XIII. CONCLUSION

We hope you have kept an open mind as you reviewed the evidence. The acceptance of the existence of a conspiracy in this case challenges the views that many of us have about our government, the news media, and Mr. Starr. Some of us may not want to learn the truth, and we have the right to ignore it. But we also have the right to learn the truth, should we choose to, and to decide whether knowing it is important.

If the Court grants Patrick Knowlton's motion, this document will forever be available from any government printing office. This filing is for the public.

The object of the Constitution's separation of the governmental power into three branches is to keep government honest. Each branch pursues different interests. Each oversees the others. And each is adversarial when necessary. James Madison described this constitutional technique of protecting against government corruption as an "auxiliary precaution."

We have all been told that the Congress, the media, and independent counsels have repeatedly scrutinized Mr. Foster's death, and that there was no criminal wrongdoing. Yet, this filing proves the existence of an obvious, six-year old cover-up. Something is wrong.

The Independent Counsel statute, or Ethics in Government Act (or "Act") expires June 30, 1999, one week from the date of this filing. Opponents of the Act argue

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August 12, 1994: As part of our probe, my staff or I interviewed... law enforcement officials... review FBI lab reports... a comparison of CW's statements to FBI agents... special thanks to... Office of Special Counsel Robert B. Fiske, Jr. for their assistance... the New York Post reports that former FBI director William Sessions said... Dr. James L. Luke - forensic Pathology Consultant, FBI Investigative Support Unit, FBI Academy... Isikoff reports that DOJ and FBI agents... The DOJ had earlier planned to release reports... The autopsy was performed by Dr. Beyer... The Forensic Pathologist Panel included... Dr. Charles Hirsch... Small traces of an anti-depressant... [were] found in Mr. Foster's bloodstream. Fiske report at 30... Fiske report at 30...

that, because our Constitution already provides its citizens with a system of oversight, we do not need another precaution against government corruption. In theory, they are right. But this argument assumes that the separate components of the system effectively exercise oversight over one another, and that the press acts somewhat like a watchdog.

The Executive. The public has been told that the US Park Police investigated from the time of the discovery of Mr. Foster's body, until the case was officially closed the first time, 17 days later. But publicly available federal government records demonstrate that throughout this first 17-day probe, FBI participation was considerable.

For the six months after the first brief probe, August through January 1994, the case was closed. At the end of January, Attorney General Reno appointed Robert Fiske to serve as regulatory Independent Counsel, and the FBI under the auspices of the Fiske probe generated most of the proof of cover-up that we reviewed above.

Six months into Mr. Fiske's tenure, in August of 1994, Mr. Starr took over, and three years later, in July, 1997 he announced the conclusion of his Foster death probe.

Technically, the Independent Counsel's investigative jurisdiction remains open until the OIC files its final Report and closes down. Therefore, the Foster case is still open. This purportedly simple case of suicide has been open for all but six months of the last six years, under the jurisdiction of the executive branch.

"The Justice Department has been near the center of almost every major political scandal of the twentieth century."[697] The term, "Independent Counsel," is short for "Counsel who is Independent from the Justice Department." In 1993, on the eve of the expiration of the last five-year term of the Independent Counsel statute, then Senator William Cohen stressed the importance under the Act of investigations being independent from the Justice

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[697] Robert E. Palmer, *The Confrontation of the of the Legislative and Executive Branches: An Examination of the Balance of Powers and the Role of the Attorney General*, 11 Pepp. L. Rev. 331, 353-54 (1984).

Department in ensuring that justice appears to have been done.

> The appearance of justice having been done is equally important as justice having been done. We can see this over a period of years where 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?" When those questions tend to linger... the cloud of doubt remains, and the cynicism remains... 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. The appearance of justice is just as important as justice itself, in terms of maintaining public confidence...[698]

The point of the law is to have an entity other than the Justice Department investigate allegations of, among other things, Justice Department wrongdoing. Mr. Starr seems to have missed the point.

> [I]f it's understood by the American people, [the OIC] will be understood as essentially a microcosm of the Justice Department. *** [T]he creation of that culture of the microcosm of the Justice Department has been so important to me in terms of my sense of what my obligations are as independent counsel.[699]

The creation of an OIC that is a microcosm of the DOJ, with all the attributes of the big Justice Department, is self-defeating. It is not "Independent." The need for independence from the DOJ is all the more evident in the expansions of jurisdiction of Mr. Starr's OIC. Travelgate[700] involves the administration's illegal use of

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[698] See 139 CONG. REC. S15846-01 & S15847-01 (daily ed, Nov. 17, 1993) (statement of Sen. Cohen).

[699] Statements of Kenneth Starr at press conference, February 21, 1997.

[700] By Order entered March 22, 1996, the Court ordered:
> ...[T]he investigative and prosecutorial jurisdiction of Independent Counsel Kenneth W. Starr be expanded to investigate whether any violations of federal criminal law were committed by William David Watkins, former Assistant

the FBI to investigate the White House Travel Office. Filegate[701] involves the White House's illegal use of FBI files. The OIC is also charged with determining whether Bernard Nussbaum, White House Counsel at the time of Mr. Foster's death, violated the law when he testified before Congress on June 26, 1996.

Of all of Mr. Starr's various investigations, the one in which the necessity of maintaining independence from the Justice Department is the most obvious is his probe of Mr. Foster's death. Before Mr. Starr's appointment to head the statutory OIC in August of 1994, the only substantive investigations into Mr. Foster's death, including the first probe, were conducted by the FBI. Yet, Mr. Starr chose to use FBI agents and the FBI Lab to investigate Mr. Foster's death.[702] The use of a federal investigative agency to investigate a case that it had twice closed as a simple suicide presents an obvious conflict of interest and defeats the purpose of the Ethics in Government Act. Congress cautioned against this type of conflict:

> Because independent counsels are appointed to handle politically sensitive investigations for the primary purpose of avoiding any appearance of partiality or bias, it is particularly important that they and their

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to the President for Management and Administration, in connection with his December 1993 interview with the General Accounting Office concerning the firing of the White House Travel Office employees and to determine whether prosecution is warranted..."

[701] By Order entered June 21, 1996, the Court ordered: ...[T]he investigative and prosecutorial jurisdiction of Independent Counsel Kenneth W. Starr be expanded to investigate whether any violations of federal criminal law... committed by Anthony Marceca... relating to requests made by the White House between December 1993 and February 1994 to the Federal Bureau of Investigation for background investigation reports and materials...

[702] Independent Counsel Leon Silverman, who investigated allegations that President Reagan's Secretary of Labor Raymond Donovan had ties to organized crime, noted that he "hired private investigators so that the investigation would not appear to be federally controlled." K. Harringer, Independent Justice, 1992.

> investigations be above any suspicion or allegation regarding conflict of interest.[703]

Because the cover-up is obvious, the OIC's attempt at maintaining the appearance of justice having been done will eventually fail. Mr. Starr's OIC will go down in history as having perpetuated a fraud on the American people, and as having joined the very corruption it was supposed to have exposed and prosecuted.

The Congress. The 1994 Senate Banking Committee was the only Committee that claimed to have looked into the death. Its limited investigative jurisdiction precluded it from investigating the facts of Mr. Foster's death, and only Senator Lauch Faircloth saw fit to cross-examine any of the witnesses, who were limited to FBI agents Monroe and Columbell, Park Police, Dr. Beyer, and Dr. Hirsch, one of Fiske's four pathologists. Dr. Beyer's testimony revealed that the x-rays vanished and that the witnesses had not gotten their story straight on who was responsible for rescheduling the autopsy to occur just 16 hours after the body's discovery. The determination of how or where Mr. Foster died was not an issue before the Committee and Senators from both sides of the aisle stipulated to Fiske's conclusion in opening statements. Senator Orin Hatch took a more aggressive approach, acting as if the Committee had determined the manner and location of the death. Network news broadcast it to millions.

> There is absolutely no credible evidence to contradict the Fiske Report's conclusion that Vincent Foster took his own life and it happened at Fort Marcy Park. There is no evidence to the contrary. I suspect conspiracy theorists will always differ with this conclusion...

Senator D'Amato's 1995 Committee had the requisite jurisdiction, but declined to probe the death. Our efforts to apprise the Congress of the facts have been steadfastly ignored.[704]

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[703] Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.C.A.N. (101 Stat. 1293) p. 2172.

[704] See endnote 32.

Conclusion

The news media. This is what happened. Patrick was harassed beginning October 26, 1995, and the harassment obviously involved the FBI. Five months later, we completed Patrick's *Report of Witness Tampering*, detailing and proving the harassment (which you read portions of above), and gave it to almost all the major newspapers.[705] No articles appeared.

On October 24, 1996, just under a year after the harassment (before the one-year statute of limitations for the assault count expired), Patrick filed his civil rights lawsuit. Because the timing was on the eve of the Presidential election, the suit was filed under seal in anticipation of attacks that the suit was politically motivated. On November 12, 1996, one week after the election, it was unsealed and distributed at a press conference held on the steps of the federal courthouse in Washington. Many representatives of the press attended.[706] There was almost no coverage.

A year later, October 10, 1997, Patrick's 20-page submission was attached as an Appendix to Mr. Starr's Report on Mr. Foster's death, by order of the Special Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals. The media received the Report and its Appendix, much of which is reprinted above. Despite the obvious historical significance of evidence of the FBI cover-up in the case being ordered attached to the Independent Counsel's Report, the media suppressed its existence. Some of the articles even mentioned Patrick's name, but not his Court-ordered Appendix.[707] On the evening of October 10, 1997, Peter Jennings announced that Starr's report should "satisfy even the most ardent conspiracy theorists." (Only three out of ten Americans believed him.[708])

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[705] See endnote 33.

[706] See endnote 33.

[707] See endnote 33.

[708] According to a Zogby International Poll conducted in January 1998, three months after the release of Mr. Starr's report on Mr. Foster's death, 21.9 percent of those polled believe that Mr. Foster was murdered, while only 31.9 percent accept the official suicide story. By nearly two to one, 44.4 percent to 23.2 percent, respondents agree

Conclusion

In October of 1998, Patrick's Amended Complaint was filed (before the expiration of the three-year statute of limitations period for the civil rights violation). It names as defendants United States Park Police Sergeant Robert Edwards, Deputy Chief Medical Examiner James Beyer and his unknown assistant, Deputy Director of the FBI Robert Bryant, FBI agents Lawrence Monroe and Russell Bransford, unknown FBI Lab technicians, Scott Bickett, and the group of men who harassed Patrick: Ayman Alouri, Abdel Alouri, and 24 John Does. The press ignored it.

Those are the developments in the case, each of which occurred in October of the last four years. They were the harassment in October of 1995, the filing of the suit in October of 1996, the Court-ordered Appendix to the OIC's Report in October of 1997, and the filing of the Amended Complaint in October of 1998. The media still fails to apprise the public of these facts.

We cannot explain it, but, despite the fact that evidence of the cover-up is obvious, no major news organization has ever assigned a single reporter to the case. Our efforts to apprise members of the press have been steadfastly rebuffed.[709] The press has acted mostly as a conduit for the official announcements and conclusions of the executive branch, like a public relations department, or the press in countries that do not enjoy the same guarantees of free speech as we do. By its attacks on doubters as conspiracy theorists, the media has a record of turning questions of fact in the case into questions of the motives of those who question the official conclusion, and even into questions of mental stability.[710]

Besides repeating the official conclusions, the media's reporting of the facts of the case is generally limited to the verdict of depression. In light of the

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that there was a government cover-up involving the facts and circumstances of Mr. Foster's death, while 32.4 percent are not sure. 43.5 percent of the participants felt that politicians and the media were too willing to accept the findings in Mr. Foster's death. 27.6 disagreed and 28.9 percent were unsure.

[709] See endnote 33.

[710] See endnote 33.

physical evidence in the case, the facts of which the press has yet to report, the print on the depression verdict could be the basis of a study on the role of the press during the progress of the cover-up.[711]

Here we simply point out what is now manifest. After six years of an obvious cover-up under the nose of the Washington press corps, the media has a powerful interest in keeping the facts of the case from public view. Mike Wallace remarked on *60 Minutes* that some people even accused him of being "a part of the conspiracy." He is not. But his most valuable professional asset, his credibility, as well as the credibility of his industry, will be diminished when the existence of the conspiracy is no longer a secret. Today, suppressing the truth of Mr. Foster's death is a matter of professional self-preservation for numerous members of the news media.

Immediately after this filing is unsealed, it will have been delivered to every major news organization in America. Every day that goes by without its being reported makes the point that much stronger. The media just will not inform the public what it knows of the truth in the case.

The Independent Counsel Statute. The Independent Counsel statute has a five-year "sunset." It expires every five years, unless reenacted. The current Act expires June 30, 1999, one week from the date of this filing, five years since it was reenacted, and five years since Mr. Starr was appointed. The five-year term of the Act has coincided with Mr. Starr's tenure. Congress must decide whether to let it lapse permanently and return to pre-independent counsel law, or to reauthorize it. Congress may reauthorize it with amendments, or even try to devise a new system of handling cases of apparent violations of the law by high government officials. Congress will not decide whether to renew it by its expiration date, June 30, 1999 and we will be without our Independent Counsel statute at least until Congress decides.

> The issue has a way of going away for five years at a time. What happens at reauthorization will depend on the experience of the five years in between. What

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[711] See endnote 33.

> happens in the last year before reauthorization is the key to it all.[712]

Those who are sensitive to the Justice Department's image resent the Independent Counsel statute because it is a form of institutionalized distrust of the Justice Department, "a clear enunciation by the legislative branch that we [DOJ] cannot be trusted on certain species of cases," an "insult."[713]

On February 24, March 3, 17 & 24, and April 14, Senator Thompson's Committee on Governmental Affairs held Hearings, *The Future of the Independent Counsel Act*. Most of the Committee's witnesses suggested that Congress let the law lapse, including Mr. Starr, who "respectfully recommend[ed] that the statute not be reenacted."[714] Starr argued that the Act impinges on Congress's oversight role[715] and that it is "constitutionally dubious."[716] He noted that

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[712] Remarks of Mary Gerwin, counsel to the 1984 Senate Subcommittee for Oversight of Government Management, K. Harringer, Independent Justice, 1992, p. 90.

[713] New York Times Magazine, July 6, 1997, quoting Lee Radek: "Institutionally, the Independent Counsel statute is an insult. It's a clear enunciation by the legislative branch that we cannot be trusted on certain species of cases;" see also Joseph E. DiGenova, *The Independent Counsel Act: A Good Time to End a Bad Idea*, 86 Georgetown U. Law Rev. 2305 (1998): "[W]e need to restore confidence in the DOJ and its ability to handle cases of this nature..."; and see Cass R. Sunstein, *Bad Incentives and Bad Institutions,* 86 Georgetown U. Law Rev. 2267, 2276 (1998): "But the more important point is that the Act breeds distrust of government..."

[714] Compare Testimony of Lawrence E. Walsh, March 24, 1999: Senate Committee on Governmental Affairs, Hearings, *The Future of the Independent Counsel Act*: "Should a statute which presently protects against such an apparent conflict of interest be abandoned without something better to take its place?"

[715] Testimony of Kenneth Starr, Senate Committee on Governmental Affairs, Hearings, *The Future of the Independent Counsel Act,* April 14, 1999: "[T]he law also may have the effect of discouraging vigorous oversight by the Congress, in a departure from our traditions."

the Act fosters tension with the Justice Department[717] and invites media criticism of the appointing Court.[718] Mr. Starr believes that attempts to give the appearance of justice are unattainable under the Act.[719] Other criticisms of the Act include the length of the investigations,[720] the ability of Independent Counsels to employ substantial

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716 Compare the Supreme Court's decision in Morrison v. Olson, 487 U.S. 654 (1988), upholding the constitutionality of the Ethics in Government Act by vote of seven to one.

717 Testimony of Kenneth Starr, Senate Committee on Governmental Affairs, Hearings, *The Future of the Independent Counsel Act,* April 14, 1999: The tension is an institutional one, which exists regardless of the particular Administration or Independent Counsel. As Attorney General Reno testified in 1993, "the relationship between the Department and Independent Counsels [is] difficult at times," characterized by "undue suspicion and resistance, on both sides."

718 Testimony of Kenneth Starr, Senate Committee on Governmental Affairs, Hearings, *The Future of the Independent Counsel Act,* April 14, 1999: "The law may have the unfortunate effect of eroding respect for the judiciary, through attacks -- unanswered and institutionally unanswerable -- on the Special Division. It is one thing to turn the political attack machine on a prosecutor; it is quite another to turn it on the judiciary."

719 Testimony of Kenneth Starr, Senate Committee on Governmental Affairs, Hearings, *The Future of the Independent Counsel Act,* April 14, 1999: Because the Independent Counsel is vulnerable to partisan attack, the investigation is likely to be seen as political. If politicization and the loss of public confidence are inevitable, then we should leave the full responsibility where our laws and traditions place it, on the Attorney General (or, where she deems it appropriate, her appointee as special counsel) and on the Congress.

720 Compare 139 CONG. REC. S15846-01 & S15847-01 (daily ed, Nov., 1993) (statement of Sen. Levin): Another criticism has been the length of the investigations. Some of them have taken a long time, some of them have not. Complex federal criminal cases often take years to investigate. I think you [Attorney General Reno] would concur. The McDade case [Pennsylvania Congressman charged with bribery] -- there were four years of investigation before indictment; Ill Wind [Pentagon procurement fraud], six years so far.

resources in pursuing targets,[721] and the imposition of expense upon those who are investigated.[722]

We review three provisions of the Independent Counsel statute. If the Act is renewed, Congress plans to keep one of these three provisions, the one that has to do with the statute's efforts to keep the costs of Independent Counsel investigations down. The second provision we review is the requirement that Independent Counsels file a final Report. As of the date of this filing, the reporting requirement has almost no chance surviving any renewed statute. We also look at current law's provision that the Court appoints Independent Counsels, which also appears to have little chance of making it into any renewed statute.

The Act's method of saving costs. The Independent Counsel statute seeks to create an office independent and separate from the Department of Justice ("DOJ"), even though all costs of running the OIC are paid by the DOJ.[723] A significant tie between the two entities under the Act is that "[a]t the request of an independent counsel, ...the Department of Justice shall provide... resources and personnel... [to] be detailed to the staff of the independent counsel."[724] "This provision enables independent

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[721] Compare 139 CONG. REC. S15846-01 & S15847-01 (daily ed, Nov., 1993) (statement of Sen. Cohen): "And so I would say that when the Justice Department focuses upon an individual, be it a member of Congress or not a member of Congress, there are substantial resources brought to bear against that individual."

[722] Compare 139 CONG. REC. S15846-01 & S15847-01 (daily ed, Nov. 1993) (statement of Sen. Cohen): I would also point out... [that] this notion that somehow we impose greater expense upon those who are investigated by independent counsels is so far greater than imposed by the Justice Department. I daresay, as Senator Levin's pointed out, Joseph McDade was investigated for four years prior to the bringing of an indictment. Six years for the prosecution of Noriega. Ill Winds and Abscam took years.

[723] 28 U.S.C. §594(d)(2): "The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel."

[724] 28 U.S.C. § 594(d)(1) states in part: An independent counsel may request assistance from the Department of Justice... and the Department of Justice shall provide that assistance, which may include... the use of the resources

counsels to use, for example, the laboratory resources and investigative agents of the FBI."[725] For the first ten years of the Act, the DOJ billed a number of OICs for their use of DOJ resources. But this seemed pointless, since the OIC in turn billed these costs back to the DOJ. The DOJ was, "in effect, demanding reimbursement for itself."[726] So in 1988, Congress directed the DOJ to stop billing OICs for their use of DOJ resources.[727]

The Act directs the Special Division to appoint an Independent Counsel who will conduct his activities in a "cost effective manner,"[728] and requires the OIC to conduct its activities with "due regard for expense."[729] Therefore, the Act provides an incentive for the OIC to use FBI agents and the FBI laboratory. The more the OIC relies on the FBI, as opposed to independent investigators and laboratories, the less the reported cost of the investigation.

But the Independent Counsel's incentive to use FBI agents and the FBI Lab is antithetical to the way the Act is supposed to work -- to be independent from the DOJ and its FBI. It is a flaw in the statute. Congress's consideration of whether and how to reenact the law has not included any consideration of making OICs more autonomous from the very entity they are supposed to be independent

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and personnel necessary to perform such independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.

[725] Senate Report No. 100-123. Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.C.A.N. (101 Stat. 1293) p. 2172.

[726] Senate Report. No. 100-123. Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.C.A.N. (101 Stat. 1293) p. 2172.

[727] Senate Report No. 100-123. 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... [and are] instructed to discontinue the practice of requiring reimbursement agreements."

[728] 28 U.S.C. § 593(b)(2).

[729] 28 U.S.C. § 594(l)(1)(A)(i).

from, the Justice Department. In fact, Congress is considering ways to somehow fold OICs into the Justice Department, to save more money.

We agree with Donald Smaltz, the Independent Counsel *In re Espy*, who observed that executive branch officials control hundreds of billions of dollars in governmental programs.

> Independent Counsel investigations are expensive and, because of the initial start-up costs, probably more expensive than the average DOJ investigation (although we don't know how much more because the DOJ does not report its figures). However, the question "How much more expensive?" is less important than "Is the expense justifiable?" In answering the question, the public must appreciate that Independent Counsels investigate corruption at the highest levels of government by individuals who hold the public trust. These guardians of the public trust deserve the closest of scrutiny in the performance of their public duties as provided for in the Independent Counsel Act. The President, his cabinet, and their immediate staffs, oversee substantial sections of our economy and control hundreds of billions of dollars in governmental programs and subsidies. When we begin to evaluate the costs in monetary terms whether to investigate and root out the corruption of officials in charge of these programs, we start down a dangerous path. Any investigation of criminal acts, whether they are conducted by the DOJ, Congress, or an Independent Counsel, will be expensive and time consuming. But when compared to insuring the safety and welfare of the people and upholding the rule of law by holding our leaders accountable, the costs are a small price to pay.[730]

Smaltz's investigation has yielded 14 guilty pleas and convictions and over $6 million in fines.

The requirement that Independent Counsels file a final Report. Today, the statute requires independent counsels to file a final Report setting forth "fully and completely

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[730] Donald C. Smaltz, *The Independent Counsel: A View From Inside*, 86 Georgetown U. Law Rev. 2366 (1998).

a description of the work of the independent counsel."[731] The main reason for this provision is to ensure that the special prosecutor does not whitewash the investigation, in keeping with the purpose of the Act of maintaining the appearance of justice having been done. If the Act is reenacted, all indications are that the reporting requirement has little chance of surviving, as Mr. Starr pointed out to the Senate during his April 14 testimony:

> The witnesses before this Committee have been virtually unanimous in their opposition to final reports.[732] I concur. If the statute is reauthorized, I respectfully recommend that Congress eliminate the report requirement. Compiling the report and (as the statute dictates) seeking comments from persons named in it are burdensome and costly tasks. And, as Mr. Fiske said in his testimony here, the requirement may encourage Independent Counsels to continue turning

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[731] 28 U.S.C. § 594(h)(1)(B).

[732] See, e.g., Testimony of Samuel Dash, Senate Committee on Governmental Affairs, Hearings, *The Future of the Independent Counsel Act*: In addition, I have developed serious doubts about the usefulness and fairness of a final report to the special division of the court. Regular federal prosecutors do not file such reports after an investigation, whether they decide to prosecute or not. It is basically unfair for an Independent Counsel to spell out why a target who was not been indicted still is believed to be guilty. The 1994 reauthorization act made some changes here, but it is still permissible for an independent counsel to label a target as guilty, even though the evidence was insufficient for an indictment. Further, the requirement to file a final report tends to lengthen the investigation. It leads the independent counsel to want to show in the report that substantial work was done and that he has dotted every "i" and crossed every "t." An example of this was Starr's conclusions on the Foster suicide, which could have been publicly released at least two years before the written report was filed. The need for the written report and the controversy over Fiske's findings compelled Starr to continue to make an exhaustive investigation, piling up evidence... *** When Starr... redid the Foster investigation, and filed a report agreeing with Fiske that Foster's death was a suicide, that conclusion was generally accepted publicly, except for some die hard conspiracy theorists.

> stones after they have concluded that no prosecutable criminal case exists. We should leave to others -- to Congress, journalists, and, ultimately, the people -- the task of making broader judgments about matters under investigation.[733]

The unknown authors of Mr. Starr's Foster death Report are guilty of willful, premeditated acts of deception. Yet, without Mr. Starr's having filed his Report on Mr. Foster's death, the foregoing comparison of its work to the underlying investigative record would not have been possible, and it would have been impossible to prove the OIC's participation in the cover-up.

The obligation of OICs to file Reports explaining their work facilitates the Ethics in Government Act's purpose of ensuring that justice is done, which is the only way of maintaining the appearance that justice has been

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[733] See also Brett M. Kavanaugh, *The President and the Independent Counsel*, 86 Georgetown U. Law Rev. 2133, 2137, 2155 (1998):

> Congress should eliminate the reporting requirement. The reporting requirement adds time and expense to independent counsel investigations, and the reports are inevitably viewed as political documents. The ordinary rules of prosecutorial secrecy should apply. *** The most illogical part of the current independent counsel is its final report requirement. The provision was originally designed to ensure that the special prosecutor did not "whitewash" the investigation. The rationale does not justify a report; the fear of whitewashing is the reason that a special counsel is appointed in the first place.

See also ABA, April, 1997, *Report and Recommendations, The Independent Counsel Statute: The Need for Limitations* [reversing prior position], by Nancy Luque, Saul M. Pilchen & Lee Radek, pp. 23-24: "[supporting] elimination of the reporting requirement."

> Compare Lawrence E. Walsh, *The Need for the Renewal of the Independent Counsel Act*, 86 Georgetown U. Law Rev., 2379, 2388 (1998). A public officer who spends millions of dollars should be required to explain his actions to the reporting court and particularly why the subject was not prosecuted... In any event, the public is entitled to know why, when the Attorney General decided an expensive investigation was necessary, no prosecution followed.

done. What we see in the Foster case is an attempt at the appearance of justice being done but without its really being done. In other words, it is a cover-up. The reporting requirement is a safeguard against cover-ups. If Congress reenacts the Act with no reporting requirement, the public will have no way of knowing whether the Justice Department is using the Act to perpetuate more FBI cover-ups, as it did in the Foster case.

The Act also provides for the inclusion of comments and factual information as an appendix to the OICs' Reports.[734] The objects of allowing persons named in final Reports to attach facts and comments to OIC's reports are to further the goals of the Act -- so that final reports are full and complete, to hold the Independent Counsel accountable, and to ensure that justice is done.

This section of the law's final Report provision is also designed to afford a measure of fairness to targets and others named final Reports. Although it did not seek to indict him, Starr's grand jury probe targeted Patrick Knowlton. He was targeted illegally, not legally. If the Court grants Patrick Knowlton's motion, this filing will be attached to the Independent Counsel's Report. The OIC's Foster death Report may have been the last such report ever filed with the Court.

Selection of Counsels by the Court. Under the current Independent Counsel statute, the Court, as opposed to the Attorney General, selects and appoints independent counsels. The last time there was no Independent Counsel statute, late 1993 into the summer of 1994, Attorney General Reno appointed Robert Fiske to serve as regulatory Independent Counsel, resulting in the second layer of the FBI cover-up into Mr. Foster's death. Mr. Starr posits that we should leave to the news media to inform us whether a regulatory independent counsel does a good enough job. But today, the view of the press as willing to keep the public informed is wishful thinking, a fiction. In the 1990s, we heard nothing of Mr. Fiske's prosecutorial record. Apparently, we would have had it been the same press that we had in the 1980s.

[734] 28 U.S.C. § 594(h)(2).

Conclusion

W. Barret, *Freedom to Steal, Why Politicians Never go to Jail*, New York Magazine, February 4, 1980:

> Crooked politicians have nothing to fear in New York. Contrary to much of the post-Watergate anti-corruption ballyhoo... As astounding as it may seem, not since the legendary Carmine DeSapio was convicted back in 1969 for bribery has a top politician or any of the thousands of public officials in the Southern District's territory -- Manhattan, the Bronx, and Westchester -- found himself in handcuffs. It is uncertain whether this pattern of timidity on the part of the politically appointed prosecutors will change [with the] replace[ment of] Robert B. Fiske in the prestigious post... *** The end of Fiske's term, in March will, in fact, conclude a ten-year period in which... [has brought] the transformation of the Southern District into a red-light district for political corruption. *** The price we all pay for these relationships and priorities is a federal jurisdiction where official corruption appears legally impenetrable.[735]

In any event, the appointment by the executive of special counsel to investigate the executive is obviously antithetical to the appearance of justice having being done.

Conclusion. The obvious Justice Department cover-up of the facts of Mr. Foster's death is approaching its sixth anniversary. Its secrecy has spanned two special counsels, two sets of Congressional hearings, and the appearance of hundreds of newspaper articles reporting that there was no foul play. What Associated Press reporter Robert Parry had to say six years ago applies today.

> What you'll hear if you listen to the McLaughlin Group or these other shows is a general consensus way - there may be disagreement on some points - but there is a general consensus of the world that is brought to bear, and often it is in absolute contradiction to the real world. It is a false reality - it's a Washington reality... How do the American people really get back

[735] See endnote 33.

> control of this - not just their government, but of their history - because it's really their history that has been taken away from them. And it's really what the Washington press corps and the Democrats in Congress as well as the Republicans are capable of, was this failure to tell the American people their history. And the reason they didn't was because they knew, or feared, that if the American people knew their real history... they wouldn't have gone along with that. *** [W]e sort of got in there - and I guess it was real nice, we felt like we were insiders.

An insider mentality pervades Washington's institutions -- the press, the Congress and the administration and its Justice Department. Many of its members have an "inside-the-beltway" mentality. The reasoning is "no more Watergates," and "the economy is good." Those of this ilk generally go farther in Washington. There is an aspect of elitism to this mentality; gentlemen do not wash their colleague's dirty linen in public -- and there is a great deal of dirty linen in the Foster case. The mentality is that publicizing very serious wrongdoing would simply not be worth the anguish that it would cause the country, much less the woe to the press and government that would ensue from public knowledge of the scarcity of oversight.

The record of Mr. Starr's OIC is one of inactivity in matters implicating the Justice Department, and of efforts to prosecute the President regarding an aspect of his personal life. In following this course of action, Mr. Starr's OIC has turned the public against the Independent Counsel statute, so that now the public's opinion of the law is the same as that of the Justice Department's and Mr. Starr's -- one of opposition to its reenactment. The more Mr. Starr's OIC is seen as partisan, expensive and unnecessary, the less likely the law is to be reenacted.

Today, inside the beltway, the separate branches of government and the press are largely pursuing the same goal -- credibility -- and are not always adversarial when necessary. The more serious the wrongdoing, the more painful it would be for Washington to exercise oversight, and the less likely the truth is to surface. But this state of affairs is hidden. It would seem that the federal government effectively oversaw itself. The impeachment proceedings are over. The charges were not serious enough

to warrant the President's removal. There was not another Watergate. The Independent Counsel statute may never be renewed. Calls for more civility in government have been made. In short, corruption in the Justice Department and its FBI is becoming more and more impenetrable.

Under the Act, a majority of members of either party of the Judiciary Committees of either House of Congress could ask Janet Reno to apply to the Court for appointment of an Independent Counsel to investigate Mr. Foster's death.[736] Because Ms. Reno's Justice Department generated almost all of the evidence we reviewed above, she would not be in a position to try to claim that the evidence of cover-up is not, in the words of the Act, "from a credible source."[737] But, as long as the existence of the cover-up remains a secret, Congress will continue to ignore the issue.

Washington's response to an onslaught of corruption, triggering seven Independent Counsel investigations, is to abolish the Independent Counsel law. One of the excuses is that the law is institutionalized distrust of the Justice Department. It is; just as our Constitution is institutionalized distrust of the separate branches of government. Moreover, Washington's institutions, having failed to expose the obvious corruption in the Foster case, are not in a position to advise the public that is does not need the "auxiliary precaution" of the Independent Counsel statute to protect the public from corruption.

The OIC's failure to expose the cover-up is a shame. It is a missed opportunity for America to learn a few things about its democratic institutions. Its Justice Department and FBI have become dangerously corrupt and politicized. We cannot trust our press to expose Justice Department cover-ups, even when their existence is obvious. Congress ignored all but the appearance of its having accepted its oversight responsibility. In short, had the OIC prosecuted the Justice Department personnel responsible for covering up the facts of its investigations into Mr.

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[736] Ethics in Government Act of 1978, As Amended, 28 U.S.C. § 592(g)(1).

[737] Ethics in Government Act of 1978, As Amended, 28 U.S.C. § 591(d)(2).

Foster's death, we would all know of the lack of effective government oversight and the lack of integrity in the news media.

The promotion of public confidence in the integrity of the federal government is a fundamental goal of the Constitution, and of our Ethics in Government Act. The only way to maintain the appearance of justice having been done, and to foster public confidence in the integrity of the federal government, is to see to it that justice is truly done. Effective government oversight is an integral element of our democratic system. This filing proves that it is in short supply today.

Justice appears not to have been done in a number of allegations of serious FBI wrongdoing in recent years. The Alfred P. Murrah Building was blown up on the anniversary of one of the first, Waco, for which no one lost even a day's pay. Truth and accountability appear scarce. What do we gain by going further down this road of distrust of our democratic institutions, as opposed to fostering public confidence in their integrity by ensuring that justice is done? This is not the time to abolish our Ethics in Government Act.

The truth in this case is a Washington secret. Some day, it will be widely known. In the interim, those who have a personal stake in the conspiracy remaining secret will be winning their fight to keep the truth suppressed, and with it, the truth of the loss of integrity of our democracy. But there is another secret in Washington. It is that the public can learn what is wrong with our democracy -- the first step in fixing it. We do not have to go along with the cover-up because we have the power to get the facts out.[738]

The case of cover-up in the federal investigations into Mr. Foster's death is not a partisan issue. It is not about money. And it is about more than government corruption. Exposing the truth in the Foster case will shake America's confidence in the integrity of its government and press, but the disease is worse than the cure. Thomas Jefferson wrote that the three branches "shall be kept forever separate." The Constitution was

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[738] See Endnote 34.

designed to work today. Americans have a right to know the facts and to judge for themselves whether its separate democratic institutions have in fact accepted the responsibilities that come with the public trust -- and whether our history has been taken from us.

Respectfully submitted,

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By Counsel