

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED JUL 15 1997

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEAL

MOTION FOR DISCLOSURE OF REPORT
ON THE DEATH OF VINCENT W. FOSTER, JR.,
TO APPROPRIATE INDIVIDUALS FOR COMMENTS WITHIN 30 DAYS

The Office of Independent Counsel In re: Madison Guaranty Savings & Loan Association (Kenneth W. Starr) has today filed its report on the death of former Deputy White House Counsel Vincent W. Foster, Jr. The OIC has prepared the report mindful of the obligation of restraint imposed by the Independent Counsel Reauthorization Act of 1994. See, e.g., Report at 16 n.23.

The OIC respectfully moves this Court for disclosure of the report to appropriate parties for comments within 30 days. The OIC intends to move for the Court's authorization of public release of the report at the conclusion of that comment period (with appropriate comments, if any, included in an appendix).

Traditionally, an independent counsel files a single final report that can be disclosed to appropriate parties and then publicly released. 28 U.S.C. § 594(h). The OIC respectfully submits that a variety of extraordinary and unique factors regarding the final report on the death of Mr. Foster justify

public release of that report as soon as practicable -- and thus immediate disclosure to appropriate parties for comments to the Court within 30 days.

1. To begin with, the Court's involvement in the report process is necessary because of the restrictions of Fed. R. Crim. P. 6(e), which applies in this Circuit primarily to testimony obtained before the grand jury.¹ In this matter, however, the witnesses named in the report who testified before the grand jury also have provided statements to Congress or to federal investigators. In addition, the report does not specifically identify any particular testimony as having occurred before the grand jury.

Moreover, the very purpose of disclosure to appropriate parties before public release is authorized is to ensure that individuals are able to protect the same reputational and privacy interests that undergird Rule 6(e). If an individual objects to public disclosure of some portion of the report (which we do not anticipate here), that objection can appropriately be considered by the Court at the conclusion of the comment period. In short, the policies underlying Rule 6(e) simply are not a reason to delay outright the process of receiving comments and authorizing

¹ See, e.g., Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 582 (D.C. Cir. 1987) (quotation and citation omitted) ("Rule 6(e)'s purpose is not to foreclose from all future revelation to proper authorities the same information or documents which were presented to the grand jury"); In re Grand Jury, 510 F. Supp. 112, 115 (D.D.C. 1981) ("documents sought for their own sake are not protected by Rule 6(e) merely because they were subpoenaed or shown to the grand jury").

public disclosure.

2. In any event, the question is not whether disclosure to affected parties is appropriate, but when. Even if the above analysis were not sufficient to justify immediate disclosure to appropriate parties (and then public release) of the OIC's report on the Foster death matter, several factors unique to the Foster death report justify that step here.

* Previous federal investigations (including those conducted by the United States Park Police and regulatory independent counsel Fiske) have publicly released statements and reports on the Foster death matter. Therefore, we believe there is no discernible public or private interest that would be served by keeping the OIC's report, which addresses the same subject matter, secret for some indefinite period until all of the OIC's investigations have concluded.

* The question at issue in the Foster matter is whether and where Mr. Foster committed suicide. The enormous public interest in a persuasive answer to that question cannot be meaningfully addressed without release of the report. The number of theories that have developed regarding Mr. Foster's death (many bearing only a loose relationship to the facts but nonetheless taking hold with segments of the public) no doubt will continue to multiply and flourish without a report explaining the reasoning behind the OIC's conclusion.

* The Congress of the United States has expressed a substantial interest in disclosure of the OIC's report. Indeed,

in 1995, the Speaker of the House asked Congressman Steven Schiff to examine the Foster death matter. Congressman Schiff has urged this Office to complete promptly a thorough report.

* We are confident, moreover, based on their communications to the OIC, that the parties primarily affected by the report -- the Foster family members -- are strongly in favor of prompt public release of the report (pending their possible specific objection to public disclosure of certain portions of it). They fervently desire closure to this matter.

3. We respectfully request a comment period of 30 days because prompt public release is strongly in the public interest and because the number of appropriate parties who will be notified for comments is manageable.

The OIC has prepared a list of contact numbers for the following named parties, and the list will be provided to Chief Deputy Clerk Marilyn Sargent:

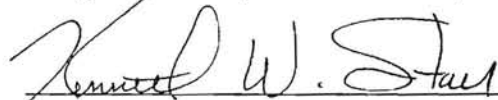
the Foster family members
Thomas Castleton
President and Mrs. Clinton
Helen Dickey
Deborah Gorham
Kaki Hockersmith
Webster Hubbell
William Kennedy
Bruce Lindsey
Craig Livingstone
James Lyons
Bernard Nussbaum
Betsy Pond
Marsha Scott
Susan Thomases
Patsy Thomasson
Linda Tripp
David Watkins
Dr. Larry Watkins
the United States Park Police

the United States Secret Service
the Fairfax County Fire and Rescue Department
Dr. James Beyer
Dr. Donald Haut

The OIC will work closely with Ms. Sargent to ensure that the notice-and-comment period proceeds as smoothly and efficiently as possible.

The OIC respectfully requests that the Court grant this motion.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Kenneth W. Starr", written over a horizontal line.

KENNETH W. STARR
Independent Counsel

Office of Independent Counsel
1001 Pennsylvania Avenue
Suite 490-North
Washington, D.C. 20004

July 15, 1997
Washington, D.C.

MEMORANDUM

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: Motion re Foster report and proposed order to IC to respond to motion

DATE: July 30, 1997

We have received a motion from a witness in the Vincent Foster matter, requesting access to relevant portions of IC Starr's report on Foster's death and permission to attach comments to the report, pursuant to section 594 (h)(2) of the IC statute. Apparently this is a witness who, for privacy reasons, was not identified in the report, but was referred to only as "C2". Attached for your review is a proposed order directing IC Starr to respond to the motion.

Also attached is the first page of the motion (total of 19 pages) and the first page of the movant's letter to us (total of 8 pages). I will send to you the complete motion and letter by mail today. I will also send to you, if you wish, the appendix attached to the motion; however, it is in two volumes and quite lengthy (several hundred pages).

MEMORANDUM

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: Order to IC to respond to motion re Foster report

DATE: August 7, 1997

Attached is an order filed today directing IC Starr to respond to a motion by Patrick Knowlton for access to the report on the death of Vincent Foster. After reviewing the IC's response we can decide whether or not to grant the motion.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

FILED AUG 07 1997

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEAL

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

O R D E R

This matter coming before the Court upon a Motion by Patrick Knowlton for access to relevant portions of Independent Counsel Kenneth Starr's report on the death of Vincent Foster and for leave to include comments as an appendix to that report, it is

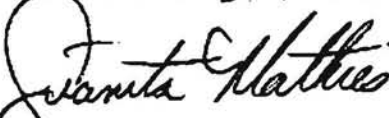
ORDERED that the Independent Counsel respond to the motion within 5 business days of the date of this order.

Per Curiam

For the Court:

Mark J. Langer, Clerk

by



for Marilyn R. Sargent
Chief Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Signature]
United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels

FILED AUG 14 1997

Ethics in Government Act of 1978, As Amended

Special Division

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEAL

RESPONSE TO MOTION BY PATRICK KNOWLTON RE: REPORT
ON THE DEATH OF VINCENT W. FOSTER, JR.

Patrick Knowlton has moved for access to relevant portions of the OIC's report on the death of Vincent W. Foster, Jr. Although Mr. Knowlton is not technically entitled under the statute to access to the report because his "name" nowhere appears in it, see 28 U.S.C. § 594(h)(2), he is briefly referenced in the report by pseudonym, which is a step taken to protect the privacy of a witness. Under the unusual circumstances, we do not object to allowing Mr. Knowlton access to the relevant portions of the report, and we thus have submitted those portions to the Clerk's Office.

At this time, Mr. Knowlton's further request for leave to include comments in an appendix is premature. The proper procedure under the statute is for Mr. Knowlton to review the relevant portions of the report and then to submit whatever factual information or comments regarding the report that he wishes to file. In accord with the statutorily ordained procedure and in the interest of efficiency, we plan to await Mr.

Knowlton's review of the report (and his possible submission of any comments following his review) before objecting, if necessary, to inclusion of any of his comments in an appendix to the report.

In sum, Mr. Knowlton's motion for access to the relevant portions of the report is moot in light of our submission of them to the Clerk, and his motion for inclusion of comments is premature pending his review of the relevant portions of the report.

Respectfully submitted,

KENNETH W. STARR
Independent Counsel

Jackie M. Bennett _{EX}

JACKIE M. BENNETT
Deputy Counsel

Office of Independent Counsel
1001 Pennsylvania Avenue
Suite 490-North
Washington, D.C. 20004

August 14, 1997

MEMORANDUM

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: IC response to Knowlton motion, and proposed order

DATE: August 18, 1997

Attached is IC Starr's response to the motion by Patrick Knowlton for access to the report on the death of Vincent Foster. In light of the IC's response I have attached a proposed order granting the motion in part, although denying the motion altogether would appear to be justifiable under § 594 (h)(2) of the IC statute since Knowlton is not "named" in the Report. In any event, I think we should deny his present request to include his submissions as an appendix to the report. Like any other individual who falls under § 594 (h)(2) he will be free to submit comments *after* he has reviewed the relevant portions of the Report, and we can then decide whether or not those comments should be included in the appendix.

I await your comments.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEAL

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

O R D E R

This matter coming before the Court upon a motion by Patrick Knowlton for access to relevant sections of IC Starr's Report on the death of Vincent W. Foster, Jr. ("the Report"), and to include as an appendix to the Report comments submitted with the motion, it is

ORDERED that the Clerk make available to Patrick Knowlton or his attorney relevant portions of the Report; it is

FURTHER ORDERED that those sections of the Report made available to Patrick Knowlton or his attorney be kept under seal; and it is

FURTHER ORDERED that the request of Patrick Knowlton to include as an appendix to the Report comments submitted with his

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motion is denied, without prejudice to his right to refile upon completion of his review.

Per Curiam

For the Court:

Mark J. Langer, Clerk

by

Marilyn R. Sargent

Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

443 United States Courthouse
10th & Main Streets
Richmond, Virginia 23219

John D. Butzner, Jr.
Senior Circuit Judge

(804) 771-2506

August 18, 1997

Judge Sentelle


Judge Fay

Div. No. 94-1 - In re: Madison Guaranty Savings & Loan
Association (IC response to Knowlton motion)

Judges:

I concur in the draft of the order that Judge Sentelle
circulated on August 18, 1997.

Sincerely yours,


John D. Butzner, Jr.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Hon. Peter T. Fay
Senior U.S. Circuit Judge

99 NE 4th Street, Room 1255
Miami, FL 33132
(305) 536-5974

TO: Judge Sentelle

FROM: Peter T. Fay

RE: No. 94-1, In re: Madison Guaranty Savings & Loan Assoc.
(IC response to Knowlton motion)

DATE: August 20, 1997

I concur your August 18th draft of the order.

PTF/mz

cc: Judge Butzner

United States Court of Appeals

District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, DC 20001-2866

David H. Sentelle
United States Circuit Judge

September 24, 1997

RECEIVED
SEP 25 1997
JOHN D. BUTZNER, JR.
SR. U.S. CIRCUIT JUDGE

MEMORANDUM TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle 

RE Division No. 94-1
*Madison Guaranty Savings &
Loan Association--Knowlton "Comments"*

You are receiving herewith the motion of Patrick Knowlton "to Include Comments and Factual Information as an Appendix to the Report on the Death of Vincent Foster, Jr." The question of what to do with his "Comments" is not an easy one. The statute, 28 U.S.C. § 594(h)(2), dealing with comments by "any individual named in such report" provides that "such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report." At least technically, Knowlton is not an "individual named" in the Report. Everyone agrees that Knowlton is the person referred to as "C2" on pages 21-22 of the Report, but he is never actually named in the Report. We could obviously deny his motion on that basis, as well as several other possible bases, particularly given the unqualified discretion afforded us by the statute. The downside of that course of action is that Knowlton appears to be either a product of or a participant with the conspiracy theorists and a denial of the motion will certainly be treated in fringe publications as an attempt to suppress his version, although obviously its non-inclusion would not prevent him from circulating it in any other fashion he chose.

If I were forced to decide the question alone, it would be my inclination to deny the motion. As Judge Butzner pointed out in his separate opinion in *In Re: North*, 10 F.3d 831, 835 (D.C. Cir. 1993), the purpose in inclusion of comments under § 594(h)(2) is "to assure that the report is full and complete and to afford a measure of fairness to persons mentioned in the report." Knowlton is not named in the Report, and does not, in fact, add much to the fullness or completeness of the Report since his "comments" (save arguably the first 2 1/2 pages) is an expression of his personal theories and an account of events beyond the scope of the Report.

Therefore, the inclusion of his comments would neither meet the literal language of the statute nor serve its purpose. Further, if we deny the motion, I suggest we do so in an opinion that stresses his First Amendment right to circulate his account by other means, not at the expense of the taxpayers.

I am by no means, however, wedded to that viewpoint. I would welcome any suggestions either of you have as to the disposition of this motion.

D.B.S.

ENCLOSURE

Memo to Judges Gentelle and
Butzner

Re: Div. No. 94-1

Motion of Patrick Knowlton

Dear Judges:

While I am anxious to discuss this matter with both of you, my initial reaction is that we should grant Knowlton's request. It seems to me that everyone involved in this investigation (Foster's death) acknowledges that Knowlton is "C2", it has been made public that he gave statements to investigators and it is his request to file these comments.

It doesn't seem to me that at this point we should judge his credibility or try to evaluate the merits of anything he writes. He does comment on specific findings and conclusions in the report. He contradicts specific factual matters and takes issue with the very basis of the report filed by the I.C. It seems

to me that the language of the statute
is designed to cover this type of situation.

In any event, would a conference
call be possible or appropriate.

Sincerely,
[Signature]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
443 United States Courthouse
10th & Main Streets
Richmond, Virginia 23219

John D. Butzner, Jr.
Senior Circuit Judge

(804) 771-2506

September 25, 1997

Judge Sentelle

Judge Fay

Div. No. 94-1 - In re: Madison Guaranty Savings & Loan
Association (Knowlton comments)

Dear Judges:


Late this afternoon, I received Judge Sentelle's memorandum of September 24, 1997, enclosing Patrick Knowlton's motion to include comments and factual information as an appendix to the report on the death of Vincent Foster, Jr. Unfortunately, Judge Sentelle's memorandum was delivered to our clerk's office, where it remained for several hours. I also just received Judge Fay's memorandum via fax.

I agree with Judge Fay that we should grant Knowlton's request. I think it should be granted with a simple order that does nothing more than grant the motion with all of its attachments.

I suspect that if we deny the motion we will be charged as conspirators in the cover-up. I think the fact that Knowlton was designated as "C2" in the report is, under the circumstances, immaterial. As Judge Fay points out, it is pretty well acknowledged that Knowlton is "C2." Having said this, I think that we should not identify him in the order as "C2." I suggest we let the motion and attachments speak for themselves.

I will, of course, be available for a conference call, if need be.

Sincerely yours,


John D. Butzner, Jr.

MEMORANDUM

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: Knowlton motion

DATE: September 25, 1997

After reviewing each of your memos of this date I too believe that we should grant Mr. Knowlton's request. As we are all in agreement it does not appear that a conference call is necessary.

I will draft a simple order granting the motion, along the lines suggested by Judge Butzner.

MEMORANDUM

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: Proposed order for Knowlton motion

DATE: September 26, 1997

Attached for your review is a draft order which simply grants Knowlton's motion to include his comments with attachments in the appendix to IC Starr's Report.

I await your comments.

DRAFTUNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**DRAFT**Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEALBefore: SENTELLE, Presiding, and BUTZNER and FAY, Senior Circuit
Judges.ORDER

Upon consideration of the motion of Patrick Knowlton to include comments and factual information as an appendix to the Report on the Death of Vincent Foster, Jr. (the "Report"), and it appearing to the court that the motion should be granted, it is

ORDERED that the appendix to the Report shall include the September 23, 1997 letter from Knowlton's attorney to the court, together with exhibits thereto.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by

Marilyn R. Sargent
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
443 United States Courthouse
10th & Main Streets
Richmond, Virginia 23219

John D. Butzner, Jr.
Senior Circuit Judge

(804) 771-2506

September 26, 1997

Judge Sentelle


Judge Fay

Div. No. 94-1 - In re: Madison Guaranty Savings & Loan
Association (Knowlton comments)

Dear Judges:

I concur in the draft of the order that Judge Sentelle
circulated on September 26, 1997.

Sincerely yours,


John D. Butzner, Jr.

MEMORANDUM

*See F3d 831
in Re North**[Signature]*

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: IC Starr's motion for reconsideration, and motion for release of report

DATE: September 29, 1997

Attached is IC Starr's motion for reconsideration of our order allowing the comments of Patrick Knowlton to be included in the appendix to the report on Vincent Foster's death. I will call you in the morning to discuss this motion.

Also attached is IC Starr's motion for release of the report. I suggest we immediately grant this motion.

MEMORANDUM

TO: Judge Butzner
Judge Fay

FROM: Judge Sentelle

RE: Orders re Foster report

DATE: September 30, 1997

Please find attached a draft order denying the motion of the IC for reconsideration. I felt the less we said the better.

Also attached is a draft order allowing public release of the report.

I await your comments.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

443 United States Courthouse
10th & Main Streets
Richmond, Virginia 23219

John D. Butzner, Jr.
Senior Circuit Judge

(804) 771-2506

September 30, 1997

Judge Sentelle


Judge Fay

Div. No. 94-1 - In re: Madison Guaranty Savings & Loan
Association (orders re Foster report)

Dear Judges:

I concur in the draft orders that Judge Sentelle circulated on
September 30, 1997.

Sincerely yours,


John D. Butzner, Jr.

DRAFT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DRAFT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

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

O R D E R

Upon consideration of the motion of Independent Counsel Starr for leave to publicly release the Report on the Death of Vincent Foster, it is

ORDERED that the motion be granted. It is therefore

ORDERED, ADJUDGED, and DECREED that the Report on the Death of Vincent Foster, inclusive of an appendix containing all comments or factual information submitted by any individual pursuant to 28 U.S.C. § 594, shall be released to the public.

Per Curiam
For the Court:
Mark J. Langer, Clerk
by

Marilyn R. Sargent
Chief Deputy Clerk

DRAFT**DRAFT**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

UNDER SEAL

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

O R D E R

This matter coming before the court upon a motion by the Independent Counsel for reconsideration of the court's order of September 26, 1997 allowing the comments of Patrick Knowlton to be included in the appendix to the Report on the Death of Vincent Foster, it is

ORDERED that the motion of the Independent Counsel for reconsideration is denied.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by

Marilyn R. Sargent
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

443 United States Courthouse
10th & Main Streets
Richmond, Virginia 23219

John D. Butzner, Jr.
Senior Circuit Judge

(804) 771-2506

October 21, 1998

Dear Dave:

I appreciate more than I can say your generous letter of October 14, 1998. My contribution to the work of the division has been quite small compared to the matters that you have taken care of. Your ability, diligence, and attention to detail have made you an exceptional presiding judge. Your concurrence in In re North (George fee application), 62 F.3d 1434 (D.C. Cir. 1994), which denied attorney fees following President Bush's pardon, dispels any notion that you have allowed political concerns to influence the discharge of your duties.

I think we differed only once--the appointment of Mr. Starr. But in the end, I decided, as you will recall, to concur. A dissent on this question would have been perceived as politicizing the court.

In every other respect we have worked in harmony. Let me assure you that it has been a source of great pleasure to be associated with you.

With every good wish, I am

Sincerely yours,



John D. Butzner, Jr.

The Honorable David B. Sentelle
United States Circuit Judge
United States Court of Appeals
333 Constitution Ave., N.W.
Washington, D.C. 20001