] In support of the motion, petitioners filed an affidavit of John N. Irwin II, the Under Secretary *76 of State. Briefly, the affidavit states that Mr. Irwin was appointed by President Nixon as Chairman of an 'Under Secretaries Committee,' which was a part of the National Security Council system organized by the President 'so that he could use it as an instrument for obtaining advice on important questions relating to our national security.' The Committee was directed by the President in 1969 'to review the annual underground nuclear test program and to encompass within this review requests for authorization of specific scheduled tests.' Results of the Committee's reviews were to be transmitted to the President 'in time to allow him to give them full consideration before the scheduled events.' In 5 of the affidavit, Mr. Irwin stated that pursuant to 'the foregoing directions from the President,' the Under Secretaries Committee had prepared and transmitted to the President a report on the proposed underground nuclear test known as 'Cannikin,' scheduled to take place at Amchitka Island, Alaska. The report was said to have consisted of a covering memorandum from Mr. Irwin, the report of the Under Secretaries Committee, five documents attached to that report, and three additional letters separately sent to Mr. Irwin. [FN3] Of the *77 total of 10 documents, ****831** one, an Environmental Impact Statement prepared by AEC, was publicly available and was not in dispute. Each of the other nine was claimed in the Irwin affidavit to have been

FN2. Petitioners also moved for dismissal of the suit insofar as respondents sought disclosure of the documents in their official capacities as Members of Congress. The District Court granted this motion, but the Court of Appeals did not reach the issue. Accordingly, the issue is not before this Court.

(Cite as: 410 U.S. 73, *77, 93 S.Ct. 827, **831)

FN3. According to the Irwin affidavit, the report contained the following documents: A. A covering memorandum from Mr. Irwin to the President, dated July 17, 1971. This memorandum is classified Top Secret pursuant to Executive Order 10501. B. The Report of the Under Secretaries Committee. This report was also classified Top Secret. Attached to the report were additional documents: 1. A letter, classified Secret, from the Chairman of the Atomic Energy Commission (AEC) to Mr. Irwin. 2. A report, classified Top Secret, from the Defense Program Review Committee, of which Dr. Henry Kissinger was the Chairman. 3. The Environmental Impact Statement on the proposed Cannikin test, prepared by the AEC in 1971, pursuant to s 102(c) of the National Environmental Policy Act of 1969, 83 Stat. 853, 42 U.S.C. s 4332(C). This document had always been 'publicly available' and a copy was attached to the Irwin affidavit. 4. A transcript of an oral briefing given by the AEC to the Committee. This document was classified Secret. 5. A memorandum from the Council on Environment Quality to Mr. Irwin. This memorandum was separately unclassified. C. In addition to the covering memorandum and the Committee's report (with attached documents), were three letters that had been transmitted to Mr. Irwin: 1. A letter from Mr. William Ruckelshaus, for the Environmental Protection Agency. This letter was classified Top Secret, but has now been declassified. 2. A letter from Mr. Russell Train, for the Council on Environmental Quality. Although the Irwin affidavit states that this letter was classified Top Secret, petitioners concede that it was so classified 'only because it was to be attached to the Undersecretary's Report.' Brief for Petitioners 6 n. 5. 3. A letter of Dr. Edward E. David, Jr., for the Office of Science and Technology. This letter is classified Top Secret.

'prepared and used solely for transmittal to the President as advice and recommendations and set forth the views and opinions of the individuals and agencies preparing the documents so that the President might be fully apprised of varying viewpoints and have been used for no other purpose.'

In addition, at least eight (by now reduced to six) of the nine remaining documents were said to involve highly sensitive matter vital to the national defense and foreign policy and were described as having

been classified Top Secret or Secret pursuant to Executive Order 10501. [FN4]

FN4. These eight documents were also described as having been classified as 'Restricted Data . . . pursuant to the Atomic Energy Act of 1954, as amended. (42 U.S.C. (ss 2014(y)), 2161 and 2162.)' Petitioners have not asserted that these provisions, standing alone, would justify withholding the documents in this case. But see 5 U.S.C. s 552(b)(3), relating to matters 'specifically exempted from disclosure by statute.'

*78 On the strength of this showing by petitioners, the District Court granted summary judgment in their favor on the ground that each of the nine documents sought was exempted from compelled disclosure by ss (b)(1) and (b)(5) of the Act. The Court of Appeals reversed, concluding that subsection (b)(1) of the Act permits the withholding of only the secret portions of those documents bearing a separate classification under Executive Order 10501: 'If the nonsecret components (of such documents) are separable from the secret remainder and may be read separately without distortion of meaning, they too should be disclosed.' 150 U.S.App.D.C. 233, 237, 464 F.2d 742, 746. The court instructed the District Judge to examine the classified documents 'looking toward their possible separation for purposes of disclosure or nondisclosure.' Ibid.

In addition, the Court of Appeals concluded that all nine contested documents fell within subsection (b)(5) of the Act, but construed that exemption as shielding only the 'decisional processes' reflected in internal Government memoranda, not 'factual information' unless that **832 information is 'inextricably intertwined with policymaking processes.' The court then ordered the District Judge to examine the documents in camera (including, presumably, any 'nonsecret components' of the six classified documents) to determine if 'factual data' could be separated out and disclosed 'without impinging on the policymaking decisional processes intended to be protected by this exemption.' We granted certiorari, 405 U.S. 974, 92 S.Ct. 1196, 31 L.Ed.2d 247 and now reverse the judgment of the Court of Appeals.

*79 II

(Cite as: 410 U.S. 73, *79, 93 S.Ct. 827, **832)

The Freedom of Information Act, 5 U.S.C. s 552, [FN5] is a revision of s 3, the public disclosure section, of the Administrative Procedure Act, 5 U.S.C. s 1002 (1964 ed.). Section 3 was generally recognized as falling far short of its disclosure goals and came to be looked upon more as a withholding statute than a disclosure statute. See S.Rep.No.813, 89th Cong., 1st Sess., 5 (1965) (hereinafter S.Rep.No.813); H.R.Rep.No.1497, 89th Cong., 2d Sess., 5--6 (1966); U.S.Code Cong. & Admin.News 1966, p. 2418 (hereinafter H.Rep.No.1497). The section was plagued with vague phrases, such as that exemption from disclosure 'any function of the United States requiring secrecy in the public interest.' Moreover, even 'matters of official record' were only to be made available to 'persons properly and directly concerned' with the information. And the section provided no remedy for wrongful withholding of information. The provisions of the Freedom of Information Act stand in sharp relief against those of s 3. The Act eliminates the 'properly and directly concerned' test of access, stating repeatedly that official information shall be made available 'to the public,' 'for public inspection.' Subsection (b) of the Act creates nine exemptions from compelled disclosures. These exemptions are explicitly made exclusive, 5 U.S.C. s 552(c), and are plainly intended to set up concrete, workable standards for determining whether particular material may be withheld or must be disclosed. Aggrieved citizens are given a speedy remedy in district courts, where 'the court shall determine the matter de novo and the burden is on the agency to sustain its action.' 5 U.S.C. s 552(a)(3). Noncompliance with court orders may be punished by contempt. Ibid.

FN5. The Act was passed in 1966, 80 Stat. 383, and codified in its present form in 1967. 81 Stat. 54.

*80 Without question, the Act is broadly conceived. It seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands. Subsection (b) is part of this scheme and represents the congressional determination of the types of information that the Executive Branch must have the option to keep confidential, if it so chooses. As the Senate Committee explained, it was not 'an easy task to

balance the opposing interests, but it is not an impossible one either. . . . Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.' S.Rep.No.813, p. 3. [FN6]

FN6. The Report states (ibid.): 'It is the purpose of the present bill . . . to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language 'At the same time that a broad philosophy of 'freedom of information' is enacted into law, it is necessary to protect certain equally important rights of privacy with respect to certain information in Government files, such as medical and personnel records. It is also necessary for the very operation of our Government to allow it to keep confidential certain material, such as the investigatory files of the Federal Bureau of Investigation. 'It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.' See also H.R.Rep.No.1497, p. 6.

**833 It is the context of the Act's attempt to provide a 'workable formula' that 'balances, and protects all interests,' that the conflicting claims over the documents in this case must be considered.

*81 A

[1] Subsection (b)(1) of the Act (hereafter sometimes Exemption) exempts from forced disclosure matters 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.' According to the Irwin affidavit, the six documents for which Exemption 1 is now claimed were all duly classified Top Secret or Secret, pursuant to Executive Order 10501, 3 CFR 280 (Jan. 1, 1970). That order was promulgated under the authority of the President in 1953, 18 Fed.Reg. 7049, and, since that time, has served as the basis for the classification by the Executive Branch of information 'which requires protection in the interests of national defense.'

(Cite as: 410 U.S. 73, *81, 93 S.Ct. 827, **833)

[FN7] We do not believe that Exemption 1 permits compelled disclosure of documents, such as the six here that were classified pursuant to this Executive Order. Nor does the Exemption permit in camera inspection of such documents to sift out so-called 'nonsecret components.' Obviously, this test was not the only alternative available. But Congress chose to follow the Executive's determination in these matters and that choice must be honored.

FN7. Executive Order 10501 has been superseded, as of June 1, 1972, by Executive Order 11652, 37 Fed.Reg. 5209, which similarly provides for the classification of material 'in the interest of the national defense or foreign relations.' Portions of two documents for which Exemption 1 is claimed were ordered disclosed in connection with the action brought to enjoin the test (see n. 1, supra). Petitioners seek no relief with respect to any matters already disclosed.

[2] The language of Exemption 1 was chosen with care. According to the Senate Committee, '(t)he change of standard from 'in the public interest' in made both to delimit more narrowly the exception and to give it a more precise definition. The phrase 'public interest' in section 3(a) of the Administrative Procedure Act has been subject *82 to conflicting interpretations, often colored by personal prejudices and predilections. It admits of no clear delineations.' S.Rep.No.813, p. 8. The House Committee similarly pointed out that Exemption 1 'both limits the present vague phrase, 'in the public interest,' and gives the area of necessary secrecy a more precise definition' H.R.Rep.No.1497, p. 9; U.S.Code Cong. & Admin.News 1966, p. 2426. Manifestly, Exemption 1 was intended to dispel uncertainty with respect to public access to material affecting 'national defense or foreign policy.' Rather than some vague standard, the test was to be simply whether the President has determined by Executive Order that particular documents are to be kept secret. The language of the Act itself is sufficiently clear in this respect, but the legislative history disposes of any possible argument that Congress intended the Freedom of Information Act to subject executive security classifications to judicial review at the insistence of anyone who might seek to question them. Thus, the House Report stated with respect to subsection (b)(1) that 'citizens both in and out of Government can agree to restrictions on categories of information which the

President has determined must be kept secret to protect the national defense or to advance foreign policy, such as matters classified pursuant to Executive Order 10501.' H.R.Rep.No.1497, pp. 9-10; U.S.Code Cong. & Admin.News 1966, p. 2427. [FN8] Similarly, **834 Representative *83 Moss, Chairman of the House Subcommittee that considered the bill, stated that the exemption 'was intended to specifically recognize that Executive order (No. 10501)' and was drafted 'in conformity with that Executive order.' Hearings on Federal Public Records Law before a Subcommittee of the House Committee on Government Operations, 89th Cong., 1st Sess., 52, 55 (1965) (hereinafter 1965 House Hearings). And a member of the Committee, Representative Gallagher, stated that the legislation and the Committee Report make it 'crystal clear that the bill in no way affects categories of information which the President . . . has determined must be classified to protect the national defense or to advance foreign policy. These areas of information most generally are classified under Executive Order No. 10501.' 112 Cong.Rec. 13659.

FN8. The House Report, it is true, indicates that the President must determine that the exempted matter be kept secret. Clearly, however, Executive Order 10501 is based on presidential authority and specifically delegates that authority to 'the departments, agencies, and other units of the executive branch as hereinafter specified.' 3 CFR s 281. (Jan. 1, 1970) (emphasis added). One may disagree with the scope of the delegation or with how the delegated authority is exercised in particular cases, but the authority itself nevertheless remains the President's and it is his judgment that the first exemption was designed to respect.

[3] These same sources make untenable the argument that classification of material under Executive Order 10501 is somehow insufficient for Exemption 1 purposes, or that the exemption contemplates the issuance of orders, under some other authority, for each document the Executive may want protected from disclosure under the Act. Congress could certainly have provided that the Executive Branch adopt new procedures or it could have established its own procedures--subject only to whatever limitations the Executive privilege may be hld to impose upon such congressional ordering. Cf. United States v. Reynolds, 345 U.S. 1, 73 S.Ct. 528, 97 L.Ed. 727 (1953). But Exemption 1 does

neither. It states with the utmost directness that note that the preamble of the new Executive by Executive order to be kept secret.' Congress was well aware of the Order and obviously accepted determinations pursuant to that Order as qualifying for exempt status under s (b)(1). In this context it is patently unrealistic to *84 argue that the 'Order has nothing to do with the first exemption.' [FN9]

FN9. Brief for Respondents 18. Respondents note that the preamble of the new Executive Order 11652 (see n. 7, supra), specifies that material classified pursuant to its provisions 'is expressly exempted from public disclosure by Section 552(b)(1) of Title 5, United States Code.' Executive Order 10501 has no comparable recital, but only the sheerest ritualism would distinguish the effect of the two orders on any such basis. Indeed, respondents' apparent acceptance of the new order as a justifiable ground for resisting disclosure under Exemption 1 points to the absurdity of maintaining that Executive Order 10501 is irrelevant to the Act.

[4][5] What has been said thus far makes wholly untenable any claim that the Act intended to subject the soundness of executive security classifications to judicial review at the insistence of any objecting citizen. It also negates the proposition that Exemption 1 authorizes or permits in camera inspection of a contested document bearing a single classification so that the court may separate the secret from the supposedly nonsecret and order disclosure of the latter. The Court of Appeals was thus in error. The Irwin affidavit stated that each of the six documents for which Exemption 1 is now claimed 'are and have been classified' Top Secret and Secret 'pursuant to Executive Order No. 10501' and as involving 'highly sensitive matter that is vital to our national defense and foreign policy.' The fact of those classifications and the documents' characterizations have never been disputed by respondents. Accordingly, upon such a showing and in such circumstances, petitioners had met their burden of demonstrating that the documents **835 were entitled to protection under Exemption 1, and the duty of the District Court under s 552(a)(3) was therefore at an end. [FN10]

FN10. This conclusion is not undermined by the new Executive Order 11652, which calls for the separation of documents into classified and unclassified portions, where practicable. 37

Fed.Reg. 5212. On the contrary, that new order provides that the separating be done by the Executive, not the Judiciary, and, like its predecessor, permits declassification of material only in accordance with its procedures. More importantly, the very existence of the new order demonstrates that the Executive exercises a continuing responsibility for determining the need for secrecy in matters that affect national defense and foreign policy. Exemption 1 recognizes that responsibility by leaving to the Executive, under such orders as shall be developed, the decision of what may be disclosed and what must be kept secret.

***85 B**

[6][7][8][9][10] Disclosure of the three documents conceded to be 'unclassified' is resisted solely on the basis of subsection (b)(5) of the Act hereafter Exemption 5). [FN11] That Exemption was also invoked, alternatively, to support withholding the six documents for which Exemption 1 was claimed. It is beyond question that the Irwin affidavit, standing alone, is sufficient to establish that all of the documents involved in this litigation are 'inter-agency or intra-agency' memoranda or 'letters' that were used in the decisionmaking processes of the Executive Branch. By its terms, however, Exemption 5 creates an exemption for such documents only insofar as they 'would not be available by law to a party . . . in litigation with the *86 agency.' This language clearly contemplates that the public is entitled to all such memoranda or letters that a private party could discover in litigation with the agency. Drawing such a line between what may be withheld and what must be disclosed is not without difficulties. In many important respects, the rules governing discovery in such litigation have remained uncertain from the very beginnings of the Republic. [FN12] Moreover, at best, the discovery rules can only be applied under Exemption 5 by way of rough analogies. For example, we do not know whether the Government is to be treated as though it were a prosecutor, a civil plaintiff, or a defendant. [FN13] Nor does the Act, by its terms, permit inquiry into particularized needs of the individual seeking the information, although such an inquiry would ordinarily be made of a private litigant. Still, the legislative history of Exemption 5 demonstrates that Congress intended to incorporate generally the

(Cite as: 410 U.S. 73, *86, 93 S.Ct. 827, **835)

recognized rule ****836** that 'confidential intra-agency advisory opinions . . . are privileged from inspection.' *Kaiser Aluminum & Chemical Corp. v. United States*, 157 F.Supp. 939, 946, 141 Ct.Cl. *87 38, 49 (1958) (Reed, J.). As Mr. Justice Reed there stated:

FN11. Title 5 U.S.C. s 552 reads in part as follows: '(a) Each agency shall make available to the public information as follows: '(b) This section does not apply to matters that are--'(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.' The three documents are: the CEQ memorandum to Mr. Irwin, the Train letter, and the Ruckelshaus letter, which has now been declassified.

FN12. See generally 4 J. Moore, *Federal Practice* 26.61 (1972) and authorities collected (*id.*, at 26.61(1) n. 2) (hereinafter Moore); 8 J. Wigmore, *Evidence* ss 2378, 2379 (McNaughton rev. 1961) (hereinafter Wigmore). There were early disputes over the issue of Executive privilege. See Chief Justice Marshall's decisions in the trial of *United States v. Burr*, 25 Fed.Cas. 30 (No. 14,692d) and 25 Fed.Cas. 187, 191--192 (No. 14,694) (CCD Va.1807), discussed in 8 Wigmore s 2371, pp. 739--741 741 (3d ed. 1940) and 4 Moore 26.61(6.--4). See also Wigmore s 2378, p. 805 and n. 21.

FN13. Different rules have been held to apply in each situation. See, e.g., *United States v. Andolschek*, 142 F.2d 503, 506 (CA2 1944) (L. Hand, J.) (United States as prosecutor); *Bank Line, Ltd. v. United States*, 76 F.Supp. 801 (SDNY 1948) (United States as defendant). Moreover, in actions under the Freedom of Information Act, courts are not given the option to impose alternative sanctions--short of compelled disclosure--such as striking a particular defense or dismissing the Government's action.

'There is a public policy involved in this claim of privilege for this advisory opinion--the policy of open, frank discussion between subordinate and chief concerning administrative action.' *Id.*, at 946, 141 Ct.Cl., at 48.

The importance of this underlying policy was echoed again and again during legislative analysis and discussions of Exemption 5:

'It was pointed out in the comments of many of

the agencies that it would be impossible to have any frank discussion of legal or policy matters in writing if all such writings were to be subjected to public scrutiny. It was argued, and with merit, that efficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to 'operate in a fishbowl.' The committee is convinced of the merits of this general proposition, but it has attempted to delimit the exception as narrowly as consistent with efficient Government operation.' S.Rep.No.813, p. 9.

See also H.R.Rep.No.1497, p. 10. But the privilege that has been held to attach to intragovernmental memoranda clearly has finite limits, even in civil litigation. In each case, the question was whether production of the contested document would be 'injurious to the consultative functions of government that the privilege of nondisclosure protects.' *Kaiser Aluminum & Chemical Corp.*, *supra*, at 946, 141 Ct.Cl., at 49. Thus, in the absence of a claim that disclosure would jeopardize state secrets, see *United States v. Reynolds*, 345 U.S. 1, 73 S.Ct. 528, 97 L.Ed. 727 (1953), memoranda consisting only of compiled factual material ***88** or purely factual material contained in deliberative memoranda and severable from its context would generally be available for discovery by private parties in litigation with the Government. [FN14] Moreover, in applying the privilege, courts often were required to examine the disputed documents *in camera*, in order to determine which should be turned over or withheld. [FN15] We must ***89** assume, therefore, that Congress legislated against the backdrop ****837** of this case law, particularly since it expressly intended 'to delimit the exception (5) as narrowly as consistent with efficient Government operation.' S.Rep.No.813, p. 9. See H.R.Rep.No.1497, p. 10. Virtually all of the courts that have thus far applied Exemption 5 have recognized that it requires different treatment for materials reflecting deliberative or policy-making processes on the one hand, and purely factual, investigative matters on the other. [FN16]

FN14. See, e.g., *Machin v. Zuckert*, 114 U.S.App.D.C. 335, 316 F.2d 336, cert. denied, 375 U.S. 896, 84 S.Ct. 192, 11 L.Ed.2d 124 (1963) (*Air Force Aircraft Accident Investigation Report*); *Boeing Airplane Co. v. Coggeshall*, 108

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U.S.App.D.C. 106, 112--113, 280 F.2d 654, 660--661 (1960) (Renegotiation Board documents); Olson Rug Co. v. NLRB, 291 F.2d 655, 662 (CA7 1961) (no claim that NLRB documents are 'exclusively policy recommendations'); Carl Zeiss Stiftung v. V. E. B. Carl Zeiss, Jena, 40 F.R.D. 318, 327 (DC 1966), aff'd 128 U.S.App.D.C. 10, 384 F.2d 979, cert. denied, 389 U.S. 952, 88 S.Ct. 334, 19 L.Ed.2d 361 (1967) (discovery denied because documents 'wholly of opinions, recommendations and deliberations'); McFadden v. Avco Corp., 278 F.Supp. 57, 59--60 (MD Ala.1967), and cases cited therein. In United States v. Cotton Valley Operators Comm., 9 F.R.D. 719, 720 (WD La.1949), aff'd by equally divided court, 339 U.S. 940, 70 S.Ct. 793, 94 L.Ed. 1356 (1950), the United States offered to file 'an abstract of factual information' contained in the contested documents (FBI reports).

FN15. See, eg., Machin v. Zuckert, supra, 114 U.S.App.D.C., at 340, 316 F.2d, at 341 (private tort action; discovery of Air Force Aircraft Accident Investigation Report); Boeing Airplane Co. v. Coggeshall, supra, 108 U.S.App.D.C., at 114, 280 F.2d, at 662 (excess profits tax redetermination); Olson Rug Co. v. NLRB, supra, 291 F.2d, at 662 (discovery for use in defense against contempt proceedings); O'Keefe v. Boeing Co., 38 F.R.D. 329, 336 (SDNY 1965) (private tort action; Air Force Investigation Reports); Rosee v. Board of Trade, 36 F.R.D. 684, 687--688 (ND Ill.1965); United States v. Cotton Valley Operators Comm., supra (civil antitrust suit). Cf. United States v. Procter & Gamble Co., 25 F.R.D. 485, 492 (NJ 1960) (criminal antitrust prosecution). See Wigmore s 2379, id., p. 812. In Kaiser Aluminum & Chemical Corp. v. United States, 157 F.Supp. 939, 141 Ct.Cl. 38 (1958), where in camera inspection of a document was refused because of plaintiff's failure to make a definite showing of necessity, id., at 947, 141 Ct.Cl., at 50, the 'objective facts' contained in the disputed document were 'otherwise available.' Id., at 946, 141 Ct.Cl., at 48--49.

FN16. See, e.g., Soucie v. David, 145 U.S.App.D.C. 144, 448 F.2d 1067 (1971); Grumman Aircraft Eng. Corp. v. Renegotiation Bd., 138 U.S.App.D.C. 147, 151, 425 F.2d 578, 582 (1970); Bristol-Myers Co. v. FTC, 138 U.S.App.D.C. 22, 424 F.2d 935 (1970);

International Paper Co. v. FPC, 438 F.2d 1349, 1358--1359 (CA2), cert. denied, 404 U.S. 827, 92 S.Ct. 61, 30 L.Ed.2d 56 (1971); General Services Admin. v. Benson, 415 F.2d 878 (CA9 1969), aff'g 289 F.Supp. 590 (WD Wash.1969); Long Island R. Co. v. United States, 318 F.Supp. 490, 499 n. 9 (EDNY 1970) Consumers Union v. Veterans Admin., 301 F.Supp. 796 (SDNY 1969), appeal dismissed as moot, 436 F.2d 1363 (CA2 1971); Olsen v. Camp, 328 F.Supp. 728, 731 (ED Mich.1970); Reliable Transfer Co. v. United States, 53 F.R.D. 24 (EDNY 1971). The proposed Federal Rules of Evidence appear to recognize this construction of Exemption 5. Proposed Rule 509(a)(2)(A) defines 'official information' to include 'intragovernmental opinions or recommendations submitted for consideration in the performance of decisional or policy-making functions.' Rule 509(c) further provides that '(i)n the case of privilege claimed for official information the court may require examination in camera of the information itself.'

[11][12] Nothing in the legislative history of Exemption 5 is contrary to such a construction. When the bill that ultimately became the Freedom of Information Act, *90 S. 1160, was introduced in the 89th Congress, it contained an exemption that excluded:

'inter-agency or intra-agency memorandums or letters dealing solely with matters of law or policy.' [FN17]

FN17. Hearings on S. 1160, S. 1336, S. 1758, and S. 1879 before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 7 (1965) (hereinafter 1965 Senate Hearings). This exemption itself had been broadened during its course through the Senate in the 88th Congress. The exemption originally applied only to internal memoranda 'relating to the consideration and disposition of adjudicatory and rulemaking matters.' Section 3(c) of S. 1666, 88th Cong., 2d Sess. (1964), introduced in 110 Cong.Rec. 17086. That early formulation came under attack for not sufficiently protecting material dealing with general policy matters not directly related to adjudication or rulemaking. See Hearings on S. 1666 and S. 1663 before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 88th Cong., 1st Sess., 202--203, 247

(1963).

This formulation was designed to permit '(a)ll factual material in Government records . . . to be made available to the public.' S.Rep.No.1219, 88th Cong., 2d Sess., 7 (1964). (Emphasis in original.) The formulation was severely criticized, however, on the ground that it would permit compelled disclosure of an otherwise private document simply because the document did not deal 'solely' with legal or policy matters. Documents dealing with mixed questions of fact, law, and policy would inevitably, under the proposed exemption, become available to the public. [FN18] As a result of this criticism, *91 Exemption 5 was changed to substantially its present form. But **838 plainly the change cannot be read as suggesting that all factual material was to be rendered exempt from compelled disclosure. Congress sensibly discarded a wooden exemption that could have meant disclosure of manifestly private and confidential policy recommendations simply because the document containing them also happened to contain factual data. That decision should not be taken, however, to embrace an equally wooden exemption permitting the withholding of factual material otherwise available on discovery merely because it was placed in a memorandum with matters of law, policy, or opinion. It appears to us that Exemption 5 contemplates that the public's access to internal memoranda will be governed by the same flexible, common-sense approach that has long governed private parties' discovery of such documents involved in litigation with Government agencies. And, as noted, that approach extended and continues to extend to the discovery of purely factual material appearing in those documents in a form that is severable without compromising the private remainder of the documents.

FN18. See 1965 Senate Hearings 36, 94--95, 112--113, 205, 236--237, 244, 366--367, 382--383, 402--403, 406--407, 417, 437, 445--446, 450, 490. See 1965 House Hearings 27--28, 49, 208, 220, 223--224, 229--230, 245--246, 255--257. Examples of these many statements are: Federal Aviation Administration (1965 Senate Hearings 446): 'Few records would be entirely devoid of factual data, thus leaving papers on law and policy relatively unprotected. Staff working papers and reports prepared for use within the agency of the executive branch would not be protected by the proposed

exemptions.' Department of Commerce (1965 Senate Hearings, p. 406): 'Under this provision, internal memorandums dealing with mixed questions of fact, law and policy could well become public information.' (Emphasis in original.)

Petitioners further argue that, although in camera inspection and disclosure of 'low-level, routine, factual reports' [FN19] may be contemplated by Exemption 5, that type of document is not involved in this case. Rather, *92 it is argued, the documents here were submitted directly to the President by top-level Government officials, involve matters of major significance, and contain, by their very nature, a blending of factual presentations and policy recommendations that are necessarily 'inextricably intertwined with policymaking processes.' 150 U.S.App.D.C., at 237, 464 F.2d, at 746. For these reasons, the petitioners object both to disclosure of any portions of the documents and to in camera inspection by the District Court.

FN19. Tr. of Oral Arg. 23.

To some extent, this argument was answered by the Court of Appeals, for its remand expressly directed the District Judge to disclose only such factual material that is not 'intertwined with policymaking processes' and that may safely be disclosed 'without impinging on the policymaking decisional processes intended to be protected by this exemption.' We have no reason to believe that, if petitioners' characterization of the documents is accurate, the District Judge would go beyond the limits of the remand and in any way compromise the confidentiality of deliberative information that is entitled to protection under Exemption 5.

[13][14][15][16][17] We believe, however, that the remand now ordered by the Court of Appeals is unnecessarily rigid. The Freedom of Information Act may be invoked by any member of 'the public'--without a showing of need--to compel disclosure of confidential Government documents. The unmistakable implication of the decision below is that any member of the public invoking the Act may require that otherwise confidential documents be brought forward and placed before the District Court for in camera inspection--no matter how little, if any, purely factual material may actually be contained therein. Exemption 5 mandates no such result. As was said in *93 Kaiser Aluminum &

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Chemical Corp., 157 F.Supp., at 947, 141 Ct.Cl., at 50: **839 'It seems . . . obvious that the very purpose of the privilege, the encouragement of open expression of opinion as to governmental policy is somewhat impaired by a requirement to submit the evidence even (in camera).' Plainly, in some situations, in camera inspection will be necessary and appropriate. But it need not be automatic. An agency should be given the opportunity, by means of detailed affidavits or oral testimony, to establish to the satisfaction of the District Court that the documents sought fall clearly beyond the range of material that would be available to a private party in litigation with the agency. The burden is, of course, on the agency resisting disclosure, 5 U.S.C. s 552(a)(3), and if it fails to meet its burden without in camera inspection, the District Court may order such inspection. But the agency may demonstrate, by surrounding circumstances, that particular documents are purely advisory and contain no separable, factual information. A representative document of those sought may be selected for in camera inspection. And, of course, the agency may itself disclose the factual portions of the contested documents and attempt to show, again by circumstances, that the excised portions constitute the barebones of protected matter. In short, in camera inspection of all documents is not a necessary or inevitable tool in every case. Others are available. Cf. *United States v. Reynolds*, 345 U.S. 1, 73 S.Ct. 528, 97 L.Ed. 727 (1953). In the present case, the petitioners proceeded on the theory that all of the nine documents were exempt from disclosure in their entirety under Exemption 5 by virtue of their use in the decisionmaking process. On remand, petitioners are entitled to attempt to demonstrate the propriety of withholding any documents, or portions *94 thereof, by means short of submitting them for in camera inspection.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Judgment reversed and case remanded.

Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Mr. Justice STEWART, concurring.

This case presents no constitutional claims, and no issues regarding the nature or scope of 'Executive Privilege.' It involves no effort to invoke judicial power to require any documents to be reclassified under the mandate of the new Executive Order 11652. The case before us involves only the meaning of two exemptive provisions of the so-called Freedom of Information Act, 5 U.S.C. s 552.

My Brother DOUGLAS says that the Court makes a 'shambles' of the announced purpose of that Act. But it is Congress, not the Court, that in s 552(b)(1) has ordained unquestioning deference to the Executive's use of the 'secret' stamp. As the opinion of the Court demonstrates, the language of the exemption, confirmed by its legislative history, plainly withholds from disclosure matters 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.' In short, once a federal court has determined that the Executive has imposed that requirement, it may go no further under the Act.

One would suppose that a nuclear test that engendered fierce controversy within the Executive Branch of our Government would be precisely the kind of event that should be opened to the fullest possible disclosure consistent with legitimate interests of national defense. Without such disclosure, factual information available to the concerned Executive agencies cannot be considered *95 by the people or evaluated by the Congress. And with the people and their representatives reduced to a state of ignorance, the democratic process is paralyzed.

**840 But the Court's opinion demonstrates that Congress has conspicuously failed to attack the problem that my Brother DOUGLAS discusses. Instead, it has built into the Freedom of Information Act an exemption that provides no means to question an Executive decision to stamp a document 'secret,' however cynical, myopic, or even corrupt that decision might have been.

The opinion of my Brother BRENNAN dissenting in part makes an admirably valiant effort to deflect the impact of this rigid exemption. His dissent focuses on the statutory requirement that 'the court shall determine the matter de novo' But the only 'matter' to be determined de novo under s 552(b) (1) is whether in fact the President has

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required by Executive Order that the documents in question are to be kept secret. Under the Act as written, that is the end of a court's inquiry. [FN*]

FN* Similarly rigid is s 552(b)(3), which forbids disclosure of materials that are 'specifically exempted from disclosure by statute.' Here, too, the only 'matter' to be determined in a district court's de novo inquiry is the factual existence of such a statute, regardless of how unwise, self-protective, or inadvertent the enactment might be.

As the Court points out, 'Congress could certainly have provided that the Executive Branch adopt new procedures or it could have established its own procedures--subject only to whatever limitations the Executive privilege may be held to impose upon such congressional ordering.' But in enacting s 552(b)(1) Congress chose, instead, to decree blind acceptance of Executive fiat.

Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL joins, concurring in part and dissenting in part.

The Court holds today that the Freedom of Information Act, 5 U.S.C. s 552, authorizes the District *96 Court to make an in camera inspection of documents claimed to be exempt from public disclosure under Exemption 5 of the Act. In addition, the Court concludes that, as an exception to this rule, the Government may, in at least some instances, attempt to avoid in camera inspection through use of detailed affidavits or oral testimony. I concur in those aspects of the Court's opinion. In my view, however, those procedures should also govern matters for which Exemption 1 is claimed, and I therefore dissent from the Court's holding to the contrary. I find nothing whatever on the face of the statute or in its legislative history that distinguishes the two Exemptions in this respect, and the Court suggests none. Rather, I agree with my Brother DOUGLAS that the mandate of s 552(a)(3)--'the court shall determine the matter de novo and the burden is on the agency to sustain its action'--is the procedure that Congress prescribed for both Exemptions.

The Court holds that Exemption 1 immunizes from judicial scrutiny any document classified pursuant to Executive Order 10501, 3 CFR 280 (Jan. 1, 1970). [FN1] In reaching this result,

however, the Court adopts a construction of Exemption 1 that is flatly inconsistent with the legislative history and, indeed, the unambiguous language of the Act itself. [FN2] In plain words, Exemption 1 exempts from disclosure only material 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.' (Emphasis *97 added.) Executive Order 10501, however, which was promulgated 13 years before the passage of the Act, does not require that any specific documents **841 be classified. Rather, the Executive Order simply delegates the right to classify to agency heads, who are empowered to classify information as Confidential, Secret, or Top Secret. Thus, the classification decision is left to the sole discretion of these agency heads. Moreover, in exercising this discretion, agency heads are not required to examine each document separately to determine the need for secrecy but, instead, may adopt blanket classifications, without regard to the content of any particular document. Thus, as ss 3(b) and 3(c) of the Order make clear, matters for which there is no need for secrecy 'in the interest of the national defense or foreign policy' may be indiscriminately classified in conjunction with those matters for which there is a genuine need for secrecy:

FN1. Executive Order 10501 was revoked on March 8, 1972, and replaced with Executive Order 11652, 37 Fed.Reg. 5209, which became effective June 1, 1972.

FN2. 'The policy of the Act requires that the . . . exemptions (be construed narrowly).' *Soucie v. David*, 145 U.S.App.D.C. 144, 157, 448 F.2d 1067, 1080 (1971). 'A broad construction of the exemptions would be contrary to the express language of the Act.' *Wellford v. Hardin*, 444 F.2d 21, 25 (CA4 1971).

3(b) 'Physically Connected Documents. The classification of a file or group of physically connected documents shall be at least as high as that of the most highly classified document therein. Documents separated from the file or group shall be handled in accordance with their individual defense classification.'

3(c) 'Multiple Classification. A document, product, or substance shall bear a classification at least as high as that of its highest classified component. The document, product, or substance

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shall bear only one over-all classification, notwithstanding that pages, paragraphs, sections, or components thereof bear different classifications.'

Even the petitioners concede, [FN3] no doubt in response to the 'specifically required' standard of s 552(b)(1) *98 and the 'specifically stated' requirement of s 552(c), [FN4] that documents classified pursuant to s 3(b) of Executive Order 10501 cannot qualify under Exemption 1. Indeed, petitioners apparently accept the conclusion of the Court of Appeals that as to s 3(b):

FN3. Petition for Cert. 9 n. 4.

FN4. Section 552(c) provides: 'This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.' The accompanying Senate Report emphasizes that s 552(c) places a heavy burden on the Government to justify non-disclosure: 'The purpose of (s 552(c)) is to make it clear beyond doubt that all materials of the Government are to be made available to the public by publication or otherwise unless explicitly allowed to be kept secret by one of the exemptions in (s 552(b)).' S.Rep.No.813, 89th Cong., 1st Sess., 10 (1965) (emphasis added). A commentator cogently argues that the 'pull of the word 'specifically' (in s 552(c)) is toward emphasis on (the) statutory language' of the nine stated exemptions. The 'specifically stated' clause in s 552(c), he notes, 'is often relevant in determining the proper interpretation of particular exemptions.' K. Davis, *Administrative Law* s 3A.15, p. 142 (Supp. 1970). See also Davis, *The Information Act: A Preliminary Analysis*, 34 *U.Chi.L.Rev.* 761 (1967). For a detailed study of the Freedom of Information Act and its background, see Note, *Comments on Proposed Amendments to Section 3 of the Administrative Procedure Act: The Freedom of Information Bill*, 40 *Notre Dame Law.* 417 (1965).

'This court sees no basis for withholding on security grounds a document that, although separately unclassified, is regarded secret merely because it has been incorporated into a secret file. To the extent that our position in this respect is inconsistent with the above-quoted paragraph of

Section 3 of Executive Order 10501, we deem it required by the terms and purpose of the (Freedom of Information Act), enacted subsequently to the Executive Order.' 150 *U.S.App.D.C.*, at 236, 464 *F.2d*, at 745.

*99 Nevertheless, petitioners maintain that information classified pursuant to s 3(c) of the Order is exempt from disclosure under Exemption 1. The Court of Appeals rejected that contention, and in **842 my view, correctly. The Court of Appeals stated:

'The same reasoning applies to this provision as to the one dealing with physically-connected documents. Secrecy by association is not favored. If the non-secret components are separable from the secret remainder and may be read separately without distortion of meaning, they too should be disclosed.' 150 *U.S.App.D.C.*, at 237, 464 *F.2d*, at 746.

Petitioners' argument, adopted by the Court, is that this construction of the Act imputes to Congress an intent to authorize judges independently to review the Executive's decision to classify documents in the interest of the national defense or foreign policy. That argument simply misconceives the holding of the Court of Appeals. Information classified pursuant to s 3(c), it must be emphasized, may receive the stamp of secrecy, not because such secrecy is necessary to promote 'the national defense or foreign policy,' but simply because it constitutes a part of such other information which genuinely merits secrecy. Thus, to rectify this situation, the Court of Appeals ordered only that the District Court in camera determine '(i)f the non-secret components are separable from the secret remainder and may be read separately without distortion of meaning . . .'. The determination whether any components are in fact 'non-secret' is left exclusively to the agency head representing the Executive Branch. The District Court is not authorized to declassify or to release information that the Executive, in its sound discretion, determines must be classified to 'be kept secret in the interest of the national defense or *100 foreign policy.' [FN5] The District Court's authority stops with the inquiry whether there are components of the documents that would not have been independently classified as secret. If the District Court finds, on in camera inspection, that there are such components, and that they can be read separately without distortion of

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meaning, the District Court may order their release. The District Court's authority to make that determination is unambiguously stated in s 552(a)(3): 'the (district) court shall determine the matter de novo and the burden is on the agency to sustain its action.' The Court's contrary holding is in flat defiance of that congressional mandate. [FN6]

FN5. See *Developments in the Law--The National Security Interest and Civil Liberties*, 85 *Harv.L.Rev.* 1130, 1224--1225 (1972).

FN6. '(G)iven the requirement that a file or document is generally classified at the highest level of classification of any information enclosed, it will often be the case that a classified file will contain information that could be released separately to the public. Because it is not 'specifically required by Executive order to be kept secret,' such information is not privileged under the Information Act. To ensure that an overall classification is not being used to protect unprivileged papers, a reviewing court should inspect the documents sought by a litigant.' *Developments in the Law*, supra, n. 5, at 1223.

Indeed, only the Court of Appeals' construction is consistent with the congressional plan in enacting the Freedom of Information Act. We have the word of both Houses of Congress that the de novo proceeding requirement was enacted expressly 'in order that the ultimate decision as to the propriety of the agency's action is made by the court and prevent it from becoming meaningless judicial sanctioning of agency discretion.' S.Rep.No. 813, 89th Cong., 1st Sess., 8 (1965) (hereinafter cited as S.Rep.No.813); H.R.Rep.No.1497, 89th Cong., 2d Sess., 9 (1966); U.S.Code Cong. & Admin.News 1966, p. 2418 (hereinafter cited as H.R.Rep.No.1497). What was granted, and purposely so, was a broad grant *101 to the District Court of 'authority whenever it considers such action equitable and appropriate to enjoin the agency from withholding its records and to order the production of agency records improperly withheld.' H.R.Rep.No. **843 1497, p. 9; U.S.Code Cong. & Admin. News 1966, p. 2426. And to underscore its meaning, Congress rejected the traditional rule of deference to administrative determinations by '(p)lacing the burden of proof upon the agency' to justify the withholding. S.Rep.No.813, p. 8;

H.R.Rep.No.1497, p. 9. The Court's rejection of the Court of Appeals' construction is inexplicable in the face of this overwhelming evidence of the congressional design.

The Court's reliance on isolated references to Executive Order 10501 in the congressional proceedings is erroneous and misleading. The Court points to a single passing reference to the Order in the House Report, which even a superficial reading reveals to be merely suggestive of the kinds of information that the Executive Branch might classify. Nothing whatever in the Report even remotely implies that the Order was to be recognized as immunizing from public disclosure the entire file of documents merely because one or even a single paragraph of one has been stamped secret. The Court also calls to its support some comments out of context of Congressmen Moss and Gallagher on the House floor. But on their face, these comments do no more than confirm that Exemption 1 was written with awareness of the existence of Executive Order 10501. Certainly, whatever significance may be attached to debating points in construing a statute, [FN7] these comments hardly support the Court's conclusion that a classification pursuant to Executive Order 10501, without more, immunizes an entire document from disclosure under Exemption 1.

FN7. See *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395, 397, 71 S.Ct. 745, 751, 752, 95 L.Ed. 1035 (1951) (Jackson, J., concurring) (Frankfurter, J., dissenting).

*102 Executive Order 10501 was promulgated more than a decade before the Freedom of Information Act was debated in Congress. Yet, no reference to the Order can be found in either the language of the Act or the Senate Report. Under these circumstances, it would seem odd, to say the least, to attribute to Congress an intent to incorporate 'without reference' Executive Order 10501 into Exemption 1. Indeed, petitioners' concession that 'physically connected documents,' classified under s 3(b) of the Order, are not immune from judicial inspection serves only to reinforce the conclusion that the mere fact of classification under s 3(c) cannot immunize the identical documents from judicial scrutiny.

The Court's rejection of the Court of Appeals' construction of Exemption 1 is particularly

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insupportable in light of the cogent confirmation of its soundness supplied by the Executive Branch itself. In direct response to the Act, Order 10501 has been revoked and replaced by Order 11652, which expressly requires classification of documents in the manner the Court of Appeals required the District Court to attempt in camera. The Order, which was issued on March 8, 1972, and became effective on June 1, 1972, 37 Fed.Reg. 5209 (Mar. 10, 1972), explicitly attributes its form to the Executive's desire to accommodate its procedures to the objectives of the Freedom of Information Act:

'The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the executive branch.'

Moreover, in his statement accompanying the promulgation of the new Order, the President stated: 'The Executive order I have signed today is based upon . . . a *103 reexamination of the rationale underlying the Freedom of Information Act.' 8 Presidential Documents 542 (Mar. 13, 1972).

The new Order recites that 'some official information and material . . . bears directly on the effectiveness of our national defense and the conduct of **844 our foreign relations' and that '(t)his official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of (the Freedom of Information Act).' (Emphasis added.) Thus, the Executive clearly recognized that Exemption 1 applies only to matter specifically classified 'in the interest of the national defense or foreign policy.' And in an effort to comply with the Act's mandate that genuinely secret matters be carefully separated from the nonsecret components, s 4(A) of the new Order provides:

'Documents in General. Each classified document shall . . . to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use.'

The President emphasized this requirement in his statement:

'A major source of unnecessary classification under the old Executive order was the practical impossibility of discerning which portions of a

classified document actually required classification. Incorporation of any material from a classified paper into another document usually resulted in the classification of the new document, and innocuous portions of neither paper could be released.' 8 Presidential Documents 544 (Mar. 13, 1972) (emphasis added).

It is of course true, as the Court observes, that the Order 'provides that the separating be done by the Executive, *104 not the Judiciary . . .' Ante, 835, n. 10. But that fact lends no support to a construction of Exemption 1 precluding judicial inspection to enforce the congressional purpose to effect release of nonsecret components separable from the secret remainder. Rather, the requirement of judicial inspection, made explicit in s 552(a)(3), is the keystone of the congressional plan, expressly deemed 'essential in order that the ultimate decision as to the propriety of the agency's action is made by the court (to) prevent it from becoming meaningless judicial sanctioning of agency discretion.' S.Rep.No.813, p. 8; H.R.Rep.No.1497, p. 9. It could not be more clear, therefore, that Congress sought to make certain that the ordinary principle of judicial deference to agency discretion was discarded under this Act. The Executive was not to be allowed 'to file an affidavit stating (the) conclusion (that documents are exempt) and by so doing foreclose any other determination of the fact.' *Cowles Communications v. Department of Justice*, 325 F.Supp. 726, 727 (ND Cal. 1971). Accord, *Frankel v. SEC*, 336 F.Supp. 675, 677 n. 4 (SDNY 1971), rev'd on other grounds, 460 F.2d 813 (CA2 1972); *Philadelphia Newspapers, Inc. v. HUD*, 343 F.Supp. 1176, 1180 (ED Pa. 1972). [FN8]

FN8. In support of their claim that Executive Order 10501 automatically and without judicial review activates the exemption of s 52(b)(1), petitioners rely upon *Epstein v. Resor*, 421 F.2d 930 (CA9 1970). Rather, Epstein confirms the Court of Appeals' interpretation of the Act. The Epstein court refused a request to review in camera documents classified pursuant to Executive Order 10501, but only because the Government, at the plaintiff's request, had begun a current review of the documents on 'a paper-by-paper basis.' Moreover, in response to the argument that petitioners advance here--namely, that the mere classification of a document precludes judicial review--Epstein states: '(I)n view of the legislative

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purpose to make it easier for private citizens to secure Government information, it seems most unlikely that (the Act) was intended to foreclose an (a)(3) judicial review of the circumstances of exemption. Rather it would seem that (subsection) (b) was intended to specify the basis for withholding under (a)(3) and that judicial review de novo with the burden of proof on the agency should be had as to whether the conditions of exemption in truth exist.' 421 F.2d, at 932--933.

****845 *105** The Court's interpretation of Exemption 1 as a complete bar to judicial inspection of matters claimed by the Executive to fall within it wholly frustrates the objective of the Freedom of Information Act. That interpretation makes a nullity of the Act's requirement of de novo judicial review. The judicial role becomes 'meaningless judicial sanctioning of agency discretion,' S.Rep.No.813, p. 8; H.R.Rep.No.1497, p. 9, the very result Congress sought to prevent by incorporating the de novo requirement.

Mr. Justice DOUGLAS, dissenting.

The starting point of a decision usually indicates the result. My starting point is what I believe to be the philosophy of Congress expressed in the Freedom of Information Act, 5 U.S.C. s 552.

Henry Steels Commager, our noted historian, recently wrote:

'The generation that made the nation thought secrecy in government one of the instruments of Old World tyranny and committed itself to the principle that a democracy cannot function unless the people are permitted to know what their government is up to. Now almost everything that the Pentagon and the CIA do is shrouded in secrecy. Not only are the American people not permitted to know what they are up to but even the Congress and, one suspects, the President (witness the 'unauthorized' bombing of the North last fall and winter) are kept in darkness.' The New York Review of Books, Oct. 5, 1972, p. 7.

***106** Two days after we granted certiorari in the case on March 6, 1972, the President revoked the old Executive Order 10501 and substituted a new one, Executive Order 11652, dated March 8, 1972, and effective June 1, 1972. The new Order states in its first paragraph that: 'The interests of the United

States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the Executive branch.'

While 'classified information or material' as used in the Order is exempted from public disclosure, s 4 of the Order states that each classified document shall 'to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use.' s 4(A). And it goes on to say: 'Material containing references to classified materials, which references do not reveal classified information, shall not be classified. Ibid.

The Freedom of Information Act does not clash with the Executive Order. Indeed, the new Executive Order precisely meshes with the Act and with the construction given it by the Court of Appeals. Section 552(a)(3) of the Act gives the District Court 'jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.' Section 552(a)(3) goes on to prescribe the procedure to be employed by the District Court. It says 'the court shall determine the matter de novo and the burden is on the agency to sustain its action.'

The Act and the Executive Order read together mean at the very minimum that the District Court has power ***107** to direct the agency in question to go through the suppressed document and make the portion-by-portion classification to facilitate the excerpting as required by the Executive Order. Section 552(a) (3) means also that the District Court may in its discretion collaborate with the agency to make certain that the congressional policy of disclosure is effectuated.

****846** The Court of Appeals, in an exceedingly responsible opinion, directed the District Court to proceed as follows:

(1) where material is separately unclassified but nonetheless under the umbrella of a 'secret' file, the District Court should make sure that it is disclosed under the Act. This seems clear from s 552(b) which states: 'This section does not apply to matters that

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are--(1) specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy.' Unless the unclassified appendage to a 'secret' file falls under some other exception in s 552(b) it seems clear that it must be disclosed. The only other exception under which refuge is now sought is subsection (b)(5) which reads that the section does not apply to 'inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.'

This exemption was described in the House Report as covering 'any internal memorandums which would routinely be disclosed to a private party through the discovery process in litigation with the agency.' H.R.Rep.No.1497, 89th Cong., 2d Sess., 10; U.S.Code Cong. & Admin.News 1966, p. 2428. It is clear from the legislative history that while opinions and staff advice are exempt, factual matters are not. Ibid.; S.Rep.No.813, 89th Cong., 1st Sess., 9. And the courts have uniformly agreed on that construction of the Act. See *Soucie v. David*, 145 U.S.App.D.C. 144, 448 F.2d 1067; *Grumman Aircraft Eng. Corp. v. Renegotiation Bd.*, 138 U.S.App.D.C. *108 147, 425 F.2d 578; *Long Island R. Co. v. United States*, 318 F.Supp. 490; *Consumers Union v. Veterans Admin.*, 301 F.Supp. 796.

Facts and opinions may, as the Court of Appeals noted, be 'inextricably intertwined with policymaking processes' in some cases. In such an event, secrecy prevails. Yet, where facts and opinions can be separated, the Act allows the full light of publicity to be placed on the facts.

Section 552(c) seems to seal the case against the Government when it says: 'This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section.' Disclosure, rather than secrecy, is the rule, save for the specific exceptions in subsection (b).

The Government seeks to escape from the Act by making the Government stamp of 'Top Secret' or 'Secret' a barrier to the performance of the District Court's functions under s 552(a)(3) of the Act. The majority makes the stamp sacrosanct, thereby immunizing stamped documents from judicial scrutiny, whether or not factual information

contained in the document is in fact colorably related to interests of the national defense or foreign policy. Yet, anyone who has ever been in the Executive Branch knows how convenient the 'Top Secret' or 'Secret' stamp is, how easy it is to use, and how it covers perhaps for decades the footprints of a nervous bureaucrat or a wary executive.

I repeat what I said in *Gravel v. United States*, 408 U.S. 606, 641--642, 92 S.Ct. 2614, 2633, 2634, 33 L.Ed.2d 583 (dissenting opinion):

'(A)s has been revealed by such expose s as the Pentagon Papers, the My Lai massacres, the Gulf of Tonkin 'incident,' and the Bay of Pigs invasion, the Government usually suppresses damaging news but highlights favorable news. In this filtering process the secrecy stamp is the officials' tool of suppression and it has been used to withhold information *109 which in '99 1/2%' of the cases would present no danger to national security. To refuse to publish 'classified' reports would at times relegate a publisher to distributing only the press releases of Government or remaining silent; if it printed only the press releases or 'leaks' it would become an **847 arm of officialdom, not its critic. Rather, in my view, when a publisher obtains a classified document he should be free to print it without fear of retribution, unless it contains material directly bearing on future, sensitive planning of the Government.'

The Government is aghast at a federal judge's even looking at the secret files and views with disdain the prospect of responsible judicial action in the area. It suggests that judges have no business declassifying 'secrets,' that judges are not familiar with the stuff with which these 'Top Secret' or 'Secret' documents deal.

This is to misconceive and distort the judicial function under s 552(a)(3) of the Act. The Court of Appeals never dreamed that the trial judge would declassify documents. His first task would be to determine whether nonsecret material was a mere appendage to a 'Secret' or 'Top Secret' file. His second task would be to determine whether under normal discovery procedures contained in Fed.Rule Civ.Proc. 26, factual material in these 'Secret' or 'Top Secret' materials is detached from the 'Secret' and would therefore, be available to litigants confronting the agency in ordinary lawsuits.

(Cite as: 410 U.S. 73, *109, 93 S.Ct. 827, **847)

Unless the District Court can do those things, the much-advertised Freedom of Information Act is on its way to becoming a shambles. [FN1] Unless federal courts can be *110 trusted, the Executive will hold complete sway and by ipse dixit make even the time of day 'Top Secret.' Certainly, the decision today will upset the 'workable formula,' at the heart of the legislative scheme, 'which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.' S.Rep.No.813, p. 3. The Executive Branch now has carte blanche to insulate information from public scrutiny whether or not that information bears any discernible relation to the interests sought to be protected by subsection (b)(1) of the Act. We should remember the words of Madison:

FN1. My Brother STEWART, with all deference, helps make a shambles of the Act by reading s 552(b)(1) as swallowing all the other eight exceptions. While s 552(b)(1) exempts matters 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy,' s 4 of Executive Order 11652 as I have noted, contemplates that not all portions of a document classified as 'secret' are necessarily 'secret,' for the order contemplates 'excerpting' of some material. Refereeing what may properly be excerpted is part of the judicial task. This is made obvious by s 552(b)(5), which keeps secret 'interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.' The bureaucrat who uses the 'secret' stamp obviously does not have the final say as to what 'memorandums or letters' would be available by law under Exemption 5, for s 552(a)(3) gives the District Court authority, where agency records are alleged to be 'improperly withheld,' to 'determine the matter de novo,' the 'burden' being on the agency 'to sustain its action.' Hence, s 552(b)(5), behind which the executive agency seeks refuge here, establishes a policy which is served by the fact/opinion distinction long established in federal discovery. The question is whether a private party would routinely be entitled to disclosure through discovery of some or all of the material sought to be excerpted. When the Court answers that no such inquiry can be made under s 552(b)(1), it makes a shambles of the disclosure mechanism which Congress tried to create. To make obvious

the interplay of the nine exemptions listed in s 552(b), as well as s 552(c), I have attached them as an Appendix to this dissent.

'A popular Government, without popular information, or the means of acquiring it, is but a Prologue *111 to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors must arm themselves with the power which knowledge gives.' [FN2] I would affirm the judgment below.

FN2. Letter to W. T. Barry, Aug. 4, 1822, 9 The Writings of James Madison 103 (Hunt ed. 1910).

****848 APPENDIX TO OPINION OF DOUGLAS,
J., DISSENTING**

Sections 552(b) and (c) of the Freedom of Information Act read as follows:

(b) This section does not apply to matters that are -

(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(Cite as: 410 U.S. 73, *111, 93 S.Ct. 827, **848)

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

*112 (9) geological and geophysical information and data, including maps, concerning wells.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

END OF DOCUMENT

A REPORTER AT LARGE

LIFE AFTER VINCE

For the first time, Lisa Foster discusses her ordeal in the two years since the death of her husband, Vincent Foster, and how she made her own investigation into why he died.

BY PETER J. BOYER

ON the second anniversary of Vincent Foster's death, his widow, Lisa, drove from Little Rock to his home town of Hope, Arkansas, and sat at his grave and cried. Then she visited her late husband's mother and advised her not to watch televised coverage of the Senate Whitewater committee, whose members were spending the week verbally ransacking Foster's White House office and showily examining his empty briefcase. A few days after the committee adjourned, in early August, I went to Little Rock to visit with Lisa Foster. She had watched part of the Senate proceeding and found it appalling—not in any particular but in the fact of its existence. She had hoped that Senate hearings conducted a year ago would conclude the Vince Foster "mystery" and end the speculations about scandal and conspiracy surrounding his death. They did not. Nor did a report last year by Robert Fiske, Jr., the first Whitewater independent counsel, who had found that Foster's death was a suicide unrelated to Presidential scandal. A new Congress and a new independent counsel, Kenneth Starr, launched their own inquiries, and the conspiracy mill has never stopped. "I could not have predicted that it would continue," she says. "I kept thinking it was going to end, and it never did."

Lisa went home to Arkansas from Washington after Vince's death, leaving the place that she believes destroyed her husband and ruined her life. She had never heard of Whitewater, but within months it was to become a synonym for Bill Clinton's undoing, and Vince was posthumously cast in a key role in a complex web of alleged scandal and coverup. He had been Bill Clinton's boyhood chum and Hillary Clinton's confidant and law part-

ner; in the White House, he was one of their most trusted aides. The revelation, five months later, that Whitewater files had been removed from Foster's office after his death suggested that he knew some damaging secret, and that it might even have pushed him to suicide. That tantalizing twist nourished a conspiracy industry on talk radio, on the cyberspace networks, and even in the mainstream press, which spun out scenarios explaining Foster's death. There were rumors of a "safe house," where Foster supposedly died; stories that he was gay or was Hillary's lover, and speculation that he was a secret agent for Israel or somehow involved in a government drug-running scheme.

Lisa Foster has remained publicly silent about her husband's death for two years. She is now convinced that it was a suicide, yet there were moments when she couldn't be certain about why he had been driven so far. When the rumors about Vince came rushing out, she sometimes thought, What if it's true? "That's one reason I never wanted to talk," she says. "I thought, As soon as I talk, they'll come up with something else they've found, and something I swore would never be true they'll tell me is true, and I won't be able to defeat it." At one point, even Vince's mother asked her, "Lisa, do you think he could have done anything?"

Lisa hates that doubt and has overcome it, having undertaken her own investigation of her husband's death. But her certainty about Vince is a hard comfort, dearly purchased. To believe completely in him, she says, she had to learn to believe in the despair that killed him.

BEFORE Lisa Foster's husband went to Washington with the Clintons, in January, 1993, the expecta-

tions of her life had been fully met. One of six children, she was reared a Catholic in the Protestant city of Nashville. Her father, an insurance broker, provided a solidly comfortable middle-class existence, with membership in the country club, and society debuts for his daughters. Lisa was educated by Dominican nuns through high school, and then went to Sweet Briar, a women's college in the Old Virginia tradition. Social life centered on big date weekends, when fraternity boys from the University of Virginia and from Davidson and from Washington and Lee would caravan in and party. It was on such a weekend in Lisa's sophomore year that she met Vince Foster, a sophomore at Davidson, on a blind date. "We had an absolute ball," she recalls. "I kissed him on the first date—I'd probably never done that in my life. I took one look at him and I thought, Oh, my God, you're the best-lookin' thing I've ever seen. I just went head over heels in love with him." Vince seemed so smart, and so interested in the world; Lisa, wanting to impress him, ordered a subscription to *Time*. When Vince told his mother about Lisa, he said, "She's a math major and she's a Catholic. She's not pretty, but she's kind of cute." Vince brought her home to Hope, and there his father, waiting outside the family's big white house, pegged his future daughter-in-law exactly right, and won her forever. "Well, I think she's beautiful," he said. "She looks just like Doris Day."

They were married in St. Henry Catholic Church in Nashville in April, 1968, when Vince was in his first year of law school, at Vanderbilt. His father had wanted him to go into the family real-

Lisa Foster, opposite: "There were certain things I know, because I was there, and there are some things I don't know—that I can never prove, except by faith."

estate business, but Vince, deeply reticent by nature, knew that he was no salesman, and he had chosen law. At the height of the American buildup in Vietnam, Vince joined the Arkansas National Guard; that required his regular presence in Hope, so he transferred to

work at the small but growing Rose Law Firm, in Little Rock.

Lisa was eager to get started, too. "All I ever, ever wanted to do was have children," she says. "And then, when I met Vince, all I wanted to do was be his wife and have children. I knew I might have

the Rose firm, he and Lisa bought a house in the Heights, an area near the club which proved to be the neighborhood of choice for future Clinton insiders. The Fosters' house, a big white Colonial, was redecorated by their next-door neighbor, Kaki Hockersmith, who



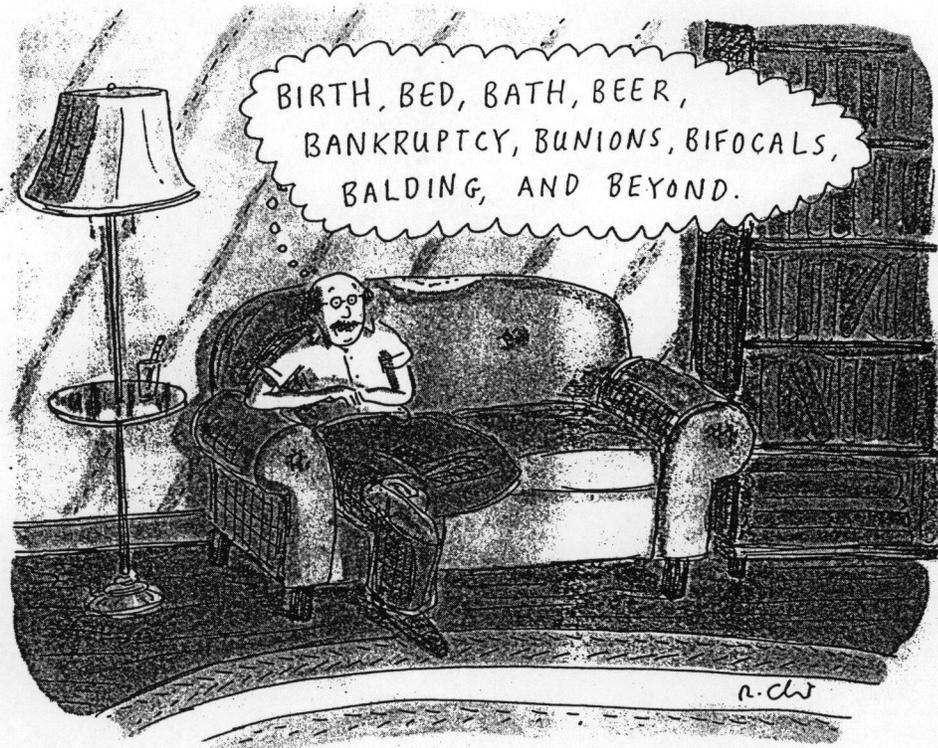
the University of Arkansas, in Fayetteville. Lisa got a job as a librarian, and Vince spent every day at the law-school library, developing a work ethic that inspired awe. "He'd work all day while the other law-school husbands were home watching the soaps," Lisa says. He overprepared himself to such an extent that at exam time studying became superfluous. He graduated first in his class, and earned the top score on the state bar exam. Eager to start his career, he skipped commencement and went to

HARRY BENSON

to work, and I was enough of a feminist even then to want to prove that I could. And I did, and that was fine. But I didn't really want to have a career." Four years after they were married, they had their first child, Vincent, Jr., and he was followed by a girl, Laura, and by another boy, John (whom they called by his middle name, Brugh). Lisa did volunteer work for the Junior League, played tennis at the Little Rock Country Club, and taught swimming to local kids, including Chelsea Clinton. As Vince prospered at

would one day design the living quarters of Hillary Clinton's White House. People considered the presidency of the state bar to be Vince's for the asking, and, beyond that, he seemed a natural choice for the federal bench.

In their twenty-five years together, Lisa and Vince fashioned a sort of compact that guided their lives: Vince worked furiously, and made all the big decisions; Lisa provided the support system, running their home, minding the kids, and organizing their social life.



Over time, this delineation of roles became quite comfortable, and the line seldom blurred. Vince only rarely involved himself in the usual household battles with the kids, and Lisa kept her distance from his work. When Vince had a big case, he prepared for it frantically, day and night, right up until his court date, all the while bemoaning his chances, declaring that he was certain to lose. But he almost invariably won, or settled; he seldom lost. Lisa learned that this was just Vince's way of working, and it further deepened the line; one day, it would also obscure the signs of desperation.

LISA FOSTER was a friend and contemporary of Hillary Clinton's. They belonged to the same social set, in one of the most insular towns in America, yet their lives could hardly have been more different. Hillary was Little Rock's model of the nineteen-eighties superwoman—a high-powered lawyer, the state's First Lady, the mother of a little girl. Lisa was a stay-at-home mom. In the culture of their place and time, Lisa's life was very much the norm, and Hillary's an aberration. Bill Clinton's Yankee-lawyer wife, who defiantly kept her maiden name, seemed indifferent to the customs of her husband's

home state. (Some of the Little Rock women had a beauty tip for Hillary's hair: Bleach it.)

It was Vince, not Lisa, who made the friendship between the Fosters and the Clintons. Bill had lived next door to him as a boy, and Vince met Hillary when they both did work for the Legal Aid Society, in the late seventies. After Hillary joined the Rose Law Firm, she and Vince and Webster Hubbell, another senior partner, became best friends, a troika. Vince valued his workplace relationship with Hillary, and when office politics reared he became her protector. Lisa and Hillary didn't lunch and shop together, but the Fosters were frequent guests at the Governor's Mansion. The Clintons went to the Fosters' pool parties and had more than one Christmas dinner with them. Lisa and Hillary sometimes discussed the different nature of their lives, and perhaps their exchanges held the hint of an edge. Lisa marvelled at Hillary's ability to manage a career and a child while serving as Arkansas's First Lady. "I don't know how you do it," she recalls saying once to Hillary, and Hillary replied, "Lisa, I don't know how *you* do it. I could never stay home with three kids all day."

On Election Night in 1992, Vince

and Lisa were part of the inner circle of Arkansans celebrating Clinton's victory at the Governor's Mansion. It was a joyous night for the Fosters, uncomplicated by any suspicion that their lives would be changed by Clinton's success. The thought of going to Washington, Lisa says, "never entered my mind." Once, back in Vince's law-school days, Lisa had asked Vince, who was interested in the political issues of the time, if he would ever consider entering politics himself, and his answer was firm: no. Intensely cautious and inward, Vince lacked the politician's nature. "He didn't want to be a politician, because he didn't like to be in a good mood all the time," Lisa says. "And, obviously, he wasn't."

Yet during the weeks of transition, as Clinton assembled his government in Little Rock, the prospect of Vince's joining the team inevitably arose. He would come home from a lunch with Hillary and raise with Lisa the issue of going to Washington. Other Arkansans were leaping aboard, and Lisa told her husband, "I'm afraid if you don't do it you'll always be sorry." Then came word that Clinton had chosen Mack McLarty to be the White House chief of staff. Mack and Vince were old, close friends from Hope, and Lisa and Mack's wife, Donna McLarty, served on volunteer boards together. That decided it. On Christmas Eve, Clinton made Foster a formal offer, and when Foster accepted it the President-elect asked, "Are you sure you want to do this?" The job, deputy White House counsel, seemed perfect for Foster. He hated the spotlight, but as deputy to the chief counsel, Bernard Nussbaum, he would hold an insider's position of influence and trust. Besides, he was taken by the notion of a higher calling; it was a moment, soon to evaporate, when Clinton's promise of change carried the force of real possibility. Yes, Foster was sure he wanted to do it. He and most of the other Arkansans who followed the new, activist President and his wife to Washington genuinely believed that they were on a mission to do good.

At first, it seemed to Lisa that Vince was happy in Washington, maybe even a little too happy. "He was

calling me, saying things like 'Last night we had cocktails on the Truman balcony and Judy Collins was there, and we all went out to dinner,'” Lisa recalls. She was not there, because Vince had insisted that she stay behind in Little Rock. Two of their children, Vincent and Laura, were away at college, but the youngest, Brugh, was in the middle of his junior year in high school, and Vince feared that an interruption might hinder his chances of getting into a good college. The family would join Vince at the end of the school year, and in the meantime he would live with his sister, Sheila, who was also going to work for the Clinton Administration.

Lisa was unhappy with this arrangement, and unreserved about voicing her feelings. It was the first time they had ever been separated. “I was angry at Vince about ninety per cent of the time,” she says. “I wasn't angry at him for going. I was just angry at him for ignoring us and leaving us behind, and making me have to deal with everything, all the decisions, and he was going up and getting all the so-called glory.” She and the children went to Washington for the Inauguration, but after the swearing-in Vince went straight to the White House to work, leaving his wife and children at the curb, uncertain how they would get back to Sheila's house.

Lisa was irritated by this, and didn't even go to the ball. Back in Little Rock, she found the prospect of running the household and preparing for the family's departure overwhelming. She had never expected to move out of her house, and when it was finally time to pack up she sat down on the floor and cried. She called Vince, and he told her to find a packer in the Yellow Pages. Lisa says that she feels guilty about the way she behaved during those months, especially in the light of what she soon discovered about Vince's life in Washington. “I whined about the whole

thing,” she says. “We had a lot of conversations over the phone that were sort of short, curt conversations, and we realized that we were both so tense about what we had to do that it was not easy for us to console each other.”

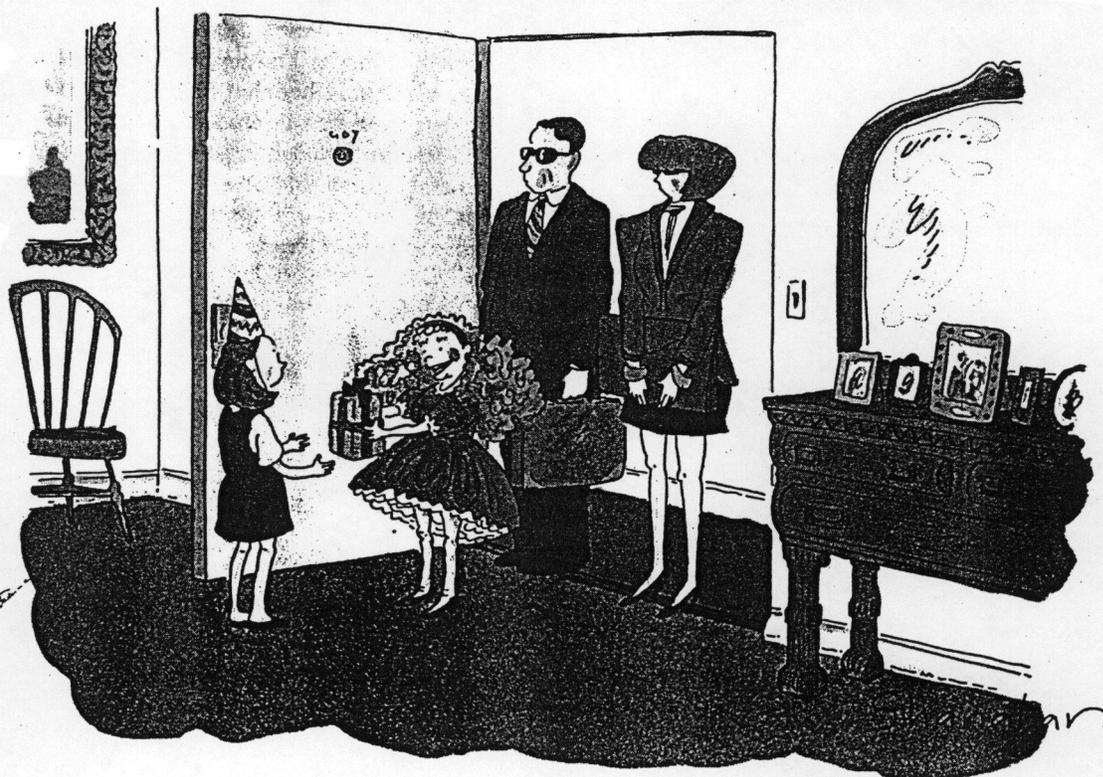
Lisa soon came to feel more optimistic about their new life. During Brugh's spring break, she went to Washington and found a small row house in Georgetown. It needed some renovation, but it was in a nice neighborhood—on Cambridge Place, next door to Senator Richard Shelby, of Alabama—and it was (by Washington standards) affordable. She moved Vince in, and got Brugh into the elite Sidwell Friends School, which Chelsea Clinton attends, for his senior year. Back in Little Rock, she managed to get their belongings organized for the move and the house rented.

School ended, and as Lisa prepared to leave Little Rock one more packing chore presented itself. Vince's father, a hunter, had died two years earlier, and Vince had taken his collection of guns. Lisa looked at the shotguns—“I'll bet you there were ten of them in the house,” she says—and deemed them too troublesome to pack up (Vince wasn't much of a hunter anyway), but she didn't know what to do with them. She worried that if she left the shotguns in the

attic the heat might cause the shells to explode. Finally, she bought a lock, put the shotguns in Vince's wine closet, and locked it. There were several handguns, too, including a .38 special, with an etched handle, which Vince's father had kept by his bed. But they were small and easy to move, so Lisa packed them and took them along to Washington.

Almost from the beginning, Vince realized he should have stayed in Little Rock. Like all the other Clinton appointees, he discovered that going to work in the White House after twelve years of Republican rule was a bit like occupying scorched earth. The counsel's offices had been left bare by the Bush people. At the Rose Law Firm, Vince had worked behind the burnished wood door of a spacious corner office; in the White House, his office had one window and was so small that the copying machine had to be installed in the hallway.

But the physical discomfort was secondary to the psychic discomfort, especially when things went wrong, and everything, it seemed, was going wrong. The aborted attempts, involving Zoë Baird and Kimba Wood, to fill the Attorney General job, and the ungraceful retreat from Lani Guinier as head of the Justice Department's civil-rights division, were more than just political em-



“My parents couldn't come, so I brought two of my backers.”

barrassments; they helped to establish the impression that the Clinton people talked a good game but weren't up to the grownup job of governing. These were problems that occurred on Foster's turf, and he was the sort of man to take such failures personally, and hard. He even assumed blame for Waco, somehow believing that the disastrous F.B.I. raid on the Branch Davidians' compound was his fault. Vince and the rest of the Clinton team, Lisa notes, "weren't up there to do bad things, and everything—just like Waco—just blew up in their faces, and it absolutely destroyed him."

Back in Little Rock, at the Rose Law Firm, Vince had had the luxury of coping with one problem at a time. In Washington, Lisa says, "he couldn't relax and make decisions; everything was immediate, and it had to be correct, because of the stakes involved. The intense scrutiny that they were getting made you feel like no matter what you do you're going to get criticized." She adds, "It was just like some dog nippin' at your ankles all the time."

And then there was Travelgate. Soon after the Clinton team took over the White House, they found that the Travel Office—which handled, among other things, transportation for the press corps—was in disarray; staff members were even suspected of embezzlement and kickbacks. Under Foster's direction, the counsel's office ordered an independent audit, and it resulted in the firing of seven staff members (ultimately, only one was indicted, and will go on trial next month); in a rather stupid move, the White House named a Clinton relative to temporarily manage some Travel

Office business. Bill Kennedy, another Rose lawyer on the counsel staff, had talked to the F.B.I. about a possible criminal investigation of the travel staff, and the White House was accused of abusing the Justice Department to cover up its clumsy cronyism. An internal inquiry was ordered, and Kennedy was reprimanded. Some people in the White House thought that Foster should have been, too, but he escaped direct rebuke. Foster was angered both by the reprimand to Kennedy and by the threat to him, and felt deeply wronged by the White House.

Things got worse, with the publication in June of the first of three now famous *Wall Street Journal* editorials that were harshly critical of Foster and the Arkansas "mores" that he and other Rose alumni supposedly represented. The *Journal* struck at Foster on a number of fronts, ranging from his disinclination to provide the paper with a photograph of himself (in violation of the Freedom of Information Act, the *Journal* asserted) to his brief aimed at keeping Hillary's health-care-commission meetings closed to the press and the public. In what soon proved a cruel irony, the *Journal* exploded Foster's anonymity by printing the outline of a man filled with a question mark, under the headline "WHO IS VINCENT FOSTER?"

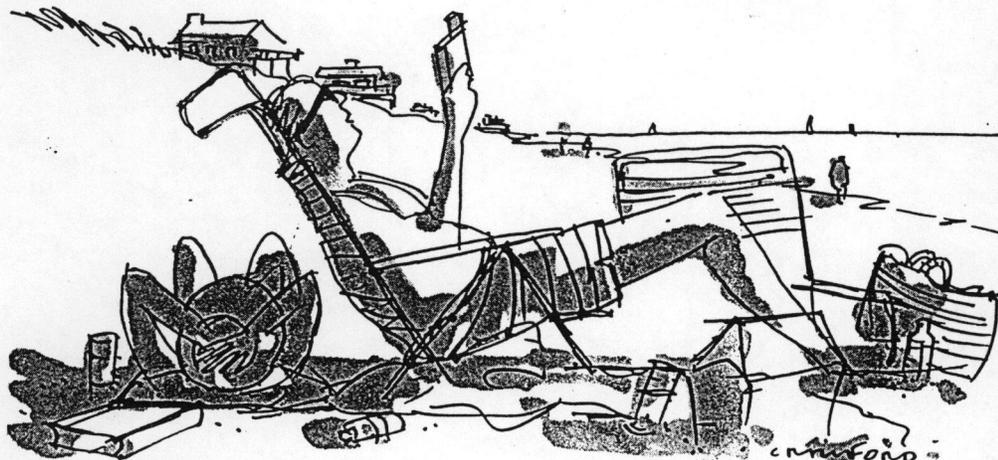
Two weeks after Lisa and the kids arrived in Washington, just as Travelgate was unfolding, Vince told her that he had made a mistake and had decided that he should resign. Something was discernibly amiss, but Lisa didn't see it. "You can't quit," she told him. "I just got here." She wanted a taste of the glamour

she thought Vince had been enjoying, but it was not forthcoming. "He didn't want to go out," she says. "He didn't want to do anything fun. He wanted me to stay home and cook. He never came home until nine or ten o'clock at night, then went straight to bed, and he got up and left at a quarter to eight in the morning. By the time we got there, it was basically awful. It was like: Well, I just moved out of my house, and I moved up here and he is unhappy. I have to make him happy. This is going to have to get better."

The two older Foster children got summer jobs, and Brugh did volunteer work, as was required by Sidwell Friends. Lisa undertook the redecoration of the house and played tennis with a friend at the Arlington Y. "I was kind of getting to like it," she says. "I loved having a place and fixing it up. I had all my cute living-room furniture in there, and I was beginning to think it was going to be possible for us to live there."

At the time, Lisa never considered the possibility that Vince was suffering from depression. In her world, emotional problems were not discussed, and depression in its clinical sense was an alien concept. "I knew he was down," she says. "I just didn't know that people committed suicide. I'd never had any experience with this at all—I hated it when people said he was depressed, because I didn't know what depression was." Perhaps she was too ready to dismiss Vince's worries over Travelgate as his characteristic overreaction to work. "I kept telling him that it wasn't any big deal. Nobody cared about it." She knew that the press was tormenting Clinton, but she thought that was overblown, too. "The press had it all out of proportion, just like Vince had it all out of proportion."

Looking back on their tense, brief time together in Washington, Lisa is filled with images of a desperately troubled man. He lost his appetite, and some nights he didn't sleep at all. "He got up one morning and said, 'I did not sleep one wink last night.' He looked awful. And I said, 'Oh, Vince, surely you slept some, you probably just



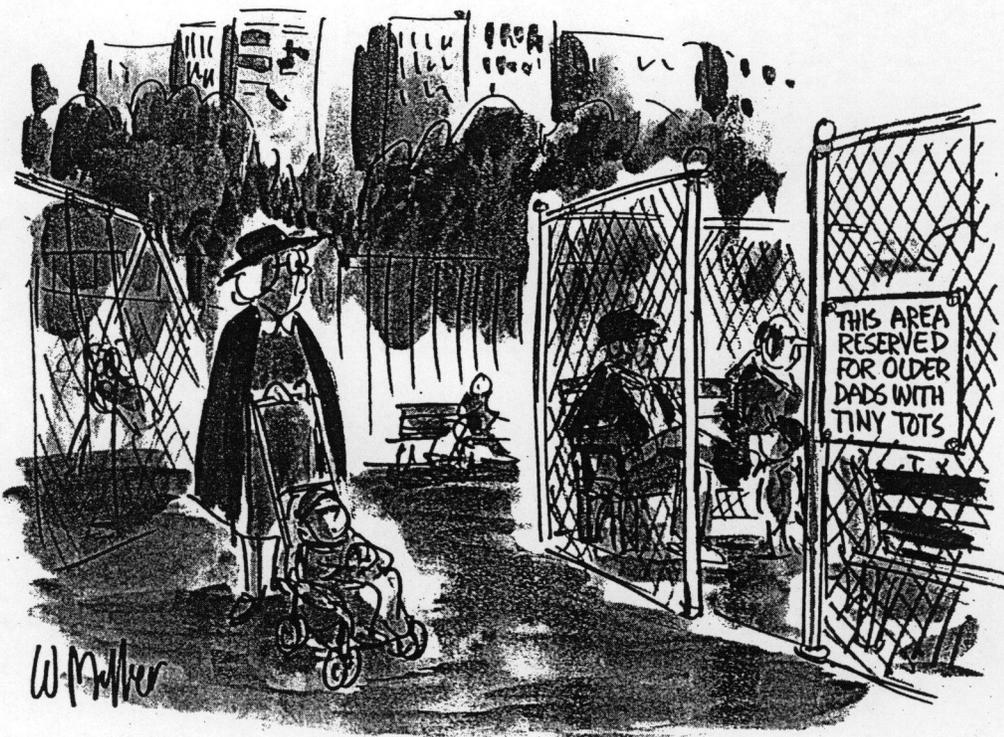
"I think I'll head back to the house for a little Net-sex and a nap."

don't feel like you did.' And he said, 'No, I didn't sleep at all. I just don't think I can go back down there.' And the next thing I knew he was dressed and had on his coat and tie and he looked like a million dollars. And I thought, 'Well, then, tonight you'll sleep.'

He was losing weight, and Lisa remembers that he began absently wringing his hands, incessantly rubbing the thumb and forefinger of one hand into the palm of the other. At a meeting at Brugh's school, Vince slumped in his chair, Lisa recalls, and she thought he looked just the way his father looked in the weeks before he died, of cancer. "All I knew to do was to tell him I didn't think it was that big a deal and that everything would be O.K., and not to worry about it so much, and to take care of himself, and try to get more rest."

As a college freshman in 1963, Lisa had travelled to Washington for John Kennedy's funeral. Now she went to the church where Kennedy had worshipped—Holy Trinity, in Georgetown—hoping to find help for her husband. "I'd go there every Sunday and I'd pray for Vince," she says. "I'd say, 'Please help him make these hard decisions, and help him make the right decisions, so that he won't be so upset.'"

One evening in early July, Vince again told Lisa that he meant to resign. He was still unable to sleep. Worried, perhaps even a bit exasperated, she told him she was tired of hearing about how miserably he was failing in his job, and she urged him to take the offensive; she suggested that he write down some of the reasons that his difficulties were *not* his fault. He went upstairs, sat on the bed, and, on a sheet of yellow legal paper, wrote the list of complaints that would soon be found, torn into twenty-seven pieces, at the bottom of his briefcase, by an associate White House counsel, Steve Neuwirth. It was not a suicide note, Lisa says, but a kind of defense brief. "After that, he said one night, 'I haven't resigned yet. I've just written my opening argument,'" she recalls. "And I think that when he wrote those things down it was as if he were defending himself in what he thought was going to be



some kind of congressional investigation. And the *Wall Street Journal* was saying, 'Who is Vince Foster?' and I think in some ways he felt he had to defend himself. I was trying to tell him that he didn't, that he hadn't done anything wrong, that he should just basically carry on and it would all go away. But it didn't."

LISA still had hope, and it seemed to her that this difficult period in Washington in some ways had brought her closer to Vince. "He was talking to me so much, and I thought, Well, really we have each other, and I'll just be there for him, and maybe that will be the good that comes out of this—that we will get closer. He needs me, because he doesn't have anybody else." Lisa even talked Vince into taking a break from Washington, a weekend trip to an inn on Maryland's Eastern Shore.

The day they left for the shore, Friday, July 16th, was a particularly bad one for Vince. He told Lisa that his heart felt as though it were pounding out of his chest, and that day he went to the White House medical unit for a blood-pressure test. His pressure measured 132/84, well within normal limits. Realizing that there was nothing wrong with his heart, he telephoned his sister, Sheila, and told

her that he thought he was suffering from depression. She gave him the phone numbers of three psychiatrists. (One of them later testified, at the first round of Senate hearings, that Sheila had spoken to him about her brother, telling him that Vince held a very sensitive position at the White House and that his depression was "directly related to highly sensitive and confidential matters.") Around lunchtime, Vince called one of the names on the list, but didn't leave a message. He tried again later, and again left no message. Apparently embarrassed, and concerned that a diagnosis of mental illness would complete the ruin of his reputation, he charged the calls to his home phone.

Vince was visibly tense as he and Lisa drove out of town. Traffic was bad, and en route they realized that they had left Vince's suitcase at home, by the back door. His mood didn't improve much when they got to the shore. Again, he seemed single-mindedly focussed on getting out of the White House. At dinner that night, Lisa recalls, "I asked him if he felt trapped, and tears came to his eyes, and he cried."

The next morning, she remembers Vince sprawled on a park lawn overlooking Chesapeake Bay, negotiating their departure date. They now agreed

that they would not stay for the full Clinton term, but she hoped to remain in Washington at least until Brugh graduated from Sidwell, the following year. Vince wanted to leave immediately. Finally, they decided that Vince would stay in his job until Christmas, then find other work in Washington until Brugh graduated.

Vince's spirits seemed to lift after that, and they even talked about living on a houseboat until they returned to Little Rock. Back at the inn, they were wakened from a nap by a call from Webster Hubbell's wife, Suzy, who was staying with her husband at the home of mutual friends nearby. Hubbell invited the Fosters to join them for dinner that night and for the day on Sunday, and they did. Again, Lisa thought she saw Vince brightening. But something still seemed to be off-key. She told Vince that she intended to telephone their family doctor in Little Rock, Larry Watkins, to see if he could suggest anything. Whenever Vince had a cold or the flu, he asked Lisa to call Dr. Watkins for him, but this time he told her he would make the call himself. On Monday, he did call Watkins, and told him he thought he might need something for depression. Watkins prescribed the antidepressant Desyrel and telephoned in the order to a Washington pharmacy. Vince did not tell Lisa he had made the call. "He never, ever mentioned the word 'depression' to me," she says, "or anything even remotely resembling mental illness. Ever."

That day, July 19th, Foster arrived at his office with three stamped, addressed envelopes. His secretary noticed the addresses on two of them: one was to his life-insurance company, and the other was to his mother, in Hope. The envelope to the insurance company was subsequently found to contain his premium payment; the one to his mother contained papers completing the transfer of oil leases from his father's estate to his and Lisa's name.

That evening, at home, Vince received a call from the President inviting him to watch a movie at the White House. He declined. "That's good," Lisa told him. "You need a good night's sleep." Besides, she had prepared a family meal. That afternoon, the medication from Dr. Watkins, thirty fifty-milligram

tablets, had been delivered to the house. Vince took one tablet. Once again, Lisa seemed to sense a lightening in his mood. "He came into the kitchen, put his arm around me, and kind of joked with me," she recalls. "He went to the wine cabinet and said, 'Maybe that's what I need, some tannin.' Then we went up and got in bed and watched TV." They talked about their weekend away, and about trying to go away again the next weekend. Lisa asked Vince if he would do something special for her—go on a date with her the following night, Tuesday. Vince said that he thought he might have to attend a birthday dinner that night but that he would try.

On Tuesday, Vince left for work at 8 A.M., and Lisa noted that he failed to kiss her goodbye. She started to say something, but stopped herself. "I was trying to act so chipper," she says. "I didn't want to make a big deal. But he just had his back to me, so stiff. And he just walked out." She played tennis at eight-thirty and then went to a charity meeting with Donna McLarty. Afterward, the two women went to the lounge of the Four Seasons Hotel in Georgetown, and drank Perrier and sounded a theme that had become increasingly common among the expatriate Arkansans—the nastiness of Washington politics.

Lisa eventually went home, and around five o'clock she called the White House to find out about the birthday party, and was told that it was not until the following week. She figured that Vince would be home soon, for their date.

But Vince didn't come home, so Lisa called the White House again, and this time she was told that the President was appearing on "Larry King Live." "I said, 'Oh, he must be with a bunch of people watching the President on "Larry King,"'" Lisa recalls. She and Laura went upstairs to watch the King show. A few minutes later, the doorbell rang, and Laura went to the door. It was some

volunteers from Greenpeace, soliciting donations.

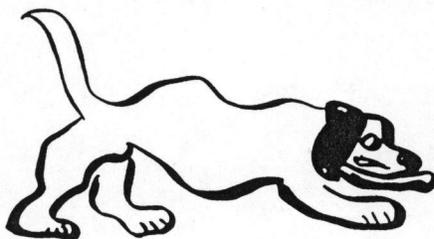
On television, King said that the President had graciously consented to extend his visit for another half hour. Lisa recalls that she groaned and thought, Oh, come on, Bill! You've got to learn when to quit! But a moment later the President and King came back on the screen and King said that Clinton had another engagement, and had to leave shortly. "He had this funny look on his face, the President did," she says.

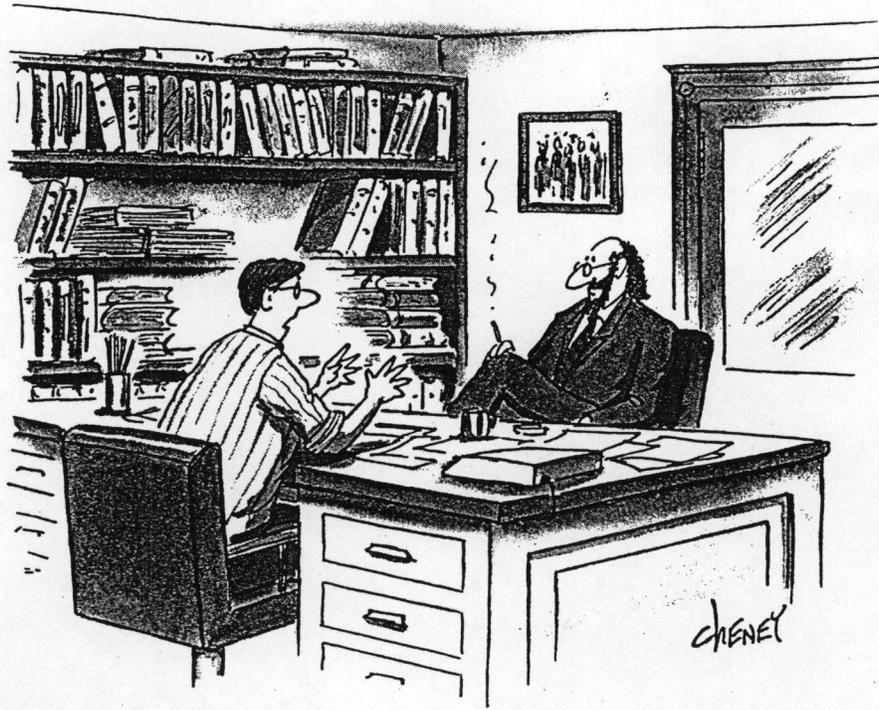
The doorbell rang again. This time when Laura answered it, there were two officers from the Park Police, a man and a woman. "Mother! Mother! Something awful. Come quick," she cried. The man said to Lisa, "Mrs. Foster, your husband, Vincent, is dead."

Lisa thought the officer had made a mistake. "I said, 'No, no, that's my son Vincent.' And he said, 'No, your husband Vincent is dead.'" She protested again that the officer must mean Vincent, Jr., because he and Brugh had gone to borrow their uncle's van, and Lisa imagined that there had been an accident. "And they said, 'No, your husband has shot himself.'" She is still remorseful about her first response to that realization. She says, "The saddest thing is that I had this little bit of relief that it wasn't Vincent."

Once the news registered, Lisa says, she didn't question it. "I never thought he'd been murdered. The worst possible thing had happened, but it was like everything came together." Lisa was told that Vince had shot himself with a .38 special, which she realized was one of the guns she had packed up and taken to Washington. She wanted to know whether her husband had shot himself in the mouth or at the temple. "I didn't know that he knew how to kill himself," she says. "But the children reminded me that he had just watched 'A Few Good Men,' and that is how the guy in the movie did it—he shot himself in the mouth."

In the chaos of that night, with the police and friends from the White House in her home, Lisa tried to console her daughter. Laura had been Vince's pride, and she adored him. When school was over that spring, she had spent a month with her father—before her mother arrived—cooking and cleaning





*"Words on paper, Ted. Just give us words on paper.
Our advertising people will do the rest."*

for him, and acting as his companion at official functions. Lisa now told her, "Laura, you had a better relationship with your father in twenty-one years than most people ever have. You're just going to have to let that come through."

WEBSTER HUBBELL and his wife took care of the move back to Arkansas. As Lisa left Washington, she felt a wave of revulsion against the place. "I can remember looking at Georgetown and thinking it was the ugliest set of buildings I had ever seen," she says. She was determined to get through the funeral without breaking down; she stared ahead, focussing on objects and avoiding eye contact.

Her friends wondered how she would manage, with two children in college and a third on his way, but financial survival was not what worried her. "Everybody thought, Poor Lisa and the kids won't have any insurance money," she recalls, because Vince's death was a suicide. But his policy had a suicide clause, allowing death-benefit payment to survivors if the insured party had held the policy for a prescribed period, and Vince had. And over the years he had built a college

trust fund for each of the children. "Unfortunately—or fortunately, I don't know which—he was the type of person who probably knew exactly what he was doing in that respect," Lisa says. "He probably thought we'd be well taken care of and maybe we'd be better off, financially, if he were dead, because if he went to a psychiatrist he'd never have another job."

At first, Lisa was preoccupied not with the nature of Vince's death but with tremendous despair at his loss. When she thought of life without him, she found herself embracing the idea of death. "I wanted to die after he died," she says. "There were a lot of times when I thought, This isn't worth it." She remembers being on an airplane with one of her sisters after Vince died and having to fly through a tornado-spewing storm system. Her sister was frightened. "Don't worry," Lisa told her. "You're with me, and God's not gonna let me die, it would be too easy. I would just love to die." But these thoughts inevitably led to images of her children. "I couldn't stand the idea of my children having to go through it more than once. It's just the most awful thing in the world, and I can't let them

think that I'd do it, too. I mean, somehow, I've got to stay alive, for them."

Lisa felt angry, too, at everyone—the Clintons, Vince, politicians, those Arkansans who stayed in Washington. She would see a picture of the White House on the news, and get livid. "I hated everything. I was mad as hell." She was angriest, perhaps, at God. She had always been a devout Catholic, never questioning, for example, that her own children would be raised in her faith, even though Vince was a Presbyterian. But when he died she suffered a crisis of faith, and has not yet emerged from it. At first, she questioned God. "Why didn't Vince run out of gas? Why didn't he have a car wreck? Why didn't he call? Why did you have to let him get so bad off when all he wanted to do was go up there and help his country and do some good things for people?" And then she stopped praying. She thought of Coleridge's *Ancient Mariner*, who surveyed his dead shipmates and was stricken by the fact of his own survival: "I looked to heaven and tried to pray;/But or ever a prayer had gusht,/A wicked whisper came, and made/My heart as dry as dust."

"Well, that's exactly the way I felt," she says. "You can't pray, because you don't know what you're praying for. You're mad as hell at God, and so you don't know what to say. You don't want to say, 'Help me,' because you think He's screwed you. What are you going to say—I praise you because you're great, even though you've done this to me?"

She kept going to church, because she didn't know how to stop going. But she wore jeans and a sweatshirt, and sat in silence through the service. People sent her cards urging her to turn to Jesus: "If I got one card about Jesus, I must have gotten a thousand. And I thought, Well, where was Jesus when I needed him? I don't know why God did this to me. I wouldn't do this to somebody I loved. You know, we're supposed to be children of God—I wouldn't do something like this to one of my children. It wasn't like we did something bad and we deserved it. I just didn't understand it."

The morning after Vince killed himself, she telephoned Bernard Nussbaum, searching for an explanation, and asked, "Bernie, did you fire Vince yesterday?" Nussbaum said of course he hadn't, but

later told Robert Fiske's office that he had noticed that Vince had become less productive, and that he had urged him to take a vacation.

Lisa says, "I was trying to figure out what could possibly have happened that put him over the edge. I kept thinking, Now, what could have made him eat lunch and go out three or four hours later and shoot himself?" After Vince's funeral, she returned to Washington to talk to the Park Police, and Nussbaum gave her a partial answer, showing her Vince's torn-up note.

EVEN as various law-enforcement agencies and congressional hearings were investigating Vince's death, Lisa undertook an inquiry of her own. She went through every box of personal files from Vince's office which had been returned to her. "If you saw them, you'd believe even more what I'm telling you," she says. "There was a file for his father, a file for his mother, a file for the children's medical records. He was a perfect husband, keeping perfect records." She examined his American Express bills for the previous six years; she studied their telephone bill, and when she saw a number she didn't recognize (such as that of the psychiatrist) she dialed it. "I did all of it, every last piece of scrap paper, name, number—oh, I investigated everything. As a matter of fact, when the F.B.I. wanted my phone bill I'd already figured it all out for them. I had the name of everybody he called."

Curious about why Foster had an appointment scheduled for July 21st—the day after his death—with Jim Lyons, a Colorado attorney who had organized the Clintons' early responses to the Whitewater allegations, she called Lyons and asked him what the meeting was to be about. He told her that Vince was worried about a possible congressional hearing on the Travelgate matter.

Lisa has satisfied herself that Whitewater was not among Vince's anxieties—a view that echoes the White

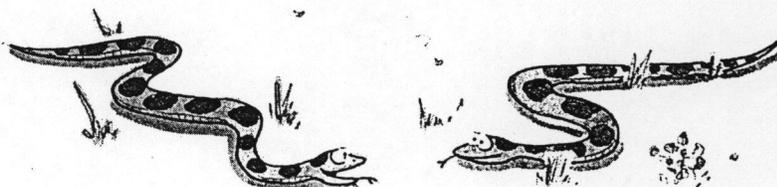
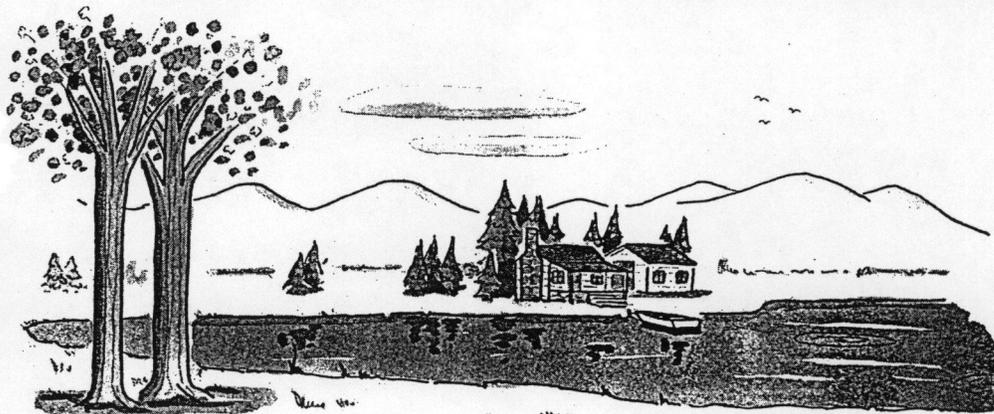
House line and the conclusion of the Fiske report. Nevertheless, it is reasonable to suppose that Foster was well aware the Clintons could face future political embarrassments over their Little Rock land deal. As Hillary Clinton's former law partner and the Clintons' friend, Vince was also handling some of their personal legal work, including their taxes on Whitewater from 1990 to 1992. Just a few weeks ago, in advance of this summer's hearings, it was revealed that Foster had written a memo in which he described Whitewater as "a can of worms you shouldn't open."

Lisa says that her search helped her cope with the wilder speculative scenarios about Vince—the tales of secret Swiss bank accounts, of involvement in a C.I.A.-sponsored drug-smuggling operation, of the alleged use of a "safe house," and so on. "I got the last six years of American Express when they started talking about him flying to Switzerland, just so I could say, 'I know he didn't do it, because it's right here before me,'" she says. "There is no secret. Anything that I know about his death I have told the Park Police, Robert Fiske, and Ken Starr, and there is no secret. There is no conspiracy. There's nothing to tell."

Lisa was not always able to make such

assertions. Just a few weeks after Vince died, she was notified that his account at the White House credit union was overdrawn. She had emptied the account, and deposited the money in her own account in Arkansas, but Bill Kennedy called her and said that Vince's account hadn't had as much money in it as Lisa thought. He had been told, he said, that Vince had made several large cash withdrawals, of several thousand dollars each, from the account. "I went berserk," Lisa says. "I said, 'I don't know anything about that.' And I thought, God, what if he was being blackmailed, or maybe he had a girlfriend in some apartment somewhere, and I didn't know about it. My mind was just racing." Lisa says that she searched her records from the credit union and found the receipts from Vince's automatic withdrawals, and discovered a mistake—thirty-five-dollar withdrawals had been misread as thirty-five-hundred-dollar withdrawals. "But it upset me so much I virtually could not see," she says. "I thought I was going to faint."

One of her sisters came over, and she called another sister. Together, the next day, they took Lisa to a psychiatrist. She has been seeing him ever since. In therapy, she began working out answers to some of the remaining questions



*Go
William*

"I thought I saw you by the lake this morning, but it was a stick."

about Vince's death, such as why he hadn't left a suicide note. "Do you know that about ninety per cent of suicides do not leave notes?" she says. "People who commit suicide don't want anybody to know they're going to do it. I mean, why do you think he went to Fort Marcy Park? If he'd wanted to hurt me or the President, he'd have done it right in front of our noses. But we'd have tried to stop him."

In December of 1993, her first Christmas without Vince, she was home alone and received a call from her Washington attorney. He told her that "A Current Affair," a tabloid TV show, was about to broadcast a rumor that he knew would upset her—allegations by Arkansas state troopers that Vince and Hillary Clinton had had an affair. Once again, Lisa broke down. She left her house, sobbing, and walked three blocks to a Catholic seminary, and there she sat beneath a statue of the Blessed Mother. "I cried my eyes out for forty-five minutes," she recalls. "I thought, This is more than I can take." But she then resolved not to be defeated by doubt, or even by grief. She thought about teaching math, something she had started doing before the family left Arkansas, and she went home to keep a tutoring appointment. This year, she started teaching math part time at a private school in Little Rock.

She had dealt with the Hillary question before, and so had Vince. The rumors of an affair first circulated during the 1992 campaign, when Bill Clinton was besieged by allegations of infidelity. Vince gathered the family and told them that the rumor about him and Hillary was false. "They're going to say that we had an affair," Vince said. "I don't see why I can't be friends with a woman at work without somebody assuming we had an affair."

Lisa says that she accepts Vince's statement. "One reason I believe that there's nothing to it is the way he treated me. I mean, I just don't think somebody is a loving husband and treats me the way he would treat me if he's having an affair, whether it's with Hillary or with anybody else. And the second reason is, I don't think Hillary would do it. I mean, she's the mother of Chelsea, and there's Bill. The type of friendship she and Vince had was not a romantic one. I

personally he was very close to

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her. I think he had a great deal of respect for her and for her mind. I think in a lot of ways he felt sort of protective of her, like when they lost a case. I just think that they were close friends."

She says that she considers Hillary a friend, but that she and Hillary have not discussed the issue of the alleged affair. "I mean, would you expect her to deny it? What good does denying do? It only elevates the accusation to some level of credibility and gives it some respect that it's not due."

In the end, Lisa says, she has come to her own accommodation with this and the other speculations about her late husband. "There were certain things I know, because I was there, and there are some things I don't know—that I can

never prove one way or the other, except by faith. I just have faith in Vince and faith in Hillary that they did not have an affair. If they did, who cares now? You know? Who cares? I sincerely believe that they didn't. But that doesn't matter to me—Vince is dead. It does matter to me that they're using him. I know that he didn't do anything dishonest, out of line, or as ridiculous as laundering money or bank accounts."

After the "Current Affair" broadcast, Lisa told her psychiatrist that she was still shaken by it. "I said, 'This is just outrageous. I can't believe that on top of losing Vince I have to deal with this.'" The doctor suggested that she try Prozac. The antidepressant gave her an understanding, for the first time, of Vince

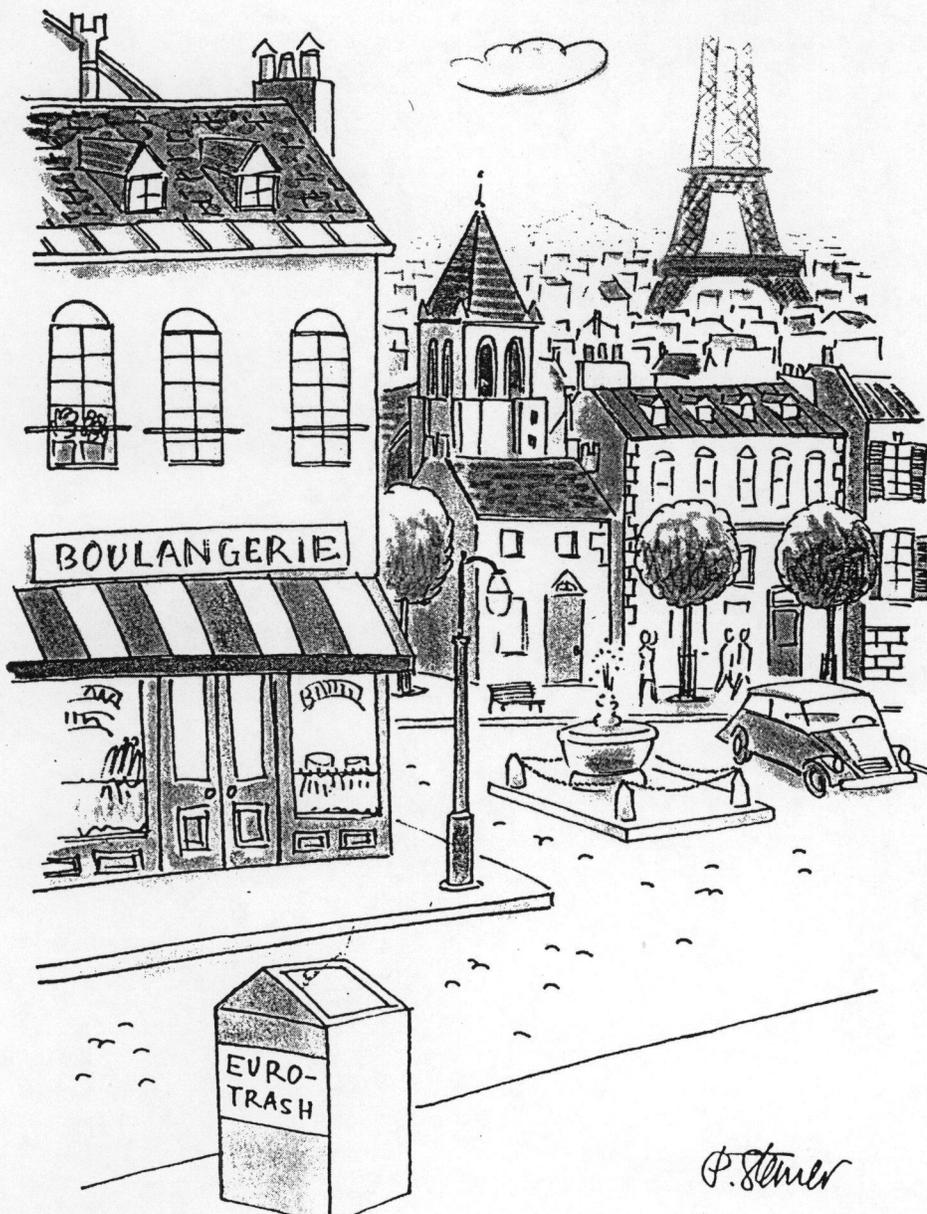
and his illness. "That's when I realized that it was a disease," she says. "Vince was just down, worn out, depressed. Lack of serotonin. He was just totally depleted. Prozac would have helped him sleep, cope, get up in the morning—deal with things without feeling such despair."

The course of Vince's depression, obscure to her even in the face of stark warnings, suddenly became clear: "Having been so low myself and come out of it, I realized how low he must have been, and how he didn't have help. I had a lot of help to get me out of it—psychiatrists and doctors and lawyers and priests and nuns and friends, everybody at every turn helping me."

Lisa believes that she has arrived at an answer to the most baffling question about Vince's last day. After he had a cheeseburger, French fries, and a Coke in his office, he walked out carrying his suit jacket, and said to one of the secretaries, "I'll be back." That was at 1 P.M. His body was found in Fort Marcy Park, in suburban Virginia, at 5:45 P.M. Where had he been during those unaccounted-for hours?

Lisa thinks that when Vince went to the White House parking lot, climbed into their car, and drove off, he may have had the gun with him but was not certain that he would kill himself. "I think he probably spent those three or four hours driving around trying to decide." She believes that Vince suddenly "flooded"—that his problems came rushing upon him, magnifying his despair. "I imagine that Vince was driving around and the thought of going back to the White House—it just made him claustrophobic. I think he was on his way to a nervous breakdown. I think he was just holding himself together."

Her children, she says, will have to reach their own understanding of their father's death. Vincent, who is selling securities in Atlanta, and Brugh, who is entering his sophomore year in college, have occasionally suspected that there is something they still don't know about their father's suicide. But Laura, like Lisa, has found some solace in the diagnosis of depression. "I think it made it easier," Laura says. "It's a whole lot easier seeing him as sick and having a chemical imbalance than to feel 'Oh, my God, he did this and he knew what



A GREEN CRAB'S SHELL

Not, exactly, green:
closer to bronze
preserved in kind brine,

something retrieved
from a Greco-Roman wreck,
patinated and oddly

muscular. We cannot
know what his fantastic
legs were like—

though evidence
suggests eight
complexly folded

scuttling works
of armament, crowned
by the foreclaws'

gesture of menace
and power. A gull's
gobbled the center,

leaving this chamber
—size of a demitasse—
open to reveal

a shocking, Giotto blue.
Though it smells
of seaweed and ruin,

this little travelling case
comes with such lavish lining!
Imagine breathing

surrounded by
the brilliant rinse
of summer's firmament.

What color is
the underside of skin?
Not so bad, to die,

if we could be opened
into *this*—
if the smallest chambers

of ourselves,
similarly,
revealed some sky.

—MARK DOTY

he was doing.' It's easier to say it wasn't his fault."

ONE day last month, Lisa says, she quietly returned to Washington and thought, God, this place is pretty. Why did I never notice it?

The town had not changed in her absence. That very week, the former Justice Department official Philip Heymann was testifying before the Senate Whitewater panel, saying he had warned Nussbaum two days after Vincent's death that it would be a "terrible mistake" to keep investigators from going through the papers in Vince's office. On the other side of the Capitol, a House committee was gearing up for its own Whitewater examination. The next week saw the birth of a new speculation about Vince Foster—the assertion, in a New York *Post* column, that he killed himself in the White House parking lot, not in Fort Marcy Park.

But, unlikely as it must once have seemed to Lisa, Washington was about to make her happy. She had returned to town for Senate confirmation hearings on the appointment to the federal bench

of a Little Rock lawyer named Jim Moody. The Senate Judiciary Committee approved Moody's appointment without dissent, followed by confirmation from the full Senate. Moody is a former colleague of President Clinton's, and he and Lisa plan to marry at the end of this year.

Lisa and Vince had known Jim and his wife, Jo Ann, but the couples had not been close friends, and didn't see each other often. The Moodys came to Vince's burial service, and Lisa saw them there. She was shocked to hear a few months later that Jo Ann had died suddenly in her sleep. As Lisa began to get well, she started dating, and Moody—a man who, like Vince, had a high reputation—was one of those who called on her. They were comfortable together, his circle was her circle, and Lisa realized that she was enjoying herself again. When Jim asked her to marry him, she did not hesitate to say yes.

By then, Lisa had nearly completed a remarkable, if unsought, transformation from the woman who was once utterly content with a Junior League and country-club existence into one who had

faced—and faced down—a horrible nightmare. But she remains Lisa Foster, not Hillary Clinton: she is someone who has spent her life wanting to be, and being, someone's wife. That is her identity. When I asked her if she surprised herself at all by planning a new marriage, she said no, she is surprised only at having fallen in love again.

She and Jim plan to live in her house—Vince's house—when they are married. Sometimes Lisa looks up and sees Vince. ("I was out there weeding and I looked over and saw him standing there," she says. "I still see him in my bed.") Jim's office will be in a converted garage at the rear of the house, in which the boxes labelled "VWF Personal" are currently scattered around. When I asked Lisa how the children felt about the marriage, she said, "You'll have to ask them."

Laura, who was standing nearby, said, "I think it'd be easier if it weren't the same house." This surprised Lisa. There followed some discussion about bathrooms and about redecorating versus moving. Lisa had the final word. "I have this feeling about some things, and that is, I can't do anything about the fact that Vince is gone," she said. "The only thing I can do is try to make the best of what we have. I have found a wonderful man whom I love and who loves me, and who will be good to my children. And just because it's going to be an adjustment is no reason not to do it. The whole damned thing's been an adjustment. So we will adjust."

Earlier that day, after Lisa's morning tennis at the athletic club, she and I had lunch at Trio's, one of Little Rock's tonier cafés. This is the life she had before Washington, and the life she wants to have again. She knows that it will never be quite the same, because too many of her friends who went to Washington with Bill Clinton came back disgraced, embarrassed, or broken-hearted. She also knows that some might have expected her to remain the grieving widow a little longer. "I don't want to forget Vince, and I don't plan to," she said. "But I do plan on loving whoever's going to be my husband as much as I loved Vince, and being, I hope, a better wife and enjoying whatever life I have. But that is not to take away from Vince. That is more to honor him, as far as I'm concerned." ♦

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Park where Foster lay dead searched

Democrat-Gazette Staff and Wire Services

WASHINGTON — In the suicide inquiry that refuses to go away, the National Park Service briefly sealed off the roadside park where Vincent Foster, a White House counsel, was found dead more than two years ago.

The park service closed Fort Marcy Park, just outside the capital in suburban Virginia, at 4 p.m. Tuesday to permit FBI agents to conduct a new search of the scene where Foster's body was found. The park was reopened Wednesday morning.

Washington FBI Agent Jim Farley said the search had been ordered by independent counsel Kenneth Starr, who has been revisiting Foster's July 20, 1993, suicide as part of his Whitewater investigation.

"I am presuming that they are looking for a bullet," said Major Robert Hines, spokesman for the Park Police. "Why they're up there looking for a bullet at this late stage, I don't know."

A team of four investigators, who had suitcases filled with gear, were at the park early Wednesday, working near a Civil War cannon where Foster was found shot to death.



Associated Press

background, a mounted National Guardsman monitors the Mall in Washington as President Clinton's helicopter lifts off Wednesday from the White House en route to Elkridge, Md.

Hubbell hired even as he faced charges

term after pleading guilty to income-tax evasion and to bilking his former law clients and law firm partners out of about \$480,000.

Hubbell was hired by the city in September 1994 — three months before he pleaded guilty to the felony charges brought by a special prosecutor, who originally had been assigned to investigate the Arkansas-based Whitewater development controversy. A city official terminated Hubbell's contract after he entered his guilty plea.

Hubbell, a close friend of both President Clinton and first lady Hillary Rodham Clinton, resigned his No. 3 post at the Justice Department in March 1994.

Records obtained by The Los Angeles Times show that early this year the City Controller hired Hubbell to lead the project to build a new city hall.

is both president of the city airport commission and a senior policy adviser to Mayor Richard Riordan.

Stein, who also is a lawyer and a developer, confirmed in an interview that he directed a subordinate to hire Hubbell in an attempt to bolster the city's airport-related advocacy with the Clinton administration. Stein acknowledged that he knew Hubbell was under "a cloud" at the time of the hiring.

"There was a cloud," Stein said. "But there was no suspicion, I believe, that there was any criminal involvement (on Hubbell's part). No one that I knew had a clue that he was going to be indicted for something. He was innocent until proven guilty."

However, Stein said, "with the benefit of 20-20 hindsight, I'm sure we should have" hired Hubbell. Stein also said that Hubbell provided "a great deal of help" in the airport project.

the basis of his contract with the city Department of Airports.

In a letter addressed to Stein, Hubbell wrote that his responsibilities included "daily contact" with the Clinton administration regarding the city's efforts to win a favorable result from the Department of Transportation.

"I was also in almost daily contact with the Department officials at the Department of Transportation and the Federal Aviation Administration regarding the City's request (for a legal decision that approved the transfer of the \$58-million of airport-held funds). Hubbell wrote. "I also contacted other members of the (Clinton) administration — concerning the status and progress of this request."

Hubbell, who began serving a 21-month prison term Aug. 1, will not be punished for anything he did while working for the city.

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LAW OFFICES
JOHN H. CLARKE
1730 K STREET, N.W.
SUITE 304
WASHINGTON, D.C. 20006
(202) 332-3030

ALSO ADMITTED IN VIRGINIA
AND MARYLAND

FAX (202) 822-8820

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.

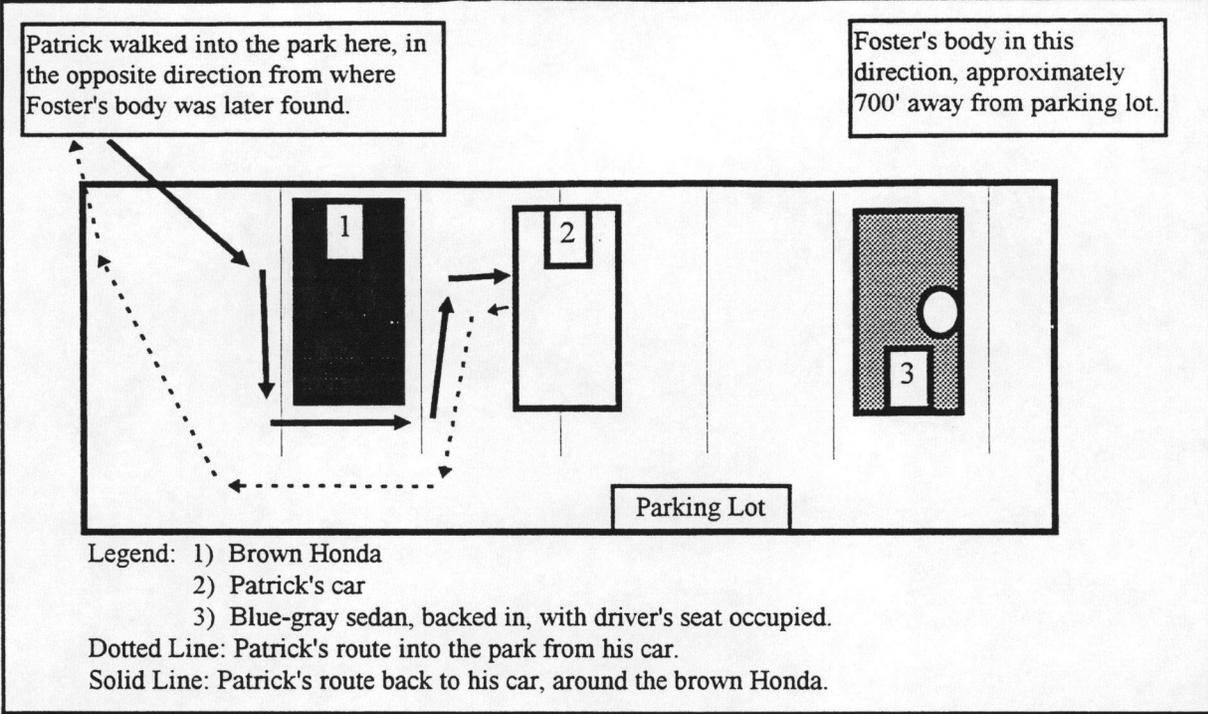
Patrick respectfully asks that the Division of the Court append this letter to the Independent Counsel's Report on the Death of Vincent Foster, Jr. to afford him a measure of fairness. A denial of this relief would augment the appearance of justice having not been done and would further frustrate legislative 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,



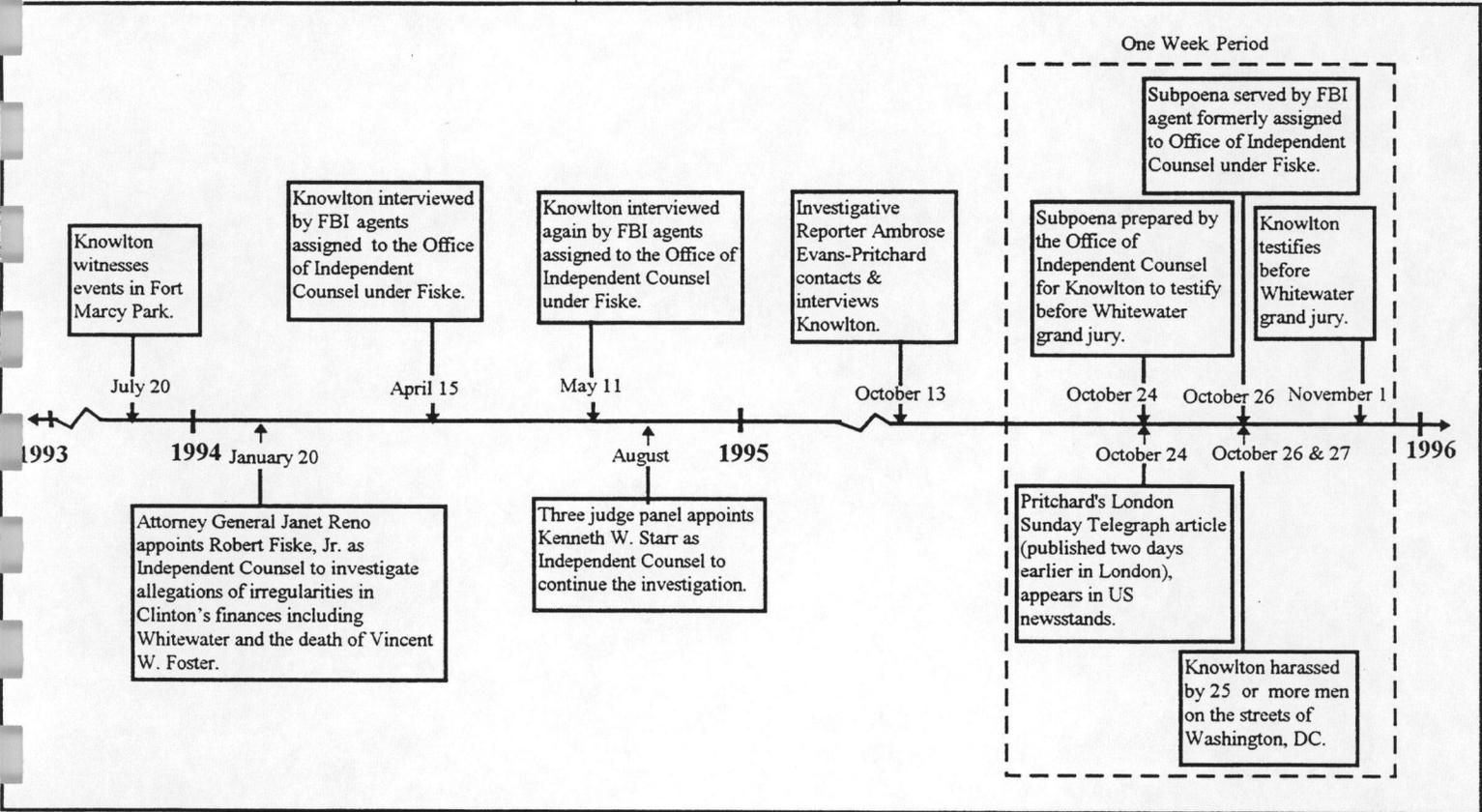
John H. Clarke

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



**EXHIBIT
1**

T I M E L I N E

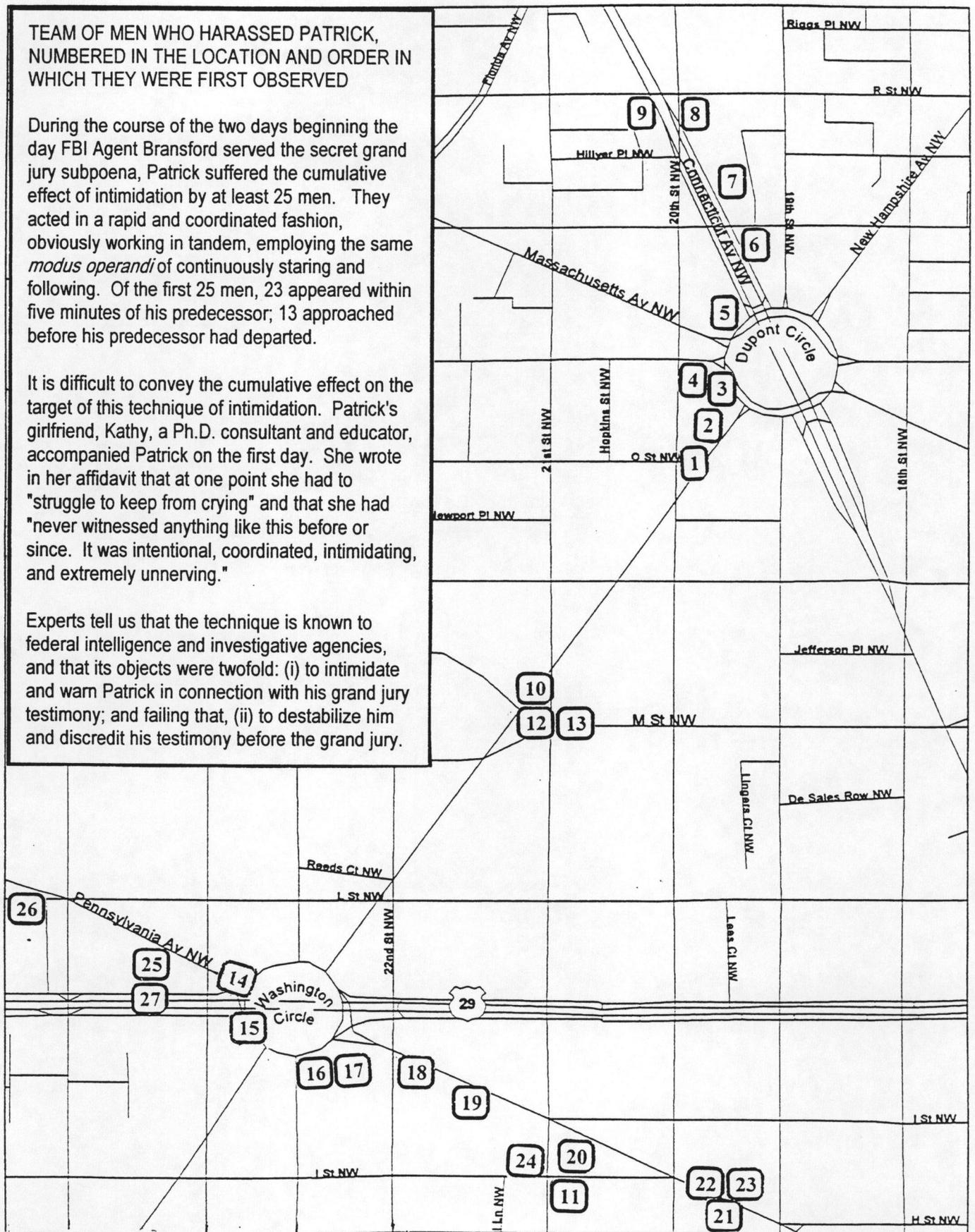


**TEAM OF MEN WHO HARASSED PATRICK,
NUMBERED IN THE LOCATION AND ORDER
IN WHICH THEY WERE FIRST OBSERVED**

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."

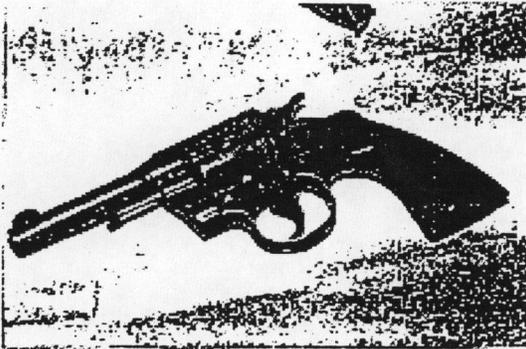
Experts tell us that the technique is known to federal intelligence and investigative agencies, and that its objects were twofold: (i) to intimidate and warn Patrick in connection with his grand jury testimony; and failing that, (ii) to destabilize him and discredit his testimony before the grand jury.



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>30507-c3</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: <u>[Signature]</u>	DATE: <u>7-26-93</u>
SUPERVISOR: <u>[Signature]</u>	DATE: <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-gun, 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.

Continuation of FD-302 of <u>ELIZABETH BRADEN FOSTER</u> , On <u>5/9/94</u> , Page <u>14</u>
<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>
may FOIA# none (URTS-16313) DocId:70105202 Page 267 belongings when she permanently moved to Washington. LISA FOSTER

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

UNITED STATES PARK POLICE	INCIDENT DID IT OCCUR?	MO	DAY	YR	YEAR	CASE/INCIDENT NUMBER
		07	20	93	93	030301
NATURE OF INCIDENT		RECLASSIFICATION OF INCIDENT				
Death Investigation						

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

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 #				
SUPPLEMENTAL CRIMINAL INCIDENT RECORD						
INCIDENT	INCIDENT DID IT OCCUR?	MO	DAY	YR	YEAR	CASE/INCIDENT NUMBER
GMPT Ft. Marcy		07	20	93	93	030301

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.

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 Gonnie Diamante
Date 7-19-94

EXHIBIT
4
Page 1 of 2 pages

NARRATIVE REPORT	NARRATIVE REPORT
INCIDENT # R32011315 UNIT M01 SUPP 01 SITF 801 DATE 07/20/93	INCIDENT # R32011315 UNIT M01 SUPP02 SITF 801 07/20/93
FOIA # none (UBTS 16313) DocId: 70105202 Page 268	POOLING OF BLOOD IN THE EXTEMITIES. PT HAD BEEN DEAD APPROX 2-4 HRS. PT HAD A WEAPON IN HIS-RIGHTHAND
PT HAD A WEAPON IN HIS-RIGHTHAND	

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

*Received
July 1997
Medical Examiner*

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 *[Signature]*
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?

24

1 A Yes, right around the jawline.

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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. FOIA # none (HRIS 16318) DocId:37010520 Page 270 taken at the scene, and the observations made by Park Police 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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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.

FBI INTERVIEW REPORT. USPP FERSTL TOOK APPROXIMATELY 7 POLAROID PHOTOGRAPHS.

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. 3-29-84) 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 Ctr. Facility
Wash DC

Description of Property:
5 Polaroids marked 1-2-3-4-5 depicting
1- Rear of Cannon
2- Heavily damaged area
3- V.F.'s body - looking down from top of beam
4- V.F.'s body - focusing on face
5- V.F.'s body - focusing on RT. side of head/ear
(notation on back of 1-5 - from Ctr. Sgt. Edwards 7/16/93)
5 Polaroids (Marked on back 1/20/93 63-3050)
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 on back JCR 7/20/93 63-3050)
1 - Right hand showing gun + thumb in guard
2 - glasses on ground
3 - V.F.'s body - taken from below + UT
4 - V.F.'s body - focusing on right side + arm
5 - V.F.'s body - focus on top of head then heavy focusing
6 - V.F.'s body - focus on head + upper torso
7 - V.F.'s face - looking directly down into face
8 - V.F.'s face - focusing

EXHIBIT
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 of 4 pages

AUTOPSY REPORT. X-RAYS TAKEN:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DISTRICT
8787 BRADDOCK ROAD
SUITE 100
FAIRFAX, VA 22032-1700
PHONE (703) 764-4840

REPORT OF AUTOPSY

11/93

JL 813

Received
in
Medical Examiner

Autopsy No. 353/93
Date 7/21/93
Time 10:00 A.M.

DECEDENT VINCENT FOSTER
First Middle Last

Autopsy Authorized by: Dr. Donald Hays - Fairfax County

Body Identified by: U.S. Park Police Tag - 7/20/93

Persons Present at Autopsy:
James C. Beyer, M.D.; Det. James C. Merrissacca, U.S. Park Police

Photographs made: Yes No X-rays made: Yes No

Examined by: J. C. Beyer Date: 7-21-93

US PARK POLICE REPORT. X-RAYS READABLE:

NATIONAL PARK SERVICE
SUPPLEMENTAL CRIMINAL INCIDENT RECORD

1. AGENCY CASE #

AGENCY	NO	DAY	HR	MIN	SEC	CASE INCIDENT NUMBER
USP Ft. Myer	0	7	2	0	9	3

head. Dr. Beyer stated that X-rays indicated that there was no evidence of bullet fragments in the head.

AFFIDAVIT. X-RAY MACHINE FUNCTIONING PROPERLY:

AFFIDAVIT

I, I am Reed J. Irvine, Chairman of Accuracy in Media, Inc.,

Virginia Beach, Va. I succeeded in located the technician who was responsible for installing and servicing this machine, Mr. Jesse Poor. Mr. Poor denied that there had been any trouble with the machine, which he had installed in June 1993. He checked his records and reported that the machine was installed on June 15, 1993 and that the first service call was on Oct. 29, 1993 to make an adjustment to make the pictures darker.

FISKE REPORT. X-RAY MACHINE INOPERABLE SO NO X-RAYS TAKEN:

**Report of the
Independent Counsel**

The office X-ray machine was inoperable at the time of Foster's autopsy, and as a result no X-rays were taken.

PART
DATE
PAGE
TITLE
TEXT

CONGRESSIONAL RECORD (HOUSE)
July 26, 1994

PAGE H6246

MORE QUESTIONS ABOUT VINCENT FOSTER'S DEATH

The SPEAKER pro tempore (Ms. Long). Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the Chair recognizes the gentleman from Indiana (Mr. Burton) for 60 minutes.

Mr. BURTON of Indiana. Today the Whitewater hearings started, and everybody in the country is very interested in what is going to come out of those investigations.

The first vote that was taken in the committee was a vote on the investigation into the former assistant White House counsel Vincent Foster's death, and whether or not that should be discussed at these hearings.

The vote went along party lines, exactly, and the Democrat majority on the committee voted not to include any of the events surrounding Mr. Foster's death in the hearings.

The reason they did that was because the report that was put out by Mr. Fiske, the special counsel, indicated that Mr. Foster's death was a suicide, there was no doubt about that, and that it was totally unrelated to the Whitewater investigation.

Tonight what I want to do, Madam Speaker, is to ask some questions and go into some of the information that I have found over the past few weeks regarding Vince Foster's death and some of the questions that are not answered by the Fiske report.

In my opinion, the Fiske report leaves glaring holes in the investigation, and I think it is totally inaccurate in many ways.

First of all, on July 20, 1993, Vincent Foster left his White House office at 1 o'clock p.m. He was later found dead by a confidential witness, a gentleman driving a white van who stopped at the park and wandered through and came upon his body near a cannon. He discovered the body of Vince Foster at 5:45 p.m.

Emergency medical service personnel discovered the body shortly after they were informed there was a body in the park by park personnel, that had been informed of Mr. Foster's body being there and his death by the gentleman called the confidential witness driving the white van.

Now, the confidential witness on March 27 of this year, because he read some misinformation in the newspapers and heard it on television and the radio, called G. Gordon Liddy, because he thought Mr. Liddy was a person that he could trust, and he called Mr. Liddy and he met with Mr. Liddy at his home, and they talked over the kitchen table and went into the entire story of how he found Mr. Foster's body and what happened out there that day and what he saw.

After I read Mr. Liddy's report and heard about it on the radio, we started checking into the death of Vince Foster, and we found a lot of inconsistencies, as I said, in Mr. Fiske's report and what actually we believe happened.

Mr. Liddy, I talked to him several times, and he finally agreed to try to set up an appointment with me with the confidential witness. The only people that had talked to this person who found the body was Mr. Liddy and later the FBI, between March 27, when he was interviewed by Mr. Liddy, and July 21, when I interviewed him at his home.

The FBI met with him and went into a discussion with him for about 2 to 3 days. The confidential witness told me and Mr. Liddy that he came to within 30 inches, 2 1/2 feet, of the body. He said he leaned right over and looked right down into Mr. Foster's face. He was not on a berm some feet away, he was directly over Mr. Foster's body.

He stated very specifically that when he looked at Mr. Foster's body, his head was looking straight up, facing straight up, and that the hands were at his side with the palms up, and there was no

(2)

gun visible in either hand.

Now, the Fiske report, this report, quotes the confidential witness as saying that he may have been mistaken. That there may have been a gun in Mr. Foster's hand that he did not see because of the dense foliage and the position of the hand.

Now, when I went out to his home and talked to him about this, this is what the confidential witness told me. He said the FBI agents pressed him on the issue of the gun, asking him as many as 20 or 25 times if he was sure there was no gun in the hand. According to the confidential witness, the FBI said, what if the trigger guard was around the thumb and the thumb was obscured by foliage and the rest of the gun was obscured by the foliage and Mr. Foster's hand. The confidential witness responded, he told me, he said well, I suppose that if the only thing was the trigger guard around his hand, and I suppose if it was lying like that with a leaf over it, I might not have seen that, and the gun might have been underneath the back of his hand and some foliage on part of it, there is a possibility that I wouldn't have seen it, because I didn't count the fingers.

But the palms were up and the head was straight up.

Now, when I talked to him about this, he restated that. And he had not seen a copy of the picture of the crime scene or the picture of Mr. Foster's hand. So there was a picture that we took from ABC news that I showed to this gentleman, and when he saw it, he became visibly angry and he told me that that was not what he saw at the crime scene, because the picture shows the gun in the hand underneath the hand with the palm down, and the gun partially obscured by Mr. Foster's body.

He said time and time again to me, that couldn't be that way, that was not the way it was, because both of the palms were up, there is no question about that. I saw no gun, and the head was straight up.

He also told me that at the bottom of the body, the vegetation had been trampled down like somebody had been walking or messing around that area for some time. He also told me that there was a wine cooler bottle near Mr. Foster's body, and that was never mentioned in the Fiske report.

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Now, why was there no mention of this in the report, and why did the FBI and Mr. Fiske go to such lengths to say maybe the gun was obscured by some leaves or something? The gentleman that saw the body said very, very clearly, there was no gun in the hand, the palms were up and the head was up. And in that situation, the body had to have been moved by somebody.

Now, regarding the head, Mr. Fiske said that when the emergency personnel got there to investigate the crime scene, they must have moved the head. The fact of the matter is, the head was moved before they even got there, because the confidential witness said that he saw the head facing straight up.

Now, there was a blood stain on the victim's cheek and a blood stain on his shoulder, and the report of the forensic expert said that the head had to be against the shoulder. It could not have been straight up. So how did his head get straight up? Because dead people do not move their heads. Somebody had to move that body. Somebody had to move the hands and somebody had to move the head.

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In addition, in the report Mr. Fiske said that maybe one of the emergency personnel moved the body, but he did not ask any of the emergency personnel if they touched the body. Nobody admitted to touching it. Everybody said they didn't. So how does Mr. Fiske in the report say that somebody moved the head, come to that conclusion, when the confidential witness, the first person on the

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scene, said it was straight up?

Now, the FBI did not find the bullet or skull fragments at the park. On July 20th, 1993, the Park Police conducted a search for the bullet that killed Vince Foster using one metal detector and walking around that area of the park. They didn't find anything. They didn't find one bullet, they didn't find one mini ball, they didn't find one belt buckle.

One year later, 9 months later, the FBI went out there with 16 experts and they used modern day technology, and they found not one, not two, but 12 bullets, none of which were Mr. Foster's, the bullet that killed Mr. Foster, and they found all kinds of other things, including civil war mini balls. Why is it that for 9 months nobody found any of this evidence? The Park Police said they looked for it with metal detectors, but they didn't find anything.

In addition, the FBI 9 months later searched around the body, dug to a depth of 18 inches, and found no bullet or bone fragments.

Now, why wasn't the bullet that killed Vince Foster found in that park? I talked to some forensic experts and ballistic experts in California. They told me that the maximum distance that bullet could have traveled after it left his skull was no more than 12 to 1,600 feet. With all the technology that they had and all the time they spent out there, they should have been able to find that bullet.

Here is an interesting thing. He had the gun in his hand, but there were no fingerprints on the gun. How in the world can a person commit suicide using a gun and there be no fingerprints on the gun?

Now, the argument is used by the special counsel that the heat of the day caused the fingerprints to melt off of the gun, that the sun and the heat caused extreme heat and that caused the fingerprints to be melted off.

I went out there. I walked all over that site. That site is completely covered by trees. There is all kinds of foliage above where the body was found.

It was found in a fairly cool area of the park. Those fingerprints could melt off that gun. I also talked to other forensic experts that said, even if that were the case, there still would have been some residue that could have been picked up, some fingerprints that could have been picked up by good forensic technology and experts.

Even if you went along with there not being any fingerprints on the gun, they found an alleged suicide note in his briefcase torn into 27 pieces. There were no fingerprints on any of the 27 pieces. It was not out in the sun, this suicide note or alleged suicide note. How did the fingerprints get off of that?

They said there was no dirt on the shoes, yet he walked over 200 yards from the parking lot into the park. When Foster's clothing was examined by the FBI lab, it said it did not contain any coherent soil but they did find some particles of mica, like off of leaves on his clothing and his shoes, which is consistent with the mica in the park at Fort Marcy Park.

The Fiske report states that it was a dry day on which he died and that the foliage leading up to and around Foster's body was dense. It concludes that it was unlikely there was a great deal of exposed moist soil in the park that soiled his shoes. He would have had to walk a long way from his car to that second cannon, it is the furthestest cannon in the park. On a dry day his shoes would have been stained either by grass or dirt. So why was there no dirt or grass found on either one of his shoes?

There was a blond or light brown hair, blond and light brown hairs on his chest, on his T-shirt. They did not match Mr. Foster's hair.

In response to a question from Robert Novak, a noted columnist,

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Mr. Fiske said that 'while we have not concluded where the blond hair came from, there is no evidence to suggest that it provides any evidence of circumstances connected to the death.' How does he know that? How does he know that? Because of these conclusions that they jumped to in this report. There were also carpet fibers all over the body on all parts of his clothing; there was carpet fibers on his jacket, his tie, his shirt, his shorts, his pants, his belt, socks and shoes. The FBI made no effort to trace the origin of the hair or the red wool fibers found on Mr. Foster's clothes. Why did not Mr. Fiske attempt to find out who the hair belonged to and where these carpet fibers came from and why would Mr. Fiske assume that this evidence was not relevant to the investigation without first investigating it?

Almost every homicide detective or department in the country will tell you, when you go to a crime scene like this, you assume it is a murder, a homicide until you prove otherwise. You do not assume it is a suicide and then try to prove it is a homicide. You assume it is a homicide or a murder and you try to prove otherwise.

Let me talk to you about the forensic experts. This is a very important part of Mr. Fiske's report. He devotes 730 pages to the credentials of the forensic experts. He does not devote any appreciable space to the coroner, the only person that saw the body.

The forensic experts, the four of them that signed this report, they based their conclusions almost entirely on the coroner's report 9 months earlier. They never saw the body, never visited the crime scene. All they did was read the information provided by the coroner to come to their conclusions, and they looked at some of the blood samples and other things.

Now, the coroner was a man named Dr. James Beyer. And on two previous occasions, one in 1989 and one in 1991, he declared two deaths suicides. I want to tell you about those two deaths.

According to the Washington Times, Dr. Beyer overlooked critical evidence in the 1989 Timothy Easley stabbing and supported a police finding that the death was suicide. The death was later changed to a murder, homicide, after an outside expert, another forensic expert, Dr. Harry Bonnell, noted that Dr. Beyer's original report contained glaring errors, including a missing stab wound. He missed a stab wound in the victim's hand and getting the color of his hair wrong. This gentleman that did the report on Mr. Foster said, when he did this autopsy on this Tim Easley, he said that, Tim had gray hair, when his hair was dark brown.

Regarding the stab wound in the hand, Dr. Bonnell, the second forensic expert said, 'I cannot understand how any competent forensic pathologist could miss it.' Dr. Beyer, the man that did the autopsy on this fellow, and did it on Vince Foster, later said the cut on Easley's right hand was consistent with a needle mark, though in his report he did not even make mention of the cut or a needle mark.

Forensic pathologists are supposed to make notes of everything that they see on the body. Dr. Bonnell also said it was doubtful that the Easley stab wound into the chest had been self-inflicted because of the angle. A good coroner would have caught that.

Eventually, it was later found that Easley's girlfriend, Candy Wharton, was the killer and she admitted stabbing Easley. But he had declared this a suicide and the autopsy report was completely wrong. And it took a second expert to go in there and point out the glaring mistakes made by Mr. Beyer, Dr. Beyer.

Now, in December 1991, another autopsy, Dr. Beyer ruled the death of Thomas Burkett, Jr., as consistent with a self-inflicted wound. It was a gunshot wound just like Vince Foster's into the mouth. He said this was a suicide.

According to the New York Post, this second autopsy conducted, there was a second autopsy on this body conducted by a Dr. Erik

(5)

Mitchell that detailed serious omissions in Dr. Beyer's autopsy.

This second autopsy came after the family complained about things they saw at the funeral, and the body was taken out of the ground. They exhumed it. It noted trauma and discoloration to this gentleman's right ear, which could indicate he was beaten before a shot was fired into his mouth.

Burkett's family noted that the ear was so disfigured and bloody, they thought he had been shot there. Dr. Beyer never noted there was any problem with the ear. Dr. Beyer also failed to identify a fractured jaw which could also indicate that the man was beaten before he was shot.

The second autopsy also noted that Burkett's lungs had not been dissected during the autopsy. But Dr. Beyer said he had opened up the man's chest cavity and looked at the chest. He lied. He did not do that.

This is the man that did Vince Foster's autopsy. The second autopsy also found no trace of gunpowder in the mouth. Dr. Beyer left blank the section for powder burns on gunshot wound chart. So why did Mr. Fiske's pathologists in the Vince Foster case base so much, if not all, of their findings in their report on the conclusions of a medical examiner who has been challenged, not once but twice in the last 3 years for flawed autopsies and flawed reports? Why did Mr. Fiske's pathologists base so much of their report on an autopsy of a medical examiner who has a history of omitting important evidence from his autopsy reports?

The fact of the matter is, this report has so many holes in it you could drive a truck through it and it is not worth much of the paper that it is written on.

Yet the media of this country has said, this is a very thorough report. It eliminates any doubt that Mr. Foster was killed someplace else, and it proves that it was a suicide. Let us go back over this real quick.

There were no fingerprints on the gun. Nobody explained whose hair was on his body. They never found the bullet. The man who found the body said that the head was straight up, the hands were palms up and no gun was visible. When he saw the picture that was on ABC News, he said, 'that couldn't be that way. They have misrepresented what I saw. They misrepresented what I saw.'

The Fiske report states that Dr. Beyer was unable to take x-rays of Mr. Foster's head because his x-ray machine was broken. Yet in the park police report, he says, that determining if there are bullet fragments in the skull, he said in the park report, he says, that x-rays of Mr. Foster indicated there was no evidence of bullet fragments in the head. So he says that he took an x-ray in the park police report, but in Mr. Fiske's report it says there was no x-ray. Now, who is right? I do not know. But we ought to find out.

Determining if there are bullet fragments in the skull is very important to determining how far the bullet would travel. Did Dr. Beyer take x-rays of Vince Foster's head or did he not? If Mr. Fiske's report is wrong, is that the case, or is it the park police report that is wrong?

Regarding the sound, there was a couple in that park probably 100 or 200 yards away. Across the street from the site where the crime was committed is the Saudi Embassy residence. He has five security guards in the yard at all times for security purposes; five, not one, two, three, four, but five. One is in a little guard house, one is in a mobile van, and the other three roam around. They watch that park all the time. In fact, on occasion they go into the park when they think there is something suspicious going on.

That residence is about 300 feet or 100 yards from the crime scene. They did not hear a bullet sound that day. Nobody reported hearing a bullet sound. The couple that was there reported not hearing any sound. They said the reason for that is because when

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he put the gun in his mouth and pulled the trigger, it probably muffled it, but I talked to some experts in homicide who deal with this on a regular basis and they say there would definitely have been a report or a sound from that kind of a gunshot wound because of the revolver's cylinders that are outside of the barrel of the gun.

We did an experiment yesterday morning. I had a homicide expert come out to my home. We built up something that was similar to a head and we put a 4-inch barrel of a gun, a 38, the same kind of weapon we are talking about, into the mouth of this head-like thing we created. We had people stand 100 yards away, the same distance as it is from the Saudi Arabian ambassador's home. You could hear the bullet very clearly. You could hear the gunshot very clearly.

Why did none of the five people that were on duty that day guarding the ambassador's residence not hear a bullet sound, the shot? Why did the two people in the park not hear the shot? It could very well be because it did not happen there.

The gentleman that found the body said that he believes the body was moved, because it was lying so straight. The people who came out, the emergency unit that came out to investigate the body, said that it did not look like anything they had ever seen before, because the body was so straight and laid so perfectly. There was very little blood around the head. Usually when there is a gunshot wound to the head, there is blood and bone fragments all over the place. There was none of that.

The Fiske report writes this off as a result of noise from traffic and construction machinery operating around the residence. I might add that when we did this experiment yesterday morning there was earth-moving equipment all around the place making all kinds of racket, and you still could hear the gunshot very clearly. If Vince Foster shot himself at Fort Marcy Park, why didn't any of these guards hear the shot?

In addition to that, he took a pager with him when he left the White House. If you are going to commit suicide, why would you take a pager with you? Why were there no fingerprints on the gun? Why did they not find the bullet?

If the hand was in the position that the FBI said it was in, we put a gun on our finger, on a thumb just like that, and the butt of the gun would have been sticking up. There is no way the confidential witness could not have seen it. We did that at this house. He said 'I would have seen it. There is a question.' There was no gun on that hand. The hand was not in that position, and he was visibly angry.

The question is, why did Mr. Fiske say there is no connection between Vince Foster's death and the Whitewater investigation? There are a lot of questions about that. Vince Foster died at 6 p.m. on July 20. He was found in that Fort Marcy Park. Shortly after 9 p.m. that night White House Chief of Staff Mack McLarty was told about his death. McLarty ordered Vince Foster's office sealed. He said, 'We don't want anybody going in or out of there.' He ordered the office sealed right after he found out about it. However, the office remained unlocked until 11 a.m. The next morning. Why?

During that time, less than 3 hours after Vince Foster's body was found, three people went into that office: Bernie Nussbaum, President Clinton's Chief Counsel; President Clinton's Special Assistant, Patsy Thomasson; and Mrs. Clinton's Chief of Staff, Margaret Williams. They went in there, and for 2 hours they took files out pertaining to Whitewater, the income tax returns, and only the good Lord knows what else.

Bernie Nussbaum said they were in the office for 10 minutes. The Park Police said they were in there for over 2 hours taking files out. We do not know what happened to those files, at least not all of them.

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During his first search when they went in there, Whitewater files and President Clinton's tax returns were removed, as I said before, and we know many were turned over to David Kendall, president Clinton's attorney. Incidentally, those should not have been in the office. That is personal stuff and it should not have been in there under official auspices, because Vince Foster was not his official attorney, he was Assistant Counsel to the President.

White House officials did not confirm or even admit that this July 20 search took place in Vince Foster's office for almost 6 months. It was not until people found out about it that they said anything about it. Two days later evidently they did not get everything out of there that they wanted, because on July 22, 1993, Mr. Nussbaum and other White House officials went into Mr. Foster's office a second time, but by now it had been closed. They collected more documents. Some were sent to President Clinton's attorney, and others were sent to Vincent Foster's attorney, James Hamilton. During the second search Mr. Nussbaum, citing executive privilege, would not allow the Park Police or the FBI to come in there with him. He said, 'We don't want you guys in here because this is executive privilege.' They do not know what he was taking out of there.

However, Dee Dee Myers, the White House Press Secretary, said, 'Bernie,' Mr. Nussbaum, 'went through and sort of described the contents of each of his files, of what was in the drawers, while representatives of the Justice Department, the Secret Service, the FBI, and other members of the counsel's office were present.' According to another source over there, however, the FBI agents and the Park Police were ordered to sit on chairs out in the hall while the White House staff went through these documents. Mr. Nussbaum gave the FBI and the Park Police no indication of what he was taking. One FBI agent stood up to look in the room, and he was reprimanded and told to sit down, citing executive privilege. The Park Police later discovered that Whitewater records had been removed from Vince Foster's office during the second search after they visited James Hamilton, Foster's lawyer, a week after the death to review a personal diary that was also taken. What was in that personal diary? Perhaps he could have told us whose blond hair was on his chest and where he might have been, where those carpet samples came from. We will probably never know.

Hamilton allowed Park Police to briefly inspect Vince Foster's diary and other documents. However, he did not allow them to make copies, citing privacy concerns, and he refused a request for access to the diary and documents by the Justice Department. Mr. Fiske does not even mention the diary in the report. He does not say anything about it. I wonder why Mr. Fiske didn't mention that. Why did he not go into some of the details there which might have shed light on the hair and carpet samples, other things, where Mr. Foster was before he died?

On July 27, 1993, White House officials revealed that on July 26 they found a note, supposedly written by Vince Foster, in the bottom of his briefcase. It had no fingerprints. They said they had missed the note in the first two searches. They went through all this stuff two times. The third time they found 27 pieces of paper in the bottom of his briefcase. It bore no fingerprints. It was unsigned and undated. I wonder why it took so long to find that and why there were no fingerprints.

Here are some questions we still need to have answered. I have been accused of being a McCarthyite and compared to Joe McCarthy because we are asking these questions. I would think any sound investigation would want these questions answered.

When did White House Chief of Staff Mack McLarty give the order to seal Vince Foster's office? How was the White House staff informed that the office was to be sealed, and why was the office not sealed until 11 a.m. the next morning?

Did Bernie Nussbaum, Patsy Thomasson, and Maggie Williams know about the order not to go in there because it was supposed to be sealed? How did they learn in the first place about Vince Foster's death? Did somebody order Nussbaum, Thomasson, and Williams to search Vince Foster's office, or did one of them make the decision to search the office?

If someone ordered them to search the office, what were they told to look for? If it was Nussbaum, Thomasson, or Williams' idea to search the office, what were they looking for?

What would Hillary Clinton's Chief of Staff be involved in the search of Vince Foster's office? I do not know what that has to do with the First Lady and her Chief of Staff.

Why did they remove the Whitewater files, and what happened to all of them? Were other documents taken?

Were other documents destroyed? How can we be sure, because they went in there, even though the office was supposed to be sealed?

Where were the documents when they entered the office? Were they in locked files or a safe? If so, how did they get those open?

Shouldn't they have left everything there for the police to examine first? That is a clearcut question that should have been answered clearly. They should not have been in there taking stuff out, not after the mysterious death of one of the most important people in the White House.

Instead of keeping the FBI from doing its job, shouldn't the White House staff have been giving law enforcement their full cooperation after their friend and colleague was found dead?

If Vince Foster was President Clinton's friend, and he was, why didn't the President immediately order the FBI to take charge of the entire investigation, instead of allowing the Park Police to take charge? The Park Police has little experience in investigating auspicious deaths.

Clothes of Mr. Foster were put in dirty paper, they were contaminated, and the crime scene was not investigated properly. It was a real mess, and anybody who reads this report would see there should have been some more professional help out there.

Why were there no fingerprints on that note? What documents were given to Vince Foster's attorney, James Hamilton, and what was given to Clinton's attorney, David Kendall? Were any destroyed?

Who were all the White House officials involved in the second search of Vince Foster's office? Did the White House staff have the legal right to keep the FBI and the Park Police from searching Vince Foster's office as part of an investigation into his death, as they did?

Has the Committee on Banking, Finance and Urban Affairs requested the telephone logs of Bernie Nussbaum, Patsy Thomasson, and Margaret Williams for the period immediately following the Foster death until the actual search of his office? If not, why did not the special investigation which started today ask those questions? They did not ask any questions. They just said we are not even going to talk about it, we are not going to go into Foster's death because it is not related to Whitewater. That is just baloney. We should know from these three officials who they talked to and why right after his death.

Let us go down to the Rose law firm in Little Rock. Jeremy Hedges, a part-time courier at the Rose law firm, told a grand jury that he was told to shred documents from the files of Vince Foster after special prosecutor Robert Fiske had announced he would look into Foster's death. Fiske was appointed on January 20 and down at the Rose law firm they start shredding these documents. Even before a subpoena is issued, the law prohibits people from intentionally impeding an investigation by destroying evidence they know investigators want. Yet they were shredding these documents down there. In February, after Fiske served subpoenas on the law firm's employees, Hedges and other couriers employed by the firm

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were called to a meeting with Ron Clark and Jerry Jones, two of the firm's partners. This is the Rose law firm now. Jones, one of the partners, challenged Hedges, the courier, challenged his recollection that he had shredded documents belonging to Foster and cautioned him against relating assumptions to any investigators from the FBI or anyone else. Hedges said, 'I shredded some documents of Vince Foster's 3 weeks ago.'

Jones replied, 'How do you know they were Foster's? Don't assume something that you do not know.' And Hedges said he was certain they were Foster's files because of the initials on the files. They were Vince Foster's initials.

Jones then said, 'Well, don't assume they had anything to do with Whitewater.' They were trying to tell him not to say anything about the shredding of the documents or that they had anything to do with Whitewater. The box Hedges was told to shred had all its file folders that were marked with VWF, Vince Foster's initials. None of the documents he said he saw related to the Whitewater Development Corp. but he was destroying hundreds of them very rapidly in a shredding machine. However, another Rose employee told the Washington Times that documents showing the Clintons' involvement in the Whitewater project had also been ordered destroyed. The shredding reportedly occurred on February 3, 1994. During the 1992 presidential campaign, three current or former Rose law firm employees said that couriers from the Rose law firm were summoned to the Arkansas Governor's mansion by Hillary Clinton who personally handed over records to be shredded back downtown at the Rose law firm. The shredding began after the New York Times reported on March 8, 1992, the involvement of Governor Bill Clinton and his wife in the Whitewater Development. Couriers made at least six other trips to the Governor's mansion during the campaign and in each trip they were given sealed, unmarked envelopes with instructions that they were to be shredded at the firm. The shredding continued through the November 3 general election. Records belonging to Webster Hubbell, Vince Foster and William Kennedy III were also shredded. A current employee said, a conservative estimate would be that more than a dozen boxes of documents were ultimately destroyed.

I hope my colleagues will get this: James McDougal and his wife Susan, who are now divorced, have said that they personally delivered all of the Whitewater records to the Governor's mansion in 1987 at Hillary Clinton's request. She had all the Whitewater documents taken over to the Governor's mansion in 1987 and when this story broke in 1992 in the New York Times during the presidential campaign, she sent them back to the Rose law firm for shredding. Then finally during the presidential campaign the Clintons said that the records had disappeared. And people, Mr. Fiske and others are saying, there is no connection between Vince Foster's death and the Whitewater Development project when he had all those records in his office and they were being shredded down at the Rose law firm along with documents that had already been shredded that were in the Governor's mansion pertaining to the Whitewater Development Corp.

Why would the Clintons order that the records from the Governor's mansion be shredded during the 1992 presidential election? Could it be just a coincidence that the shredding began just after a March 1991 New York Times article detailing Bill and Hillary Clinton's involvement in Whitewater? Why would officials at the Rose law firm order a courier to shred documents bearing Vince Foster's initials after Robert Fiske announced that he would investigate Foster's death? That is impeding justice.

Would not Vince Foster's former colleagues at the firm want to cooperate in every way with an investigation into their friend's death? Wouldn't Bill and Hillary want to? Who gave the initial order that Rose law firm documents belonging to Vince Foster,

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Webster Hubbell and William Kennedy be destroyed during the 1992 presidential election? Who gave the initial order that Vince Foster's records be destroyed this year after Robert Fiske was appointed special counsel? Who gave the order that Bernie Nussbaum and Patsy Thomasson search Vince Foster's office and remove files right after his death last July along with Hillary Clinton's chief of staff? But the most damning thing that I have talked about tonight is the confidential witness, because if Vince Foster's body was moved, this report is not worth the paper it is written on.

I believe that his body was moved. The head was straight up. Yet the forensic expert said that was not possible because the cheek had to be lying on the shoulder because of the bloodstains. But the confidential witness who found the body said it was straight up before anybody got there. Who moved the head? He said the hands were palm up and there was no gun visible. He said he did not count the fingers and that is why he told the FBI that if there was a ring around this thumb that might have been obscured by a leaf and the gun was underneath the back of the hand obscured by leaves, he might not have seen them.

He said, 'I saw the fingers, I didn't count all the fingers, and I saw that the palms were up.' When I showed him the picture of the gun in Vince Foster's hand, he said, 'Oh, my gosh, that's wrong, it was not like that at all.' And he visibly got angry, because he said that the hands had to have been moved after he saw the body and reported it to the park employees who contracted the police.

How did that happen? If somebody took that body there and they saw this guy coming up there, they probably hid because he was not expected. And when he left, they knew there would be police all over that place before too long. And he probably went back there and rammed the gun on the hand and tried to get out of there as quickly as possible. There was a wine bottle that was lost, that was never found. If it was there, why wasn't it reported? It was probably taken away because there might have been fingerprints on it. There were no fingerprints on the gun. There were no fingerprints on the suicide note. They did not find any brain or skull fragments at the site. They did not find the bullet. The people around that area that were security guards less than 100 yards away did not hear any shot. All of these questions need to be answered. And the Fiske report does not answer them. Now we have got this very narrowly defined Whitewater hearing over there with the Committee on Banking, Finance and Urban Affairs and they will not allow anybody to talk about this. They do not want this brought up. In fact, they voted on party lines today to not allow this to happen. My question is, why? Why are not these questions being asked? And why are not they being answered. If there is nothing to hide, there should be no reason why these questions are not answered. Yet they do not even want to talk about it, folks. They say there is no connection between Vince Foster's death and yet he was the personal attorney for Hillary and Bill Clinton and he had the Whitewater files in his office when he mysteriously died that day.

Documents were shredded after he died down at the Rose law firm with his initials on them. During the 1992 presidential campaign they were shredding documents that were related to Whitewater that were in the Governor's mansion at Little Rock. Then they said they could not find those documents relating to Whitewater. You have to be almost blind not to see the connection.

I would just like to say to my colleagues, who I hope are paying attention to this special order, and anybody else that is listening, please check into the questions I have asked tonight. Do not take my word for these things. Do not draw any conclusions like I may have drawn. But at least ask the questions. I would like to say to any media that might be paying attention, why are not you asking these questions instead of just taking this thing at

face value? Everybody says, oh, my gosh, this thing is absolutely correct because of the credentials of the forensic experts. But the four forensic experts that they talked about, to which they devote 70 pages in this document, base their report almost entirely on a coroner's report who has been guilty of malfeasance in office twice in the last 4 years. They never saw the body. They were not at the crime scene. They took the report right off of the coroner's desk and took it at face value. And this guy has been proven wrong on two murders that he called suicides in the last 3 years. It does not make any sense to me. I hope it does not make any sense to my colleagues.

Lincoln said, 'Let the people know the facts and the country will be safe.' How about a few facts on this?

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